

23RD JUDICIAL DISTRICT COURT FOR THE PARISH OF ASCENSION

STATE OF LOUISIANA

NUMBER _____

DIVISION “ _____ ”

HENRYNNE LOUDEN, M.D. GEORGE ARMSTRONG AND LANA WILLIAMS

VERSUS

ASCENSION PARISH COUNCIL

DATE FILED: _____

DEPUTY CLERK

**PETITION FOR ENFORCEMENT OF THE
OPEN MEETINGS LAW**

The *Petition for Enforcement of the Open Meetings Law* of Henrynne Louden, M.D., George Armstrong and Lana Williams, all of whom are of the full age of majority and all of whom are domiciled and residing in the Parish of Ascension, State of Louisiana respectfully represents that:

THE PARTIES

1.

A. Plaintiff, Henrynne Louden, M.D., is a pediatrician and a resident of Prairieville, Louisiana. Dr. Louden has practiced medicine in Louisiana since 1972, when she became was the first black woman to graduate from the Tulane Medical School. Dr. Louden is an active member of St. John the Evangelist Catholic Church in Prairieville.

B. Plaintiff, George Armstrong, is a 15-year resident of the Dutchtown area of Ascension Parish. Mr. Armstrong is a retired minister and former budget analyst for the State of Louisiana, an LSU Instructor of Economics and a cotton farmer. Mr. Armstrong has been active in civic affairs all his life, following the example of his parents. Mr. Armstrong's father served as vice president of manufacturing for Ethyl Corporation/Albemarle Corporation and his mother served as President of the East Baton Rouge Parish School Board. Mr. Armstrong has two grandsons who attend Ascension Parish public schools.

C. Plaintiff, Lana Williams has been a resident of Ascension Parish for 39 of her 42 years. Ms. Williams has three children that have grown up in Ascension Parish public schools. Ms. Williams is a teacher at Donaldsonville Primary School and an area representative for Ascension Association of Educators.

2.

Made defendant herein is the Ascension Parish Council (hereinafter “the Council”), the governing authority of Ascension Parish, a local governmental subdivision of the State of Louisiana as defined by Article VI, § 44 of the Louisiana Constitution of 1974.

3.

The Parish of Ascension is governed under a home rule charter adopted pursuant to the authority of Article VI, § 5 of the Louisiana Constitution of 1974

4.

The Ascension Parish Council consists of eleven members.

5.

The Council conducts its business through various committees, including the Finance Committee of the Ascension Parish Council (hereinafter “the Finance Committee”).

6.

The Council is a “public body” as that term is defined in LSA-R.S. 42:13(A)(3) and is subject to the provisions of the *Open Meetings Law*.

7.

The Finance Committee is a “public body” as that term is defined in LSA-R.S. 42:13(A)(3) and is subject to the provisions of the *Open Meetings Law*.

FACTUAL BACKGROUND

8.

Article 7, Section 21(F) of the Louisiana Constitution of 1974 provides:

Notwithstanding any contrary provision of this Section, the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and may be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms “manufacturing establishment” and “addition” as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process.

9.

After being elected, Governor John Bel Edwards determined that the Board of Commerce and Industry and previous governors of Louisiana had approved Industrial Tax Exemption contracts ultimately resulting in an average of \$1.4 billion in foregone *ad valorem* tax revenue each year for the next five years for parishes, municipalities, school districts and other political subdivisions of the state that directly provide law enforcement, water and sewage, infrastructure, and educational opportunities to Louisiana citizens.

10.

On October 21, 2016, Governor John Bel Edwards issued **EXECUTIVE ORDER NUMBER JBE 2016-73** entitled *Amended and Restated Conditions for Participation in the Industrial Tax Exemption*.

11.

In order to ameliorate the loss of revenue to local governmental bodies, prior to a proposed Industrial Tax Exemption being considered by the Governor for approval, **EXECUTIVE ORDER NUMBER JBE 2016-73** requires that the Governor and Board of

Commerce and Industry be provided with a resolution adopted by, among others, “the relevant governing Parish Council” signifying “whether it is in favor of the project.”

EXECUTIVE ORDER NUMBER JBE 2016-73, Section 6.

12.

EXECUTIVE ORDER NUMBER JBE 2016-73 further provides that Contracts for Industrial Tax Exemptions that do not include a resolution by the relevant Parish Council signifying whether it is in favor of the project “will not be approved by the Governor.”

EXECUTIVE ORDER NUMBER JBE 2016-73, Section 7.

13.

The Council is “the relevant governing Parish Council” for projects seeking Industrial Tax Exemptions in Ascension Parish.

14.

On September 12, 2017, the Finance Committee held a meeting.

15.

All eleven members of the Council serve as members of the Finance Committee.

16.

The agenda for the September 12, 2017 meeting of the Finance Committee failed to indicate that the Finance Committee would be considering whether or not to approve a resolution signifying that the Council was in favor of one or more Industrial Tax Exemptions.

17.

The only indication that on the agenda for the September 12, 2017 meeting of the Finance Committee that related to Industrial Tax Exemptions was Item (7) which provided:

“(7) Ascension Economic Development to Introduce Industrial Tax Exemption Applicants (Kate MacArthur, President/CEO and Lisa Laws, Project Manager)”

18.

The agenda for the September 12, 2017 meeting of the Finance Committee was never amended to include an agenda item that would have permitted consideration of a resolution signifying that the Council was in favor of one or more Industrial Tax Exemptions.

19.

Despite the foregoing, the Finance Committee considered and recommended approval by the Council of a resolution signifying that the Council was in favor of Industrial Tax Exemptions on five projects having a total value of more than \$450 Million.

20.

Upon approval by the Finance Committee, an item was added to the "consent agenda" for the meeting of the Ascension Parish Council to be held on September 21, 2017 that read:

"(7) Consent Agenda

* * *

u. Adopt Resolutions to award Industrial Tax Exemption at levels recommended by the Ascension Economic Development Board for the following projects: (Finance Recommendation)

- Project Magnolia
- Project Zinnia
- Project Bagel
- Project Sunflower/Sunflower Seed"

21.

The identity of the projects on the agenda for the meeting of the Council held on September 21, 2017 are fictitious.

22.

Neither Plaintiffs nor any other member of the public could determine, from a review of the "consent agenda" for the meeting of the Council held on September 21, 2017:

- (a) The identity of the company seeking the benefit of an Industrial Tax Exemption;
- (b) The amount of the Industrial Tax Exemption sought for each project;
- (c) The cost of granting each of the Industrial Tax Exemptions;
- (d) Whether any of the projects comply with the requirements of Article 7, § 21(F) of the Louisiana Constitution of 1974; or
- (e) Whether any of the projects comply with the requirements of **EXECUTIVE ORDER NUMBER JBE 2016-73.**

23.

Despite the foregoing, at the meeting of the Council held on September 21, 2017, the Council approved item (7) u. on the “consent agenda” and adopted resolutions awarding Industrial Tax Exemptions to fictitious projects having a total value of more than \$450 Million.

VIOLATIONS OF THE OPEN MEETINGS LAW

24.

Article XII, § 3 of the Louisiana Constitution of 1974 provides:

No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

25.

LSA-R.S. 42:14 provides:

A. **Every meeting of any public body shall be open to the public** unless closed pursuant to R.S. 42:16, 17, or 18.

B. **Each public body shall be prohibited from utilizing any** manner of proxy voting procedure, secret balloting, or any other **means to circumvent the intent of this Chapter.**

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules and restrictions regarding such comment period.

(emphasis added).

26.

Not only are meetings of public bodies to be open, citizens have the right to know - in advance - the subject matter upon which governing bodies will deliberate and vote. See LSA-R.S. 42:19.

27.

Public bodies, such as the Council and the Finance Committee, "**shall give written public notice of their regular meetings**, if established by law, resolution, or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times, and places of such meetings." LSA-R.S. 42:19(A)(1)(a) (emphasis added).

28.

Public bodies, such as the Council and the Finance Committee, "**shall give written public notice of any regular, special, or rescheduled meeting** no later than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the meeting." LSA-R.S. 42:19(A)(1)(b)(i) (emphasis added).

29.

Notice of the meetings of public bodies, such as the Council and the Finance Committee, "**shall include the agenda**, date, time, and place of the meeting. The agenda shall not be changed less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting." LSA-R.S. 42:19(A)(1)(b)(ii)(aa) (emphasis added).

30.

Each item on the agenda of meetings of public bodies, such as the Council and the Finance Committee, “**shall be listed separately and described with reasonable specificity.**” LSA-R.S. 42:19(A)(1)(b)(ii)(bb) (emphasis added).

31.

The *Open Meetings Law* must be liberally construed in favor of insuring that “public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.” LSA-R.S. 42:12(A); *Norris v. Monroe City School Board*, 580 So.2d 425, 427 (La. App. 2nd Cir. 1991).

32.

The primary purpose of the *Open Meetings Law* and the constitutional provision ensuring the right of citizens to participate in the deliberations of public bodies is to protect citizens from secret decisions made without any opportunity for public input.

33.

The public has a right to know what is being considered and is entitled to direct participation in deliberations of public bodies, such as the Council and the Finance Committee. LSA-Const. art. XII, § 3. *Wagner v. Beauregard Parish Police Jury*, 525 So.2d 166, 169 (La. App. 3rd Cir. 1988); see *Organization of United Taxpayers and Civic Associations of Southeast Baton Rouge, Inc. v. Louisiana Hous. Fin. Agency*, 96-2406 (La. App. 1st Cir. 11/07/1997), 703 So.2d 107, 110-11, writ denied, 97-3007 (La. 02/06/1998), 709 So.2d 745.

34.

The agenda for the September 12, 2017 meeting of the Finance Committee failed to comply with the requirement of the *Open Meetings Law* that mandates that each item on the agenda “shall be listed separately and described with reasonable specificity”, LSA-R.S. 42:19(A)(1)(b)(ii)(bb), and, as a result, the Council and Finance Committee violated

the *Open Meetings Law* by denying Plaintiffs and the members of the general public the right to:

- (a) know what was being considered by the Finance Committee;
- (b) directly participate in the deliberations of the Finance Committee concerning the Industrial Tax Exemptions that were being considered; and
- (c) protect themselves from secret decisions made without any opportunity for public input.

35.

The agenda for the September 21, 2017 meeting of the Council failed to comply with the requirement of the *Open Meetings Law* that mandates that each item on the agenda “shall be listed separately and described with reasonable specificity”, LSA-R.S. 42:19(A)(1)(b)(ii)(bb), and, as a result, the Council violated the *Open Meetings Law* by denying Plaintiffs and the members of the general public the right to:

- (d) know what was being considered by the Council;
- (e) directly participate in the deliberations of the Council concerning the Industrial Tax Exemptions that were being considered; and
- (f) protect themselves from secret decisions made without any opportunity for public input.

RELIEF REQUESTED

36.

LSA-R.S. 42:25(C) provides:

Any person who has been denied any right conferred by the provisions of [the *Open Meetings Law*] or who has reason to believe that the provisions of [the *Open Meetings Law*] have been violated may institute enforcement proceedings.

37.

Plaintiffs have been denied the rights conferred by the *Open Meetings Law* and have reason to believe that the provisions of the *Open Meetings Law* have been violated by the Finance Committee and the Council.

38.

LSA-R.S. 42:24 provides:

Any action taken in violation of [the *Open Meetings Law*] shall be voidable by a court of competent jurisdiction. A suit to void any action must be commenced within sixty days of the action.

39.

These proceedings were commenced with sixty days of the action of the Finance Committee taken on September 12, 2017 and the Council taken on September 21, 2017.

40.

LSA-R.S. 42:26(A)(4) provides that:

A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief:

* * *

(4) Judgment rendering the action void as provided in R.S. 42:24.

* * * *

41.

Considering the foregoing violations of the *Open Meetings Law*, Plaintiffs request, pursuant to LSA-R.S. 42:26(A)(4), judgment in their favor rendering the action of the Finance Committee taken on September 12, 2017 and the action of the Council taken on September 21, 2017 with respect to Industrial Tax Exemptions void as provided in LSA-R.S. 42:24.

42.

LSA-R.S. 42:26(C) provides, in pertinent part, that:

If a person who brings an enforcement proceeding prevails, he shall be awarded reasonable attorney fees and other costs of litigation. If such person prevails in part, the court may award him reasonable attorney fees or an appropriate portion thereof.

43.

Plaintiffs are entitled to recover their reasonable attorney fees and other costs of litigation from the Council pursuant to LSA-R.S. 42:26(C).

44.

Pursuant to LSA-R.S. 42:27, this enforcement proceeding “shall be tried by preference and in a summary manner.”

WHEREFORE, Plaintiffs, Henrynne Loudon, M.D. George Armstrong and Lana Williams, pray that this matter be tried by preference and in a summary manner and, after due proceedings are had herein, there be judgment in favor of Plaintiffs and against the Ascension Parish Council (I) rendering the action of the Finance Committee of the Ascension Parish Council taken on September 12, 2017 with respect to Industrial Tax Exemptions void as provided in LSA-R.S. 42:24; (II) rendering the action of the Ascension Parish Council taken on September 21, 2017 with respect to Industrial Tax Exemptions void as provided in LSA-R.S. 42:24; and (III) awarding Plaintiffs their reasonable attorney fees and other costs of litigation pursuant to LSA-R.S. 42:26(C).

Respectfully submitted:

Brian F. Blackwell (18119)
Charles L. Patin, Jr. (10338)
BLACKWELL & ASSOCIATES
8322 One Calais Avenue
Baton Rouge, Louisiana 70809
Telephone: (225) 769-2462
Facsimile: (225) 769-2463
E-mail: brian@blackwell-associates.com
charlie@blackwell-associates.com

*Counsel for Plaintiffs, Henrynne Loudon, M.D.,
George Armstrong and Lana Williams*

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RULE TO SHOW CAUSE

Considering the foregoing *Petition for Enforcement of the Open Meetings Law* and the statutory requirement that proceedings to enforce the *Open Meetings Law* shall be tried by preference and in a summary manner:

IT IS ORDERED that the Ascension Parish Council show cause on the ____ day of October, 2017 at _____ o'clock __. M. why judgment should not be rendered in favor of Plaintiffs and against the Ascension Parish Council:

- I. rendering the action of the Finance Committee of the Ascension Parish Council taken on September 12, 2017 with respect to Industrial Tax Exemptions void as provided in LSA-R.S. 42:24;
- II. rendering the action of the and the action of the Ascension Parish Council taken on September 21, 2017 with respect to Industrial Tax Exemptions void as provided in LSA-R.S. 42:24; and
- III. awarding Plaintiffs their reasonable attorney fees and other costs of litigation pursuant to LSA-R.S. 42:26(C).

Gonzales, Louisiana this ____ day of October, 2017.

JUDGE, 23RD JUDICIAL DISTRICT COURT

PLEASE SERVE:

Ascension Parish Council
Through the Parish President:
Kenny Matassa
Ascension Parish Governmental Complex
615 East Worthey Street
Gonzales, LA 70737