

DISTRICT COURT, ELBERT COUNTY,
STATE OF COLORADO
751 Ute Avenue
Kiowa, CO 80117

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**JILL DUVALL,
JIM DUVALL,
CHRISTOPHER N. HATTON,
NIC MEYER, and
ROBERT ROWLAND,**

Plaintiffs,

v.

▲ COURT USE ONLY ▲

**BOARD OF COUNTY COMMISSIONERS for
ELBERT COUNTY, COLORADO;**

CHRIS RICHARDSON in his official capacity as a
member thereof;

DALLAS SCHROEDER in his official capacity as a
member thereof;

GRANT THAYER in his official capacity as a member
thereof;

Defendants.

Case No. 2024-cv-_____

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**COMPLAINT
(FOR DECLARATORY AND INJUNCTIVE RELIEF)**

Plaintiffs Jill Duvall, Jim Duvall, Christopher N. Hatton, Nic Meyer, and Robert Rowland, by and through their undersigned counsel at Zansberg Beylkin LLC, hereby submit this Complaint and state as follows:

INTRODUCTION

“[T]he formation of public policy is public business
and may not be conducted in secret.”
§ 24-6-401, C.R.S. (2024)

This lawsuit is brought by five citizens, all residents of Elbert County, Colorado, to hold accountable the governing body of that jurisdiction, the Board of County Commissioners (“BOCC”) for having violated two statutes: the Colorado Open Meetings Law (“COML”), and the provision of the County Code (Title 30) entitled “No liability against county beyond appropriation.” As set forth below, (Defendants are not expected to contest any of the *averments of facts* herein – only their legal consequence) earlier this year, the Defendants conducted a series of meetings among two or more of its members at which they *discussed* public business, specifically, the terms of employment for two County officials covering a three year period. In addition, outside of any public meeting, the BOCC made *decisions* by which they committed the County to incur substantial financial obligations over a three-year period.

Aside from the unlawful *process* by which those decisions were made, the *substance* of the decisions made by the BOCC (the two contracts entered into) also violates a clear prohibition of Colorado law, which forbids County Commissioners from imposing on the County any financial obligations or commitments that have not previously been authorized. As a result of those violations, Colorado law mandates that each individual who caused such unauthorized expenditures is personally liable to the County to reimburse it for the sum of those expenditures.

This lawsuit asks this Court to find and declare that the BOCC violated the Colorado Open Meetings Law by engaging in discussion of public business without providing advance notice and the opportunity for the public to observe those discussions. It also asks the Court

to declare and find that the BOCC made decisions –to enter into two multi-year employment contracts – outside of any lawfully-convened and open public meeting. Lastly, this lawsuit asks the Court to enter an Order, pursuant to § 30- 25-103, C.R.S. (2024), commanding each of the three individually-named Defendants personally to reimburse the County treasury for the expenditures they caused the County to incur which were not previously authorized.

PARTIES

1. Plaintiff Jill Duvall is a resident of Elbert County, Colorado.
2. Plaintiff Jim Duvall is a resident of Elbert County, Colorado.
3. Plaintiff Christopher N. Hatton is a resident of Elbert County, Colorado.
4. Plaintiff Nic Meyer is a resident of Elbert County, Colorado.
5. Plaintiff Robert Rowland is a resident of Elbert County, Colorado.
6. Defendant the Board of County Commissioners for Elbert County, Colorado is a local public governmental body, elected by the citizens of Elbert County and officially authorized by Colorado law to serve as the governing body of the Elbert County government.
7. Defendant Chris Richardson is a member, and Chair, of the Board of County Commissioners of Elbert County, Colorado.
8. Defendant Dallas Schroeder is a member of the Board of County Commissioners of Elbert County, Colorado.
9. Defendant Grant Thayer is a member of the Board of County Commissioners of Elbert County, Colorado.

JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court pursuant to C.R.S. § 24-6-402(9), C.R.S.

11. Venue is proper in this Judicial District Court pursuant to C.R.C.P. 98(b)(2) because all defendants are public officials and a local public body whose actions giving rise to this Complaint occurred in Elbert County.

GENERAL ALLEGATIONS

12. At some point(s) prior to June 13, 2024, two or more members of the BOCC discussed outside of any noticed public meeting, whether the County should enter into two, new, three-year contracts with the County Attorney and County Administrator with specific terms, including levels of compensation (both monetary and non- monetary benefits) and duration. Furthermore, in the course of such meeting(s), a majority of the BOCC *decided* that the County should enter into those contracts, and they authorized Board Chair Richardson to sign those contracts, thereby binding Elbert County to perform the obligations therein.

13. After members of the public became aware of the unlawful decision-making by the BOCC, outside of any noticed and open public meeting, they voiced their concerns at a Town Hall on July 17, 2024. Prior to the next regularly scheduled public meeting of the BOCC, on July 24, 2024, an agenda was posted that did not include any discussion of the unlawful decisions the BOCC had made to enter into the two employment contracts. Rather, **upon convening that public meeting**, one Commissioner moved to amend the posted agenda to add that issue as a “Discussion” topic, which motion was approved.

14. Approximately one hour and twenty-two minutes into the BOCC’s public meeting of July 24, 2024, the Commissioners took up the previously unposted discussion of their unlawful decision to approve and enter into the two employment contracts. The County Attorney opined that no violation of the COML had occurred, because, in his opinion, the

prior secret meetings among the majority of the BOCC to discuss and approve those contracts were exempt from the notice requirement of the COML, because such meetings constituted “day-to-day supervision” of County employees.

15. Notwithstanding their stated position that no COML violation had occurred in the discussion of, and the decision to enter into, the two employment contracts, the BOCC then proceeded to discuss the reasons why they had made those decisions, defended the *process* by which they were made, and formally voted to “ratify” those decisions.

16. The value of the salaries and other benefits the BOCC committed to provide the two county officials in their three-year employment contracts exceed the amounts that were previously authorized for such expenditures.

APPLICABLE LAW

17. COML requires that any discussion of public business by two or more members of the BOCC be conducted in a meeting that is open to the public. § 24-6-402(2)(b) (2024) (“All meetings of . . . [a quorum] of any local public body . . . at which any public business is discussed . . . are declared to be public meetings *open to the public* at all times.”) (emphasis added).

18. COML further prohibits any local public body from making any *decision* – such as agreeing to sign a multi-year contract that commits the County to pay substantial sums – outside of a properly noticed meeting that is open to the public. § 24-6-402(8), C.R.S. (2024).

19. Indeed, while local public bodies are permitted to discuss such employment contracts in a properly convened executive session (to discuss “personnel matters” regarding certain publicly identified county employees), they are expressly prohibited from either taking

“formal action” or “adopt[ing] a position” during that executive session. § 24-6-402(4), C.R.S. (2024). Quite clearly, committing to pay two county officials hundreds of thousands of dollars over the course of three years cannot possibly be considered “day to day supervision” of such employees.

20. “As a rule, [the COML] should be interpreted most favorably to protect the ultimate beneficiary, the public.” *Cole v. State*, 673 P.2d 345, 349 (Colo. 1983) (citation omitted).

21. Whenever a court finds a public body violated the COML, the plaintiff who initiated that action is entitled to recover his/her reasonable attorney’s fees and costs. § 24-6-402(9), C.R.S. (2024); *Zubeck v. El Paso Cty. Retirement Plan*, 961 P.2d 597, 601-602 (Colo. App. 1998) (“Under the provisions of the OML, plaintiffs are entitled to an award of attorney fees upon a finding that the governmental entity has violated any of the provisions of the law. . . .There is no requirement that the violation be knowing or intentional . . .”).

22. Section 30- 25-103, C.R.S. (2024), provides:

No contract shall be made by the board of county commissioners of any county, and no liability against the county shall be created by any officer of the county, whether the object of the expenditure has been ordered by the board of county commissioners or not, unless an appropriation shall have been previously made concerning such expense. Each member of the board of county commissioners and other officers of the county who undertake to create any liability against the county, except such as they are by statute required to do, shall be personally liable and, together with the sureties upon their official bonds, shall be held for such indebtedness.

FIRST CLAIM FOR RELIEF
For Declaratory Relief Recognizing Past Violations
of the Colorado Open Meeting Law
(Board of County Commissioners)

23. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

24. The BOCC engaged in discussion of public business among two or more members of the BOCC outside of a properly noticed public meeting that was then open to the public.

25. As a result of their unlawful conduct, Defendants deprived Plaintiffs (and others in Elbert County) of their rights under the Colorado Open Meetings Law, to notice and an opportunity to observe that discussion in real time.

26. Plaintiffs have suffered an injury in fact and have standing as set forth in § 26-6-402(9)(a), C.R.S.

27. Plaintiffs are entitled to the entry of a Declaration and Finding by this Court that the Defendants' conduct was in violation of the Colorado Open Meetings Law.

SECOND CLAIM FOR RELIEF
For Declaratory Relief Recognizing Past Violations
of the Colorado Open Meeting Law
(Board of County Commissioners)

28. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

29. Defendants made decisions – specifically to enter into two multi-year employment contracts which committed the County to expend significant sums of County funds – outside of a lawfully convened and open public meeting.

30. The BOCC's subsequent unanimous vote to “ratify” its earlier unlawful decisions

at its Special Meeting of July 24, 2024, did not “cure” the prior violations, but merely “rubber stamped” them. *See Walsenburg Sand & Gravel Co., Inc. v. City of Walsenburg*, 160 P.3d 297 (Colo. App. 2007) (merely rubber-stamping in a public meeting an earlier-made unlawful decision does not “cure” the violation); *Van Alstyn v. Housing Auth.*, 985 P.2d 97 (Colo. App. 1999) (same).

31. As a result of their unlawful conduct, Defendants deprived Plaintiffs (and others in Elbert County) of their rights under the Colorado Open Meetings Law.

32. Plaintiffs have suffered an injury in fact and have standing as set forth in §26-6-402(9)(a), C.R.S.

33. Plaintiffs are entitled to the entry of a Declaration and Finding by this Court that the Defendants’ conduct was in violation of the Colorado Open Meetings Law. |

THIRD CLAIM FOR RELIEF
For Declaratory and Injunctive Relief
For Violations of § 30- 25-103, C.R.S.
(Defendants Richardson, Schroeder, and Thayer)

34. Plaintiffs incorporate all other allegations in this complaint as if fully set forth herein.

35. Plaintiffs are entitled to a Declaration and Finding by this Court that the three named individual Defendants are each personally liable for having participated in the above referenced decisions to obligate Elbert County to financial expenditures that had not previously been authorized.

36. Plaintiffs are entitled to an Order of the Court commanding all three of the named Defendants to fulfill their obligations set forth in § 30- 25-103, C.R.S., to reimburse the County treasury for financial expenditures above appropriated amounts that they caused the County to incur.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter a judgment in their favor as follows:

- (1) Enter an Order finding and declaring that the meetings conducted by the BOCC at which two or more of its members discussed public business violated the Colorado Open Meetings Law;
- (2) Enter an Order finding and declaring that the decisions made by the BOCC outside of any public meeting violated the Colorado Open Meetings Law;
- (3) Enter an Order commanding Defendants Richardson, Schroeder and Thayer, each to pay to the treasury of Elbert County, Colorado all monies that they voted to commit Elbert County to pay out that were not previously authorized;
- (4) Enter an Order commanding the BOCC to pay Plaintiffs their reasonable attorney fees and costs he incurred in bringing this successful action to enforce their, and the public's, rights under the Colorado Open Meetings Law; and
- (5) Such other and further relief as the Court deems just and proper.

Dated this 19th day of September, 2024.

ZANSBERG BEYLKIN LLC

s/ Steven D. Zansberg

Steven D. Zansberg