

STATE OF NORTH CAROLINA  
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06-CvS-106

**FREE SPIRIT AVIATION, INC. and GEORGE RONAN,**  
Plaintiffs,

vs.

**RUTHERFORD AIRPORT AUTHORITY; RUSTY WASHBURN,** individually and as a member of the Rutherford Airport Authority; **PHILLIP ROBBINS,** individually and as a member of the Rutherford Airport Authority; **ALAN GUFFEY,** individually and as a member of the Rutherford Airport Authority; **DON GREENE,** individually and as a member of the Rutherford Airport Authority; and **DAVID RENO,** as a member of the Rutherford Airport Authority,  
Defendants.

**JUDGMENT**

**AND  
ORDER**

FILED  
2009 APR -9 A 10:50  
RUTHERFORD COUNTY, N.C.  
BY: *[Signature]*

**THIS MATTER** was heard by the undersigned Judge and a jury empaneled at the January 26, 2009, term of the Superior Court of Rutherford County.

**Jury Verdict**

**THE FOLLOWING ISSUES** were submitted to and answered by the jury:

1. Whether there was an unannounced official meeting of the Rutherford Airport Authority on December 15, 2004? Answer: no.
2. Whether there was an unannounced official meeting of the Rutherford Airport Authority on February 21, 2005? Answer: no.
3. Whether there was an unannounced official meeting of the Rutherford Airport Authority on May 5, 2005? Answer: no.
4. Whether there was an unannounced official meeting of the Rutherford Airport Authority on September 22, 2005? Answer: no.
5. Whether there was an unannounced official meeting of the Rutherford Airport Authority on September 28, 2005? Answer: no.
6. Whether the closed sessions of the Rutherford Airport Authority for January 10, 2006, and January 13, 2006, were properly entered into? Answer: no.

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### Attorney Fees

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**FOLLOWING THE JURY VERDICT**, the undersigned Judge considered Plaintiffs' request for attorney's fees pursuant to North Carolina General Statutes § 143-318.16B; and also considered Defendants' Motion for Attorney's Fees pursuant to N.C.G.S. § 143-318.16B and § 6-21.5. Having heard the testimony at trial, having reviewed the file, and having considered the arguments of all parties and their counsel in considering both Plaintiffs' and Defendants' requests, the Court makes the following **findings of fact**:

1. Plaintiffs filed this action against the Rutherford Airport Authority (the "Authority") and members of the Authority in their individual capacity, with Plaintiffs' first two claims for relief relating to violations of Article 33C of Chapter 143 of the North Carolina General Statutes (the "Open Meetings laws"), specifically with Plaintiffs' first claim for relief alleging violation of Chapter 143 through holding improper official meetings on several occasions, and with Plaintiffs' second claim for relief alleging violation of Chapter 143 through improperly entering into a closed session that began on January 10, 2006, and extended to January 13, 2006. Plaintiffs also requested injunctive relief pursuant to N.C.G.S. § 143-318.16.

2. In addition, Plaintiffs also made claims for relief for malfeasance of office for malicious and retaliatory acts, and in bad faith, against all defendants; malfeasance of office for improper benefit received by several individual Defendants in violation of N.C.G.S. § 14-234; malfeasance of office for improper benefits received by one specific defendant in violation of N.C.G.S. § 14-234; wrongful interference with contract; conspiracy; and for punitive damages.

3. Following filing, David Reno was dismissed from the suit by Plaintiffs, and Defendant Phillip Robbins passed away. Mr. Robbins' estate was properly substituted as a defendant in this matter prior to trial.

4. Discovery was conducted, after which Defendants filed a Motion for Summary Judgment. Following a hearing on that motion, the Honorable Laura Bridges made conclusions of law that there remained genuine issues of material fact as to whether Defendants violated the Open Meetings laws; as to whether Defendants acted in any retaliatory or malicious manner; as to whether individual Defendants were protected by a public official immunity; as to whether Defendants received improper benefits; as to whether Defendants violated N.C.G.S. § 14-234(a)(1); and as to whether Defendants acted to wrongfully interfere with contract. Defendants appealed the ruling regarding public official immunity, but the ruling was affirmed by the North Carolina Court Of Appeals.

5. Prior to trial, Plaintiffs dismissed their claims for conspiracy, the seventh claim for relief, and did not proceed on the injunctive relief requested in the complaint.

6. At the close of Plaintiffs' evidence at trial, the Court directed verdict in favor of Defendants on Plaintiffs' third through sixth, and eighth, claims regarding retaliatory or malicious acts; receipt of improper benefits and violations of N.C.G.S. § 14-234(a)(1); wrongful interference with contract by Defendants; and punitive damages.

7. Prior to the January 10, 2006, meeting, several individual Defendants, including Authority Chairman Dr. Rusty Washburn, in their capacity as Authority members, attended a training seminar on the Open Meetings laws, at which the permitted purposes and procedures for entering into closed sessions was discussed.

8. At some Authority meetings prior to the January 10, 2006, meeting, Authority meeting minutes show that the Authority properly both stated a permitted purpose and cited statutory authority prior to entering into a closed session.

9. At the January 10, 2006, Authority meeting, the Authority was to be presented and consider proposals by independent contractors wishing to contract with the Authority to be the fixed base operator at the Rutherford Airport.

10. Dr. Washburn testified that, prior to the January 10, 2006, meeting, he met with the attorney for the Authority to discuss how the Authority could consider the contract proposals, and that Dr. Washburn's understanding was that the Authority could enter into a closed session to discuss those contract proposals, and to discuss negotiations regarding entering into that contract. The attorney for the Authority was not present at the January 10th or January 13th meetings.

11. At the January 10, 2006, closed session, Authority member David Reno protested the purpose and procedure of entering into the closed session as improper, and restated that protestation at the January 13, 2006, continuation of the closed session.

12. Plaintiffs' claim for relief regarding Defendants' violation of the Open Meetings laws through improperly entering into a closed session on January 10, 2006, was a significant issue in this matter.

13. Defendants' Motion for Attorneys' Fees moved the Court to award Defendants attorney's fees pursuant to N.C.G.S. § 143-318.16B and pursuant to N.C.G.S. § 6-21.5, claiming Plaintiffs' issues regarding retaliatory or malicious acts; receipt of improper benefits and violations of N.C.G.S. § 14-234(a)(1); and wrongful interference with contract by Defendants, were not justiciable.

14. Attorney for Plaintiffs submitted an affidavit detailing attorney's fees totaling \$45,165.75, and requesting an award of that amount.

15. Attorney for Defendants submitted an affidavit detailing attorneys' fees for one of Defendants' attorneys, and requesting an award of attorney's fees of \$20,934.60 pursuant to N.C.G.S. § 143-318.16B, and \$21,697.20 pursuant to N.C.G.S. § 6-21.5, a total request of \$43,631.80.

**BASED UPON THE FOREGOING** findings of fact, the Court makes the following **conclusions of law**:

1. The legislative intent of the Open Meetings laws is to "curtail...unwarranted secrecy by public bodies." *H.B.S. Contractors, Inc. v. Cumberland Co. Bd. of Education*, 468 S.E.2d 517, 521 (N.C. App 1996).

2. The purpose stated for entering into the January 10-13, 2006, closed session was not one of the permitted purposes listed in N.C.G.S. § 143-318.11(a), and the Authority did not properly cite an enabling statute for entry into that closed session.

3. Plaintiffs succeeded on a significant issue in this matter in obtaining a verdict that Defendants violated the Open Meetings laws by improperly entering into a closed session on January 10, 2006.

4. In exercising its discretion to award attorney's fees pursuant to N.C.G.S. § 143-318.16B, the Court must apply the "merits test" adopted in *H.B.S. Contractors, Inc. v. Cumberland Co. Bd. of Education*, 468 S.E.2d 517 (N.C. App 1996).

5. Applying the merits test here, while Defendants prevailed on more claims, and Plaintiffs did not prevail on all of their claims, Plaintiffs did prevail on a very significant issue in this matter, and are the prevailing parties pursuant to N.C.G.S. § 143-318.16B.

6. Plaintiffs' issues regarding retaliatory or malicious acts; receipt of improper benefits and violations of N.C.G.S. § 14-234(a)(1); and wrongful interference with contract by Defendants, were justiciable, and were not frivolous.

7. Defendants are not prevailing parties under either N.C.G.S. § 143-318.16B or N.C.G.S. § 6-21.5.

8. The individual defendants followed the advice of the attorney for the Authority, as that advice was relayed by Dr. Washburn.

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**IT IS THEREFORE ORDERED** as follows:

1. That judgment is entered for Plaintiffs, as prevailing party in this matter, against Defendant Rutherford Airport Authority for attorneys fees pursuant to N.C.G.S. § 143-318.16B in the amount, considering the amount of work expended and success achieved by the prevailing party, among other factors, of \$17,500.00.

2. That Defendants' Motion for Attorneys Fees is denied.

This the 2 of April, 2009.

  
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Superior Court Judge Presiding