

**IN THE CIRCUIT COURT OF BAXTER COUNTY, ARKANSAS
CIVIL DIVISION**

MELISSA KLINGER

PLAINTIFF

v.

CASE NO. _____

**MOUNTAIN HOME SCHOOL DISTRICT;
MOUNTAIN HOME SCHOOL DISTRICT BOARD
OF EDUCATION**

DEFENDANTS

COMPLAINT

Comes now the Plaintiff, Melissa Klinger, and for their cause of action against the Defendants, Mountain Home School District and Mountain Home School District Board of Education, states:

1. This is an action brought pursuant to the Arkansas Freedom of Information Act of 1967 (herein “FOIA”), as amended, codified as Ark. Code. Ann. § 25-19-101 *et seq.*

2. Plaintiff Melissa Klinger is an adult citizen of the State of Arkansas and a resident of Crittenden County. Plaintiff brings this action as a matter of right under Arkansas Code Annotated § 25-19-107. Plaintiff is a taxpayer who resides in the Mountain Home School District of Baxter County, and who pays taxes that support the Mountain Home School District.

3. This cause of action seeks declaratory and injunctive relief. This Court has subject matter jurisdiction over the Complaint for declaratory and injunctive relief pursuant to Arkansas law.

4. Defendant Mountain Home School District (“MHSD”) is a political corporation organized pursuant to the laws of the State of Arkansas. The Mountain Home School District Board of Education (sometimes referred to as “the Board”) is the governing body of the Mountain Home School District. The Mountain Home School District is tasked with complying with the open-meetings and open-records provisions of the Arkansas Freedom of Information Act (“FOIA”).

5. Jurisdiction and venue are appropriate in the Court pursuant to Ark. Code Ann. § 25-19-107(a).

6. On or about March 10, 2023, Plaintiff filed a FOIA request with the Mountain Home Public School District requesting communications between former MHSD Superintendent Jacob Long and members of the MHSD Board.

7. In response to her FOIA request, Plaintiff received screen shots of several text conversations from a group chat between then Superintendent Jake Long and Board members Lisa House, Daniel Smakal, and Bob Chester. (**Exhibit A**) Several of the exchanged text messages pertained to a proposed millage increase aimed at generating between \$54-60 million.

8. On or about February 9, 2023, Superintendent Long polled Ms. House via text message about whether she would support a millage increase of “2.5” or “2.75” for the MHPS. Ms. House answered “2.25.”

9. On February 10, 2023, Superintendent Long polled Ms. House again regarding the proposed millage increase. The exchange went as follows:

Superintendent Long: “Right now we are 3-3 split on 2.25 vs. 2.75- still waiting on 1 response. One suggestion was 2.75 and any excess go back. Thoughts? 2.25 is the boards opinion.”

Lisa House: “Still on 2.25.”

Superintendent Long: “Got it.”

Lisa House: “So we are all agreeing on 2.25.”

Superintendent Long: All agreeing no—it’s 4-3 and I’m only recommending 2.25 based on the 4 opinion [sic]”

10. On February 9th, Superintendent Long also polled Board member Daniel Smakal about whether he would support a millage increase of 2.5 or 2.75. Mr. Smakal answered “2.25.”

11. On February 10th, Superintendent Long polled Mr. Smakal at the same time he was polling Ms. House. The exchange with Mr. Smakal went as follows:

Superintendent Long: “Right now we are 3-3 split on 2.25 vs. 2.75- still waiting on 1 response. One suggestion was 2.75 and any excess go back. Thoughts? 2.25 is the boards opinion.”

Daniel Smakal: “I think it would [be] a lot harder battle to increase it and try to pass it again. I would think the 54 million from the 2.25 would cover our needs.”

12. Other text messages were sent between Superintendent Long and Board members as are identified in Exhibit A, attached hereto and incorporated by reference. It is apparent that Superintendent Long had previously polled each of the Board members on whether they supported a millage increase. This is clear from Long's statement that the Board was divided “3-3” on the issue of a millage rate of "2.25 vs. 2.75", and that he was waiting on one Board member to respond.

13. On or about February 16, 2023, Superintendent Long and the Board approved a millage measure for the May 2023 ballot for a millage increase of 2.25 mills.

14. The text message exchanges described in “Exhibit A” between Superintendent Long and Board members Lisa House and Daniel Smakal took place outside of a public meeting without any prior notice given to the media or any other parties. Superintendent Long's actions, as described in the text messages, involve actively seeking decisions from individual board members on a specific issue (the proposed millage increase), which constitutes an effort to reach a collective

decision outside of a public meeting.

15. Plaintiff made the decision to bring this lawsuit after Baxter County Prosecuting Attorney David Ethredge declined to bring criminal charges against Superintendent Long and Board members while acknowledging that their actions constitute a violation of the Arkansas Freedom of Information Act. Mr. Eldredge stated, "...it is clear the Superintendent Jake Long engaged in a course of conduct that was designed to circumvent and frustrate the explicit intent of the ARFOIA. Superintendent Long created the non-public text communication to avoid open public meetings on matters that were of great public interest. While initiated by Long, the actions also involved the then existing school board." (**Exhibit B; Letter from David Ethredge**) See also Affidavit of Probable Cause Determination attached hereto as "**Exhibit C.**"

16. FOIA provides that, "Except as otherwise specifically provided by law, all meetings, formal or inform, special or regular, of the governing bodies of all [...] school districts [...] shall be public meetings." Ark. Code Ann. §25-19-106 (a)

17. It is well-established under Arkansas law that a series of individual, private discussions involving members of a governing body, conducted for the purpose of polling the members, constitutes a violation of FOIA. *Rehab Hospital Services Corp. v. Delta-Hills Health Systems Agency, Inc.*, 285 Ark. 397, 687 S.W.2d 840 (1985).

18. Furthermore, the Arkansas Freedom of Information Act states: "It is vital in a democratic society that the public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decision that are reached in public activity and in making public policy. Toward that end, this [act] is adopted, making it possible for them, or their representatives to learn and report fully the activities of their public officials." As the United States Supreme Court has stated, "The basic purpose of FOIA is to ensure

an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 242.

19. The Court should declare that the text messages described above constitute impermissible polling and an illegal meeting held without public notice in violation of the open-meeting provisions of FOIA.

Prayer for Relief

WHEREFORE, the Plaintiffs pray that the Court grant the relief requested herein, that the Court hold a hearing on this matter and declare that the text messages described above constitute impermissible polling and an illegal meeting held without public notice in violation of the open-meeting provisions of FOIA; that the Court enjoin the Defendants from conducting business out of the public view through secret meetings; for such other relief as is requested herein; for costs; for attorney’s fees; and for such other relief as is just and proper.

Respectfully submitted,



Joey McCutchen, Ark. Bar No. 88045
Stephen Napurano, Ark. Bar No. 2017071
McCutchen Sexton Napurano – The Law Firm
P.O. Box 1971
Fort Smith, AR 72902
Phone (479) 783-0036
Facsimile (479) 783-5168

12:38

5G



Lisa >

Sat, Jan 28 at 11:04 AM

Playing out Monday night in my head. I think the board should consider and it might be best to vote on millage ballot on the 16th regardless of if we move forward [REDACTED]. It could be pretty distasteful to get all this information and immediately vote on it. Thoughts?

You will be getting some information for the first time

Sat, Jan 28 at 12:34 PM

16th of may

February

By vote I mean board voted to put it on ballot for may

Ok

Tue, Jan 31 at 9:59 AM

You ok?



iMessage



EXHIBIT

A

12:39

5G



Lisa >



Thu, Feb 2 at 10:33 AM

Let me know when you have time to talk millage

I'm here all day

Mon, Feb 6 at 5:13 PM

Be at Dunbar at 5:45?

Yes

Mon, Feb 6 at 9:46 PM

Come in

Tue, Feb 7 at 9:16 PM

What's the current mills collected for school. 3? And what is the proposed increase. 2? So a total of 5 mills??

Current is 32.16
Proposed is 2.25

Increase



iMessage



2:04

5G



Lisa >

Thu, Feb 9 at 1:11 PM

2.25 or 2.75?

2.25

Fri, Feb 10 at 9:07 AM

Right now we are 3-3 split on 2.25 vs. 2.75- still waiting on 1 response.

One suggestion was 2.75 and any excess go back.

Thoughts?



Message



Q W E R T Y U I O P

A S D F G H J K L

↑ Z X C V B N M ↵

123

space

return



2:04

5G



Lisa >



2.25 or 2.75?

2.25

Fri, Feb 10 at 9:07 AM

Right now we are 3-3 split on 2.25 vs. 2.75- still waiting on 1 response.

One suggestion was 2.75 and any excess go back.

Thoughts?

2.25 is the boards opinion

Still on 2.25

Got it

So we are all agreeing on 2.25

All agreeing no —it's 4-3 and I'm only recommending 2.25 based on the 4 opinion

3 really want 2.75 with excess going back? Will the excess go back also



iMessage



14:27

Signal strength, Wi-Fi, and battery icons.



Dr Jake >

I think it would a lot harder battle to increase it and try to pass it again. I would think the 54 million from the 2.25 would cover our needs.

Will said he was at 350 yesterday.

$350 \times 160,000$
 $= 56,000,000$

We do have state money - I just want the board to know it could be tight

I really think it's a bad idea to raise it to a



iMessage



14:27

36



Dr Jake >

Thu, Feb 9 at 13:11

2.25 or 2.75?

2.25

Fri, Feb 10 at 09:07

Right now we are 3-3
split on 2.25 vs. 2.75-
still waiting on 1
response.

One suggestion was
2.75 and any excess
go back.

Thoughts?

I think it would a lot
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iMessage



14:34

35



Dr Jake >

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$350 \times 160,000$
 $= 56,000,000$

We do have state
money - I just want the
board to know it could
be tight

I really think it's a bad
idea to raise it to a
higher amount right
now.

Ok



iMessage



12:39

5G



BC



Bob >

Mon, Feb 13 at 9:14 AM

We have some kind of extension with the state for the building upgrade because the last millage didn't pass. If I could find out more about that or get a copy that would be great. I probably will want to share the reasons we have no choice but to push ahead with this millage at this time.

Canda Reese is checking on the millage increase that may have been mandated by the state for education without a vote. She said she will get back to me probably today.

Mon, Feb 13 at 10:31 AM

If you get a minute I would like to follow up on millage increases. A quick call would be best

Mon, Feb 13 at 11:37 AM

I sent you the email from Canda. Very interesting

Mon, Feb 13 at 4:24 PM



iMessage





**DAVID L. ETHREDGE
PROSECUTING ATTORNEY
14TH JUDICIAL DISTRICT**

Baxter County Office, 301 E. 6th St., Ste. 170, Mountain Home, AR 72653

Telephone 870-425-2595

Fax 870-425-2596

Superintendent Allyson Dewey
2465 Rodeo Dr.
Mountain Home, Ar. 72653

Dear Superintendent Dewey,

In 2023-2024, the Baxter County Sheriff's Office initiated an investigation of former Mountain Home School District Superintendent Jake Long based upon information regarding potential violation(s) of the provisions of the Arkansas Freedom of Information Law.

The Baxter County Sheriff's Office has completed this investigation and sent the investigative file to my office for review. From the investigation, it is clear that Superintendent Jake Long engaged in a course of conduct that was designed to circumvent and frustrate the explicit intent of the ARFOIA. Superintendent Long created the non-public text communication to avoid open public meetings on matters that were of great public interest. While initiated by Long, the actions also involved the then existing school board.

The present law does not allow for prosecution of Long's actions. The criminal provisions of the ARFOIA only apply to elected officials. Since District Superintendents are employees hired by the district, Long's actions are not in violation of any criminal provision of the ARFOIA. It is unfortunate that there is not a course of action to penalize this individual as his actions directly caused an impairment in the relationship of the school and the school board.

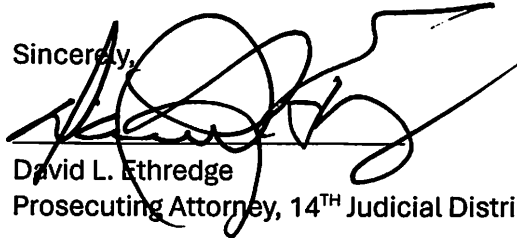
This letter shall serve as an Official Warning that all meetings of the Mountain Home School Board should be fully open to the public. All meetings should occur after proper notice and not involve any electronic communication between individual school board members. Failure to comply with the provisions of the ARFOIA will result in further action for subsequent violations. It is abundantly clear that there is a need to promote and restore public confidence in the Mountain Home School Board and its critical mission for this community. It would be appropriate to provide a training session through the Mountain Home School District Attorney's Office for the present school board and relevant school personnel on all ARFOIA Law.



This office is appreciative of the work of the Baxter County Sheriff's Office in their review of this matter. Without the actions of Melissa Klinger, the Mountain Home Observer, KTLO and other concerned citizens, these violations would have remained hidden, and the community would have been denied their role as a vital participant in the operation of the Mountain Home Public Schools.

I appreciate the efforts that you have taken to address this problem and your desire to make the actions of the school open to the public. If you have questions, please do not hesitate in letting me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'David L. Ethredge', written over a horizontal line.

David L. Ethredge
Prosecuting Attorney, 14TH Judicial District



IN THE DISTRICT COURT OF BAXTER COUNTY, ARKANSAS
AFFIDAVIT FOR PROBABLE CAUSE DETERMINATION

In the matter of: State of Arkansas v. LONG, Jacob Edward

W /M

LKA: ~~12182 County Road 7470, Canfield, MO 65626-9200~~

DOB: ~~11-04-1983~~

BXSO Case # 2306011400

Offense(s): (1) A.C.A. §25-19-104 Penalty, for violation of the Arkansas Freedom of Information Act of 1967, particularly A.C.A. §25-19-106, Open public meetings, a class C misdemeanor.

January 24th, 2023

Pursuant to Rule 4.1(e) of the Arkansas Rules of Criminal Procedure, the undersigned affiant(s), being duly sworn, deposes and says that there is reason to believe that the above-named person has committed the above offense(s) about and between the dates of February 8th, 2023 and April 7th, 2023 and, in Baxter County, Arkansas against the peace and dignity of the State of Arkansas.

That the facts establishing Probable cause are as follows: On or about March 10th, 2023 a citizen of Baxter County, Arkansas, Ms. Melissa Klinger [hereafter: WITNESS_1 or W1], suspecting violations of the open meeting requirement for school boards, filed a request for information under the Arkansas Freedom of Information Act of 1967 with the Mountain Home (Arkansas) Public School District [hereafter: MHPS]. Specifically, W1 requested MHPS Board and Superintendent communications records. W1 collated the information into a file which she presented in person to the 14th Judicial District Prosecuting Attorney. In response W1 received, among other items, screen shots of certain text conversations between then Superintendent Jacob Long and individual school board members Lisa House and Dan Smakal. On Thursday, February 9th at 1:11 PM Superintendent Long polled Ms. House via text message as to whether she was supportive of a 2.5 or 2.75 millage increase for the MHPS. Ms. House answers "2.25". On Friday, February 10th at approximately 9:07 AM Superintendent Long polled Ms. House again in the following exchange:

Superintendent Long: "Right now we are 3-3 split on 2.25 vs. 2.75- still waiting on one response. One suggestion was 2.75 and any excess go back. Thoughts? 2.25 is the Board's opinion"

Ms. House: " Still on 2.25"

Also on Thursday, February 9th 2023 at approximately 1:11 PM and Friday, February 10th 2023 at approximately 9:07 AM Superintendent Long had the same word for word conversations with Mr. Smakal.

The above exchange(s) amount to the superintendent polling school board member(s) hoping to know the board's opinions before an official vote could be cast.

On or about Wednesday, January 24th, 2024 at approximately 1:35 PM this Investigating Officer (Sergeant Scott Thrasher, Baxter County Sheriff's Office Criminal Investigation Division, #11) interviewed W1. W1 was able to verify that the above-described screen shots that were delivered to the Prosecuting Attorney's Office were the items that she received from the MHPS in answer to her FOIA request.

This I/O notes an article written in the online news outlet "The Mountain Home Observer". Said article was published on or about Wednesday, April 26th, 2023. The article was written by Mr. Chris Fulton, a journalist, and was titled "Superintendent Long admits to secret school board chat group, texts regularly deleted". The article exhibited several screenshots of a group chat that appears to have been conducted on or about April 5th, 6th, and 7th, 2023. It appears that the participants in the chat were Superintendent Long, and Board members Mr. Daniel Smakal, Mr. Bob Chester, and Ms. Lisa House. It appears that there are six members in the chat group. This I/O interviewed Mr. Fulton on Wednesday, January 24th, 2024 at approximately 10:14 AM. Mr. Fulton verified that he wrote said article and that he took the photos of the group chat screen. Mr. Fulton further attests to the validity of the facts set therein. Mr. Fulton further stated that the phone belonged to Mr. Jason Schmeski, another school board member. Mr. Schmeski allowed Mr. Fulton to photograph the group chat and use the photos in his article.

The group chat conversation was mostly inane conversation, with the exception of one section where it appeared that Superintendent Long was discussing a policy matter as follows: "I am going to recommend freezing all other schedules and doing 1 time retention bonuses from other funds" The group chat in its self is in direct contravention to the open meeting requirement of the Arkansas Freedom of Information Act of 1967.

This Investigating Officer swears that the above facts are true and correct to the best of his knowledge and requests a PROBABLE CAUSE finding from a magistrate in the above-described matter.

Affiant's Signature

Affiant's Signature

Name and Official Position

Name and Official Position

Subscribed and sworn before me this ____ day of _____, 20____.

Notary

PROBABLE CAUSE DETERMINATION

I, being a Judicial Officer with jurisdiction in Baxter County, Arkansas, do hereby state that I have examined this Affidavit and I have determined that reasonable and probable cause does exist for charging the above-named Defendant with the above offense(s). This determination is made pursuant to rule 4.1(e) and Rule 8.3(c) of the Arkansas Rules of Criminal Procedure.

Judicial Officer

Date

IN THE DISTRICT COURT OF BAXTER COUNTY, ARKANSAS

AFFIDAVIT FOR PROBABLE CAUSE DETERMINATION

In the matter of: State of Arkansas v. LONG, Jacob Edward

W /M

LKA: [REDACTED]

DOB: [REDACTED]

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This I/O notes an article written in the online news outlet "The Mountain Hoe Observer". Said article was published on or about

This Investigating Officer swears that the above facts are true and correct to the best of his knowledge, and requests a WARRANT for ESKEW, Andrew Garret for the above stated offense(s).

REQUEST MAGISTRATE TO SET BOND

Affiant's Signature

Affiant's Signature

Name and Official Position

Name and Official Position

Subscribed and sworn before me this ____ day of _____, 20____.

Notary

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Judicial Officer

Date

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In the matter of: State of Arkansas v. LONG, Jacob Edward

W /M

LKA: [REDACTED] Road 7, 20, [REDACTED], MO 65625

DOB: [REDACTED]

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January 24th, 2024

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Notary

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Judicial Officer

Date