

Coalition closing in on challenge grant

The North Carolina Open Government Coalition is closing in on its crucial goal of meeting the requirements of a challenge grant from the John S. and James L. Knight Foundation. While the NCOGC has raised more than 80 percent of the required matching funds, it remains a few stubborn steps from what has become an elusive finish line in the shaky economic climate.

“With a little more backing from our supporters, we can reach this vital goal,” said Connie Book, Sunshine Center executive director. “The grant is essential to sustain the Coalition’s efforts to advance openness throughout the state.”

Unfortunately, the economic slow down came at a time when the Coalition was speeding toward the finish line to meet

the challenge by its Nov. 30 deadline. In light of the economic crisis and the Coalition’s solid fundraising record, the Knight Foundation has issued a six-month extension. Supporters of open government in North Carolina now have a little more time to step in and ensure the future of the Coalition.

Elon University’s School of Communications has provided startup funding and resources for many of the Coalition’s efforts, including conducting workshops, answering open government queries, developing and distributing educational materials and much more. The Knight Foundation grant would bring long-term funding to the Coalition’s efforts — but \$48,230 must be raised by May of 2010 to secure the grant.

Greensboro, NCOGC team up for sunshine workshops

☐ City’s new protocols call for six-steps and 10-day turnaround on records requests

The North Carolina Open Government Coalition and city of Greensboro teamed up to conduct a pair of two-hour workshops Oct. 22 at the Greensboro Historical Museum. The well-attended event drew more than 75 city and county employees as well as members of the general public.



Presenters in Greensboro included, left to right: Greensboro City attorney Terry Wood; Greensboro Chief Deputy Becky Jo Peterson-Buie; Eric Fink of the Elon University School of Law; and Greensboro Assistant City Manager Denise Turner.

At the first session, the city of Greensboro unveiled a new effort to establish response protocols for all open government requests. The proposed protocols include a six-step process for responding to public records requests. Guidelines call for acknowledging all requests within two days and fulfilling them within 10 business days. Details of the plan can be found at www.ncopengov.org.

The protocols under consideration were explained by Greensboro Assistant City Manager Denise Turner and Chief Deputy Becky Jo Peterson-Buie.

Further workshop presentations included Elon School of Law professor Eric Fink, who provided an overview of current challenges with the federal Freedom of Information Act. Dave Levine, also an Elon Law professor, discussed the challenge of retaining intellectual property when records go public. Sunshine Center Executive Director Connie Book discussed findings on open government awareness from a 2009 Elon Poll, and Assistant Director Dale Harrison reviewed sunshine legislation from the most recent legislative session.

A robust question-and-answer period followed the workshop. City employees offered a range of questions and comments concerning compliance with state law and working with the media and public in responding to requests.

See Turner’s presentation by visiting ncopengov.org

Penurious economy has wealth of access implications

These are hard times for open government lawsuits in North Carolina.

The newspapers and television stations that traditionally have funded suits seeking access to public records and government meetings are hurting financially and cutting costs. Editors and news directors confronted with government secrecy and stonewalling must balance their journalistic zeal and idealism against the reality of penurious budgets, salary freezes (or reductions) and staff layoffs.

Times are especially hard at newspapers. The New Yorker reported this week that newspaper revenues in 2009 will be half of what they were in 2000. Government officials who formerly were reluctant to pick fights with publishers who bought ink by the barrel are well aware that all too often these days the ink that newspapers are most concerned about is red.

Trade associations and not-for-profit groups that have supported open government suits also are dealing with reduced numbers of members and contributions. First Amendment-related foundations have seen their investments decline in value and their dividends dive.

The courts don't always help, either. The Public Records Law provides that litigants who successfully compel the disclosure of public records shall be awarded their attorney fees unless the judge finds the defendants were "substantially justified" in withholding the records. The Open Meetings Law authorizes judges to award attorney fees to parties that prove violations of that statute. Despite repeated admonitions from North Carolina's appellate courts that these "Sunshine Laws" are to be construed liberally in favor of openness, some judges refuse to see the attorney fee provisions as legal glasses that are half empty, rather than nearly full. In 2006

The President's Desk

By
Hugh
Stevens



a group of Chatham County residents spent \$30,000 in proving 12 separate violations of the two laws by the county board of elections, but the presiding judge awarded only \$3,000 in attorney fees. In October, another judge refused to award attorney fees to a newspaper that proved multiple violations of the law on the part of a public body. The judge said the violations, which included failing to keep minutes of meetings, failing to give proper notice of meetings, and conducting illegal closed sessions, were just "technical" infractions.

Reflecting the adage that it's an ill wind indeed that blows no good, the current hard times have produced one happy development: media companies that once filed "sunshine law" suits individually have begun to form coalitions to pursue access to gov-

ernment records and meetings. In Raleigh, for example, The News & Observer has joined forces with WRAL-TV in efforts to curtail and oppose sealed search warrants and other court documents, and six news organizations – three newspapers, two television stations and the Associated Press – teamed up to pursue release of the "dash-cam" video of an incident in which a UNC student was shot and killed by police officers.

Coalitions simply make sense in an era of tight budgets, penurious and insensitive judges, and uncertain outcomes; after all, every news organization – and the public – "wins" when public records are unsealed or public bodies are ordered to obey the law. By sharing the costs and risks, news organizations extend the reach of their legal budgets while simultaneously sending the subliminal message that sunshine litigation is about more than selling copies of a particular newspaper or boosting the ratings of a particular station.

Hugh Stevens is a Raleigh attorney and president of the North Carolina Open Government Coalition.

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Elon University
School of Communications
2850 Campus Box
Elon, NC 27244-2010 (336) 278-5506
ncopengov@elon.edu
www.ncopengov.org



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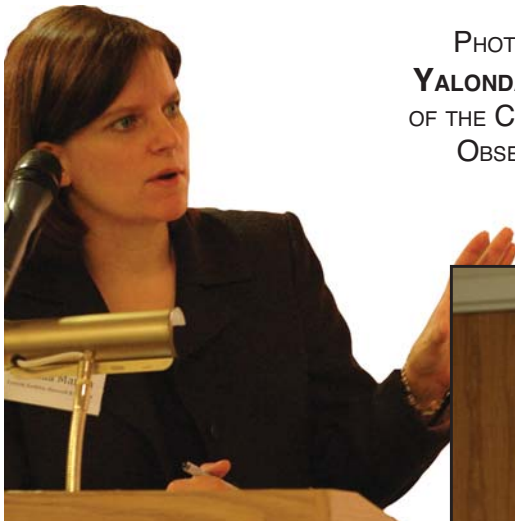
Sunshine Day in Charlotte explores emerging issues



Attorneys **Hugh Stevens** and **Elizabeth Spainhour**, pictured at left, delved into developing issues at Sunshine Day 2009.



Charlotte Observer editor **Rick Thames**, above, led a panel titled "Who Foots the Open Government Access Bill?"



PHOTOS BY
YALONDA JAMES
OF THE CHARLOTTE
OBSERVER

Attorney **Amanda Martin**, above, explored how to apply new rules on disclosure of public officials' compensation

Sunshine Day 2009 was held at the Levine Museum of the New South in Charlotte. Attorney **Jon Buchan**, right, led a panel titled "You've got E-mail (and we want to see it)."



Upcoming

March 14 – 20, 2010
Sunshine Week, nationwide
Visit sunshineweek.org



March 16, 2010
NCOGC Sunshine Day in North Carolina — featuring NPR's **Nina Totenberg** — Elon University School of Law, Greensboro

For the full text of North Carolina's Public Records and Open Meetings Laws, sunshine news and more, visit our Web site: ncopengov.org

Closed meetings victory inspires game of ‘What if?’ for OBS editor

After just finishing an open government legal challenge, it is difficult to look back on the General Assembly’s last session and not play “what if ...”

In November, Superior Court Judge Quentin Sumner granted the Outer Banks Sentinel’s request for a court order mandating that the Dare County Tourism Board maintain verbatim minutes of its closed sessions forevermore.

The order came as a result of a complaint filed by the newspaper in May after it became clear that violations of open meetings and open records laws had become routine at the agency.

Violations alleged in the complaint included:

- withholding draft settlement documents
- altered closed session minutes
- total absence of minutes for a committee meeting
- the legality of two closed sessions

Six weeks after the complaint was filed, the settlement documents were released when Superior Court Judge Alma Hinton signed a consent order. The board’s attorney wanted the order’s protection before releasing the drafts because of a confidentiality clause inserted in the settlement agreement between the board and its former director. Confidential agreements are illegal.

During the hearing before Sumner in October, the board chairman admitted the questioned closed session minutes were altered in an effort to comply with the settlement’s confidentiality clause.

The final resolution of the problem of the Nominating Committee’s meeting in December 2008 when they kept no minutes actually became funny in a twisted sort of way. After the complaint was filed, closed session minutes were placed in the minute book. I questioned why there were no open session minutes and they magically appeared in July. But the morning portion of the meeting was recessed and it was acknowledged that there were no minutes for that later portion. Two former board members were asked to write down what they could remember, and those notes were combined, deemed to be minutes, and shared with me one week before going to court — and 10 months after the meeting occurred.

The judge didn’t address the legality of the closed sessions but did say the Sentinel was justified in filing the complaint, — although, he said, he found only “technical violations.” And although he acknowledged that it appeared the minutes had been altered, he said they still met the spirit of the law.

Several years ago, attorney Tom Davis who represented the Sentinel in this case, also represented The Pamlico News in a case against Hyde County. In both instances, I asked for and was granted an order instructing the boards to tape all closed sessions. Ironically, after the Hyde County case was settled, Davis was elected as

Commentary **Sandy Semans** Outer Banks Sentinel



a county commissioner on that same board. Now board chairman, he lives with having to tape closed sessions. He told the judge that, although it is sometimes a pain, he thinks it actually keeps them from straying off topic from the purpose of the closed sessions.

Now, “What if ... “ What if the bill introduced during the last legislative session, which, if passed, would have required all boards in counties and municipalities with populations of 50,000 or more to record closed session was in place? Dare County’s population is not high enough to trigger such a law, but perhaps during the next session, the population cap can be removed.

And what if last year’s version of the Open Government Bill had passed? It would not have helped us recover our legal fees that the judge chose not to award.

One of the several flaws in the bill as now written is that it doesn’t include open meetings violations. Before this bill moves during the next session, steps must be taken to make it applicable to both open records and open meetings violations.

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And a caveat in the bill — still in committee — states there is no automatic recovery if the public body relied on a judgment or an order of a court applicable to a governmental unit or governmental body; the published opinion of an appellate court; or a written opinion,

decision, or letter of the Attorney General.

The Attorney General’s office is a political body and, while writing an opinion, may be involved in defending the state in a case that is related or reflects the same issue. Thus, there is a potential conflict of interest.

Lower and appellate court decisions are frequently overturned. Someone who wins a case that trumps an earlier court action should not be penalized by withholding legal fees.

“And what if” — each time I write or hear that phrase, I hear my late grandmother’s voice, although she has been gone for more than four decades.

As a child, whenever I began the “what if” game, she would quickly respond, “And if a frog had longer legs, he wouldn’t bump his butt!”

Maybe that is the real answer to open government. We need to evolve so that we can grow longer legs — or more backbone.

Sandy Semans is managing editor of the Outer Banks Sentinel and has been involved in several successful sunshine lawsuits.