

Court sets limits on Open Meetings Law

On April 21, the Colorado Supreme Court ruled that a meeting attended by Costilla County commissioners was not subject to the Open Meetings Law (OML) because it was not related to policy making. The OML was intended to give the public access to a broad range of meetings at which public business is discussed and to prevent public bodies from carrying out public business in secret.

The Case

Battle Mountain Resources, Inc. operated a gold mine in Costilla County from 1989 to 1996. The mine is located on the banks of a stream in the Costilla County Conservancy District. In 1999, when the mine was being reclaimed, the Colorado Department of Public Health and Environment discovered that mine waste had seeped into the stream. The department issued a violation notice and a cease and desist order to Battle Mountain.

On September 20, 1999, Battle Mountain, the Health Department, and the Department of Natural Resources held a meeting at the Hideaway Restaurant in Alamosa to report what Battle Mountain was doing to remedy the seepage problem. A Battle Mountain employee invited the Costilla County Board of Commissioners as well as other officials and private citizens to attend the meeting. Two of the three county commissioners (a quorum) attended the meeting. The Board did not provide public notice of the meeting and the meeting was not open to the public. Although public business was discussed, the commissioners did not actively participate in the meeting.

Both before and after the Hideaway meeting, the Board held regularly scheduled meetings to discuss the Battle Mountain situation. These meetings were open to the public and the public was notified.

After the meeting, Battle Mountain agreed to construct a water treatment plant, pay \$86,700 in civil penalties, and pay \$30,000 to the Costilla County Water and Sanitation Department.

The Costilla County Conservancy District sued the Board of Commissioners, alleging that the Board violated the OML because they failed to give public notice of the meeting. The trial court dismissed the case concluding that the law only applied to meetings that the public body itself arranged and in which its members participated.

On appeal, the appeals court reversed the lower court's decision stating that if public entities are excused from the public notice requirements because they did not arrange the meeting, private parties would be encouraged to circumvent the law by inviting public officials to attend private presentations on public matters to influence policy decisions.

The Board appealed to the Colorado Supreme Court. The Supreme Court reversed the appeals court ruling, stating that the Hideaway meeting was not convened for the purpose of discussing or furthering public policy and therefore was not part of the policy-making process. Consequently, the Board was not required to give public notice of this meeting.

What this Ruling Means to Counties

As the Supreme Court clearly indicated, the OML, while fairly broad, has some limitations. The public does not have to be notified of a meeting simply because a majority of county commissioners plans to attend. Only those meetings in which county officials are engaged in policy making are covered by the law. For more information, contact CTSI at 303-861-0507.

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