



Attorney Fees Awarded Only After Party Obtains Injunctive Relief

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The Michigan Supreme Court recently overruled over 30 years of Court of Appeals case law about recovering attorney's fees under the Open Meetings Act (OMA.) In *Speicher v Columbia Township Board of Trustees*, No. 148617, the defendant township changed its regular meeting schedule, but failed to timely post notice of the change as required by the OMA. The Michigan Court of Appeals determined that the township violated OMA and granted attorney fees to the plaintiff because he had pursued injunctive relief and obtained declaratory relief. The Court of Appeals stated that, to obtain attorney fees, the plaintiff must only be successful in obtaining any relief, not just injunctive relief.

Under the OMA, the standard for awarding attorney fees is as follows: (1) a public body must not be complying with the OMA, (2) a person must commence a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act, and (3) the person must succeed in obtaining relief in the action.

The Supreme Court, however, determined that a plain reading of the statute required a party to both seek and obtain injunctive relief before being awarded attorney fees. Speicher argued that he satisfied the statute by merely requesting injunctive relief. The Court did not agree: "A party cannot simply assert a meritless claim for injunctive relief under MCL 15.271 in the hope that one of its other claims will yield some fruit, and then bootstrap its claim for court costs and actual attorney fees on the other relief provided."

While this decision makes it more difficult for plaintiffs to obtain attorney fees when suing townships for violations of the OMA, it is always important for townships to follow the OMA's guidelines to avoid litigation. For more information on the Open Meetings Act and how to avoid violations, please contact a Foster Swift municipal attorney.

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Open Meetings Act