

Sun-e Briefs • August 2010

Sun-e Briefs are a service of the Sunshine Center made possible through a grant from the Knight Foundation. This monthly news update will keep you in the open-government loop by bringing you news about access issues from across the state and updates on the Sunshine Center and North Carolina Open Government Coalition. Coming to you from Elon University, home of the Sunshine Center, we think you'll find **Sun-e Briefs** a valuable addition to your inbox. If you would like to contact us to let us know about a story or to remove your name from our list, please write ncopengov@elon.edu.

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Access Update: Legislation

Ethics Act brings substantive changes to sunshine in N.C.

- New laws include mediation, attorneys' fees, greater access to personnel records

The Government Ethics and Campaign Reform Act of 2010" includes a trio of new provisions that has substantial implications on government transparency in North Carolina. The new laws affect both the amount of information available and the ability of the public to gain access to its own information, which is held by government agencies. By introducing a mediation process and strengthening language to recover attorneys' fees when a citizen must sue to gain access, the new laws hold some promise for greater transparency. The following sections detail major changes to each portion of the law:

● **More personnel records now public**

The act adds several categories of information that must now be available to the public regarding a public servant's employment with state and local government. Subsections for different types of government agencies specify which information is available at each level, including state employees, boards of education, county employees, authorities, and more. Dan Kane of the News & Observer details major changes to the law at the link below. Be sure to follow the page to the bottom and link to the full story in the News & Observer:

<http://www.elon.edu/e-net/Note.aspx?id=946934>

● **Attorneys' fees**

A provision of the Ethics Reform Act strengthens language pertaining to the recovery of attorneys' fees for plaintiffs who win public records lawsuits under North Carolina's sunshine laws. Following are the previous statute and the language of the Reform Act for comparison. Note that the new law defines much more narrowly when government agencies are not liable for attorneys' fees if they fail to produce public records according to law. The previous law allowed judges a wide berth in determining whether awarding attorneys' fees might be "unjust." The new law

requires judges to allow recovery of attorneys' fees unless tangible evidence of a valid legal argument can be produced, such as a state court order, published judicial opinion from a state court, or attorney general opinion. First, the previous law:

"In any action ... in which a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover its reasonable attorneys' fees ... unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust."

The law now reads:

"... the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees ... The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

"(1) A judgment or an order of a court applicable to the governmental unit or governmental body.

"(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.

"(3) A written opinion, decision, or letter of the Attorney General."

While the new law should positively impact recovery of legal fees for citizens who sue to gain access to their public records, it does not affect lawsuits involving violations of open meetings law.

● **Mediation**

When public servants fail to produce public records for the citizens they serve, there is now a formal mechanism available that is short of filing a lawsuit. The Ethics Reform Act of 2010 introduces mediation into the process of gaining access to public records in North Carolina. Individuals may now apply for mediation by contacting the court clerk of the county in which a public records dispute takes place.

The law requires the Administrative Office of the Courts to develop a "request for mediation form." In the meantime, according to the N.C. Attorney General's Office, local clerks of court will be required to provide a form or other means by which individuals may initiate mediation. The act involves both voluntary and required mediation stages. Those interested in the new mediation provision should retrieve the full text of the law (see link below) and read § 7A-38.3E, "Mediation of public records disputes."

An existing statute already provides mediation for disputes about the cost of public records through the Office of the State Chief Information Officer.

● **Full text of the Reform Act of 2010**

You can retrieve the entire text of the Government Ethics and Campaign Reform Act of 2010 by visiting the General Assembly's Web site. Go to the page below. Under "Find Bills by Number" for the 2009 session (right margin), type in the bill's number: HB961. Retrieve the full Reform Act by selecting the final, signed version, labeled SL2010-169. Start here:

<http://www.ncleg.net/gascripts/Statutes/Statutes.asp>

Coalition News

NCOGC installs new president, three new members

- New coalition president sets out to reduce roadblocks to public records and meetings

Rick Willis, news director at News 14 Carolina, was installed as president of the NCOGC Board of Directors at its July 29 meeting on the campus of Elon University. Willis wants to identify roadblocks to government transparency and public access, and he is calling on public officials to embrace the Coalition's goals. Please see Willis' introductory Sun-e Briefs column at:

<http://www.elon.edu/e-net/Note.aspx?id=947354>

- New board members join coalition from local government, public radio, and television news

The NCOGC Board of Directors is welcoming three new members to its ranks: Rick Gall, news director at WRAL in Raleigh; Sue Rowland, town clerk of Cary; and Roger Sarrow, president and general manager of WFAE Public Radio in Charlotte. To learn more about Gall, Rowland and Sarrow, please see:

<http://www.elon.edu/e-net/Note.aspx?id=947274>

North Carolinians rally behind NCOGC and Sunshine Center to ensure government transparency throughout state

Because individuals, businesses, and organizations across North Carolina have rallied behind the goals of the NCOGC and Sunshine Center, the future of government transparency in the state is becoming more lucid. North Carolinians have devoted \$250,000 to help ensure open government in their state, which means the John S. and James L. Knight Foundation of Miami has now matched their enthusiasm with a check for the same amount. These funds have been set aside for an endowment that will help ensure operating costs for the NCOGC and Sunshine Center in the future. The NCOGC mission is "ensuring and enhancing the public's access to government activity, records and meetings," and the Sunshine Center sets out to educate public officials, citizens, journalists, and others about sunshine laws while assisting them with particular issues related to public records and open meetings access. Please see:

<http://www.elon.edu/e-net/Note.aspx?id=946827>

Access Update: News

Housing authorities hold secret ballots, closed sessions

- Wilmington Housing Authority bars Star-News reporter from training session, later relents

The Wilmington Housing Authority initially denied public access to training sessions it was holding when a reporter for The Wilmington Star-News was barred from

attending. The WHA later allowed the Star-News to attend the second day of training. WHA Chief Executive Officer Michael Krause said the training session wouldn't be worthwhile if commissioners didn't feel free to express their ideas openly, according to the Star-News. Read the Star-News story at:

<http://www.elon.edu/e-net/Note.aspx?id=947088>

- Wilkesboro Housing Authority refuses to release board members' votes from closed session

From the Wilkes Journal-Patriot: "Officials of the North Wilkesboro Housing Authority (NWA) have released salary information for both the current and past executive director as requested by the Wilkes Journal-Patriot. The board's attorney, however, maintains that the vote taken in a closed session on May 25 to terminate the contract of Keith Deveraux, the authority's former executive director, was permissible under state general statutes. The publishers of the Wilkes Journal-Patriot dispute that and contend that the closed session vote was in direct violation of state open meetings laws as set forth in the state general statutes."

Read the full Journal-Pilot story at:

<http://www.elon.edu/e-net/Note.aspx?id=946839>

Sunshine Center in Action

Fall workshop tentatively set for Asheville area

The Sunshine Center is preparing to journey west for its annual open government workshop and has tentatively selected Asheville as the site for a workshop Oct. 14. The annual event features up-to-date information on North Carolina's Public Records and Open Meetings Laws and related issues, such as the state shield law. This year's workshop will include a presentation of the statewide public records audit conducted by faculty and students at Campbell University. For further info on the audit, click the following link. Be sure to click on "Read the research findings" in the top, right margin of this page to view the findings from the audit:

<http://www.elon.edu/e-net/Note.aspx?id=945347>

Keep an eye on the Sunshine Center Web site and future e-mail for details on the fall workshop as they become available.

Sunshine Center takes part in Chuck Stone diversity program

Sunshine Center assistant director Dale Harrison participated in the Chuck Stone Program for Diversity in Education with a presentation on North Carolina sunshine laws and other legal and ethical issues in writing at UNC-Chapel Hill July 14. The program attracts outstanding journalism students from around the country who represent diverse backgrounds. Students participate in workshops like Harrison's and also publish their own blog and publication called The Mix. This is the second consecutive year the Sunshine Center has participated in the program. For more on the Chuck Stone Program, see:

<http://www.jomc.unc.edu/stoneprogram>

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