

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

David Esrati pro se : Civil Action No. 2018 CV 00593
113 Bonner St. :
Dayton, OH 45410 :
Plaintiff, :
vs. :
Dayton City Commission :
101 W. Third St. :
Dayton, OH 45402 :
and :
Jeffrey J. Mims, Jr. :
Member, Dayton City Commission :
Co-Chairman, School Facilities Task Force :
101 W. Third St. :
Dayton, OH 45402 :
and :
Dayton Board of Education :
115 S. Ludlow St. :
Dayton, OH 45402 :
and :
Mohamed Al-Hamdani :
Member, Dayton Board of Education :
Co-Chairman, School Facilities Task Force :
115 S. Ludlow St. :
Dayton, OH 45402 :
Defendants. :

**MEMORANDUM CONTRA TO THE MEMO FILED BY DEFENDANT,
DAYTON CITY COMMISSION, ET AL.**

The Plaintiff asks the Court to move for an expedited hearing and trial. The Defendant's

continued attempts to shift this case away from ORC 121.22 violations with requests for an affidavit and the applicability of rule 65, are a waste of the courts time. Since this process started, the “task force” and district have said they will move the announcement of closings up to March 20, 2018, giving little time for public discussion or evaluation of any recommendations.

We restate that ORC 121.22 makes no mention in the defined process for a complaint of either a TRO or Rule 65. The plaintiff’s TRO was only an attempt to get the court to stop the chicanery in a timely manner on the advice of Judge Skelton.

If the court wants an affidavit, I have submitted multiple videos of the violations and attempts to circumvent ORC 121.22.

That this process has been delayed innumerable times since my original filing, while the Defense has managed to not only file and win an injunction about a basketball game (see 18 CV 00983) is an insult to the people of the Dayton Public School district who are facing the loss of a number of school buildings that they are still paying for, being decided in private, by an unelected body.

It would appear that basketball is more important than the Sunshine laws in Dayton by this courts entertaining of these delaying tactics.

Respectfully submitted,

David Esrati
Pro se

MEMORANDUM CONTRA

{¶ 1} Plaintiff, David Esrati, pro se, has clear and damning evidence that the “Task Force” was convened prior to the swearing in of Mohamed Al-Hamdani, and that no vote was taken to name him co-chair of this committee of the Dayton Board Of Education. According to the law, this in itself, causes problems:

ORC 3313.10 Oath of office of member.

Before entering upon the duties of his office each person elected or appointed a member of a board of education shall take an oath to support the Constitution of the United States and the constitution of this state and that he will perform faithfully the duties of his office. Such oath may be administered by the treasurer or any member of the board.

His initial actions, the morning of January 9th, 2018, asking the plaintiff to stop recording, as the Co-Chair of the School Closing Task force, happened a full 8 hours before he took the oath of office. That he was working on forming the committee in December, with the cooperation of the Superintendent suggests that the oath of office law was violated.

{¶ 2} That on multiple occasions the task force met, without following the rules of ORC 121.22 which require prior public published notice and agenda, and that minutes be kept and posted.

{¶ 3} That these meetings were to consider the future of buildings owned by Dayton Public Schools, and paid for from a tax levy that is still being paid off by the residents of Dayton.

{¶ 4} Because any school building that is rendered vacant, must be sold after two years at steeply discounted values, the recommendations/advice/discussions of this task force and the decision that is the responsibility of the Board Of Education will affect all Dayton tax payers for years to come. See ORC 3313.411 Lease or sale of unused school facilities.

{¶ 5} Because the plaintiff can show this process has been conducted by unsworn members of the school board, with the assistance of the Interim Superintendent, and the interloping of the Mayor and City, on business of the school board, it is essential that this case be decided before the remainder of the board decides on the qualifications and ethical standards demonstrated by the Interim Superintendent before the hiring window closes for Superintendents in Ohio (generally considered the month of March). Expediency in this case is of the utmost import.

{¶ 6} Plaintiff made clear at the meeting of the committee on January 9, 2018 at 9:30 AM that the meeting had to be held in public, and that any action by the committee held without compliance with ORC 121.22 would bring legal action. The meeting of Jan 9 was adjourned on the spot.

{¶ 7} Despite the warnings by the Plaintiff, and requests for notification of all future meetings as specified by ORC 121.22, Plaintiff filed a request for an injunction on February 5th to stop the private tour on the 6th.

{¶ 8} Under instruction from the court, plaintiff filed for a TRO under rule 65, despite no mention of that requirement in ORC 121.22 which gives the plaintiff up to 2 years AFTER a violation to file.

{¶ 9} The Committee did in fact conduct a secret meeting in their rolling conference room on Feb 6th, and at multiple times, despite plaintiffs demands for entry, continued on with their meeting in secret, and denied the plaintiff access or his legal right to video/audio record.

{¶ 10} Since the defendants did willingly continue to ignore warnings, and that Al-Hamdani exited the bus en-route, and Mims and Gower didn't enter Valerie Elementary, while information was distributed and discussed in private, there is no question that the committee did in fact violate the Open Meetings Act, and any and all arguments about the necessity of a TRO are in fact moot. The law has been broken. It is up to the court to direct the remedies offered in ORC 121.22

{¶ 11} The Plaintiff takes exception to the statement of the defendants in their **"MEMORANDUM IN OPPOSITION TO THE MOTION FILED BY PLAINTIFF, DAVID ESRATI"**: "The OMA provides no legal authority for this Court to preclude the participation of certain board members, nor for this Court to control what discussions Board members may have amongst themselves or with administrators or employees of DPS."

{¶ 12} The sole purpose of the OMA is to control what discussions Board members may have

amongst themselves or with administrators or employees of DPS. It sets rules for notification, agenda, publishing, what can and can't be discussed in executive session, and sets out the rules to ensure that the peoples business is in fact conducted in view of the people.

{¶ 13} Since the Defense is clearly delusional about the role of the OMA, we ask that before we appear in Court, the judge conduct a competency exam on Attorney Brian Wildermuth, before we proceed so that legal incompetence isn't used as a stall tactic to restart this case after a decision has been rendered.

{¶ 14} The Plaintiff restates his call that the court order that only the remaining four members of the School Board, John McManus, Sheila Taylor, Karen Wick-Gagnet, Jocelyn Rhynard be tasked with all decision making on this subject, without any discussion with the members of the task force, or Acting Superintendent Lolli, Treasurer Hiwot Abraha, Associate Superintendent Sheila Burton, PR person Marsha Bonhart, because they have disqualified themselves from these operational decisions.

{¶ 15} There is an abundance of legal precedent banning this kind of end run around the OMA, by creating alternate groups. The opinion of the Ohio Attorney General 1992 Ohio Op. Atty Gen 078 clearly states:

The appropriateness of this conclusion is supported by the fact that R.C. 121.22 requires the board of county commissioners to deliberate upon official business, except in those instances described in R.C. 121.22, only in open meetings. It follows, therefore, that R.C. 121.22 requires a committee created by the board of county commissioners for the purpose of advising the board about matters which the board itself could discuss only in an open meeting, also to deliberate and formulate its advice about such matters only in public. To conclude otherwise would allow a public body to circumvent the requirements of R.C. 121.22 merely by assigning to an advisory body those portions of its deliberations of the public business which it seeks to shield from public scrutiny; such a result would be clearly contrary to the legislative intent expressed in R.C. 121.22(A).

In summary

The defense is clearly trying to subvert the provisions of ORC 121.22 by insisting on obtuse procedural issues and delaying the courts action so that the mistakes made by the Task Force aren't made public before the Board takes action on school closings or the hiring of a full time superintendent.

The defense has already lost on appeal in the case of Jones v Board of Education, in another OMA case, and was hastily engaged and heard in an irrational legal action against the Ohio High School Athletics Association, which would harm the student athletes of Thurgood Marshall High School in favor of those at Dunbar High School.

The seemingly unlimited amounts of money available to the school board to fight battles that would be unnecessary if they had competent leadership is astounding. It is part of the reason the district is 2nd worst in the State and facing the low enrollments that are the results of their failure of leadership.

It is only through filings of cases like this that the public can and will get the Board of Education to begin to make rational and legal decisions about their conduct and actions in the best interests of the public and the students.

Affidavit

For some odd reason, there seems to be a need for me to state that not only is everything in this document submitted, and in all my other filings, that I am stating the truth.

Of that, there can be no question. Unlike the rest of these people involved in this issue, with the exception of fellow veteran Jeff Mims, I have honorably served my country and sworn an oath to defend and protect the constitution at a level higher than those who serve in public office-offering my life as my bond. I took that oath seriously then, as I do now.

May we please stop dancing around the problem of this school task forces wanton violation of the OMA, and stop the school board from undertaking actions that will be null and void if any of these task force members participate in any way on the issue of closing of schools?

Humbly, for the people,

/s/David Esrati

David Esrati *pro se*
113 Bonner St.
Dayton OH 45410