

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 4, 2005 Session

**PUTNAM COUNTY EDUCATION ASSOCIATION v. PUTNAM COUNTY
COMMISSION, ET AL.**

**Appeal from the Chancery Court for Putnam County
No. 2000-370 Vernon Neal, Judge**

No. M2003-03031-COA-R3-CV - Filed August 1, 2005

The Putnam County Educational Association filed this declaratory judgment action contending that Putnam County Commission exercised a line-item veto over the Putnam County Board of Education's budget, thereby usurping the authority of the Board of Education to administer the schools. The Association also alleged that the Board of Education, by allowing the budget to be implemented without said line-item expenditure, breached its agreement with the Association. The purpose of the action was to restore \$30,000 that had been allocated to fund medical insurance premiums for retired teachers to the 2000-2001 budget, which allocation the Association and Board of Education had agreed upon pursuant to Tenn. Code Ann. § 49-5-612. The Commission rejected two proposed budgets submitted by the Board of Education that included the allocation. The trial court dismissed the Association's declaratory judgment action upon summary judgment. Thereafter, the Association also contended that the Commission discussed the matters at issue during a closed meeting in violation of Tennessee's Open Meetings Act. The trial court found no violation of the Act. The Association appealed. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, P.J., M.S., and WILLIAM B. CAIN, J., joined.

Richard L. Colbert and W. Gregory Miller, Nashville, Tennessee, for the appellants, Putnam County Education Association.

Daniel H. Rader III and Jeffrey G. Jones, Cookeville, Tennessee, for the appellees, Putnam County Board of Education and Putnam County Commission.

OPINION

In 1999, the Association and the Board of Education entered into a three-year collective bargaining memorandum of agreement pursuant to Tenn. Code Ann. § 49-5-612.¹ As part of the memorandum of agreement, the Board of Education was to include in its 2000-2001 budget an allocation of \$30,000 to fund medical insurance premiums for retiring or retired teachers who were not eligible for Medicare.²

The Board of Education prepared a proposed school budget – also referred to as the general purpose school budget – that required additional funding due to a variety of increases, mandates, new personnel and the \$30,000 expenditure for retired teachers’ medical insurance. The Board of Education’s proposed school budget was first considered by the Commission’s “budget committee” in advance of the Commission meeting set for August 21, 2000.³ The budget committee made a recommendation to the Commission that it adopt a “.10 cent tax increase” in the school fund; however, it recommended that the medical insurance for retired teachers “not be paid.” The Commission considered the budget proposed by the Board of Education and the recommendations of the budget committee at its regular meeting on August 21, 2000. A motion was made to approve the “School Fund” and a “Tax Rate” at \$0.83⁴ which carried; however, the minutes of the Commission meeting provide that the Board of Education’s proposed “budget presented tonight must be reworked to meet the .83 tax increase and brought back for the Commissions [sic] approval.”

The Commission’s action placed the ball back in the hands of the Board of Education. After considering its options, the Board reduced its proposed budget to satisfy the \$0.83 tax rate; however, the \$30,000 allocation for medical insurance for retired teachers remained in the proposed school budget. The revised Board of Education budget, its second proposed budget, was presented to the Commission for its consideration at its next regular meeting, which was on September 6, 2000. The Commission, however, rejected the revised school budget. The Commission also rescinded its

¹Tenn. Code Ann. § 49-5-612 is part of the Education Professional Negotiations Act, codified in Tenn. Code Ann. § 49-5-601, *et. seq.* The Education Professional Negotiations Act requires boards of education and recognized professional employee organizations to negotiate issues concerning salaries and wages, grievance procedures, insurance, fringe benefits, working conditions, leave, student discipline procedures, and payroll deductions. Tenn. Code Ann. § 49-5-611. Agreements resulting from said negotiations are memorialized in “memorandums of agreement,” defined as “written memorandum[s] of understanding. . . which shall be presented to the board of education and to the membership of such organization for ratification or rejection.” Tenn. Code Ann. § 49-5-602(6).

²The \$30,000 was budgeted to fund 55% of the anticipated cost of the medical insurance premiums. Pursuant to the agreement, the retired teachers were to pay 45% of the premium.

³The record contains minutes of budget committee meetings on July 13 and July 20, 2000.

⁴The “tax rate” of .83 cents only pertained to the county’s “school fund” which was a portion of the county budget and tax structure. The total tax rate for the county was subsequently set at \$2.695. This occurred at the Commission meeting on September 6, 2000.

approval of an \$0.83 tax rate and adopted a tax rate for the school fund of \$0.825.⁵ The change in the tax rate reduced the total budget by \$34,759. The reason for the foregoing action by the Commission was no secret. As the minutes reflect, Commissioner Billy Rodgers stated “that this County Commission wanted to go on record that they do not recognize funding for the retiring teachers [sic] Insurance Proposal.”

As a result of the Commission’s rejection of the Board of Education’s second proposed budget, the ball was once again placed in the hands of the Board of Education. Thereafter, the Board of Education, at its meeting on September 14, 2000, elected to again revise its proposed budget. This time it removed the allocation of \$30,000 for retiring teachers’ medical insurance. The Board of Education then submitted its third proposal for its 2000-2001 budget to the Commission. The third proposed budget was within the budgetary constraints of an \$0.825 tax rate and did not include medical insurance for retired teachers. The Commission approved the Board of Education’s third proposed budget along with a budget for the county for fiscal year July 1, 2000 to June 30, 2001, which action included the passage of the Appropriation Resolution and the Tax Levy Resolution.⁶

The Association filed this declaratory judgment action shortly thereafter, contending the Commission exercised a line-item veto to remove funding for the retired teachers’ medical insurance from the Board of Education’s budget. It also contended that the Board of Education breached its agreement with the Association by failing to include the medical insurance benefit in the budget. The Commission moved to dismiss the Association’s complaint, which the court treated as a motion for summary judgment.⁷ The Board of Education and the Association also filed motions for summary judgment. The trial court denied the Association’s motion for summary judgment but granted those of the Commission and the Board of Education, explaining:

It would be the judgment of the Court that the plaintiff’s motion for summary judgment be denied and that the Putnam County Board of Education’s motion for summary judgment be granted.

. . . .

Be it a further order of the Court that the matter be dismissed against the Putnam County Commission. . . . TCA § 49-5-612(b) says any items . . . negotiated by a Board of Education and a professional employees organization which require funding shall not be considered binding until such time as a body empowered to appropriate the funds has approved such appropriation.

⁵The motion that carried read, “MOTION RE: RESCIND ACTION ON THE GENERAL PURPOSE SCHOOL FUND BUDGET ON THE APPROPRIATION RESOLUTION AND THE TAX RATE RESOLUTION.”

⁶The minutes indicate that the appropriation and tax levy resolutions were approved at the meeting while the school budget was scheduled to be approved at the next regular meeting.

⁷The Commission’s motion to dismiss was an amended motion to dismiss.

So as the Court reads this, it's talking about any item in agreement that's not funded. Then, according to the Carter County case, either goes back to the Board of Education and the Education Association to renegotiate or to continue the agreement absent that provision.⁸

Thereafter, the Association filed a motion to alter or amend the judgment of the trial court. The Association asserted that the ruling regarding the line-item veto was based on "inaccurate representations of the pertinent facts and events" by the Commission. The Association also asserted that the Commission had unlawfully conducted a closed meeting before the September 6, 2000 deliberations on the 2000-2001 budget, in violation of Tennessee's Open Meetings Act, Tenn. Code Ann. § 8-44-101, *et seq.*, to decide upon a strategy by which to reject the funding for retired teachers' medical benefits.⁹ The Commission denied providing inaccurate information. It admitted holding a closed meeting but contended the meeting did not violate the Open Meetings Act, because the challenged meeting took place in anticipation of litigation, the County attorney attended for the purpose of providing legal advice concerning the threatened litigation, and no vote was taken. The trial court denied the Association's motion to alter the judgment. It also held, "In the Court's opinion there hasn't been any evidence of any violation [of the Open Meetings Act]."

The Association appeals the order granting the Commission's and Board of Education's motions for summary judgment as well as the order denying the Association's motion to alter or amend and presents two issues for our review. One, whether the Putnam County Commission exercised a line-item veto over the Putnam County Board of Education's budget when it refused to approve a budget that included funding for medical benefits for retired teachers, thereby usurping the authority of the Board of Education to administer the schools.¹⁰ Two, whether the Commission violated the Open Meetings Act by holding a closed meeting prior to the September 6, 2000 Commission meeting.

Standard of Review

The issues were resolved in the trial court upon summary judgment. Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Advertising & Publishing Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997).

⁸The trial court reference to the Carter County case is to *Carter County Board of Education Commissioners v. American Federation of Teachers*, 609 S.W.2d 512 (Tenn. Ct. App. 1980).

⁹The alleged violation of the Open Meetings Act was raised as newly discovered evidence in support of the Association's motion to alter or amend.

¹⁰Though it was not expressly identified as an issue in its brief, the Association also contends the Board of Education breached its agreement by submitting a budget without an appropriation for insurance.

Summary judgments are proper in virtually all civil cases that can be resolved on the basis of legal issues alone, *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1983); *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001); however, they are not appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. The party seeking a summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that party is entitled to judgment as a matter of law. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). Summary judgment should be granted at the trial court level when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion, which is the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak and Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State Farm Mutual Automobile Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001). The court must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, discard all countervailing evidence, and if there is a dispute as to any material fact or if there is any doubt as to the existence of a material fact, summary judgment cannot be granted. *Byrd v. Hall*, 847 S.W.2d at 210-211. To be entitled to summary judgment, the moving party must affirmatively negate an essential element of the non-moving party's claim or establish an affirmative defense that conclusively defeats the non-moving party's claim. *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

Line-Item Veto

The Association contends the Commission exercised a line-item veto over the Putnam County Board of Education's budget, usurping the authority of the Board of Education to administer the schools.

The supervision and control of the schools of the county, the employment of teachers, the fixing of salaries and erecting of buildings is vested in the county board of education, Tenn. Code Ann. § 49-2-203; *see also State ex rel. Boles v. Groce*, 280 S.W. 27, 28 (Tenn. 1926); however, the county commission has a duty to levy a tax for the needed school funds because it is the only agency clothed with such power. *Boles*, 280 S.W. at 28. The process imposed upon local school systems and county commissions to fund the school systems is set forth in Tenn. Code Ann. § 49-2-101 *et. seq.* The board of education makes the first move, because it is the responsibility of the board of education to prepare a school budget and to submit the proposed school budget to the budget committee of the county commission for its consideration. Tenn Code Ann. § 49-2-203; *see also Morgan County Bd. of Commissioner v. Morgan County Board of Education*, No. 03A01-9308-CV-00290, 1994 WL 111457, at *3 (Tenn. Ct. App. April 6, 1994). The budget committee of the county commission reviews the proposal and then presents its budget recommendations to the county commission. The county commission is obligated to levy such taxes as are necessary to properly fund the operation of the county schools; however, it is not required to adopt the school budget as submitted. *Morgan County*, 1994 WL 111457, at *4.

County commissions have authority to decrease the overall amount of the proposed school budget but they lack the authority to alter or revise line items in a school budget. *Morgan County*,

1994 WL 111457, at *5. A line-item veto occurs when one or more parts of an appropriation bill or proposal is rejected, while the remainder of the appropriation bill or proposal is adopted.¹¹ While the Commission does not have the authority to veto line-item provisions of the school budget, it has the power and jurisdiction to "alter or revise the proposed budget" by adopting a smaller school budget than that submitted. *Id.* However, "this power and jurisdiction to 'alter or revise the proposed budget' does not extend to changing line items in the school budget." *Id.*

The limitation on a county commission's right to exercise a line-item veto requires an understanding that the local school systems are separate from the county governments. *Cloudia Hill v. McNairy County*, No. 03-1219-T, 2004 WL 187314, at *1 (W.D. Tenn. Jan. 15, 2004); *see also Boles*, 280 S.W. 27 (Tenn. 1926) (holding that our courts have long recognized the separation of the powers of the two entities). It also requires an understanding that while the county government controls funding, "the local board of education has exclusive control over many operational aspects of education policy." *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221-22 (Tenn. 1988). The two entities have separate origins, functions, and management. The separate origin of each is succinctly explained in *Rollins v. Wilson County Government*, 967 F.Supp. 990, 996 (M.D. Tenn. 1997).

[P]ublic school systems within the state of Tennessee were established by the Constitution of the State of Tennessee. *See* Art. 11, § 12, Tenn. Const. Although counties were also established as arms of state government, counties were statutorily created by the state legislature, rather than by the state constitution. *State v. Stine*, 200 Tenn. 561, 292 S.W.2d 771, 772 (1956); *Bayless v. Knox County*, 199 Tenn. 268, 286 S.W.2d 579, 587 (1955).

Rollins, 967 F.Supp. at 996. Counties and school systems perform separate functions. *Hill v. McNairy County*, 2004 WL 187314, at *2. The fact that there are financial connections between a local school system and local government does not detract from the essentially separate functions of these two entities.¹² *Id.*

A county is a corporation run by its local officials. *See, e.g. State v. Read*, 152 Tenn. 442, 446-47, 278 S.W. 71 (Tenn. 1925). The schools of a county, on the other hand, are operated and maintained through the agency of the county board of education and a superintendent. *Reed v. Rhea County*, 189 Tenn. 247, 225 S.W.2d 49, 50 (1949). The school board and superintendent are not employees of the county government, but rather perform separate and distinct functions. Affidavit of James L. Francis. *See*

¹¹The term "line-item" refers to the level of detail found in appropriations bills, which corresponds to the different "lines" of spending proposed. J. Gregory Sidak and Thomas A. Smith, *Symposium on the Federal Budget: Law, Politics and Process in the Coming Administration*, 9 J. L. & Pol. 39, 49 (1992). Line items are what one state supreme court has called "separable fiscal units." *Id.* (citing *In re Opinion of the Justices*, 2 N.E.2d 789, 790 (Mass. 1936)).

¹²Our courts have long recognized the separation of the powers of the two entities. *State ex rel. Boles v. Groce*, 280 S.W. 27 (Tenn. 1926).

also, *State ex rel. Boles v. Groce*, 152 Tenn. 566, 280 S.W. 27, 28 (1926) (discussing the separation of powers between a county school board and county government officials); *Morgan County Bd. of Commissioners, et al. v. Morgan County Bd. of Ed.*, 1994 WL 111457, *3-*4 (Tenn. App. 1994) (describing county school board and county commission as two separate entities with separate powers).

Hill v. McNairy County, 2004 WL 187314, at *2 (citing *Rollins v. Wilson County Government*, 154 F.3d 626, 629-630 (6th Cir.1998) (quoting the District Court in *Rollins v. Wilson County Government*, 967 F.Supp. 996-97 (some citations omitted in the original)).

Though they have separate origins and functions and the management of each is autonomous of the other, interaction between the two entities is a necessity. This is because the county controls the purse strings, and it is not compelled to provide the funding requested by the school system, while the supervision and control of the schools of the county, the employment of teachers, the fixing of salaries and erecting of buildings is vested in the county board of education. *Boles*, 280 S.W. at 28. Thus, tension – if not litigation – occurs when the county refuses to adopt the budget proposed by the school system. Although the county commission has no supervisory authority over the board of education, the legislature vested the authority to appropriate funds for county purposes, including education, in the county commission. *Id.*

[W]hile the preparation of the budget lies with the board of education, the county commissioners are not wholly stripped of their traditional discretion in making appropriations of county funds. "The county school board and superintendent prepare the budget and it is then submitted to [the county board of commissioners] evidently to determine if the amount of the budget exceeds the total amount of money that has been raised by taxation for general school purposes." Some degree of discretion in the county commission is necessary so that a single body may oversee a unified budgetary process to avoid exceeding the available revenue to operate county services efficiently.

Weaver, 756 S.W.2d at 225 (citations omitted in original). Though some degree of discretion is necessary, county commissions may not make line-item changes in the school budget because that would empower the county commissions to control and supervise the Board in its operation of the schools. *Morgan County*, 1994 WL 111457, at *5. If county commissions "were allowed to revise line items, it would amount to a complete abrogation of the powers of the Board to control the school system. *Id.* at *5. That would not be in keeping with the line of cases relating to the powers of commissions and school boards. *Id.*

Here, the Putnam County Board of Education submitted three proposed school budgets. The first two proposals included a \$30,000 allotment for retired teachers' medical insurance premiums. The Commission rejected – vetoed if you will – the first and second proposed budgets in their entirety. Though the Commission rejected two proposed budgets, it never rejected one part of a proposed budget while adopting the remainder of a proposed budget. A line-item veto occurs when one or more parts of an appropriation bill or proposal is rejected, while the remainder of the

appropriation bill or proposal is adopted. Accordingly, the Commission did not exercise a line-item veto over the first or second proposed budget. Moreover, the third school budget proposed by the Board of Education was approved by the Commission in its entirety. Thus, that budget was not vetoed in whole or in part.

We therefore concur with the holding of the trial court that the Commission did not exercise a line-item veto.

The Agreement

The Association also contends the Board of Education “breached its agreement with the [Association] to provide payment of medical insurance for retired Putnam County teachers” by unilaterally eliminating the benefit from its operating budget without further negotiations with the Association. The Board of Education denies breaching any agreement with the Association. It also affirmatively contends that “further negotiations” with the Association were held, and the Association acquiesced in the revised budget.

The memorandum of agreement upon which the Association bases its breach of contract claim against the Board of Education is authorized by and subject to the Education Professional Negotiations Act. Tenn. Code Ann. § 49-5-601, *et seq.* The purpose of the Act is to prescribe the “rights and obligations of boards of education and their professional employees and to establish procedures governing relationships between them. . . .” Tenn. Code Ann. § 49-5-601(b)(1). The Act requires the boards of education and the recognized professional employees’ organizations to negotiate, in good faith, certain conditions of employment including salaries, insurance and fringe benefits. Tenn. Code Ann. § 49-5-611(a). However, the Act prohibits the parties from agreeing to matters contrary to “board of education rights contained in this title.” Tenn. Code Ann. § 49-5-612(a)(3). One of the restrictions is that “items negotiated . . . which require funding shall not be considered binding until such time as [the county commission] has approved such appropriation.” Tenn. Code Ann. § 49-5-612(b).¹³

¹³The full text of Tenn. Code Ann. § 49-5-612(b) provides:

When agreement is reached by the representatives of the board of education and the recognized professional employees’ organization, they shall jointly prepare a memorandum of understanding, and . . . present it to their appropriate governing authorities for ratification or rejection. These governing authorities, as soon as practical, shall consider the memorandum and take appropriate action. If either governing authority rejects or modifies any part of a proposed memorandum, the matter shall be returned to the parties for further negotiation. The board of education may enter into such memorandum for a period not in excess of three (3) years. Any items negotiated by a board of education and a professional employees’ organization which require funding shall not be considered binding until such time as the body empowered to appropriate the funds has approved such appropriation. In the event the amount of funds appropriated is less than the amount negotiated, the board or its representatives and the professional employees’ organization or its representative shall renegotiate an agreement within the amount of funds appropriated.

The items negotiated, which included among other negotiated items the disputed insurance for retired teachers, required funding. The Commission did not appropriate the requisite funds and, therefore, the agreement was never binding. Tenn. Code Ann. §49-5-612(b); *see also Carter County Board of Education Commissioners v. American Federation of Teachers*, 609 S.W.2d 512, 517 (Tenn. Ct. App. 1980) (holding that an item could not be considered binding until the commissioners approved funding for an increase in salaries which had been negotiated between the board of education and the union because it required funding by the county commissioners). Since the memorandum of agreement was never binding, there was no contract upon which to base a claim for breach of contract. The only remedy available to the parties following rejection of the appropriation by the Commission was to renegotiate. As Tenn. Code Ann. § 49-5-612(b) expressly provides, “In the event the amount of funds appropriated is less than the amount negotiated, the board or its representatives and the professional employees’ organization or its representative shall renegotiate an agreement within the amount of funds appropriated.”

The Board of Education contends the parties did just that – renegotiate. It further contends the Association acquiesced in proceeding without funding for the retired teachers’ insurance benefit. The affidavit of Dr. Michael Martin, Director of Schools, reads:

After it became clear that the Putnam County Commission would not approve funding for the insurance provision which is the subject of this suit, further negotiations were conducted with the [Association] in accordance with Tennessee Code Annotated § 49-5-612(b). It was made clear in the negotiations that the County Commission had not funded the insurance provision contained in the contract, and accordingly, the contract between the [Association] and the Putnam County Board of Education would be implemented absent said provision. The [Association] understood this as part of the negotiation process and accepted all pay and other benefits pursuant to the contract with the exception of this provision because it was not approved and funded by the Putnam County Commission.

There is no evidence in the record that directly contradicts the affidavit of Dr. Martin. Moreover, while the Association contends that the Board of Education “unilaterally” eliminated the benefit, there is no evidence in the record to support this contention.

The trial court found that the Association and Board of Education agreed in principal that they would operate without that agreement. In pertinent part the trial court found:

Inasmuch as the insurance premium payments for retired teachers was not funded, the other benefits, the other matter – the matter was brought back to the attention of the Putnam County Education Association who understood and agreed in principal that they’d be operating without that agreement; although, a suit was later filed by them for declaratory judgment and for these benefits.

Also, the Court finds . . . , that they acquiesced in the agreement absent the provision for the retired teachers’ insurance benefits.

The record supports the trial court's conclusion that the parties renegotiated, as Tenn. Code Ann. § 49-5-612(b) requires, and that the Association agreed, acquiesced, to proceed without funding for the retired teachers' medical insurance benefit. We therefore affirm the decision of the trial court to dismiss the Association's breach of contract claim.

Open Meetings Act

The Association contends the Commission violated Tennessee's Open Meetings Act by discussing issues pertaining to the retirees' proposed medical benefits in a closed meeting immediately prior to a public meeting.

Tennessee's Open Meetings Act provides that the formation of public policy and decisions is public business and shall not be conducted in secret. Tenn. Code Ann. § 8-44-101(a). Therefore, if commission members discussed during a closed meeting what action to take on the proposed Board of Education budget, such discussion would constitute a violation of the Open Meetings Act. *Smith County Education Association v. Anderson*, 676 S.W.2d 328, 334 (Tenn. 1984). The Open Meetings Act may not, however, restrict the commission from conferring in private with its legal counsel concerning pending or threatened litigation. "[A]pplication of the Open Meetings Act to discussions between public bodies and their attorneys regarding pending litigation violates Article II, Sections 1 and 2 of the Tennessee Constitution." *Smith County*, 676 S.W.2d at 334. Therefore, discussions with counsel regarding pending or threatened litigation is an exception to the Open Meetings Act; however, it is a very narrow exception:

The exception is limited to meetings in which discussion of present and pending litigation takes place. Clients may provide counsel with facts and information regarding the lawsuit and counsel may advise them about the legal ramifications of those facts and the information given to him. However, once any discussion, whatsoever, begins among the members of the public body regarding what action to take based upon advice from counsel, whether it be settlement or otherwise, such discussion shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Act.

Id. at 334. This narrow exception to the Open Meetings Act was further explained in *Van Hooser v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991). In *Van Hooser*, the Warren County school board met privately with its attorney to discuss the status of a teacher who had been accused of excessively paddling students. The teacher argued that the Open Meetings Act had been violated, because no charges had been filed against her, and there was no pending litigation when the private meeting was held. While the Tennessee Supreme Court found that, in that instance, the Open Meetings Act had been violated,¹⁴ it clarified that the school board had a right to meet with its

¹⁴The court held, "[T]o the extent that the board made decisions or deliberated toward a decision, this was a "meeting" to which the Open Meetings Act applies. *Van Hooser*, 807 S.W.2d at 237.

attorney to discuss the pending controversy even though no charges had been preferred against the teacher and litigation had not yet commenced. *Id.* at 237.

The Association introduced the affidavit of former Commissioner Vernon Crabtree who stated the retirees' proposed medical benefits were discussed during this closed meeting that preceded the September 6, 2000 Commission meeting, where the revised school budget was to be considered. Mr. Crabtree also stated approximately twenty members of the Commission attended the "pre-meeting." However, Mr. Crabtree's testimony was directly contradicted by affidavits of four other commissioners. The affidavits of former Commissioner Ralph Dunn, former Commissioner Marilyn Gray and current Commissioner Jere Mason were identical, and they read in pertinent part:

2. On September 6, 2000, I attended a meeting between the County Attorney and several of the Commissioners.

3. Prior to this meeting, the budgeting process with the school system had become so adversarial that demonstrations were occurring and lawsuits had been threatened. The aforementioned meeting took place in anticipation of litigation.

4. At the outset of the meeting in question, the County Attorney stated in no uncertain terms that the meeting was one between attorney and client. He also stated that the meeting was in anticipation of litigation. Furthermore, he stated that this was not a meeting for which a quorum was required and that those in attendance would not be deliberating towards a decision. Lastly, he stated that any comments made by Commissioners needed to be directed to him.

5. The County Attorney then proceeded to explain the law surrounding some of the questions that had arisen during the budgeting process. At no time during the meeting did any vote occur. Furthermore, no decisions were made regarding any course of action.

6. It is my recollection that Mr. Crabtree did not come into the meeting until it was about to break up. Consequently, he could not have been in a position to observe what transpired at the meeting.

A fourth affidavit submitted by Commissioner Bill Rodgers concurred with those of Commissioners Dunn, Gray and Mason and added that, "The County Attorney specifically referenced cases in Morgan County and Carter County. The County Attorney also explained . . . the process of collective bargaining with School Boards."

It is undisputed that there was a pending controversy. Moreover, the Commission's contention that a lawsuit had been threatened was validated by the fact the Association filed this action one month later. Four commissioners testified that the closed meeting took place in anticipation of litigation, that the County Attorney was in attendance, that no vote was taken, there

were no deliberations towards a decision or course of action, and that all comments from commissioners were directed to the attorney. Further, their testimony not only directly contradicted that of former Commissioner Crabtree, they also testified that he did not attend all of the meeting, only the last moments of the meeting.¹⁵ The foregoing evidence fully supports the trial court's conclusion that the closed pre-meeting with the Commission's legal counsel pertained to threatened litigation and did not violate the Open Meetings Act. Thus, we affirm.

Conclusion

The judgment of the trial court is affirmed in all respects, and this matter is remanded with costs of appeal assessed against Appellant, the Putnam County Educational Association.

FRANK G. CLEMENT, JR., JUDGE

¹⁵The Association did not provide evidence to contradict this.