

Supreme Court

No. 2002-677-Appeal.
(KC 01-1006)

Frederick S. Tanner :

v. :

The Town Council of the Town of East :
Greenwich et al.

Website Summary

In this case, the defendants, the Town Council of the Town of East Greenwich and its five members, in their official capacity, (hereinafter collectively referred to as “town council”), appealed from a grant of summary judgment and an award of attorney’s fees in favor of the plaintiff, Frederick S. Tanner, on his allegation that the town council appointed three people to the zoning board of review and planning board in violation of the Open Meetings Act (OMA). The plaintiff alleged that the posted notice for the disputed meeting was misleading because it listed the town council meeting as consisting of “Interviews for Potential Board and Commission Appointments,” and then listed the names of potential appointees beside their respective scheduled interview times, with each interview scheduled twenty minutes apart, but failed to give any indication that the town council intended to vote on several appointments.

The Supreme Court affirmed the grant of summary judgment and held that the plaintiff had standing to challenge the violation of the OMA; that, notwithstanding the town council’s subsequent renote and reappointment of the disputed appointees, the issues of whether the town council in fact violated the OMA and, if so, whether it did so willfully or knowingly were still justiciable controversies; that the requirement that a

public body provide supplemental notice, including a “statement specifying the nature of the business to be discussed,” obligates that public body to provide fair notice to the public under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon; and that the original notice failed to comply with this standard.

The Supreme Court, however, vacated the award of attorney’s fees. The Court was unable to determine, on the record of this case, whether the hearing justice had properly exercised her discretion in determining the amount of attorney’s fees, in this case the remedy for the OMA violation. Consequently, the Court was unable to determine whether the remedy was “proportional to the breach and the effect thereof.” The Supreme Court, in the interest of judicial economy, declined to remand the case for a reassessment of attorney’s fees, and instead, based on the fact that the record contained all the necessary information to apply inherent tenets of justice and fairness to the factual findings of the hearing justice, fashioned an appropriate remedy.