DISTRICT COURT, ARCHULETA COUNTY, COLORADO Court Address: 449 San Juan St. P.O. Box 148 Pagosa Springs, CO 81147 970-264-5932	
Plaintiff: **William Hudson** **v.** **Defendants:** **CLIFFORD LUCERO**	**COURT USE ONLY** Case Number: 2010 CV 259 Division: Courtroom:

ORDER
REGARDING STIPULATED REQUEST FOR *IN CAMERA* REVIEW OF RECORD

THIS MATTER having come before the Court on the Parties' Joint Stipulation for an *in camera* review of the Minutes of an Executive Session convened by the Board of County Commissioners (BOCC) September 1, 2010 during the course of a specially called meeting, the Court having reviewed the Minutes and the record submitted by the parties and being fully advised in the premises, hereby finds that the nondisclosure of the Executive Session Minutes on the stipulated basis of "attorney consultation" and "instructing negotiators" exceptions to the general rule of open meetings is not substantiated for the reasons that follow.

One exception to the mandate of opening public meetings is a properly convened and conducted executive session. Section 24-6-402(3)(a). Such an executive session must meet two specific prerequisites. First, it can only be held after publication of a valid regular or special meeting notice that describes the topics for discussion. *Id.* Second, the executive session must be announced to the persons gathered and that announcement must include a citation to the law authorizing a closed session on that topic and identify the particular matter to be discussed, in as much detail as possible without compromising the session's purpose. *Id; Alstyne v. City of Pueblo*, 985 P. 2d 97 (Colo. App. 1999). Second, an affirmative vote of two-thirds of the entire membership of the body is required. Section 24-6-402(3)(a).

Plaintiff William Hudson (the Plaintiff) brought the instant action to compel disclosure of the minutes of the September 1, 2010 executive session. The County Attorney denied production and then when this action was filed he responded with a motion to dismiss on behalf of the named Defendant, Clifford Lucero (Defendant). Even if properly closed to the public, the minutes of an executive session are exempt from disclosure only if the body considers "solely" the matters specified in the notice. The only other sanctioned business at such a meeting is the approval or amendment of the minutes of that executive session. §26-6-402(4). As pertinent here, the BOCC is precluding from adopting any proposed "policy, position, resolution, rule, regulation or formal action" at an executive session that is closed to the public. *Id.* Likewise, the law prohibits the BOCC from "rubber stamping" a previously, privately-decided issue in a later public meeting. *Walsenburg Sand & Gravel Co., Inc. v. City Council of Walsenburg,* 160 P.3d 297, at 299-300 (Colo. App. 2007).

The parties have stipulated that the basis for going into a closed session was both for "attorney consultation" and BOCC "determining positions relative to matters which may be subject negotiations" which are set out as exceptions to the general rule of open meetings in §§24-6-402(3)(a) and (2)(e). Defendant argues that requisite notice can be very broad and that *Town of Marble v. Darien,* 181 P.3d 1148 (Colo. 2008) stands for the proposition that general notice is sufficient as long as the items actually considered at the meeting are in some way related to the noticed subject matter. The Court disagrees.

As Plaintiff correctly notes, the Colorado Supreme Court's decision in *Town of Marble* did not address the notice requirements necessary to convening an executive session. Since that is the subject here the *Town of Marble* case is inapposite. Where language of a statute is plain and the meaning is clear, the court need not resort to interpretive rules of statutory construction, but must apply the statute as written. *Allstate Ins. Co. v. Smith*, 902 P.2d 1386 (Colo. 1995). Neither "negotiation" nor "reasonably related" are defined in the statute. However, the presumption underlying the Open Meetings Act §24-6-101 *et seq* is that the public should have access to a broad range of meetings at which public business is considered. The assembly's plain intent is to give citizens an expanded opportunity to become fully informed on issues of public importance. §24-6-101; *Van Alstyne v. City of Pueblo*, 985 P. 2d 97 (Colo. App. 1999) Therefore exceptions to open meetings must be strictly construed. *See Bd. of County Comm'rs v. Costilla County Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004).

So viewed the plain meaning of these phrases flow from their ordinary use. "Negotiations" are generally thought of as a public body's discussions with another who is under or about to

be involved in a contract with it. Being "reasonably related to negotiations" therefore must reflect the statute's broad policy of open meetings and disclosure of public records. It follows that if the BOCC executive session was not held to instruct the BOCC how to negotiate in a bargaining context as those words are ordinarily meant, prior to or during the executive session, it may not avail itself of the protections afforded by an executive session exception. *Zubec v. El Paso County Retirement Plan*, 961 P.2d 597 (Colo. App. 1998).

Here the record does not contain any evidence of the BOCC vote taken before the closed meeting. Even assuming *in arguendo* the requisite vote took place, the minutes clearly do not support the allegation that any attorney advice was given or that the topic actually discussed was reasonably related to instructing BOCC negotiators. Additionally the actions of the BOCC in announcing its decision to send an endorsement letter to a federal party at the conclusion of the session, followed by immediate adjournment that cut off any public feedback, strongly suggests a public rubber stamp of a BOCC private decision, made in that session or earlier. The Court therefore finds that the existing stipulated record is insufficient to conclude that the executive session was properly convened and conducted.

The Court reserves judgment regarding public inspection of the Minutes, however. Since the evidence required to determine if the request for the minutes of that meeting was legally sufficient, and if so, to whom and what part of the minutes of that meeting should be made open to public inspection pursuant to the Open Records Act are part of Defendant's pending Motion to Dismiss, the Court will proceed to consider that Motion. Therefore the Court orders as follows:

1. Within 18 days the Plaintiff shall submit a responsive brief to Defendant's pending Motion to Dismiss.
2. The Defendant will file a response to Plaintiff within the time allotted by the rules for a Reply.
3. Both parties shall include with their briefs all evidence in their possession regarding the existence of a claim of an exception to the open meeting law on the announced basis of attorney privilege and instructing negotiators, as well as all legal arguments regarding the legal sufficiency of Plaintiff's request for disclosure.

IT IS SO ORDERED.

Done this 13th day of June 2011.

By the Court:

Gregory G. Lyman

District Court Judge, Gregory G. Lyman