

**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY OHIO**

THOMAS F. McMASTERS
6934 Sylmar Ct
Huber Heights, OH 45424
Pro Se
Plaintiff

Case No.

Judge

v.

THE CITY OF HUBER HEIGHTS
6131 Taylorsville rd
Huber Heights, OH 45424
Defendant

COMPLAINT FOR INJUNCTIVE RELIEF, FINE AND COURT COSTS

Plaintiff, Thomas F. McMasters, citizen of Huber Heights, pro se, for his Complaint states as follows:

PARTIES AND FACTS

1. Plaintiff Thomas F McMasters is a citizen of Huber Heights.
2. Defendant City of Huber Heights, is a municipal corporation located in Montgomery County Ohio.
3. This Court has jurisdiction because the facts giving rise to this Complaint occurred in Montgomery County.
4. This court has a venue because it is where the parties conduct business.
5. ORC121.22(I) provides (1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation.

6. Defendant the City of Huber Heights violates the Open Meetings Act as a regular occurrence. This complaint focuses on the violations occurring in conjunction with the issue of the separation of City Manager Robert Schommer but there have been many violations. Including, but not limited to, those that occurred in and around meetings held on September, 17, 2019, May 11, 2020, and August 4, 2020
7. On Saturday March 6, 2021, Mayor Gore met with Councilmen Campbell and Shaw to discuss the dismissal of City Manager Robert Schommer.
8. On Saturday March 6, 2021 Councilman Shaw back briefed Councilman Otto about the issue.
9. March 8, 2021 Huber Heights held a regularly scheduled City Council Meeting. City Manager Rob Schommer did not attend this meeting, nor did he have any legal representative there on his behalf.
10. March 8, 2021 during the regularly scheduled meeting City Council went into executive session under the pretense of considering the employment of public employee. ORC121.22 (G)(1) requires the motion to hold an executive session state which one or more of the approved purposes listed in division (G)(1) under which the executive session will be held. That list distinguishes between dismissal, compensation and employment (among other approved reasons).
11. On March 8, 2021 the executive session lasted 20 minutes from the time the motion passed until all members were back in chambers or online.
12. On March 8, 2021 Council passed a motion to accept Mr. Schommer's resignation and charged the City Attorney to execute a consulting agreement with Mr. Schommer for a total of \$150,000. Note that the Huber Heights City Charter designates the responsibility of awarding consulting and other contracts to the City Manager and requires these to be authorized by resolution or ordinance. Note also that negotiating and awarding a contract is not a listed exception to ORC121.22 open meeting requirements. Note also

the restrictions of ORC 2921.42(A)(3) which according to the Post-Employment and Revolving Door – Ohio Ethics Law Pamphlet published by the Ohio Ethics Commission prohibits a Public Official in Mr. Schommer's employment position from accepting consulting work.

13. On March 9, 2021 Mr. Schommer submitted his resignation which was accepted by the City Attorney. The resignation acceptance included waving of the City Manager's contractual requirement to provide a 30-day notice. It also included the claim he was leaving for other opportunities.
14. On March 10, 2021 Council held a City Council Emergency Meeting. During this meeting Councilman Lyons accused Mayor Gore of committing fraud. Council members Lyons, Otto and Shaw conveyed they believed that if Mr. Schommer was voluntarily resigning then no severance pay or consulting contract was warranted.
15. On March 10, 2021 during the meeting the City Attorney conveyed the contract was already executed and the city had a moral obligation to pay it.
16. On March 15, 2021 the City held a City Council Special Meeting. During Citizen Comments Mr. Joseph Hendrix ask council a specific and clear question about when they learned of the Mayor's desire to fire Mr. Schommer. Council Members Lyons, Otto and Shaw answered a different question as if Mr. Hendrix asked when they saw the letter. Mr. Campbell outright lied and said on March 8th. Mrs. Byrge left the meeting and Mr. Web did not respond. Mr. Hill and Ms. Baker conveyed March 8th.
17. On March 15, 2021 approximately an hour, twenty-seven minutes into the meeting Mr. Otto revealed the Saturday meeting for the first time.
18. On March 15, 2021 Council passed Resolution 2021-R-6977. During discussion the City Attorney conveyed to Council that they were obligated to pass this legislation because the contract had already been signed. Additionally, during discussion, it was revealed

that he had signed them up for a contract that exceeded the maximum total authorized in the motion but he incorrectly stated an inconsequential amount of \$5,000.

19. On March 16 Council held a City Council Emergency Meeting. In this meeting the City Attorney conveyed that the actual amount he exceeded and signed council up for was a substantial \$20,000 above the limit set forth in the motion. He continued to present council was obligated to pay this amount.
20. On March 16 during the City Council emergency Meeting Councilman Lyons proclaimed, "NOW, IF I WERE TO MAKE A PREDICTION, I WOULD PREDICT A BIG BAG OF MONEY SHOWING UP ON SOMEBODY'S BACK PORCH, BEHIND SOME BUSHES FOR THEIR CAMPAIGN THIS YEAR. AND I BET THAT THERE ARE COUNCIL MEMBERS WHO WOULD BE UNAWARE OF THAT HAPPENING. DON'T EXPECT THAT TO SHOW UP ON THE CAMPAIGN FINANCE REPORT, EITHER AS A PUBLIC RECORD"
21. On March 16 Council held a Council Work Session which included discussion on the separation of Mr. Schommer for the City Manager position.
22. A totality of the discussions held during the March 8, March 10, March 15 and March 16 combined with the evasiveness answers to direct questions, historical alliances between Mr. Campbell, Mr. Lyons, Mr. Webb and Mrs Bryge and the short 20 minute time it took in executive session indicates Council was engaged in round robin discussions contrary to ORC 121.22.
23. Council has a fiducial obligation to the citizens of Huber Heights. A totality of the discussions held during the March 8, March 10, March 15 and March 16 shows the advice given by the City Attorney was contrary to the Huber Heights City Charter, the Open Meeting Laws of the State of Ohio and a direct result of Council's violations of Ohio's Open Meeting Laws. Council was unduly influenced by bad advice and because of this bad advice chose the most expensive of the options presented.

FIRST CLAIM FOR RELIEF (Injunctive Relief)

1. Plaintiff hereby incorporates all other paragraphs as if fully stated herein.
2. ORC121.22 provides that upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.
3. Based upon the discussions held in open meetings to date, reasonable observers might come to two possible conclusions. First, the Mayor desired to fire Mr. Schommer and the Consulting Agreement (even though it is illegal as it currently stands) was expected to cost essentially the same as the severance package outlined in his current contract. Or Second, Mr. Schommer had decided to resign and the Mayor and Mr. Campbell, with others, conspired to funnel money to Mr. Schommer he would not otherwise be entitled. Council must understand the nature of Mr. Schommer's separation in order to make responsible fiducial decisions on behalf of the City. Only an immediate injunction preventing the actions taken due to the improper executive session, namely against the March 8, 2021 motion and March 15 Resolution 2021-R-6977, can ensure the integrity of the process going forward.
4. The current consulting contract implementation was contrary to the process required by the City Charter and because of poor legal advice this was not corrected when the resolution was passed. Additionally, this contract violates the provisions of ORC 2921.42(A)(3) which according to statute is a felony. These deficiencies will be corrected through the requested injunctive relief.
5. The Motion and Attachment filed in conjunction with this complaint satisfy the requirements necessary to be granted injunctive relief.

WHEREFORE: Plaintiff prays for relief on all claims against the Defendant as follows:

- a. A temporary restraining order and preliminary injunction preventing the Defendant from proceeding with any action resulting from the March 8, 2021 Motion or the March 15, 2021 Resolution 2021-R6977
- b. An injunction compelling the members of Huber Heights City Council to comply with the provisions of ORC 121.22
- c. Court Costs;
- d. Fine in accordance with ORC121.22(l)(2)
- e. Attorney fees

Respectfully submitted,

/s/ Thomas F. McMasters

THOMAS F. McMASTERS
Pro Se