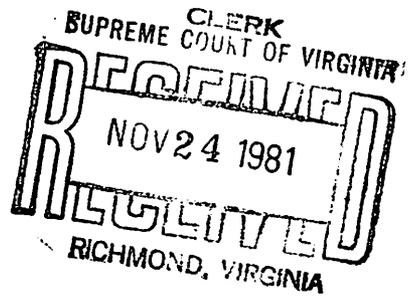


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✓ IN THE
SUPREME COURT OF VIRGINIA



810769

ROANOKE CITY SCHOOL BOARD, a Body Corporate,

Appellant

VS.

TIMES-WORLD CORPORATION, a Virginia corporation,

and

JOHN J. CHAMBERLAIN,

Appellee

APPENDIX

TABLE OF CONTENTS

	<u>Page</u>
Petition.....	1
Stipulation of Facts.....	4
Final Decree.....	7
Notice of Appeal.....	9
Assignment of Error included in Petition for Appeal.....	10

PETITION

(Filed on February 13, 1981)

Your Petitioners, Times-World Corporation and John J. Chamberlain, file this Petition pursuant to Chapter 21 of Title 2.1, Code of Virginia, the Virginia Freedom of Information Act, in particular §2.1-346 of the Code of Virginia providing for enforcement of rights and privileges conferred upon the public by the Act. The Petitioners represent as follows:

1. Petitioner Times-World Corporation is publisher of "The Roanoke Times & World-News," and Petitioner John J. Chamberlain is education writer for those newspapers. The Petitioners, for themselves and as disseminators of news coverage to the public in the Roanoke area, have a legitimate interest in the activities of public bodies in the Roanoke area, including the Roanoke City School Board.

2. Defendant Roanoke City School Board, a public body corporate, is subject to the provisions of the Virginia Freedom of Information Act and all meetings of the Board must comply with requirements of the Act.

3. The Roanoke City School Board has been engaged in the process of selecting a new superintendent of schools for the City of Roanoke. In furtherance of that objective, the members of the School Board, on or about Monday,

February 9, 1981, met by telephone conference call to discuss matters related to the employment of a new school superintendent.

4. Said meeting by conference call constituted a "meeting" under the provisions of the Virginia Freedom of Information Act. While the subject of the meeting was proper for an executive or closed session, the meeting constituted a violation of the Act because no vote to conduct an executive or closed session was taken in open meeting, stating specifically the purpose or purposes of the executive or closed session or making specific reference to the applicable provision of the Act allowing the executive or closed session, as required by §2.1-344(b) of the Code of Virginia. The Petitioners are advised that the Roanoke City School Board takes the position that the provisions of the Act providing for executive or closed meetings does not apply to a telephone conference call. If such a position is allowed to go unchallenged, the provisions of the Virginia Freedom of Information Act intended to provide the public with information of public business will be seriously undermined.

5. The meeting by conference call occurred only approximately two weeks after two other meetings in violation of the Act, one held at the residence of Board

Chairman James A. Allison, Jr., and one held at the residence of another Board member. In neither case did the Board comply with the requirements of §2.1-344(b) of the Code of Virginia.

6. The use of the telephone conference call following so closely the two unlawful meetings at the homes of members of the Board evinces a continuing intention on the part of the Board to evade the provisions of the Act guaranteeing to the public knowledge of developments in the effort to employ a new school superintendent.

WHEREFORE, the Petitioners, having been denied the rights and privileges conferred by the Virginia Freedom of Information Act by the Defendant, pray that an injunction be entered by this Court permanently prohibiting the Roanoke City School Board from conducting executive or closed sessions, including telephone conference calls among the Board members, without first complying with the procedural requirements for executive or closed meetings provided by the Act, and that the Petitioners be awarded their costs and reasonable attorney's fees.

STIPULATION OF FACTS

(Filed on February 25, 1981)

Petitioners Times-World Corporation and John J. Chamberlain and Defendant Roanoke City School Board, by their respective counsel, stipulate as follows for the purposes of this litigation only:

1. Petitioner Times-World Corporation is publisher of "The Roanoke Times & World-News," and Petitioner John J. Chamberlain is education writer for those newspapers. The Petitioners, for themselves and as disseminators of news coverage to the public in the Roanoke area, have a legitimate interest in the activities of public bodies in the Roanoke area, including the Roanoke City School Board.

2. Defendant Roanoke City School Board, a public body corporate, is subject to the provisions of the Virginia Freedom of Information Act and all meetings of the Board must comply with requirements of the Act.

3. During the month of February, 1981, the Board was in the final stages of selecting a new Superintendent. On Monday, February 9, 1981, Reverend James A. Allison, Chairman of the Board, made telephonic inquiry of the State Board of Education as to the eligibility of an applicant for the position of Superintendent to be placed on the Virginia Eligibility List for Superintendents.

Upon being advised as to the status of the applicant, the Chairman was desirous of passing this information on to the other Board members whom he knew to be anxious to receive such information.

4. Rather than telephoning each Board member individually, the Chairman considered arranging a telephone conference call. The Chairman thereupon inquired of Assistant City Attorney William X. Parsons as to whether a telephone conference call would constitute a violation of the Virginia Freedom of Information Act. Mr. Parsons advised that, in his opinion, such conference call would not constitute a "meeting" within the meaning of the Freedom of Information Act.

5. On the same date, the telephone conference call was arranged with the assistance of a telephone operator. No notice of the telephone conference call was given to the public or members of the media. No public or open meeting was held prior to the telephone conference call and no vote of the School Board to hold an executive or closed session was taken or recorded. No minutes were taken with respect to the telephone conference call.

6. All seven of the members of the School Board participated in the telephone conference from his or her own place of residence or business. During the telephone conversation the Chairman passed on to the Board members

the information he had received from the State Board relative to the eligibility of the applicant to be placed on the Virginia Eligibility List. Other matters proper for an executive or closed session, all related to the selection of a new Superintendent, were discussed. The conference call lasted approximately one-half (1/2) hour. No action or votes were taken during the call.

7. If called as a witness in this proceeding, the Chairman of the School Board would testify that it was not his intent in arranging the telephone conference call to avoid the provisions of the Freedom of Information Act, but that he simply desired to expedite what would have otherwise been a time consuming process.

8. Should it be finally determined by the courts that the above action of the Roanoke City School Board constituted a "meeting" in violation of the Virginia Freedom of Information Act, the Board agrees that it will not in the future hold discussions by telephone conference call without complying with the requirements of the Freedom of Information Act for public and/or executive meetings.

Counsel for the parties represent to the Court that the foregoing Stipulation of Facts contains, in their respective opinions, all facts necessary for a proper resolution of the issues raised by the Petition now pending before the Court.

FINAL DECREE

(Filed on March 17, 1981)

This proceeding was brought on for determination by the Court on March 5, 1981, upon the Petition duly filed and upon an agreed stipulation of facts executed on behalf of the parties.

The Court has considered the memoranda filed by each of the parties and the oral argument of counsel. The Court finds that the telephone conference call initiated by the Chairman of the Roanoke City School Board and participated in by all seven members of the Board, lasting approximately one-half hour and involving discussion appropriate for executive session related to the selection of a new School Superintendent for Roanoke City, but involving no formal action or vote of the Board, constituted a "meeting" within the meaning of that term as set forth in the Virginia Freedom of Information Act, Code of Virginia §2.1-340 et seq.

The Court further finds that the telephone meeting of the Roanoke City School Board constituted a violation of the Virginia Freedom of Information Act in that no notice of the telephone conference call was given to the public, no public meeting was held prior to the conference call, and no vote of the School Board to go into executive session was taken or recorded, and it is so ORDERED and DECREED.

The Roanoke City School Board having stipulated that it will not in the future hold discussions by telephone conference call without complying with the requirements of the Freedom of Information Act for public and/or executive meetings if it is finally determined by the courts that the facts involved herein constituted a "meeting" in violation of the Virginia Freedom of Information Act, and the Petitioners having conceded that the award of injunctive relief is therefore unnecessary, the Court accordingly declines to enjoin the Roanoke City School Board from further violations of the Freedom of Information Act.

The Court further finds that the action taken by the Roanoke City School Board was taken in good faith upon the advice of counsel and not in an attempt to circumvent the Freedom of Information Act. The Petitioners' request for the award of costs and attorney's fees is accordingly denied.

NOTICE OF APPEAL

(Filed on March 27, 1981)

NOTICE is hereby given that the Roanoke City School Board appeals from a final order rendered by this Court on the 17th day of March, 1981, and announces its intention of applying for a Writ of Error to the Supreme Court of Virginia. This notice is given pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, as amended. A Stipulation of Facts was agreed to by the parties, filed with the trial court, and is part of the record in this case. No transcript, statement of facts, testimony or other incidents of the case will be hereafter filed.

ASSIGNMENT OF ERROR

(Filed on May 12, 1981)

The Court erred in ruling that a telephone conference call constitutes a "meeting" for purposes of the Virginia Freedom of Information Act.