

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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DANIEL ZIMMER,

Plaintiff/Appellee,

v.

Court of Appeals No.

Ottawa County Circuit Court  
No. 24-8070-CZ

OTTAWA COUNTY and OTTAWA  
COUNTY BOARD OF  
COMMISSIONERS,

**ORAL ARGUMENT REQUESTED**

Defendants/Appellants.

Appeal from a Judgment of Ottawa County Circuit Court  
Hon. Scott A. Noto, Kent County Circuit Court Judge  
Sitting by SCAO Assignment

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**APPELLEE DANIEL ZIMMER'S MOTION FOR IMMEDIATE  
CONSIDERATION AND ENTRY OF INJUNCTIVE RELIEF PENDING  
REMAND**

**Relief needed no later than tomorrow, December 19, 2024 – 9:00 a.m.**

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December 18, 2024

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Plaintiff-Appellant Daniel Zimmer respectfully requests that this Court grant appropriate emergency relief to maintain the status quo, and reverse the trial court's denial of a Temporary Restraining Order. In addition, Appellant asks that this Court reverse the Ottawa County Circuit Court bench's decision that it cannot hear this Open Meetings Act case against the Ottawa County Board of Commissioners because the Board is the court's funding unit. Appellant needs emergency relief from this Court **by tomorrow, Thursday, December 19, 2024, no later than 9:00 a.m.** for the reasons explained to prevent irreparable harm.

In support, Appellant states as follows:

1. On December 10, 2024, the Ottawa County Board of Commissioners ("the Commission") voted to approve three separate contracts in violation of the Open meetings Act (OMA), MCL 15.261 *et seq.* One of those contracts also exceeds the authority of a county board of commissioners and thus violates the law in that manner as well. Without injunctive relief, Ottawa County ("the County") will distribute more than \$800,000 for contracts that were not lawfully approved.

2. On December 16, 2024, Plaintiff filed a complaint and motion for ex parte TRO in Ottawa County Circuit Court. Plaintiff argued that, under the circumstances, the County would be unable or unlikely to obtain repayment of public funds spent on illegal contracts after the Court ultimately ruled on the merits. All the judges of that Ottawa County Circuit Court recused themselves, and SCAO selected Judge Scott A. Noto of the Kent County Circuit Court to sit by

designation. On December 18, 2024, at 10:24 a.m., Judge Noto denied Plaintiff's motion for a TRO without explanation.

3. Since filing his action, Plaintiff has learned that the County was holding funds pending a decision from the court. Plaintiff has also learned that the two of the contracts at issue in this case will likely be addressed by the Commission and the Ottawa County Insurance Authority, tomorrow, on December 19, 2024. Plaintiff believes that the Commission will try to reenact those contracts under the procedure outlined in the OMA; however, unless this Court orders release of the closed session minutes in which the Commission unlawfully discussed those contracts, the Commission cannot reenact the decision to approve those contracts in conformity with the OMA.

### *The Commission Meeting*

4. The Commission met for its regular December meeting on December 10, 2024. (Compl. ¶ 9.) The agenda released on the evening before included the following suggested motions:

- “To go into closed session pursuant to MCL 15.268(1)(a) to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, as requested by Senior Executive Aide Jordan Epperson (requires 2/3 vote).” (*Id.* at ¶ 10.)
- “To go into closed session pursuant to MCL 15.268(1)(a) to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, as requested by Interim Administrator Benjamin R. Wetmore (requires 2/3 vote).” (*Id.* at ¶ 11.)
- “To approve and authorize the Board Chair and Clerk/Register to sign the

Agreement for the Care, Management, and Maintenance of Land Located at Crockery Lake, and to appropriate \$563,404.00 from the General Fund balance, Monsanto reserve for the purpose of funding this Agreement.” (*Id.* at ¶ 12.)

5. The packet included with the agenda contained the proposed contract for the Crockery Lake Agreement. (Ex. A.) Included as an exhibit to the Contract was a two-page document that purported to summarize the costs of the proposed lake program. (*Id.*)

***The Open Meetings Act (OMA)***

6. The OMA requires that “[a]ll decisions of a public body must be made at a meeting open to the public.” MCL 15.263(2). The statute further requires that, with limited exceptions, “[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.” MCL 15.263(3). The enumerated exception that the Board relied on here was that a public body may go into closed session to “consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing.” MCL 15.268(1)(a). None of these reasons is actually present here.

7. The OMA allows a public body to reenact a decision made in violation of the OMA. The statute states:

In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner

shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

MCL 15.270(5). This section is often used to cure a technical violation of the OMA, such as when a public body failed to properly vote to into closed session. See e.g., *Willis v Deerfield Twp*, 257 Mich App 541, 543 (2003).

***Motions on Epperson and Wetmore***

8. Despite having no lawful basis to go into closed session under OMA, the Commission voted to go into closed session to discuss a severance agreement for executive aide Jordan Epperson. (Compl ¶ 22.) After meeting in closed session, the Commission returned to open session and voted for “the [County] Clerk and [Commission] Chair to sign and authorize a separation and release agreement” for Epperson. (*Id.*) There was no public discussion about the agreement prior to the vote, and the Commission did not disclose any details about the terms. (*Id.*)

9. Thereafter, the Commission voted to go into closed session to discuss Interim County Administrator Benjamin Wetmore. (Compl ¶ 23.) Upon return to open session, the Commission voted for “the [County] Clerk and [Commission] Chair to sign and authorize a separation and release agreement” for Wetmore. (*Id.*) There was no public discussion about the agreement prior to the vote, and the Commission did not disclose any details about the terms of the agreement. (*Id.*)

10. A local news reporter made a Freedom of Information Act request for the severance agreements, and published them on December 16, 2024 at 12:24 p.m. (Compl ¶ 25.) Per the agreements, the County must pay severance agreement

payments in a lump sum by December 17, 2024, even though Epperson and Wetmore are to work until January 1, 2025. (Ex. B ¶ 3.c; Ex. C ¶ 3.b.) The County will make total payments under both agreements of more than \$280,000, not including the cost of providing health insurance to Epperson under the agreements. (Compl ¶ 25.) Being paid the value of a severance agreement prior to ending work is an extremely unusual feature of such an agreement. (*Id.*)

### ***Crockery Lake Contract***

11. At the December 10, 2024 meeting, the Board also took up a motion to approve a contract between the County and Chester Township (“the Contract”). (Compl ¶ 28.) Under the Contract, the Board would provide \$563,404 to Chester Township to restore the waters of Crockery Lake. (*Id.*) The money would then be paid by the Township to Restorative Lake Sciences and its owner Dr. Jennifer Jermalowicz-Jones to do work to improve the quality of the lake. (*Id.*) Upon information and belief, Dr. Jermalowicz-Jones is a supporter and political ally of the Ottawa Impact-affiliated Commissioners who lose their majority on the Board at the end of 2024. (*Id.* at ¶ 29.)

12. Crockery Lake is an inland lake in Chester Township in Ottawa County. (Compl ¶ 30.) It has a voluntary lake association, the Crockery Lake Association, which purports to be aimed at ensuring the health of Crockery Lake. (*Id.*) The Crockery Lake Association is also focused on recreation activities at the lake, including annual fireworks displays and boat parades. (*Id.*) Crockery Lake does not have a lake improvement board, which is a type of body provided for under

state law to engage in lake improvement projects. (*Id.*)

13. In September 2024, the Crockery Lake Association presented information about Crockery Lake to the Finance and Administration Committee of the Commission. (Compl ¶ 31.) Dr. Jermalowicz-Jones also presented to the Committee. (*Id.*) Following that meeting, the Crockery Lake Association issued a statement to its members that county officials had been positive and “very promising” that they would support the lake improvement project. (*Id.* at ¶ 32.) On December 3, 2024, the Finance and Administration Committee approved a contract with Chester Township. (*Id.* at ¶ 33.) The Committee did not have the contract between Chester Township and Restorative Lake Sciences or even a summary of the proposed project from Restorative Lakes Sciences. (*Id.*)

14. The Contract as presented to the Commission on December 10, 2024 contained several substantive changes from the contract that was detailed in the discussion and passed by the Finance and Administration Committee. (Compl ¶ 34.) For instance, the contract that was passed by the committee directly authorized Restorative Lake Sciences, i.e. Dr. Jermalowicz-Jones, to conduct the project, whereas the contract presented to the Commission authorized the Township to conduct the project and provided the Township with the entirety of the anticipated cost of the project. (*Id.*)

15. The Contract is different from other County contracts in important respects. (Compl ¶ 35.) According to statements made by Commissioners at the meeting, the County has not previously entered into contracts with townships and

has never funded a lake improvement contract for an inland lake. (*Id.* at ¶ 36.)

There are more than 100 inland lakes in Ottawa County, and historically, improvement projects on those lakes have been funded without County money. (*Id.*)

16. The Contract provides for the County to pay the entire \$563,404 of the contract to Chester Township immediately, even before there are permits for any aspect of the project. (Compl ¶ 37.) This is not standard practice for improvement projects with public entities. (*Id.*) The Contract did not provide for any funding milestones, as is common with County contracts, nor for any other specific means of accountability for progress and standards of workmanship. (*Id.*) Commissioner Jacob Bonnema, who is not affiliated with OI, raised multiple concerns with the Contract. Bonnema expressed concerns that the entire amount of the contract was being paid up front, and that there were no funding milestones. (*Id.* at ¶ 38.) Commissioner Gretchen Cosby, who is an OI-affiliated commissioner who lost her bid for re-election, stated in response: “You . . . are asking about whether you can retract dollars. Maybe that might be why we want to fund it in full.” (*Id.* at ¶ 39.) It was understood that she meant that the Contract obligated the County to pay the entirety of the cost of the project up front and prior to the end of 2024 so the new Commissioners could not reverse course, or have the opportunity to revisit any aspect of the Contract for any reason (even illegality), when they take office in about three weeks. (*Id.*)

17. The Contract also provides for the County to indemnify Chester



Township for any claims, damages, or lawsuits arising from the project, thus leaving the County bearing the entirety of the legal risk for the project with little information about the work that is to be done – and no say in what work is to be done, how it is to be done, or when it is to be done. (Compl ¶ 40.) As the County is the funder of the project in this Contract, and not the recipient of the funds, this is also extremely unusual. (*Id.*) There is no recourse built into the contract, like periodic payments, benchmarks that need to be met, or other penalties like clawback provisions if the County has a later concern about what the Township and/or Dr. Jermalowicz-Jones is doing. Environmental projects like that contemplated in the Contract can create substantial, long-term, and costly legal liability, and so the County agreeing in the Contract to act as the indemnitor of the Township is a significant concession for which the County receives no apparent benefit. (*Id.* at ¶ 41.)

18. Upon information and belief, there was not a process to solicit bids for the work on Crockery Lake; instead, the project was awarded to Restoration Lake Sciences for Dr. Jermalowicz-Jones to do the work without any bids from other potential providers, and without a public hearing of any sort on the feasibility of the project. (Compl ¶ 42.) The County’s Board policy requires a competitive bid process for service contracts greater than \$35,000. (*Id.*)

19. At the December 10, 2024 meeting, Wetmore stated that the County has been working with Chester Township on the Contract for months. (Compl ¶ 43.) Nonetheless, the Contract – which differed from that passed by the Finance and

Administration Committee the previous week – was not provided to the entire Commission until the evening before the meeting, or roughly twelve hours in advance. (*Id.*) Upon information and belief, the Contract was provided to only some members of the commission, i.e., OI-affiliated members, prior to the time the agenda and packet were released. (*Id.* at ¶ 44.) Upon information and belief, a quorum of Commissioners engaged in discussions about the contract prior to the December 10, 2024 meeting. (*Id.* at ¶ 45.)

20. On December 9, 2024 – the day prior to the County Commission meeting – the Chester Township Board approved a contract to do the work on Crockery Lake. (Compl ¶ 46.) Township officials had reason to believe that it was a *fait accompli*, or predetermined, that Defendants would vote to give the Township the necessary funds, no strings attached, at the County Commission vote the following evening. (*Id.*) Indeed, the Township Board’s meetings reflect that Ottawa County had already committed “to front the funds for a 5-year period.” (*Id.*)

21. On December 10, 2024, the Commission narrowly approved and ratified the Contract with Chester Township, in a 6-5 vote, to appropriate \$563,404 of funds from the County’s General Fund, even though the Contract had not been provided to the entire Commission until the previous evening. (Compl ¶ 47.)

### ***The Upcoming Commission Meeting***

22. Following the meeting on December 10, 2024, the Commission scheduled a special meeting for December 19, 2024. Although the Commission has not yet posted the agenda for that meeting, Plaintiff believes that the Commission

intends to vote again on the severance agreements with Epperson and Wetmore in an attempt to reenact those votes in light of this litigation. The Ottawa County Insurance Authority, which will fund the payments to Epperson and Wetmore, had originally scheduled a meeting for December 18, 2024, but that meeting was postponed until December 19, 2024. Plaintiff believes that meeting was postponed in order to allow the Commission an opportunity to reenact the severance agreement decisions.

23. Plaintiff believes that the money for the contracts still has not been paid, in anticipation of further direction from the Court.

24. The trial court did not hold a hearing and did not give any reasons for denying a TRO in its written order.

25. A TRO here enjoining payment on these contracts until such time as further hearing can be held or OMA-compliant decisions are made, and requiring release of the closed session meeting minutes from December 10, 2024, would permit the Commission to consider these actions again in conformity with OMA if it wished. Without a court order permitting release of the closed session minutes and disclosure of reasons for the original decisions, it will not be possible to for the Board to re-enact the decisions in conformity with OMA if that is what the Board wishes to do.

26. Plaintiff-Appellant needs relief by tomorrow, December 19, 2024, no later than 9:00 a.m., when the Board is expected to take up these matters again.

27. The purpose of injunctive relief under the OMA is to vindicate the public interest in open meetings by governmental bodies. *Schulke v Mason Cty Bd of*

*Comm'rs*, No. 189450, 1996b Mich App Lexis 535, at \*3-4 (Mich Ct App Dec 17, 1996). That public interest will not be harmed by immediate injunctive relief that maintains the status quo while the Court determines the legality of the Commission's actions, but will instead be advanced by that relief. A TRO will merely prevent taxpayer dollars from going out the door until the Court can determine whether the Commission lawfully entered into the agreements at issue. Even if the Court were to ultimately determine that Plaintiff could not succeed on the merits of his claims, the public interest would not be harmed by a short delay in performance under the contracts. Accordingly, there is no harm to the public interest from a TRO.

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Dated: December 18, 2024

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