

Open Meetings Ruling

Full Notice With Specific Agenda Information Where Possible

The town of Marble, Colorado was exploring various ideas concerning a public park owned by the town known as Mill Site Park. It is an historic site for milling marble; the Lincoln Memorial and the Tomb of the Unknowns at Arlington National Cemetery are made of marble from the nearby Yule Marble Quarry.

The fate of Mill Site Park was a matter of public interest, so the Town formed an advisory committee to advise the Town Board of Trustees, gather public opinion and develop options for the Board to consider regarding the use of the park. One of the proposals presented was for a permanent display of a large block of Yule marble along with a small museum, visitor center and gift shop. The notice posted for the Town's Board meeting included an agenda which allotted fifteen minutes to "Mill Site Committee Update" including the date of the upcoming Mill Site Committee meeting. During the course of this meeting, a member of the Town Board, who also served on the Mill Site Committee, made a motion to reject the idea of a permanent display at Mill Site Park.

The motion passed, and group of citizens who supported the proposal and who were not in attendance at the meeting subsequently sought to have the vote rescinded on the basis that the notice violated the open meetings law by not expressly stating that the Board would take formal action on the proposal. The trial court ruled in favor of the town. The Colorado Court of Appeals ruled in favor of the citizen challengers.

The Court of Appeals ruled that the vote was invalid because: (1) the use of the word "update" and the inclusion of the date of the next committee meeting in the notice did not imply the possibility of formal action on the item; (2) the notice contained no basis for the public to infer that the Board would vote on the proposal; and the Board could have postponed voting on the motion until a later meeting when a new meeting notice could have specifically included on the agenda the fact that formal action would be taken.

The Supreme Court disagreed, fortunately for the Town of Marble and special districts. The Court states that the statute "establishes a flexible standard aimed at providing fair notice to the public". The Court held that the notice was "full" because an ordinary member of the community would understand that the agenda item listed on the notice would include consideration of, and possible formal action on, the proposal. Use of the word "update" and the date of the next committee meeting did not rule out formal action.

The Court also held that the notice satisfied the statutory requirement that specific agenda be included "where possible" because the notice contained the agenda information available at the time of posting. A specific listing on the agenda is not required in order to be considered at a public meeting.

The Court did disapprove generally of notices that are too generic on a matter. The Court said notice is sufficient as long as the items actually considered at a meeting are reasonably related to the subject matter indicated by the notice.

What This Means For Counties

The Supreme Court opinion indicated that the Court will not look favorably on a governmental body that attempts to circumvent in bad faith the requirements of the open meetings law and withhold agenda items by waiting until after the notice is posted to formulate the true agenda for a public meeting. If the board or any of the board members of a special district know or intend that certain items of business or issues for decision will arise at an upcoming board meeting, that information should be included in the posted notice.

For more information, contact CTSI at 303-861-0507.