

***Williams v. DeKalb County*, 840 S.E.2d 433 (Ga. 2020)**

The Georgia Supreme Court in *Williams v. DeKalb County*, 840 S.E.2d 423 (Ga. 2020), recognized for the first time that a private citizen has the right to seek the imposition of civil penalties for a government official's noncompliance with Georgia's Open Meetings Act (OMA). Edward Williams, a citizen and taxpayer of DeKalb County, argued that the DeKalb county commissioners violated the OMA when they failed to provide adequate notice of their intention to discuss and vote on a proposed increase to each commissioners' base salary. *Id.* at 427; O.C.G.A. § 50-14-1(e)(1). Although the agenda was published well in advance of the meeting and in accordance with most of the procedural requirements of the OMA, it did not list the proposed salary increase as a point of discussion. *Id.* Instead, the commissioners unanimously decided to add the resolution to the agenda well into the meeting and approved the salary increase with a vote of six to one. *Id.* Williams appealed the Superior Court of DeKalb County's decision to dismiss with prejudice his second amended complaint seeking claims for, among other things, criminal and civil penalties for the DeKalb county commissioners' violation of the OMA. *Id.* at 426.¹

The Superior Court of DeKalb County held that the commissioners were not subject to civil penalties under the OMA for three reasons. *Id.* at 428. First, the court found that official immunity protected the commissioners' failure to include the proposed salary increase in the agenda because its addition was a discretionary act. *Id.* Second, the court found that legislative immunity protected the commissioners because they "were exercising their legislative authority

¹ Williams was represented on appeal by the University of Georgia School of Law's Appellate Litigation Clinic.

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when they passed the [resolution].” *Id.* Finally, the trial court determined that the commissioners were acting as a whole when they voted to add the resolution, not as individual commissioners. Therefore, the court concluded that the OMA’s penalty provisions could not apply since penalties could only be applied to individuals, not agencies, under the Act. *Id.*

On appeal, the Supreme Court of Georgia had to decide, as a matter of first impression, whether Williams had standing to seek the imposition of civil penalties against the commissioners for noncompliance with the OMA.² *Id.* at 433. Recognizing that “[t]he Act authorizes trial courts to impose a civil penalty ‘in any civil action brought pursuant to [the Act],’ not only [in] actions brought by the Attorney General,” the Supreme Court of Georgia held that a private citizen does have such standing. *Id.* Additionally, the Court emphasized that the \$1,000 fine in the penalty provision of the OMA would be paid to Williams for each county commissioner found to have violated the Act. *Id.*

Turning to the reasons underlying the decision of the Superior Court of DeKalb County, the Georgia Supreme Court held that: (1) Williams’ complaint sufficiently alleged that the commissioners performed their acts with actual malice (a deliberate intention to do wrong), and, that, even if the acts were discretionary, official immunity does not protect discretionary acts performed with actual malice; (2) legislative immunity provides no shelter to the commissioners because, according to the Court, the OMA “abrogates legislative immunity for local officials;” and (3) a person participating in violation of the OMA is still liable, notwithstanding the fact that the individual was part of a group that ultimately acted as a whole, because a meeting is

² The Supreme Court of Georgia had already previously held that private citizens do not have standing to seek the imposition of criminal penalties for noncompliance with the OMA. *See Lue v. Eady*, 773 S.E.2d 679, 689 n.14 (Ga. 2015).

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inherently a group of *individuals* deciding how to collectively carry out work. *Id.* at 434-435.

Therefore, the Georgia Supreme Court found that the trial court erred in dismissing Williams' case and must determine, on remand, whether the commissioners actually violated OMA. *Id.*

Williams v. Dekalb County is significant because the Supreme Court of Georgia recognized, for the first time, that a private citizen -- not just the Attorney General of Georgia -- has the right to seek civil penalties for enforcement of violations of OMA. Furthermore, penalties awarded under a suit brought by a private citizen are paid to that citizen.

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