

**Matter of New York Coalition for Open Govt., Inc. v
City of Buffalo**

2024 NY Slip Op 30656(U)

February 27, 2024

Supreme Court, Erie County

Docket Number: Index No. 816293/2023

Judge: Craig D. Hannah

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At a Special Term, Part 31 of the
Supreme Court held in and for the
County of Erie at the Courthouse at
Buffalo, New York on the
6th day of February 2024

PRESENT: HON. CRAIG D. HANNAH
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

NEW YORK COALITION FOR
OPEN GOVERNMENT, INC.,
NATHAN FEIST, and
MATTHEW AUSTIN,

DECISION AND ORDER

Petitioners,

Index. No. 816293/2023

For a Judgment Pursuant to Article 78 of the New York
Civil Practice Law and Rules,

-against-

CITY OF BUFFALO,
CITIZEN SALARY REVIEW COMMISSION,
CITY OF BUFFALO BOARD OF REVIEW, and
BUFFALO COMMON COUNCIL,

Respondents.

PAUL W. WOLFE, ESQ.
Attorney for Petitioners
392 Evans Street
Williamsville, New York 14221

CRAIG R. BUCKI, ESQ.
Attorney for Respondents
City of Buffalo, et al.
One Canalside
125 Main Street
Buffalo, New York 14203-2887

CARIN S. GORDON, ESQ., Of Counsel
CAVETTE A. CHAMBERS, ESQ.
CORPORATION COUNSEL
CITY OF BUFFALO
*Attorney for Respondents,
City of Buffalo, et. al.*
1100 City Hall
65 Niagara Square
Buffalo, New York 14202

HON. CRAIG D. HANNAH, S.C.J.

At a special term of this Court, the petitioners, NEW YORK COALITION FOR OPEN GOVERNMENT, INC., NATHAN FEIST, and MATTHEW AUSTIN, by their attorney Paul W. Wolfe, Esq., having duly moved for an order pursuant NY CPLR §3001 for a declaratory judgment seeking to invalidate and declare Local Law No. 2 (2023) null and void upon the grounds that Respondents, CITY OF BUFFALO, CITIZEN SALARY REVIEW COMMISSION, CITY OF BUFFALO BOARD OF REVIEW and BUFFALO COMMON COUNCIL (hereinafter collectively referred to as “Respondents”) have violated the New York Open Meetings Law, pursuant to NY Public Officers Law §102; and petitioners having moved for a temporary injunction immediately halting the salary increases for certain City officials, which increases occurred on January 1, 2024. Respondents opposed this application and seek dismissal of the verified petition, with prejudice.

This instant matter arises out of Respondents creating a salary legislation in 2023, which made salary adjustments for certain City officials; to wit: the Mayor, Common Council Members, City Comptroller, and School Board Members. Respondents created a Salary Review Commission, as required by law, and the Salary Review Commission recommended adjustments to these City officials’ salaries. Petitioners allege that the Salary Review Commission was not properly appointed and that its meetings violated the State’s Open Meetings Law. Respondents assert that,

inter alia, petitioners' allegations are time barred and that the Open Meetings Law did not apply to the Salary Review Commission.

Initially, it is noted by the Court that petitioners, by their attorney, Paul W. Wolfe, Esq., made certain assertions in the media that the Court should recuse itself from the instant matter based upon on the Court's familiarity with the Respondents. Although no formal application was ever made or filed with the Court, and no party moved for a hearing regarding same, and although Respondents objected to any oral application for recusal because it was improper and untimely, the Court, *sua sponta*, addressed petitioners' concerns on the record. The Court established that it has a certain familiarity with all of the parties in this case at bar, including petitioners' attorney. The Court's role is to be fair and impartial, preside over the matter without prejudice, and decide the issues by applying the law to the evidence presented by the parties. The Court feels that its familiarity with the parties in no way impairs its ability and duty to preside impartially over this case and, therefore, the Court sees no basis for recusal. After establishing this on the record, all parties agreed to go forward with argument.

Before the Court can address the merits of petitioners' arguments, the Court must first address the procedural issues raised by Respondents. Specifically, whether the statute of limitations to bring this action expired and whether petitioners' action is time-barred as a matter of law. In New York, it is well settled that causes of action alleging violations of the Open Meetings Law are subject to a four-month statute of limitations and the four-month clock starts, at the latest, when the minutes of challenged meeting are released to the public. *See, Jones v Bayshore Union Free Sch. Dist.*, 170 F Supp 3d 420, 434 (EDNY 2016); *see also, Our City Action Buffalo, Inc. v Comm. Council of the City of Buffalo*, 77 Misc 3d 1107, (Sup Ct Erie County 2022); citing *Matter of Smith v. City Univ of NY*, 92 NY2d 707, 717 (1999).

Here, on May 2, 2023, the Citizens Salary Review Commission recommendations [minutes] were filed as Item No. 56 with the Buffalo Common Council Meeting Agenda and, thereby, made public. Accordingly, the commencement of the four-month statute of limitations began on May 2, 2023, and ended on September 2, 2023. Petitioners filed their verified petition in this action on December 20, 2023, which was 3½ months after the deadline to file such a claim. Thus, their claims based upon the Open Meetings Law are time barred, as a matter of law.

Additionally, *Our City Action Buffalo, Inc. v Comm. Council of the City of Buffalo*, 77 Misc 3d 1107, (Sup Ct Erie County 2022), is analogous to this a case at bar. Based upon the holding and precedent established in *Our City Action Buffalo Inc.*, the Salary Review Commission would not qualify as a public body and, therefore, would not be subject to the Open Meetings Law. The case states in pertinent part:

“...the Open Meetings Law governs entities that qualify as a ‘public body’ under New York Public Officers Law (“POL”) §102(2). Because the Citizens Commission does not require a quorum to conduct its business under the Charter or the General Construction Law, it is not a ‘public body,’ and is not subject to the Open Meetings Law.”

Based upon the foregoing, and after due deliberation having been held thereon, it is hereby **ORDERED, ADJUDGED and DECREED**, that Petitioners’ motion for a temporary injunction immediately halting the salary adjustments for certain City officials, which increases occurred on January 1, 2024, be and the same is hereby Denied, in its entirety; and it is further

ORDERED, ADJUDGED and DECREED, that petitioners’ motion for a declaratory judgment seeking to invalidate and declare Local Law No. 2 (2023) null and void upon the grounds that Respondents have violated the New York Open Meetings Law, pursuant to NY Public Officers Law §102, be and the same is hereby Denied, in its entirety; and it is further

ORDERED, ADJUDGED and DECREED, that Respondents' motion to dismiss is hereby Granted, in its entirety, and the verified petition in this matter is dismissed, in its entirety.

This decision shall constitute the Order of this Court in this matter and no other or further Order shall be required.

SO ORDERED.

DATED: Buffalo, New York
February 27, 2024



HON. CRAIG D. HANNAH, S.C.J.