

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
Grady County, Oklahoma

OCT 24 2016

ALAN GUARD,)
)
 Plaintiff,)
)
 -v.-)
)
 THE CITY OF CHICKASHA, a Municipal)
 Corporation,)
)
 Defendant.)

LISA HANNAH, Court Clerk
By *Juspe* Deputy

Case Number CJ-16-239

PETITION

COMES now the Plaintiff, ALAN GUARD (herein referred to as "Plaintiff"), and for cause of action against the Defendant, THE CITY OF CHICKASHA (herein referred to as "Defendant"), alleges and states as follows:

PARTIES, JURISDICTION, AND VENUE

1. That the Plaintiff is an individual and is a resident of Grady County, State of Oklahoma.
2. That the Defendant is a Municipal Corporation located in Grady County, State of Oklahoma.
3. That the claims for relief presented herein arise from actions and circumstances that took place in Grady County, State of Oklahoma.
4. That Jurisdiction and Venue are proper in this Court.

CLAIM I: DECLARATORY RELIEF – VIOLATION OF OPEN MEETINGS ACT

5. That on or about Friday, October 7, 2016, the Defendant gave notice of a Special Meeting of the City Council of the City of Chickasha to the municipal clerk for the City

of Chickasha, such meeting to take place on Monday, October 10, 2016, at 5:30 p.m., and that such notice did not meet the forty-eight hour requirement of 25 O.S. § 311.

6. That on or about Friday, October 7, 2016, the Defendant sent written notice of such meeting to each person that had filed a request with the Defendant for notice of meetings of the Defendant, and that such written notice did not meet the forty-eight hour requirement of 25 O.S. § 311.

7. That on the notice and agenda which violated the forty-eight hour requirement of 25 O.S. § 311 the Defendant provided for an executive session.

8. That on October 10, 2016, the Defendant held a special meeting of the City Council for the City of Chickasha willfully in violation of 25 O.S. § 311, and in such special meeting the Defendant went into executive session willfully in violation of 25 O.S. § 307.

WHEREFORE, Plaintiff prays this Court adjudicate all questions in his favor and enter a declaratory judgment against Defendant making the determinations that: the special meeting held on October 10, 2016, was held in violation of the Oklahoma Open Meetings Act; that the executive session held at the October 10, 2016, meeting was entered into in violation of the Oklahoma Open Meetings Act; that any actions taken at the October 10, 2016, meeting are invalid; that the minutes and all other records of the executive session on October 10, 2016, including tape recordings, be immediately made public; and that this Court award the Plaintiff with his reasonable attorney fees in bringing this suit, as well as any additional and further relief whether under equity or at law to which Plaintiff is entitled.

CLAIM II: DECLARATIVE RELIEF – VIOLATION OF OPEN RECORDS ACT

9. That on or about October 3, 2016, the Plaintiff submitted an request under the Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq.*, to the Defendant requesting “[a]ny

and all records, including but not limited to any investigation report, regarding or referencing demotion, discipline, termination or potential demotion, discipline, or termination of Alan Guard (if such records are considered confidential under 51 O.S. § 24A.7 then Mr. Guard requests such records under the provision of 51 O.S. § 24A.7(C)).”

10. That on or about October 11, 2016, the Defendant denied the Plaintiff’s request made under the Oklahoma Open Records Act, stating that the records discussed other employees in addition to the Plaintiff, and were therefore confidential, and that such records were not a part of the Plaintiff’s personnel file.

11. That the Defendant used the records requested by Plaintiff to determine on October 10, 2016, to terminate the Plaintiff’s employment and therefore such documents should be and necessarily are a part of Plaintiff’s personnel file and are subject to production to the Plaintiff under 51 O.S. § 24A.7(C).

WHEREFORE, Plaintiff prays this Court adjudicate all questions in his favor and enter a declaratory judgment against Defendant making the determinations that: the records requested on October 3, 2016, were subject to production under the Oklahoma Open Records Act; that, as such, the Defendant’s denial of Plaintiff’s request is a violation of the Oklahoma Open Records Act; that Defendant should produce the records requested by the Plaintiff on October 3, 2016; and that this Court award the Plaintiff with his reasonable attorney fees in bringing this suit, as well as any additional and further relief whether under equity or at law to which Plaintiff is entitled.

CLAIM III: DECLARATIVE RELIEF – VIOLATION OF CHARTER

12. That the Charter for the City of Chickasha provides that “[n]either the mayor nor any other member of the city council shall interfere or become involved with

personnel matters, or directly with the administration of the city. Any officer violating this section shall forfeit his office.” Charter for the City of Chickasha, Article 5, Section 6.

13. That certain members of the City Council, acting in their capacities as officers and agents for Defendant, have individually and collectively interfered with and become involved with personnel matters, and have become involved directly with administration of the City of Chickasha.

WHEREFORE, Plaintiff prays this Court adjudicate all questions in his favor and enter a declaratory judgment against Defendant making the determinations that: certain members of the City Council, acting as officer and agents for Defendant, have interfered with personnel matters and have become involved directly with administration of the City of Chickasha; that such actions are a violation of the Charter for the City of Chickasha, Article 5, Section 6; that, therefore, the violating members of the City Council for the City of Chickasha, are required to forfeit their offices; and that this Court award the Plaintiff with any additional and further relief whether under equity or at law to which Plaintiff is entitled.

CLAIM IV: 42 U.S.C.A. § 1983 CLAIM AGAINST DEFENDANT

The allegations contained in paragraphs 1 through 13, above, are adopted and incorporated herein by reference. The Plaintiff additionally alleges and states:

14. That the Plaintiff had a vested interest in his employment under his employment contract between the Plaintiff and the Defendant.

15. That the Defendant did not provide notice to Plaintiff of the reasons that he was to be disciplined and/or terminated prior to the special meeting on October 10, 2016.

16. That the Defendant did not provide proper notice to Plaintiff, as a member of the public, required under the laws of the State of Oklahoma to take the

disciplinary/termination actions which Defendant took in the special meeting on October 10, 2016.

17. That the Defendant did not provide the Plaintiff with a hearing regarding allegations that were used against him in the determination of the disciplinary/termination actions which Defendant took in the special meeting on October 10, 2016.

18. That the Defendant did not allow the Plaintiff to speak during the "Citizen and Council Communications" portion of the special meeting based upon the content that Defendant believed would be included in Plaintiff's speech.

19. That Defendant's policies caused Defendant's employees and officers under color of law to act in the following ways:

- a. Failure to provide proper notice to Plaintiff of the allegations used against Plaintiff in the determination to discipline Plaintiff and/or terminate Plaintiff from his employment.
- b. Failure to provide proper notice of the special meeting wherein such determination to discipline Plaintiff and/or terminate Plaintiff from his employment was to be made.
- c. Failure to provide a proper hearing to Plaintiff on the issue of his discipline and/or termination from his employment.
- d. Failure to provide Plaintiff an opportunity to be heard on the issue of his employment, the allegations against him, and the Defendant's actions, prior to Defendant determining to discipline Plaintiff and/or terminate Plaintiff from his employment.
- e. Failure to allow Plaintiff to speak in a public forum based solely upon the assumed content of his speech.

20. That the actions of Defendant and Defendant's officers and employees under Defendant's policies described in paragraph 19 above have resulted in and caused an unconstitutional deprivation of and injury to Plaintiff's constitutional interest in his continued employment without due process of law.

21. That the actions of Defendant and Defendant's officers and employees under Defendant's policies described in paragraph 19 above constitute a violation of Plaintiff's free speech right under the First Amendment of the United States Constitution and made applicable to the Defendant under the Fourteenth Amendment of the United States Constitution.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for actual damages in an amount exceeding \$10,000.00 for the injuries above stated together with costs, pre-judgment interest, punitive damages, attorney fees and such further relief to which the Plaintiff may be entitled.

CLAIM V: BREACH OF CONTRACT

22. That on or about the 6th day of April, 2015, Plaintiff entered into a written employment contract with Defendant whereby Defendant hired Plaintiff as City Manager for the City of Chickasha and Plaintiff agreed to accept such employment subject to certain terms contained in the written employment contract.

23. That subsequent to entering into such written contract, Defendant has breached certain terms of the written employment contract.

24. That the breach of such written employment contract has caused Plaintiff actual damages in an amount in excess of \$10,000.

WHEREFORE Plaintiff prays judgment against the Defendant for actual damages in an amount exceeding \$10,000.00 for the injuries, and for such other relief to which Plaintiff may be entitled under equity or law.

Respectfully Submitted,



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ATTORNEY FOR PLAINTIFF

**ATTORNEY'S LIEN CLAIMED
JURY TRIAL DEMANDED**

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF GRADY)

Alan Guard, of lawful age, being first duly sworn, on his oath states: That he is the Plaintiff above named, that he has read the above and foregoing instrument, is familiar with the contents thereof and that the matters and things therein stated are true.

Alan Guard
ALAN GUARD

SUBSCRIBED AND SWORN TO before me this 19 day of October, 2016.

Bonnie Morse
Notary Public

My commission expires: May 15, 2019