

Nos. A05-2340, A05-2341, A05-2342, A05-2343

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

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Kenneth Brown and Robert Banks, individually and on behalf  
of the State of Minnesota,

*Respondents,*

vs.

Cannon Falls Township, a political subdivision of the State of Minnesota;  
Gary Hovel, an individual;  
Lawrence D. Johnson, an individual; and  
Keith Mahoney, an individual,

*Appellants.*

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**BRIEF OF *AMICUS CURIAE*  
LEAGUE OF MINNESOTA CITIES**

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## **LEGAL ISSUE**

The Open Meeting Law provides that public officials who intentionally violate its provisions in “three or more actions” must forfeit their public office. Can a plaintiff force a public-office forfeiture by simultaneously filing four complaints that result in one adjudication in a single court proceeding of more than three Open-Meeting-Law violations?

## INTRODUCTION

The League of Minnesota Cities has a voluntary membership of 829 out of 853 cities in Minnesota. The League represents the common interests of cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, advocacy, and insurance services. The League has a public interest in this case as a representative of city councils and other city bodies that are subject to the Open Meeting Law and will be directly affected by this Court's decision.<sup>1</sup> The League has a particular interest in clarifying that three separate adjudications of Open-Meeting-Law violations in three successive court proceedings are required before a public official must forfeit his or her public office.

The Open Meeting Law requires forfeiture of public office if a public official has been found to have intentionally violated the Open Meeting Law in "three or more actions" involving the same governing body. Minn. Stat. § 13D.06, subd. 3(a) (2004). In this case, Respondents sued the Cannon Falls Town Board of Supervisors (Board) by simultaneously filing four separate complaints alleging multiple violations of the Open Meeting Law. All of the alleged violations stemmed from the Board's interpretation of Respondents' single written request for individual notice of special meetings regarding feedlot permits and setbacks from residential structures. *See* Minn. Stat. § 13D.04, subd.

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<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal, and that no other person or entity made a monetary contribution to its preparation or submission.

2 (2004). The Board (in accordance with the advice of its attorney) erroneously interpreted Respondents' request for notice as being ineffective.

The discovery and trial for all four complaints were consolidated by agreement of the parties, and the district court issued one decision finding eight violations of the Open Meeting Law. The district court removed the Town Supervisors that were still serving on the Board from their public offices finding that they had violated the Open Meeting Law in "three or more actions" simply because the violations had been pleaded in four separate complaints.

### **STATEMENT OF THE CASE AND FACTS**

The League concurs with Appellants' Statement of the Case and Facts.

### **ARGUMENT**

Appellants' Brief demonstrates that the Town Supervisors were improperly removed from office. The League concurs with the Appellants' legal arguments, which will not be repeated here. Instead, this brief will focus on why it is good public policy to interpret the "three or more actions" language of the Open Meeting Law's forfeiture provision to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings before a public-office forfeiture is triggered. It is good public policy to interpret the language this way because it effectuates the legislative intent for adopting the language; it protects the right of citizens to be represented by the public officials they have elected; and it prevents plaintiffs from manipulating the forfeiture provision to force public officials out of office for political reasons or to increase their attorney fees.

**I. Interpreting the Open Meeting Law’s forfeiture provision to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings effectuates the legislative intent for amending the forfeiture provision.**

The Open Meeting Law’s forfeiture provision should be interpreted to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings to effectuate the Legislature’s intent for amending the forfeiture provision. *See* Minn. Stat. § 645.16 (2004) (the object of statutory interpretation is “to ascertain and effectuate the intention of the legislature”). The League of Minnesota Cities was one of the organizations that took the lead in seeking the legislative amendment that resulted in the statutory language at issue in this case. We did so in reaction to an Open-Meeting-Law case involving the Hibbing City Council.

In *Claude v. Collins*, the Mayor of Hibbing and two of its council members were removed from office following one adjudication of multiple violations of the Open Meeting Law. 518 N.W.2d 836 (Minn. 1994) (Hibbing case). At that time, the Open Meeting Law’s forfeiture provision provided “[u]pon a third violation by the same person connected with the same governing body, such person shall forfeit any further right to serve on such governing body.” Minn. Stat. § 471.705 (1992). The Supreme Court held that based on this statutory language “[o]ne adjudication of three separate, unrelated, and intentional violations is sufficient for removal under the statute.” *Id.* at 842.

At the time of the violations in the Hibbing case, the city council and its unions were locked in a labor dispute. *Id.* at 838-839. Many perceived that the plaintiffs (two of which were union leaders) had made a political decision to intentionally wait to bring

their lawsuit until there were enough Open-Meeting-Law violations to force the mayor and the council members out of office.

In response to the Hibbing case, the Hibbing Mayor, with the support of the League of Minnesota Cities, the Minnesota School Boards Association, the Association of Minnesota Counties, and the Minnesota Association of Townships, sought legislation to amend the Open Meeting Law to prevent the Hibbing situation from occurring again. The amendment was sought and granted because there was agreement that it was bad public policy to allow plaintiffs to manipulate the Open Meeting Law's forfeiture provision to force public officials out of office for political reasons.

Indeed, Appellants' review of the legislative history of the 1994 amendment confirms two important points. Appellants' Brief at 18-31. First, the purpose for amending the statute was to prevent plaintiffs from suddenly bringing multiple claims of Open-Meeting-Law violations all at once to remove public officials from office without giving them notice of the alleged violations or an opportunity to correct their behavior or to defend their interpretation of the Open Meeting Law in court. *Id.* Second, while the Senate Data Privacy Subcommittee was searching for the proper wording for the amendment it chose the phrase "three or more actions" in reliance on the Senate attorney's assurances that the inclusion of this phrase would require at least three separate adjudications in three separate court proceedings before a public-office forfeiture was triggered. *Id.*; *See also*, Minn. Stat § 645.45(2) (2004) (defining an "action" as "any proceeding in any court in this state") (emphasis added).

If the forfeiture provision is not interpreted to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings, the 1994 legislative amendment will be meaningless. If the district court's decision is not reversed, the Hibbing situation – the stockpiling of Open-Meeting-Law violations to remove public officials from public office – cannot be prevented. All plaintiffs will need to do to force a public-office forfeiture (like the Respondents did in this case) is wait for multiple violations to accumulate and plead them in separate complaints that are filed at the same time.

**II. Interpreting the Open Meeting Law's forfeiture provision to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings protects the right of citizens to be represented by the public officials they have elected.**

It is good public policy to interpret the Open Meeting Law's forfeiture provision to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings because it will protect the right of citizens to be represented by the public officials they have elected. This Court has recognized that citizens of a local unit of government have a right to be governed by the elected officials of their choice. *McNamara v. Office of Strategic and Long Range Planning*, 628 N.W.2d 620, 629-630 (Minn. Ct. App. 2001) (citations omitted). The Open Meeting Law's forfeiture provision is an extraordinary remedy because it interferes with this right by essentially allowing one individual or a small group of individuals to invalidate the votes of a majority of citizens.

Public-office forfeitures also harm voters by causing disruption in the public body that serves them. For example, public-office forfeitures in cities create costs associated with electing and training new city officials and may cause disruption to city business and city services.

Public-office forfeitures also discourage citizens from serving their communities as public officials. Indeed, citizens will be less willing to serve their communities if they know they can be subjected to the public shame of being removed from public office even in situations where they have relied on their attorney's advice in interpreting the Open Meeting Law and have not been given notice or an opportunity to correct their behavior or to defend their interpretation of the Open Meeting Law in court.

Individuals that volunteer to serve as public officials come from all walks of life and most are not trained in the law. They should not be punished for relying on the advice of their attorneys when interpreting the Open Meeting Law. It is important to remember that this Court's holding will extend to a wide variety of reasonably debatable interpretations of the Open Meeting Law. Indeed, the Open Meeting Law has been subject to much litigation and the interpretation of its provisions is often a close question about which reasonable people can disagree. *See, e.g., Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983) (the supreme court noted that while the Open Meeting Law clearly requires meetings to be noticed and open, it was not immediately clear whether the Open Meeting Law applies to an informal discussion between a few members of the public body); *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002) (the supreme court held that city council had improperly applied the attorney-

client-privilege exception to the Open Meeting Law after both the district court and the court of appeals had held that the city council had properly applied the exception).

Because there are a wide variety of reasonably debatable interpretations of the Open Meeting Law, public officials should not be required to forfeit their public office unless they have first received notice of the alleged violation and have been given an opportunity to change their behavior or to defend their interpretation of the Open Meeting Law in court.

And finally, if the extraordinary remedy of public-office forfeiture is used sparingly (as the Legislature intended) it would not allow public officials to violate the Open Meeting Law with immunity. As noted by Appellants, the Legislature carefully made a distinction between the word “actions” in reference to forfeiture of office and the word “occurrences” in reference to penalties or fines. Appellants’ Brief at 30-31. As a result, even if public officials are not subject to removal from office for multiple violations brought in one court proceeding, they can still be fined up to \$300 for each individual occurrence of an Open-Meeting-Law violation. Minn. Stat. § 13D.06, subd. 1 (2004). And the citizens of the public body can always choose to vote public officials that have violated the Open Meeting Law out of office at the next election.

**III. Interpreting the Open Meeting Law's forfeiture provision to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings prevents plaintiffs from manipulating the statute to force public officials out of office for political reasons or to increase their attorney fees.**

The Open Meeting Law's forfeiture provision should be interpreted to require three or more separate adjudications of Open-Meeting-Law violations in three or more successive court proceedings to prevent plaintiffs from manipulating the statute to force public officials out of office for political reasons or to increase their attorney fees. The Open Meeting Law was adopted to protect the public.

The Open Meeting Law serves several purposes: (1) "to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning [public bodies'] decision or to detect improper influences"; (2) "to assure the public's right to be informed"; and (3) "to afford the public an opportunity to present its views to the [public body]."

*St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Schs.*, 332 N.W.2d 1, 4 (Minn. 1983)

(citations omitted). But in this case, the district court has interpreted the Open Meeting Law in a way that actually harms the public.

If Open-Meeting-Law violations are occurring, it is in the public's best interest to stop the violations as soon as possible. The district court's decision, however, creates an incentive for plaintiffs to allow multiple violations to accumulate before simultaneously filing three or more separate complaints because if they do so; they can force public officials out of office as well as increase their attorney fees. Plaintiffs should not be allowed to manipulate the Open Meeting Law's forfeiture provision this way.

## CONCLUSION

The Open Meeting Law's forfeiture provision should be interpreted to require three separate adjudications of Open-Meeting-Law violations in three successive court proceedings because it fulfills the legislative intent for amending the provision; it protects the right of citizens to be represented by the public officials they have elected; and it prevents plaintiff from manipulating the forfeiture provision to force public officials out of office for political reasons or to increase their attorney fees.

For all of these reasons, the League of Minnesota Cities respectfully requests that the district court's decision be reversed.

Dated January 24, 2006

Respectfully submitted,

LEAGUE OF MINNESOTA CITIES

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