

Bruce T. Moats, Esq.
Law Offices of Bruce T. Moats, P.C.
2515 Pioneer Avenue
Cheyenne, WY 82001
(307) 778-8844
fax: (307) 638-1227

STATE OF WYOMING)
) ss. IN THE DISTRICT COURT FOR THE
COUNTY OF SWEETWATER) THIRD JUDICIAL DISTRICT

ROSE MOSBEY, ISLAND RICHARDS,)
LEIGHTON WESSEL, HOLLY DABB,)
and ROCK SPRINGS NEWSPAPERS, INC.,)
a Wyoming corporation,)

Plaintiffs,

vs.

Docket No. _____

THE BOARD OF COUNTY)
COMMISSIONERS FOR SWEETWATER)
COUNTY, and COUNTY OF SWEETWATER,)

Defendants.)

PETITION FOR DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION

Petitioners Rose Mosbey, Island Richards, Holly Dabb and Rock Springs Newspapers, Inc., acting by and through their attorney, petitions the Court for declaratory judgment that the appointment of Don Van Matre, Jr., by the Sweetwater County Commission to fill a vacancy on the Commission is null and void as the decision was made at a meeting not in compliance with the Wyoming Public Meetings Act. Petitioners further request that the Court issue a preliminary injunction prohibiting Van Matre from executing the duties as Commissioner until this matter is resolved. In support of their Petition, Petitioners state the following:

Parties and Jurisdiction

1. Petitioner Rock Springs Newspapers, Inc., is duly incorporated in the State of Wyoming and publishes *The Rocket-Miner*, a newspaper of general circulation in Sweetwater County, Wyoming.
2. Petitioner Holly Dabb is the publisher of the *Rock Springs Rocket-Miner* and a resident of Sweetwater County, Wyoming.
3. Rose Mosbey, a registered Democrat, is a resident of Sweetwater County, who has been and is active in county politics and municipal government.
4. Island Richards, a registered Republican, is a resident of Sweetwater County,

Wyoming, who has been and is active in county politics and government.

5. Leighton Wessel is a longtime Sweetwater County business owner, now retired, who has an interest in county politics and government.

6. Defendant Board of County Commissioners is a governmental subdivision pursuant to the laws of the State of Wyoming. The Board is empowered by Wyoming law with the duty to appoint interim members to fill a vacancy on the Board. The Board is governed by the provisions of the Wyoming Public Meetings Act.

7. Van Matre is not a necessary party as this action challenges the actions of the Board of County Commissioners in making the appointment, and is not directed at Van Matre personally. Further, Van Matre has no vested right in the appointed position. Petitioners did not wish to make him an involuntary party with the associated costs and other burdens. However, Petitioners have provided Van Matre with notice of this action via U.S. Mail and would not oppose Van Matre intervening in this matter if he would choose to defend the actions of the Board in making his appointment.

8. The public and the media as the “eyes and ears of the public” have standing to seek a declaration regarding the applicability of the Public Meetings Act. See *Cheyenne Newspapers, Inc. v. Building Code Bd. of Appeals of City of Cheyenne*, 2010 WY 2 ¶6.

9. The Court has jurisdiction to hear actions seeking to declare actions taken in violation of the Public Meetings Act. *Id.*

Facts

10. On December 30, 2010, the Board of County Commissioners conducted a regular meeting that had been rescheduled from December 27, 2010. This meeting was the last for Commission Chairwoman Debby Dellai-Boese and Commissioner Randy Walker, as their terms were about to expire and they were not reelected. Paula Wonnacott had two years left on her term. Four newly-elected commissioners took office on January 3, 2011.

11. Wonnacott submitted her resignation at the December 30, 2010, meeting. Her resignation had not been announced publicly before the meeting.

12. Upon returning from a break in the meeting, Dellai-Boese announced Wonnacott’s resignation. She then called for a motion to appoint Van Matre to fill the unexpired term of Wonnacott. Walker made the motion, Dellai-Boese seconded it and it was approved.

13 Van Matre was in the audience when the motion was made. He publicly stated that the appointment was dropped on him “overnight.”

14. Commissioners Dellai-Boese and Walker both read prepared statements at the meeting. There was little discussion after the motion was made to appoint Van Matre other than asking him if he would accept the appointment, the reading of prepared comments by Walker, including Van Matre’s qualifications, and a point of clarification by legal counsel that the appointment did not have to be made at that meeting but could be made by the incoming Board.

15. In response to a reporter’s question, Dellai-Boese stated that the Board would accept no public comment on the appointment.

Violation of Public Meetings Act

16. Disclosure, not secrecy, is the dominant objective of the Wyoming statutes, including the Wyoming Open Meetings Act, that provide for public access to governmental information and operations. *Sheridan Newspapers v. Sheridan*, 660 P.2d 785, 793 (1983). These statutes are to be interpreted “liberally in favor of disclosure” and all exemptions must be construed narrowly. *Houghton v. Franscell*, 870 P.2d 1050, 1052 (Wyo. 1994). “Where the public interest is affected, an interpretation is preferred which favors the public.” *Id.* The Wyoming Supreme Court has continually found that the intent of the Legislature in adopting the open government statutes was to have the “public’s business available to the public whenever that is possible.” *Sheridan Newspapers*, 660 P.2d at 791. The language of the statute must be interpreted with that intent in mind.

17. The Wyoming Open Meetings Act, W.S. §16-4-403 states: “All meetings of the governing body of an agency are public meetings, open to the public at all times, except as otherwise provided. No action of a governing body of an agency shall be taken except during a public meeting following notice of the meeting in accordance with this act. Actions taken at a meeting not in conformity with this act is null and void and not merely voidable.”

18. The Act defines “action” as “the transaction of official business of an agency including a collective decision of a governing body, a collective commitment or promise by a governing body to make a positive or negative decision, or an actual vote by a governing body upon a motion, proposal, resolution, regulation, rule, order or ordinance.” W.S. §16-4-402(a).

19. The Act further defines a “meeting” as “an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the purpose

of discussion, deliberation, presentation of information or taking action regarding public business.”
W.S. § 16-4-402(a)(iii).

20. The Act broadly defines “agency” as meaning “any authority, bureau, board, commission, committee, or subagency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming constitution, statute or ordinance, other than the state legislature and the judiciary. [*italics added*]”

21. The Board of County Commissioners for Sweetwater County is the governing body of an agency as contemplated by the Public Meetings Act.

22. Upon information and belief, the Board made a “collective decision” or “a collective commitment or promise” to make the decision appointing Van Matre to fill the vacancy on the Board at a meeting not noticed or in compliance with the Public Meetings Act. The motion for the appointment was made and approved without discussion among the commissioners or any notice to the public that it would be made. Van Matre was in attendance at the meeting and stated publicly that the appointment was dropped on him overnight.

23. The controversy over the filling of the vacancy on the Board is redressable by the Court, and the judgment of the Court would have the effect of a final judgment on the rights of the parties, and would not constitute an advisory opinion.

24. Further, the appointment of a person to represent the residents of Sweetwater County in a position that is normally elected by the people is a matter of great public interest. The lack of notice regarding the vacancy and the Board’s decision to fill the vacancy locked the public out of the process. County residents had no opportunity to suggest candidates for consideration or to seek consideration themselves. They had no opportunity to provide input about the candidate appointed by the Board.

25. The Wyoming state statute governing the filling of vacancies on the Board calls for a process that provides the public the opportunity to know and provide input on the candidates being considered by the Board, as well as advice from an independent source – county political parties. W.S. § 18-3-601(a). As Commissioner Wonnacott was an independent, the process set forth in W.S. § 18-3-601(a) does not apply. However, the Board violated the spirit of the statute that calls for a public process for replacing a publicly elected commissioner.

26. The vote by the Board at a public meeting cannot be said to cure the violation of the

Public Meetings Act, as the public had no notice of the appointment and was not allowed to comment on the appointment. While a public body is not forever barred from ratifying a prior decision made illegally, the governing body must provide "a new and substantial reconsideration of the issues involved, in which the public is afforded ample opportunity to know the facts and to be heard with reference to the matters at issue." *Souder Health Partners, Inc.*, 997 S.W.2d 140, 149 (Western Section Ct. App. Tenn. 1998). There was no notice of the facts, i.e., the resignation of Commissioner Wonnacott, the intent to appoint a replacement, and the candidates to be considered, and no opportunity for the public to be heard.

Preliminary Injunction

27. A preliminary injunction is necessary to maintain the status quo while a determination is made as to whether the appointment is null and void. "A preliminary injunction is to preserve the status quo until the merits of an action can be decided." *Simpson v. Petroleum, Inc.*, 548 P.2d 1, 2 (Wyo. 1976).

28. A preliminary injunction prohibiting Van Matre from executing the duties of the office is necessary to serve the interests of the residents of Sweetwater County as it avoids the potential for challenges to decisions by the Board if Van Matre is the deciding vote in a decision adversely affecting the interest of an individual or business. Residents will be irreparably harmed if they cannot rely on decisions potentially tainted by Van Matre's participation without fear that those decisions might be overturned.

29. The residents further suffer irreparable harm if a commissioner that purports to represent them is not duly appointed and whose appointment they had no notice or opportunity to participate.

30. Petitioners respectfully request that a hearing on the request for a preliminary injunction be scheduled at the earliest date available to the Court.

WHEREFORE, Plaintiffs requests the following relief:

1. The issuance of injunctive relief prohibiting Don Van Matre, Jr., from executing the duties as a member of the Board of County Commissioners for Sweetwater County until such time as a determination can be made regarding whether his appointment is null and void.

2. An order declaring the appointment to fill the vacancy on the Board of County Commissioners of Sweetwater County null and void.

3. Other such relief as the Court deems just and proper.

DATED this 10th day of January, 2011.

ROSE MOSBEY ET AL.,
Plaintiffs

BY: *Bruce T. Moats*
Bruce T. Moats (WY Bar No. 6-3077)
Attorney for Plaintiffs