

Michigan Court of Appeals: Substantial Compliance with the OMA Does Not Protect Against Personal Liability for Intentional Violations

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The Michigan Court of Appeals has ruled that "substantial compliance" with the Open Meetings Act's public notice requirements is insufficient to shield public officials from civil liability for intentional public notice violations. The opinion was issued on July 8, 2021, by a three-judge panel in the case of *Spalding v. Swiacki*, Case No. 354598.

The Open Meetings Act, Act 267, Public Acts of Michigan, 1976, as amended (the "OMA"), provides for various forms of relief in connection with violations of its public notice requirements. Section 10 of the OMA provides that a public body's decision may be invalidated if the public body has not complied with the OMA's public meeting requirements in making a decision or if failure to give notice in accordance with section 5 has interfered with substantial compliance with the OMA's public meeting requirements and a court finds that the noncompliance or failure has impaired the rights of the public under the OMA. Section 11 states that "the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance" with the OMA. Notably, the OMA also provides for civil liability for public officials—Section 13 states that "a public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action."

In *Spalding*, four members of a five-member elected public body scheduled a special meeting. While physical notice of the meeting was timely posted, the public body failed to post notice to its website until the morning of the meeting, ostensibly violating the OMA's mandate that notice be posted on a portion of the website fully accessible to the public at least 18 hours in advance of any public meeting. Notwithstanding the late notice—and over the objection of one of the public body's members—the public body held the special meeting. The objecting member and another public official brought suit against the public body for violating the OMA.

Although the lower court found that the participating members had technically violated the OMA for failure to timely provide notice on the public body's website, the lower court ultimately dismissed the case, finding that the public body had *substantially* complied with the OMA's notice requirements.

The Court of Appeals reversed the decision. The Court distinguished the OMA's civil liability provision from its other remedial provisions, finding that the civil liability provision "makes no reference to 'substantial compliance' and instead imposes liability on a public official for violating the OMA, but only if the violation is intentional." Finding that the civil liability provision focuses on "the state of mind of the public official" rather than the "impact of the violation," the Court ultimately found that the lower court should not have dismissed the plaintiffs' case. Because the plaintiffs sought relief under the civil liability provision, "substantial compliance" with the OMA was irrelevant.

The Court's decision narrowly focuses on the type of relief sought for an alleged OMA violation—where invalidation of a public body's decision is sought, the standard of "substantial compliance" with the OMA would still apply. Pursuant to the Court's decision in *Spalding*, however, where a claimant seeks relief pursuant to the OMA's civil liability provision, substantial compliance will not shield a public official from liability.

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If you have any questions about the Michigan Open Meetings Act, please contact your Miller Canfield attorney or any of the people listed on this e-alert.