

DISTRICT COURT ARCHULETA COUNTY, COLORADO P.O. Box 148 Pagosa Springs, Colorado 81147 (970) 264-8160	DATE FILED: August 31, 2020 11:41 AM CASE NUMBER: 2020CV30026
<hr/> Plaintiff: Matthew Roane; v. Defendant: Robyn Bennett, Custodian of Records for the Archuleta School District 50 Joint Board of Education.	<hr/> COURT USE ONLY Case Number: 2020CV30026 Division: 1 Courtroom: 1
ORDER UPON THE PLAINTIFF'S MOTION FOR THE IN-CAMERA INSPECTION OF THE RECORDINGS OF EXECUTIVE SESSIONS	

This case comes before the Court upon the plaintiff's motion pursuant to CRS 24-72-204(5.5) of the Colorado Open Records Act, requesting the Court conduct an in-camera review of the recordings of two executive sessions of the Archuleta School District 50 Joint Board of Education (hereinafter the "Board"). The Board conducted the executive sessions on December 19, 2019, and January 22, 2020, to select finalists for the open superintendent position (December 19, 2019) and to offer the superintendent position to the current superintendent (January 22, 2020). The plaintiff alleges that in these executive sessions the Board decided upon the finalists for the open superintendent position and then formally decided to offer the position to the current superintendent of schools. The plaintiff alleges that the Board holding these meetings in executive session was a violation of the Colorado Open Meetings Law, CRS 24-6-401, *et. seq.* In order to prevail upon this motion, the plaintiff need only establish reasonable grounds to believe that the Board "... engaged in substantial discussion of any

matters not enumerated in section 24-6-402(3) or (4) or that the state public body or local public body adopted a proposed policy. . . or formal action.” CRS 24-72-204(5.5)(b)(I).

The Board does not contest that the Board decided upon finalists and selected the applicant who was offered the superintendent position in executive session. The Board argues that the Board was authorized to do so by CRS 24-72-204(5.5) by analyzing the statutory framework of the open meetings law. As to the decision as to which candidates that the Board selected as finalists for the position, the Court agrees with the Board. CRS 24-6-402(3.5) requires a search committee to:

“ . . . establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting.”

CRS 24-6-402 (3.5). As argued by the Board, if the legislature wanted a search committee to hold public deliberations about the applicants for a chief executive officer position, it could have so directed in CRS 26-6-402. See *In re Marriage of Chalot*, 112 P.3d 47, 54 (Colo. 2005). The ability of the Board to decide upon finalists for a superintendent position in executive session is supported by the requirements of subsection (3.5) requiring the Board to make public the list of finalists and to treat documents submitted by the applicants confidential¹. Individuals applying for the superintendent position, if currently employed, would likely want to keep their interest in leaving their current employment confidential, and having to discuss such individuals in public could reduce the pool of qualified applicants. Discussion at a public meeting of the various qualifications and character of the applicants would hinder candid discussions by the search committee in their deliberations as to whom to choose as finalists. Public discussions of deliberations at this stage of the process would likely disclose information contained in

¹ But not the applications of the finalists. See below.

documents submitted with each application which, per subsection (3.5), by referencing CRS 24-72-204 (3)(XI)(A), is not subject to public disclosure. The requirement of subsection (3.5) that the Board make public the list of finalists for a chief executive officer position² at least fourteen days prior to the chosen applicant being appointed or becoming employed by the Board would be superfluous if the selection of finalists was required to be made at a public meeting.

For the foregoing reasons, the plaintiff's request that the Court conduct an in-camera review of the Board's proceedings in executive session that occurred on December 19, 2019, is denied.

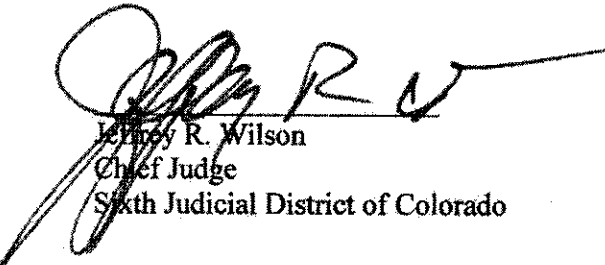
However, a reading of the Colorado Open Records Act, together with the Colorado Open Meetings Act and CRS 22-32-108, leads to a different result as to the decision to choose the finalist who was ultimately selected to be offered the position of superintendent. The Colorado Open Meetings Law requires that "full and timely notice" shall be given for any meeting "... at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs." CRS 24-6-402(2)(c)(I). Meetings at which "... any formal action may be taken are declared to be public meetings open to the public at all times." CRS 24-6-402(2)(b). The Court finds it difficult to find that the selection of a superintendent of schools is not a formal adoption of a policy decision or a formal action. The Court notes that school boards in the state of Colorado are specifically prohibited from making "... final policy decisions while in executive session." CRS 22-32-108(5)(a). The Colorado Supreme Court has held that a formal decision not to renew a teacher's contract "... is a final policy decision that can only be made at a public meeting. . ." *Hanover Sch. Dist. No. 28 v. Barbour*, 171 P.3d 223, 228 (Colo. 2007), *as modified on denial of reh'g* (Dec. 3, 2007). The decision as to who will lead a school district certainly has

² The Court finds that the superintendent of schools is the chief executive officer of a school district.

more policy implications for a school district than the decision not to renew the contract of an individual teacher. The requirement of subsection (3.5) of the Colorado Open Meetings Law that imposes on the Board the duty to make public a list of the finalists for the position of superintendent at least fourteen days before the superintendent is appointed or employed shows legislative intent that the selection of the actual superintendent from the list of finalists be done at a public meeting. Likewise, subsection (3)(XI)(A) of the Colorado Open Records Act makes the application documents submitted by the finalists for the superintendent position public records that are subject to inspection. If the legislature intended the selection of a superintendent of schools from the pool of finalists to be done in executive session, there would be no reason to treat the application documents submitted from the finalists any differently than the application documents filed by the nonfinalist applicants.

For the foregoing reasons, as to the plaintiff's motion that the Court conduct an in-camera review of the Board's proceedings in executive session that occurred on January 22, 2020, the motion is granted. The Board shall submit the recordings to the Court of that executive session for in-camera review within 30 days.

Done and signed this 31st day of August, 2020.


Jeffrey R. Wilson
Chief Judge
Sixth Judicial District of Colorado