

EIGHTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF UNION

CASE NO. CV-2011-

52

FILED IN MY OFFICE
8TH JUDICIAL DIST. COURT
UNION COUNTY, NM ON
2011 AUG 18 AM 11:15

BERNABE P. STRUCH
CLERK OF THE
DISTRICT COURT

KAREN BRAY,

Plaintiff,

v.

VILLAGE OF DES MOINES, LEE DIXON,
Mayor, and SANDRA FERNANDEZ, ANNIE
KENNEDY, RAYMOND SISNEROS, and
SCOTT WARNER, Council Members,

Defendants.

ALTERNATIVE WRIT OF MANDAMUS

STATE OF NEW MEXICO TO: VILLAGE OF DES MOINES, LEE DIXON,
SANDRA FERNANDEZ, ANNIE KENNEDY,
RAYMOND SISNEROS, and SCOTT WARNER

I.

THE MATTER having come before the Court upon the Application for Writ of Mandamus,
verified and filed in this Court by Plaintiff Karen Bray which shows:

1. This is a Mandamus action brought pursuant to the New Mexico Open Meetings Act, NMSA §10-15-1 *et seq.* to enforce the Open Meetings Act. This is an action to compel the Defendants, Village of Des Moines, its Mayor and Council Members to comply with the Open Meetings Act in their effort and to remove Plaintiff Karen Bray from the position of Des Moines Village Clerk/Treasurer and to recover from the Defendants the salary and benefits which have accrued to Plaintiff Karen Bray as Village Clerk/Treasurer until such time as the Defendants lawfully remove Karen Bray from office. Further, Plaintiff Karen Bray seeks to recover from the Defendants

Plaintiff's costs and reasonable attorneys fees in bringing this enforcement action. The Open Meetings Act specifically provides this Court with jurisdiction in Mandamus to enforce the Open Meetings Act upon application of any person and provides that this Court shall award costs and reasonable attorneys fees to any person who is successful in bringing an enforcement action NMSA §10-15-3. The Mandamus statutes provide that a successful Plaintiff in Mandamus shall recover the damages she has sustained together with costs and disbursements. NMSA §44-2-12.

2. Karen Bray is, and at all times material hereto was, a resident of Union County, New Mexico.

3. Village of Des Moines is, and at all time material hereto was, a New Mexico municipality located in Union County, New Mexico.

A. Defendant Lee Dixon is, and all times material hereto was, an individual and the Mayor of the Village of Des Moines and a resident of Union County, New Mexico.

B. Defendant Sandra Fernandez is, and all times material hereto was, an individual and a Council Member of the Des Moines Village Council and a resident of Union County, New Mexico.

C. Defendant Annie Kennedy is, and all times material hereto was, an individual and a Council Member of the Des Moines Village Council and a resident of Union County, New Mexico.

D. Defendant Raymond Sisneros is, and all times material hereto was, an individual and a Council Member of the Des Moines Village Council and a resident of Union County, New Mexico.

E. Defendant Scott Warner is, and all times material hereto was, an individual and a Council Member of the Des Moines Village Council and a resident of Union County, New Mexico.

JPS It appearing that,

A. Plaintiff Karen Bray was appointed the Clerk/Treasurer of the Village of Des Moines in January 2001. Plaintiff resigned in October of 2008 but was paid to continue in the position through November 2008 and Plaintiff was reappointed in January of 2009. Plaintiff Karen Bray has never

been removed from the position of Clerk/Treasurer of the Village of Des Moines.

JMS It appearing that
On May 12, 2009, the Defendants may have attempted to terminate Plaintiff Karen Bray from the position of Clerk/Treasurer. The Agenda for and Minutes of that meeting reveal that the Defendants were a complete failure in any such attempt.

JMS It appearing that
6. The Open Meetings Act requires that the Agenda for a meeting of the Des Moines Village Council list the specific items of business to be discussed or transacted at the meeting. The Agenda for the May 12, 2009, meeting of the Des Moines Village Council does not make any reference, whatsoever, to discussion or action on termination of Plaintiff Karen Bray from her position as Clerk/Treasurer.

JMS It appearing that
7. The Open Meetings Act requires that, for the Des Moines Village Council to go into closed session, the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion to close the meeting. The minutes of the May 12, 2009, Des Moines Village Council meeting demonstrate that there was no motion to close the meeting and that neither the authority for the closure nor the subject to be discussed in the closed meeting were stated.

JMS It appearing that
8. The Open Meetings Act requires that the minutes show how each member of the Des Moines Village Council voted. The Minutes of the May 12, 2009, Des Moines Village Council meeting do not state how each member voted on the decision to close the meeting.

JMS It appearing that
9. The Open Meetings Act prohibits the taking of any action in a closed meeting. The Minutes of the May 12, 2009, Des Moines Village Council meeting state that, upon ending the closed session it was announced, "The Council has a vote of no confidence for Karen Bray, her job was terminated." Although the Des Moines Village Council purportedly took this vote in the closed session, the minutes do not state how each member voted on the action purportedly taken in the closed meeting.

10. The Open Meetings Act provides that no action taken by any public body shall be valid unless taken in accordance with the Open Meetings Act. Because the Des Moines Village Council violated the Open Meetings Act in virtually every way possible in its attempted termination of Plaintiff Bray, that action is invalid.

11. Plaintiff Karen Bray is entitled to a Writ of Mandamus compelling Defendants to immediately pay Plaintiff Bray all salary and provide all benefits which have accrued since May 12, 2009, and that Defendants continue to pay and provide such salary and benefits until such time as Plaintiff Bray is lawfully and validly terminated from the position of Des Moines Village Clerk/Treasurer.

12. By letter from her attorney, dated July 19, 2011, Plaintiff Karen Bray provided written notice to the Defendants of the violations of the Open Meetings Act. Although the Defendants met in an "emergency" meeting in July 2011, to hold a closed session on a personnel matter, the Defendants have failed to act upon the Plaintiff's claim of violation within fifteen days of receiving it; Plaintiff Karen Bray is therefore entitled under the Open Meetings Act to bring this enforcement action in Mandamus and to recover her costs and reasonable attorney's fees.

13. Plaintiff Karen Bray has no adequate remedy at law; the Open Meetings Act specifically provides for enforcement by equitable proceedings including *inter alia* Mandamus.

II.

AND THE COURT having reviewed the Application for Writ of Mandamus IT IS HEREBY ORDERED THAT:

THE VILLAGE OF DES MOINES, LEE DIXON, SANDRA FERNANDEZ, ANNIE KENNEDY, RAYMOND SISNEROS, and SCOTT WARNER each of you shall:

Pay Plaintiff Karen Bray all salary and provide all benefits which have accrued since May

12, 2009, on or before September 23, 2011, and thereafter continue to pay and provide such salary and benefits until such time as Plaintiff Bray is lawfully and validly terminated from the position of Des Moines Village Clerk/Treasurer;

OR IN THE ALTERNATIVE

On or before September 23, 2011, file your answers to this writ, if you fail to timely file your answer, a peremptory writ as requested by Plaintiff will immediately issue, and if you timely file your answer, it is further ordered that you appear before the Court at the Union County Courthouse in Clayton, New Mexico, on the 28th day of October, 2011 at 9 30A.M. and show cause, if any you may have, why a Peremptory Writ of Mandamus requested by the Plaintiff should not issue;

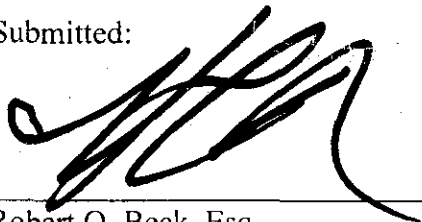
III. Copies of this Writ shall be served upon the Defendants by Certified Mail; and

IV. The Court reserves the matter of the recovery by the Plaintiff of the Plaintiff's costs and reasonable attorney's fees from the Defendants for determination in the future.



District Judge

Submitted:



Robert O. Beck, Esq.