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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 791110

MAYOR HENRY L. MARSH, III, et al.

v.

RICHMOND NEWSPAPERS, INC., et al.

APPENDIX

Conard B. Mattox, Jr.
City Attorney
C. Tabor Cronk
Assistant City Attorney
Room 300 City Hall
Richmond, Virginia 23219

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PETITION FOR AN INJUNCTION

[Filed March 12, 1979]

* * * * * *

19. Upon information and belief, other similar meetings will be held in the near future. See Exhibit D at 2. These future meetings may also be closed.

* * * * * *

[The Petition as finally amended is set forth in its entirety with all appended exhibits beginning at page 2 of this Appendix.]

DEMURRER

[Filed March 19, 1979]

The defendants, by counsel, say that the Petition for an Injunction fails to state facts upon which the relief demanded, specifically an injunction, can be granted because plaintiffs allege no basis sufficient in law to justify enjoining future conduct of the defendants, specifically, paragraph 19 of the Petition states only that future meetings of the Council "may" be closed.

ORDER

[Entered March 21, 1979]

This cause came on to be heard on the petition and the demurrer filed by the defendants. And the Court having fully heard the argument of counsel finds that the amendment of § 2.1-346 of the Code of Virginia, which is a part of Chapter 709 of the 1976 Acts of Assembly, overrules the opinion of the Supreme Court of Virginia in WTAR Radio-TV Corp. v. City Council of Virginia Beach, 216 Va. 892, 223 S.E.2d 895 (1976), and therefore overrules the demurrer, to which action of the Court counsel for the defendants objects and excepts.

[Amended] PETITION FOR AN INJUNCTION

[Filed April 13, 1979]

1. Petitioner Richmond Newspapers, Inc., is a Virginia corporation which publishes a daily morning newspaper, with a Sunday edition, and an evening newspaper six days a week in the metropolitan Richmond, Virginia area. (Richmond Times-Dispatch and Richmond News Leader.)

2. Petitioner Timothy B. Wheeler, a citizen of the state of Virginia, is an employee of petitioner Richmond Newspapers, Inc., and is a reporter for the Richmond Times-Dispatch.

3. Defendants, Mayor Henry L. Marsh, III; Vice Mayor G. S. Kemp, Jr.; Willie J. Dell; Carolyn C. Wake; Walter T. Kenney; Claudette Black McDaniel; Wayland W. Rennie; Henry W. Richardson and Aubrey H. Thompson, are members of the Richmond, Virginia, City Council, the legislative governing body of the City of Richmond, Virginia.

4. The Richmond City Council is a public body within the meaning of § 2.1-341(e) of the Code of Virginia of 1950, as amended.

5. On or about March 1, 1979, defendant Mayor Henry L. Marsh, III, announced that a joint meeting of the governing bodies of the City of Richmond and the Counties of Henrico and Chesterfield would be held on Tuesday, March 6, 1979. See Notice attached as Exhibit A.

6. On March 6, 1979, at approximately 2 p.m., defendant Mayor Henry L. Marsh, III, convened a joint meeting of the legislative bodies of Richmond, Henrico and Chesterfield. See Agenda attached as Exhibit B. This meeting was a "meeting" as defined in Va. Code Ann. § 2.1-341(a) and a "conference between two or more public bodies, or their representatives", as used in Va. Code Ann. § 2.1-344(d).

7. After opening remarks by defendant Mayor Henry L. Marsh, III, defendant Vice Mayor G. Stevenson Kemp, Jr., made a motion, attached as Exhibit C.

8. Upon information and belief, the motion attached as Exhibit C was made at the request of defendant Mayor Henry L. Marsh, III, and was prepared and delivered to defendant Vice Mayor G. Stevenson Kemp, Jr.

9. The motion appears to have been based on Va. Code Ann. § 2.1-344(a)(6), although the authority given was "§ 2.1-344(6)."

10. The motion attached as Exhibit C was not seconded.

11. The substantive content of the motion attached as Exhibit C was insufficient for convening an executive or closed meeting.

12. Defendant Wayland W. Rennie asked defendant Mayor Henry L. Marsh, III, to "be a little more explicit in order to support Mr. Kemp's motion", asked for "an outline of what we are to discuss," because he felt "that both the public and the other jurisdictions are entitled to know the general broad areas before we make a decision."

13. In response, defendant Mayor Henry L. Marsh, III, replied that the Agenda, attached as Exhibit B, listed the order of presentation and that the proposals would go to the impasse between the jurisdictions on proposed I-295 and the recent General Assembly legislation.

14. Plaintiff Timothy B. Wheeler pointed out to defendant Mayor Henry L. Marsh, III, that matters not

exempted from the Virginia Freedom of Information Act could not be discussed in executive session.

15. After asking the other defendants for a voice vote in favor of the motion attached as Exhibit C, defendant Mayor Henry L. Marsh, III did not ask for negative votes.

16. Those matters admittedly discussed in the meeting were diclosed [sic] at a press conference following the meeting, where a press release and proposal, attached as Exhibit D and E, respectively, were distributed. The press release was also read aloud by defendant Mayor Henry L. Marsh, III.

17. Those matters discussed, as revealed by Exhibit D, extend far beyond matters exempted from disclosure by Va. Code Ann. § 2.1-344(a)(6).

18. A discussion of the matters enumerated in Exhibits D and E during an executive session constituted a willful and knowing violation of Va. Code Ann. § 2.1-344.

19. Upon information and belief, other similar meetings will be held in the near future. See Exhibit D at 2. These future meetings may also be closed.

20. Denial of the right of petitioners to attend meetings of the type held on March 6, 1979, is a violation of the Virginia Freedom of Information Act, Va. Code Ann.

§§ 2.1-340 through 2.1-346.1.

WHEREFORE, petitioners pray that this Court enter a permanent injunction against defendants prohibiting them from closing any further meetings to the press and public, whether with or without the governing bodies of Chesterfield, Henrico and Richmond or any other jurisdiction, except as specifically permitted by Va. Code Ann. §§ 2.1-344(a)(1) through 2.1-344(a)(6) and from considering any matter which is not specifically permitted during any closed portion of any meeting; that should the Court find that there has been a willful and knowing violation of Va. Code Ann. § 2.1-344, defendants be fined in their individual capacities as provided in Va. Code Ann. § 2.1-346.1; that petitioners be awarded their costs and attorney's fees herein incurred; and that petitioners have such other relief as this Court may deem just and proper.

Exhibit A

For Release: Thursday, March 1, 1978

A joint meeting of the governing bodies of the City of Richmond and the Counties of Henrico and Chesterfield will be held on Tuesday, March 6.

The meeting was announced today in a joint statement issued by the Chairmen of the County Boards of Supervisors,

E. Merlin O'Neill of Chesterfield, and Eugene Rilee of Henrico, and Mayor Henry L. Marsh, III of the City of Richmond.

According to the statement, the purpose of the meeting will be to discuss the issues pertaining to the construction of the I-295 circumferential highway and other matters relating to regional cooperation.

The governmental leaders indicated that the meeting will provide an opportunity for a full and frank exchange of viewpoints on matters of vital importance to the three governments and to all of the citizens of the Richmond Metropolitan Area.

The meeting, which will be held in the large conference room of the Richmond City Hall (2nd floor), * is the outgrowth of discussions between the three governmental leaders and will mark the first time in recent memory that the three governmental bodies have met in a joint meeting.

Contact: Mayor Henry L. Marsh III
780-4711

*Meeting time is 2:00 p.m.

Exhibit B

AGENDA

Joint Meeting Legislative Bodies of Richmond, Henrico, and Chesterfield

March 6, 1979

Welcome	Mayor Marsh
Introductory statements concerning purpose of meeting	Richmond Henrico Chesterfield
Presentation of Proposals	Mayor Marsh
General Discussion	

Exhibit C

M O T I O N

Mr. Mayor,

The announced purpose of this meeting is to discuss the issues pertaining to the construction of the I-295 Circumferential Highway and other matters relating to regional cooperation.

Consideration of these subjects necessarily involve [sic] "legal matters within the jurisdication [sic] of the" City. Section 2.1-344(6) of the Code of Virginia (Freedom of Information Act) permits the Council to discuss such matters in Executive Session.

I, therefore, move that the Council go into Executive Session for the purposes of discussing the matters hereinabove enumerated.

Exhibit D

PRESS RELEASE FOLLOWING MARCH 6 MEETING

The governing bodies of Chesterfield, Henrico, and Richmond met for informal discussions of several matters of regional concern including:

1. The location and construction of the proposed circumferential highway.
2. The probable effect of the highway on the location of future industrial and commercial development within the region.
3. The effect that the recent "annexation legislation package" (House Bills 599, 602 and 603) will have upon the three jurisdictions.
4. The relative tax burdens of the City and the adjacent counties.
5. The cost of the regional services and facilities that are provided by the City.
6. Potential procedures for the counties to participate in the cost of regional services and facilities.

There was a free exchange of opinions and ideas, and certain elected officials requested the further evaluation of various alternatives.

No decisions were made during the meeting. Each jurisdiction agreed to discuss the proposals with their respective bodies.

Additional discussions are to be held within the

relatively near future.

Exhibit E

A PROPOSAL FOR IMPROVING THE TAX INEQUITIES IN THE RICHMOND REGION

The disparity in the taxes imposed on the residents of the City of Richmond compared to those in the adjacent counties is detrimental to the economic health and vitality of the City and of the region. The adjusted per capita taxes in Chesterfield County are only 56 percent of those in the City, and Henrico County's taxes are only 58.3 percent of the City's. The tabulation (Table "A"), 1976-77 Tax Revenues, which provides a summary of the taxes in the three jurisdictions, gives the basis for the calculation of these comparisons.

Counties within the Richmond region have a vested interest in the maintenance of the City's economic vitality. A professional has stated:

> "The general economic health and vitality of the region is dependent, in a large measure, on the strength and vitality of the central city--Richmond. The City is the focal point and centerpiece of the economy and fulfills several important roles in the region's economic vitality. ... In sustaining the

entire region's competitive advantage as a good place for employees to locate, the capacity of the central city to retain and attract central-place kinds of economic activities is important. ... Stagnation in the central city, in turn, could retard overall economic growth in the region."

The City's extensive tax burden places the City and the region in a disadvantageous competitive position with other areas of the State and the nation. The excessive burden is due, in a large part, to the services and facilities that the City provides for the use of the region.

Many of the services and facilities provided by the City of Richmond are used by non-residents including the some 63,500 persons who are employed in the City but live elsewhere. A vast majority of these non-residents live in the Counties of Chesterfield and Henrico. A significant portion of the higher tax rates of the City is attributable to these commuters and to the City's response to regional needs. In the past, the City has taken the initiative in planning and providing facilities that were needed for the economic growth and cultural pursuits of the region.

Tax revenues are the product of tax rates and tax basis.

Tabulation (Table "B"), Evaluation of 1976-77 Revenues, provides the theoretical property tax base for each jurisdiction based upon their real estate tax rates and total property tax revenues.

Utility consumer taxes and business and occupational licenses are significant portions of the City's total tax revenue, while they are used to a lesser extent by the counties. The disparity in local tax burdens is more evident when the revenue from these sources is converted to an equivalent real estate tax rate. The evaluation of the three types of taxation shows that Chesterfield's tax effort, or burden, is only 45.5 percent of the City's rather than the 61.2 percent of the real estate tax rate. The comparison also reduces Henrico's tax effort from 54.6 percent, based upon the real estate rate, to 47.5 percent for the composite rate.

THE PROPOSAL

The City proposes the sharing of the cost of the regional services and facilities that are provided by the City. There are two components of these costs, that of capital invested to provide the facilities and the annual operating and maintenance cost.

The tabulation (Table "C"), Cost of Regional Services and Facilities, gives the City's investment in ten types of

facilities, a proposal for capitalizing the investment (equity), and the net operating and maintenance cost. The captalization [sic] is proposed at 5.5 percent over 30 years, which requires equal annual payments of 6.78805 percent. The net operating and maintenance cost is the total cost, less revenue produced by the facilities and State and Federal grants.

The tabulated cost of $21.748 million is a preliminary figure in that there has not been sufficient time to review all City records as to investment in the facilities. In addition, the tabulated operating and maintenance costs, which are from the 1978-79 Budget, may not reflect all indirect costs, such as personnel fringe benefits, which are budgeted to other activities.

The City proposes the establishment of a total dollar value of regional services and facilities which is to be the permanent base for determination of the cost allocations. This cost is to be shared according to populations, adjusted by the basic school aid formulas per capital index of local wealth.

The base annual dollar cost is to be indexed to the consumers price index, and adjusted early each calendar year for inclusion in the next budgets of the participating juris-

dictions. The adjusted populations are to be recalculated each year according to the latest available information.

Street Maintenance and Construction

The cost of street maintenance and construction has been tabulated separately as the State may assume a more equitable responsibility for this function. The base annual dollar cost is to be adjusted according to such changes. The tabulated cost reflects the additional aid to be provided by H.B. 602.

Airport

The Regional Airport has been excluded from this list as Richmond and Henrico are partners in the facility. The current agreement should be modified to provide for Chesterfield becoming a full partner. This will require the purchase of a share of the City's and Henrico's equity in the facility and Chesterfield's assumption of a portion of the debt service and operating and maintenance cost. Chesterfield's participation will require the purchase of about $1 million in equity and a payment of about $500,000 per year in debt and operating and maintenance costs. The equity purchase can be spread over several years and the debt service cost will decline each year until it is satisfied in 1995. Henrico County will receive about 44 percent of these payments and Richmond about 56 percent.

Richmond Metropolitan Authority

The Richmond Metropolitan Authority is truly a regional facility as the toll road was constructed to alleviate traffic congestion within the City and to provide convenient access to the central business district.

The City has sold $9.5 million in bonds for the Authority, and has provided the Authority with about $14 million in additional finance subsidies.

Coliseum

The Coliseum is one of the facilities that provides the cultural amenities which make the Richmond region a more desirable place to live and work. A few years ago, the Dow Chemical Company explained its choice of Richmond as the location for a new sales office by stating, "Employee considerations are not overlooked in the quest of a new location. And Richmond had much to offer--good weather, cultural centers, excellent educational facilities, and nearby recreation sports. But while Richmond cherishes its past, it doesn't rely upon history to get by in today's competitive business markets. Consider that Richmond..has recently constructed a new Coliseum and City Hall."

Urban Renewal

The various urban renewal projects of the City are

beneficial to both the City and the region. Urban renewal serves two essential purposes. First, is the removal of slums and blight which have a tendency to spread due to their influence on adjacent neighborhoods. Second, this renewal makes land available for desirable residential and commercial development.

Urban renewal has been expensive for the City, as the Federal program requires the local construction of modern site improvements so that the land can be utilized. Such land, as contrasted with suburban land, cannot be marketed if the developer is required to provide these improvements. The City has spent over $32 million for site improvements within urban renewal areas.

Major Parks

The eleven major parks within the City occupy some 1,400 acres, or 3.65 percent of the City's land area. These parks add to the "quality of life" of the region and occupy valuable land that would otherwise be in productive use. The assessed values of all properties within the City indicate that this acreage, if developed, would have a value of $106 million rather than its present $10 million.

Main Library

With the elimination of non-residential fees, the City's

Main Library has assumed a greater regional role. The reference materials and the specialized collections are used by all residents of the region. This facility represents a $10.402 million investment. The regional share of the operating and maintenance cost is based upon the net of 11.6 percent of City circulation to county residents.

Cemeteries

The City cemeteries, which are available for all residents of the region, occupy 386 acres, or 1 percent of the City's land area. The value of this property, if developed according to the City's average value, would be $30 million rather than its present $4 million.

Stadium - Parker Field

These facilities are similar to the Coliseum in that they serve a regional, rather than a local, function.

Greater Richmond Transit Company

The public transit system serves the region rather than just City residents. County residents who do not use the service will receive a benefit due to the reduction in traffic congestion and the regional economy that is prompted by the availability of the service. The City sold $2 million in bonds to acquire the assets of the Virginia Transit Company, and the 1978-79 operating subsidy will amount to $1,732,874.

Harbor

The Richmond Harbor is a facility that contributes to the economy of the region. The City has sold $1,321,000 in bonds for improvements to the Harbor and provides land for the disposal of dredging spoil. Operating costs of the facility are offset by revenue.

EVALUATION OF PROPOSAL

The tabulation (Table "D"), Evaluation of Proposed Tax Adjustments, gives the proposed allocation of the, preliminary, $21,749 million cost of regional services and facilities.

Richmond's share remains the largest at $9.226 million, while its tax burden is reduced by the $12.522 million to be paid by the adjacent counties.

The evaluation of proposed changes in local tax burdens includes the State aid to be received from H.B. 599.

The composite equivalent real estate tax rate of the City, as developed in Table "B", Evaluation of 1976-77 Revenues, is reduced by 20.4 percent, while Chesterfield's rate is increased by 13.5 percent, and Henrico's rate is increased by 13.8 percent. Chesterfield's composite tax rate will increase from 45.5 percent to 64.9 percent of the City's and Henrico's rate will increase from 47.5 to 68.0 percent of the City's composite rate.

The City's adjusted per capita tax burden will be

reduced by $78 from $434 to $356. Chesterfield's burden will increase by $28 to $271, and Henrico's burden will increase by the same amount to $281. Chesterfield's adjusted per capita tax burden will be increased to 76.1 percent of the City's burden while Henrico's burden will be increased to 78.9 percent of the City's burden.

This proposal reduces the inequities in regional tax burdens, but the City retains a significantly greater burden.

TABLE "A"

1976-77 TAX REVENUES
(Millions of Dollars)

	Chesterfield	Richmond	Henrico
Property	$25.032	$ 63.472	$32.852
Utility Consumers	-	15.720	2.083
Business and Occupational Licenses	2.361	14.191	7.120
Local Sales	2.443	10.139	7.422
Motor Vehicles	1.141	1.873	2.071
Others	0.404	1.431	0.262
TOTAL	$31.381	$106.826	$51.810
1977 Population	116,100	224,200	174,700
Per Capita Index of Wealth	1.1135	1.0990	1.1743
Adjusted Population	129,277	246,396	205,150
Adjusted Per Capita Taxes	$243	$434	$253

Sources

Tax Revenues - Report of Auditor of Public Accounts

Population - Tayloe Murphy Institute

Index of Wealth - Virginia Department of Education

3/6/79

TABLE "B"

EVALUATION OF 1976-77 REVENUES

(Revenues in Million Dollars)

	Chesterfield	Richmond	Henrico
Property Taxes	25.032	63.472	32.852
Real Estate Tax Rates per $100 of Value	$ 1.12	$ 1.83	$ 1.00
Percent of City Rate	61.2	-	54.6
Theoretical Property Tax Base	2,235.	3,468.	3,285.
Utility Consumers Taxes	-	15.720	2.083
Equivalent Real Estate Tax Rate	-	0.453	0.063
Business and Occupational License Taxes	$ 2.361	$ 14.191	$ 7.120
Equivalent Real Estate Tax Rate	$ 0.106	$ 9.409	$ 0.217
Composite Equivalent Real Estate Tax Rates	$ 1.226	$ 2.692	$ 1.280
Percent of City Rate	45.5	-	47.5

3/6/79

TABLE "C"

COST OF REGIONAL SERVICES AND FACILITIES

(Millions of Dollars)

	Equity	Capitalized Equity	Net Operations and Maintenance	Total Cost
1. RMA	23.104	1.568	2.000	3.568
2. Coliseum	23.539	1.598	0.220	1.818
3. Urban Renewal	32.312	2.193	-	2.193
4. Major Parks	9.498	0.645	1.822	2.467
5. Main Library	10.400	0.706	0.343	1.049
6. Cemeteries	3.052	0.207	0.282	0.489
7. Stadium-Parker Field	4.005	0.272	0.096	0.368
8. GRTC	1.950	0.132	1.733	1.865
9. Harbor	1.431	0.097	-	0.097
SUB-TOTAL	108.510	7.418	6.496	13.914
10. Streets	57.394	3.896	3.938	7.834
TOTAL	165.904	11.314	10.434	21.748

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TABLE "D"

EVALUATION OF PROPOSED TAX ADJUSTMENTS

(Millions of Dollars)

	Chesterfield	Richmond	Henrico
Current Expenditures for Regional Services and Facilities	-	$21.748	-
Percent of Adjusted Population	22.26	42.42	35.32
Share of Regional Expenditures	$4.841	$9.226	$7.681
State Aid from H.B. 599	$1.130	$6.479	$1.887
Additional Local Cost	$3.711	(-$19.001)	$5.794
Theoretical Property Tax Base	$2,235.	$3,468.	$3,283.
Change in Equivalent Real Estate Tax Rate per $100 of Value	+$0.166	-$0.548	+$0.176
Composite Equivalent Real Estate Tax Rate per $100 of Value			
Current (1976-77)	$1.226	$2.692	$1.280
Percent of City	45.5	-	47.5
Proposed	1.392	2.144	1.457
Percent of City	64.9	-	68.0
Local Tax Burdens			
Current			
-Total	$31.381	$106.826	$51.810
-Adjusted Per Capita	$243	$434	$253
Percent of City's	56.0	-	58.3
Proposed			
-Total	$35.092	$87.825	$57.604
-Adjusted Per Capita	$271	$356	$281
Percent of City's	76.1	-	78.9

3/6/79

STIPULATION

[Filed April 17, 1979]

By agreement of the parties, by counsel, the following are stipulated as true:

1. Petitioner Richmond Newspapers, Inc., is a Virginia corporation which publishes a daily morning newspaper, with a Sunday edition, and an evening newspaper six days a week in the metropolitan Richmond, Virginia, area. (Richmond Times-Dispatch and Richmond News Leader.)

2. Petitioner Timothy B. Wheeler, a citizen of the State of Virginia, is an employee of petitioner Richmond News-papers, Inc., and is a reporter for the Richmond Times-Dispatch.

3. Defendants, Mayor Henry L. Marsh, III; Vice Mayor G. S. Kemp, Jr.; Willie J. Dell; Carolyn C. Wake; Walter T. Kenney; Claudette Black McDaniel; Wayland W. Rennie; Henry W. Richardson, and Aubrey H. Thompson, are members of the Richmond Virginia, City Council, the legislative governing body of the City of Richmond, Virginia.

4. The Richmond City Council is a public body within the meaning of § 2.1-341(e) of the Code of Virginia of 1950, as amended.

5. If called to testify in this case, Mayor Henry L. Marsh, III, would testify under oath that he vigorously opposed passage of certain legislation sometimes referred to as the "annexation immunity" bills enacted by the General Assembly in its 1979 session, which gave such immunity to

Chesterfield and Henrico Counties. Subsequent to passage of of the said legislation, he called the meeting of the Council of the City of Richmond with the Boards of Supervisors of Chesterfield and Henrico Counties on March 6, 1979, which meeting is the subject of this suit. His purpose for the meeting was to advise the governing bodies of the said counties that the City found itself in the position of having to litigate the validity of the said legislation and would aggressively oppose as well the proposed circumferential highway (I-295) proposed for the Richmond Metropolitan District unless, as an alternative thereto, Chesterfield and Henrico Counties would agree to various concessions (and Mayor Marsh so advised them at the meeting). Mayor Marsh would testify further that he is an attorney practicing in Virginia and that he was aided in his presentation of the proposal which is appended to this stipulation as Exhibit A by Manuel Deese, City Manager, and George R. Talcott, Assistant to the Manager of the City of Richmond, and that the concessions to which reference is made above consist of those items delineated in the said Exhibit A under the heading "The Proposal" and a voluntary transfer of certain land located in both counties to the jurisdiction of the City.

6. On or about March 1, 1979, defendant Mayor Henry L. Marsh, III, announced that a joint meeting of the governing bodies of the City of Richmond and the Counties of Henrico and Chesterfield would be held on Tuesday, March 6, 1979. The notice stated:

* * * * * * [See Exhibit A, p.6]

7. On March 6, 1979, at approximately 2:00 p.m., defendant Mayor Henry L. Marsh, III, convened a joint meeting of the legislative bodies of Richmond, Henrico and Chesterfield. The Agenda stated:

* * * * * * [See Exhibit B, p.7]

8. After opening remarks by defendant Mayor Henry L. Marsh, III, defendant Vice Mayor G. Stevenson Kemp, Jr., made the following motion:

* * * * * * [See Exhibit C, p.8]

9. The motion set forth in paragraph 8 was made at the request of defendant Mayor Henry L. Marsh, III, and was prepared and delivered to defendant Vice Mayor G. Stevenson Kemp, Jr.

10. The motion appears to have been based on Va. Code Ann. § 2.1-344(a)(6), although the authority given was "§ 2.1-344(6)."

11. Mr. Kemp's motion was not seconded.

12. Defendant Wayland W. Rennie asked defendant Mayor Henry L. Marsh, III, to "be a little more explicit in order to support Mr. Kemp's motion", asked for "an outline of what we are to discuss," because he felt "that both the public and other jurisdictions are entitled to know the general broad areas before we make a decision."

13. In response, defendant Mayor Henry L. Marsh, III, replied that the Agenda, as set forth in paragraph 7 above, listed the order of presentation and that the proposals

would go to the impasse between the jurisdictions on proposed I-295 and the recent General Assembly legislation.

14. Plaintiff Timothy B. Wheeler pointed out to defend- and Mayor Henry L. Marsh, III, that matters not exempted from the Virginia Freedom of Information Act could not be discussed in executive session.

15. After asking the other defendants, excepting Councilman Thompson who was not present, for a voice vote in favor of Mr. Kemp's motion as set forth in paragraph 8 above, defendant Mayor Henry L. Marsh, III, did not ask for negative votes. Every defendant present voted for the motion except Councilman Rennie, who did not vote.

16. Immediately subsequent to the exclusion of the public from the meeting, defendant Wayland W. Rennie called upon the City Attorney and the attorneys for Chesterfield and Henrico Counties, all of whom were then and there present, to so advise the various assembled councilmen and county supervisors if at any time during the meeting they or any of them were of the opinion that the Freedom of Information Act was being in any way violated. The said counsel remained in attendance throughout the meeting and thereafter voiced no objection and no objection was voiced by any elected official present pertaining to the Freedom of Information Act.

17. Those matters admittedly discussed in the meeting were disclosed at a press conference following the meeting, where a press release and proposal were distributed. The

press release was read aloud by defendant Mayor Henry L. Marsh, III, and stated:

* * * * * * [See Exhibit D, p.8]

The proposal, consisting of eight pages of text and four pages of tables, is appended to this stipulation as Exhibit A. [See Exhibit E, p. 10]

18. Except as otherwise stipulated, the members of council present at the meeting did not consult with legal counsel, nor were they briefed by staff members, consultants, or attorneys, pertaining to actual or potential litigation, nor any legal matters in connection with the items set forth in the press release which is restated in paragraph 17 above, or the proposal appended as Exhibit A or the voluntary transfer of certain land located in both counties to the City.

19. A tape recording of public statements made at the meeting before it was closed, and of statements made at the meeting after it was opened, may be played to the Court. A transcript of the tape is attached as Exhibit B.

20. Subsequent to the meeting, which is the subject of this proceeding, the Council of the City of Richmond met jointly with the Board of Supervisors of Henrico County on March 28, 1979, in open session. No other meetings have been held between the governing bodies of the City of Richmond and Henrico County or Chesterfield County other than the meeting aforesaid.

21. These foregoing stipulations constitute the

evidence of the parties and no additional evidence of any nature whatsoever shall be proffered by the several parties hereto.

* * * * * *

EXHIBIT B

Excerpts from joint meeting of Richmond, Henrico, Chesterfield elected officials on March 6, 1979.

[MAYOR MARSH]

On behalf of the Richmond Council I want to personally thank each of you for attending. We are extremely grateful to you for coming to this meeting on such short notice, and virtually in the blind. We hope that we would not violate the confidence that you had in us by coming. Hopefully this will be the first of many meetings that we will have between the various jurisdictions.

The subject matter of today's meeting is one of vital importance, not only to the governmental bodies but to the people of this region and perhaps to people in other areas of the country. I must confess that this meeting is made possible mainly because of the excellent cooperation and communication and climate between the leaders of the various governments. Personally I feel that it is better than it has even been and hopefully that climate can help us solve whatever problems we discuss here today.

This meeting was convened in a spirit of mutual friendship and understanding and cooperation, and hopefully whatever we discuss here today will be in that spirit and I'm

confident that we will have - have a good result.

I guess -

[VICE MAYOR KEMP]

Mr. Mayor -

[MAYOR MARSH]

Mr. Kemp

[VICE MAYOR KEMP]

The announced purpose of this meeting is to discuss the issues pertaining to the construction of I-295, the circumferential highway and other matters pertaining to regional cooperation. Consideration of these subjects necessarily involves (quote) legal metters within the jurisdiction of the (quote) City. Section 2.1-344(6) of the Code of Virginia, the Freedom of Information Act, permits the Council to discuss such matters in executive session. I, therefore, move that the Council go into executive session for the purposes of discussing the matters hereinabove enumerated.

[MAYOR MARSH]

Mr. Kemp, this motion is made only to the members of Council and does not refer to the other governing bodies. I have been advised by the City Attorney that Council would have to make this decision by itself - as though we were sitting without the other bodies here, and so I am addressing the question raised by Mr. Kemp's motion to the other members of Council. He has moved that we go into executive session for the purposes that he indicated.

[HENRICO BOARD CHAIRMAN EUGENE RILEE]

Mr. Chairman.

[MAYOR MARSH]

Yes.

[MR. RILEE]

On behalf of Henrico I certainly have no objections to going into executive session if that is what the majority wishes, but I believe the matters to be discussed here can be discussed openly if necessary, they're preliminary - I don't believe any hard decisions are going to be made today certainly. I hope it will just open some highways of mutual - of mutual - agreement later on. Whatever the wishes of the other Boards are certainly I will be happy to follow, but Henrico has no objection to an open meeting.

[MAYOR MARSH]

I personally agree with Mr. Kemp's motion - I think that I agree with you that the matter of no decisions will be made here today, but I think that the matters we will be discussing are of such a nature that since the Attorney has advised they are covered by the Freedom of Information Act, that it would permit a fuller and freer discussion if we operate under that Act and hopefully we will fully brief the press and the public to whatever we discuss here today.

[MR. RENNIE]

My Mayor, would you be a little more explicit. In order to support Mr. Kemp's motion, could you give us an outline of what we are to discuss. I think that both the public and the other jurisdictions are entitled to know the general

broad areas before we make a decision and invite them to meet with us.

[MAYOR MARSH]

Right. I think we have an agenda which should have been passed around by now, Mr. Rennie, which sets forth the order of presentations and basically the meeting will - I guess - revolve around the presentation which will be made concerning suggestions for resolving the impasse between the jurisdictions surrounding the construction of I-295 and the difficulties and differences between the jurisdictions with respect to the legislation that was recently passed by the General Assembly. I think these are the items which will be discussed today, and hopefully proposals will be discussed which will provide a basis for further discussions which hopefully will lead to a solution of these differences. Are members of Council ready to vote on Mr. Kemp's motion?

All in favor let it be known by saying aye.

[COUNCIL MEMBERS]

Aye.

[MAYOR MARSH]

And the other jurisdictions, I guess, will have to take similar actions if they desire. But ladies and gentlemen -

[MR. WHEELER]

Excuse me, Mr. Mayor. May I make one point before you go into this executive session. A number of these discussions have been held in open session before. I know the county bodies concerning positions on I-295 - the law does

provide for legal consultations with staff members and consultants on matters within the legal jurisdiction. It also specifically provides for executive sessions on real estate and on potential litigation. However, it does say in the law that anything not covered under those exemptions must be discussed in an open session. I wanted to remind you of that.

[MAYOR MARSH]

We will be . . . we will be

[MR. WHEELER]

I ask you if you intend to come out and discuss those other matters.

[MAYOR MARSH]

We will be discussing those matters that you mentioned during the meeting, and I have been advised by the City Attorney that this meeting is specifically covered by the Freedom of Information Act.

[MR. WHEELER]

All matters to be discussed will be

[MAYOR MARSH]

Right.

[MR. WHEELER]

exempt.

[MAYOR MARSH]

Right.

[MR. WHEELER]

I disagree with your interpretation.

[MAYOR MARSH]

That's your right.

Thank you ladies and gentlemen.

[MR. O'NEILL]

Since my Board is here - we have to convene our Board and also have a motion to go into executive session. Do I hear a motion?

[MR. BOOKMAN]

I move that we shall go into executive session.

[MR. O'NEILL]

The motion seconded. All in favor say aye.

[MEMBERS OF CHESTERFIELD BOARD OF SUPERVISORS]

Aye.

[MR. O'NEILL]

Opposed?

All right.

[MR. RILEE]

Since I am the only Board member from Henrico County that is present today, I don't believe a motion is necessary on my part for me to vote to do whatever I want to do. (Laughter.) Since obviously the other two jurisdictions want to go into executive session I certainly will agree although it's - no vote is needed that Henrico will be happy to go into executive session.

[General low talk which could not be deciphered.]

Statement following executive session
of joint meeting of Richmond, Henrico
and Chesterfield on March 6, 1979

[MAYOR MARSH]

The governing bodies of Chesterfield, Henrico, and Richmond met for informal discussions on several matters of regional concern, including: first, the location and construction of the proposed circumferential highway; second, the proposed - the probable effect of the highway on the location of future industrial and commercial development within the region; third, the effect that the recent annexation legislation package, House Bills 599, 602, and 603, will have on the three jurisdictions; fourth, the relative tax burdens of the City and the adjacent counties; fifth, the cost of regional services and facilities that are provided by the City; sixth, the potential procedures for the counties to participate in the cost of certain regional services and facilities. There was a free exchange of opinions and ideas, and certain elected officials requested a further evaluation of the various alternatives. No decisions were made during the meeting. Each jurisdiction agreed to discuss the proposals with their respective bodies and additional discussions are to be held in the relative - relatively near future. There are copies - a small number of copies

of the proposals that I have available and additional copies will be made later. The proposal consists of a written narrative and some charts.

[MR. RILEE]

And you will need one of each to understand them.

[MAYOR MARSH]

We thank you for your patience and forebearance.

[MAYOR MARSH]

Any further questions?

[MS.

Yes. Which one of these listed items prompted the meeting to be closed?

[MAYOR MARSH]

Well, we made the statement at the beginning of the meeting concerning the reasons for closing the meeting, and that statement still stands.

[

How does sharing the cost of the coliseum's expenses come under the Freedom of Information Act?

[MAYOR MARSH]

That's related to the section that was read by Mr. Kemp in his motion.

[

In what way sir?

[MAYOR MARSH]

I don't have the statement in front of me now, but certainly that was within the statement. The statement spoke of financial interest within the City. I don't have the statement in front of me now.

[

Mr. Mayor, the Henrico Chairman mentioned that the subject of land did come up . . . [unintelligible]. What land was involved in those discussions?

[MAYOR MARSH]

No, I don't think its [sic] appropriate at this point. We intend to have future discussions and I don't believe it's appropriate at this point to go beyond the statement that was made. It was discussed in a general way, and I think it would prejudice any future discussions that we might have to go any further into that subject.

[

Do you plan to pursue it further at a later date?

[MAYOR MARSH]

Well, the statement indicates that we hope to have additional discussion in the near future.

[

Mr. O'Neill, what's your view on the land issue?

[35]

* * * * * *

THE COURT: But you also stated that you were not going to ask for any penal sanctions, and I take it that that still goes, that the only thing you are concerned with at the hands of this Court is an injunction under the amended statute which went into effect July the 1st, I believe, or maybe July 1st a year ago, that one instance was enough for a court to act?

MR. WELLFORD: That is correct.

THE COURT: As differentiated from the Virginia Beach case where the Virginia Supreme Court said they met twice and went on from there?

MR. WELLFORD: Yes, sir.

THE COURT: What have you got to say on the proposition that the law never presumes that a public official will do an illegal act? I think I know the answer, and I will paraphrase it, and ask you to enlarge upon it if you like. As I understand what you are saying, you are not presuming that these stipulations, which have all the effect of sworn

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evidence, show that there has been one violation and that

one violation is sufficient under the statute, and therefore you are not moving on any presumption that they may sometime in the-- Well, the one we can sense was an open meeting, but you are saying that you have sufficient reason to go without any presumption that they may do so because they have done so as shown by your stipulation?

MR. WELLFORD: That is correct, that's the Virginia Beach case, and the Supreme Court of Virginia indulging in the presumption that it will not be repeated--

THE COURT: Well, I can't very well indulge in that presumption because first off, it was pretty obvious from the 28th meeting that everybody on the Henrico County board, or practically everybody says this meeting is going to be out in the open.

MR. WELLFORD: Well, the Henrico board, other than Mr. Rilee, didn't bother to come.

THE COURT: I understand that.

MR. WELLFORD: And Mr. Rilee said on that tape that he really saw no reason to close the meeting because it would be very general, but that he would not object.

THE COURT: I have never heard the tape.

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MR. WELLFORD; We would be happy to play it, Your Honor.

* * * * * *

THE COURT: All right, let's hear the tape.

MR. WELLFORD: There is a transcript of what will be said appended to the stipulation if you

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would like to follow it, Your Honor, and that might make it easier. It is appended to the stipulation as Exhibit B.

THE COURT: All right, I would like to have that also. Yes, here it is. All right, you may start the tape.

NOTE: At this point the tape is played as indicated in the transcript of the tape through Page 7; whereupon the tape is stopped and the case continues as follows:

THE COURT: Now, the next thing you have is the statement that was read after the meeting was opened up again?

MR. WELLFORD: Yes, this is after the meeting. There is also some colloquy and some questioning that follows it that is transcribed on Pages 10 and 11.

THE COURT: Well, did you read those before?

MR. WELLFORD: No, I have not read that into the record. If the Court would like, we can continue the tape, it will only take about five minutes, if that long.

THE COURT: All right, play that portion for me.

NOTE: At this point the tape is played as

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indicated in the transcript of the tape on Pages 8 through 11, whereupon the tape is concluded and the case continues as follows:

THE COURT: All right, Mr. Wellford.

MR. WELLFORD: That is our case, Your Honor

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THE COURT: Mr. Wellford, before I hear from Mr. Cronk, read me the amendment to the statute.

MR. WELLFORD: The amendment as far as the Court's ability to act?

THE COURT: Yes.

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THE COURT: And they became effective on July 1st?

MR. WELLFORD: July 1st of '76. The WTAR case came down in April.

THE COURT: I just wanted to get that sequence there. The Virginia Beach case, I call it, came down on April 23rd, I believe.

MR. WELLFORD: That's right.

THE COURT: And that statute became effective the following July.

MR. WELLFORD: Correct

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THE COURT: Are you saying now that you can go out on any one of the six exemptions, you can go out under (1) into closed session and then discuss anything included in the other five?

MR. CRONK: I am saying this, Your Honor, and I will admit that the better practice would be that one that Mr. Wellford suggested, that if you talk about legal matters and you get through with

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that and then some fellow says, well, what about those personnel matters that don't have anything to do with the public concern that we have got to discuss, that you ought to say, well, let's get up and go back in public and tell them what we are going to do, that we are going to talk about personnel matters, and then let's go back in and do it.

But, if you don't, and you say, all right, let's get right into the personnel matters and discuss them, then at least technically you are still within the mandate of this 2.1-344 because you still haven't talked about anything that is outside of the limitations of the exemptions in Paragraph (a) of that section. Certainly I think you haven't committed any violation worthy of the Court's attention and extreme

MR. CRONK: Well, all litigation is a lever in the broadest sense, Your Honor.

THE COURT: Yes, sure, but some of it is based on something that is actionable, and I don't know that. I get a little perturbed when I think that-- Well, I am sure that it happens all the time, but I get a little perturbed when I think that one threatens litigation for one purpose when he's actually after another purpose.

MR. CRONK: That's true, Your Honor. Now, I think that the presumption attends that everybody pretty much does as he is required by the law to do and his duty to do, and of course lawyers aren't supposed to threaten litigation just for that purpose, but I have never known it to be outside of the rules of proper conduct for a lawyer to say, I am going to do this, and that's a fact, and then do no more or no less, and I think that's the only meaning which can be attached to this.

THE COURT: I have a hard time finding that

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that is in this realm of actual or potential litigation as contemplated by the Act.

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THE COURT: Could they discuss anything that wouldn't be a legal matter in one sense of the word? If you are getting as broad as we could go, can City Council discuss anything that isn't a legal matter or potentially a legal matter? It's a lawmaking body, you know.

MR. CRONK: I think that would be the case, although I wouldn't suggest it.

THE COURT: I wouldn't suggest it either, but it is a legislative body, so everything it does has to do with law in one sense of the word. And, if it has to do with law, it's potentially a legal matter.

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THE COURT: Let me ask you, are you saying in your last argument, Mr. Cronk, that even if the Court is of the opinion that there is a violation and that a party having standing has well pleaded it,

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as the Supreme Court used the langauge in the case we talked about earlier of WTAR vs. Virginia Beach, "Our holding does not render the Act unenforceable; the injunctive relief it authorizes remains available when a cause is proper-

ly pleaded," if the Court held that the cause was properly pleaded by a party having standing, are you saying that the Court then should exercise its discretionary judgment as to whether or not to issue the injunction in that situation?

MR. CRONK: Yes, indeed, Your Honor.

THE COURT: In other words, the Court can come up and say, the Court is convinced upon the stipulations, the agenda, the press release, all of which are part of the stipulation, that there was a violation, but despite a proper pleaded case it will do nothing about it?

MR. CRONK: I think so, Your Honor.

THE COURT: Well, that's what I want to discuss with both of you in a little more detail.

MR. CRONK: Yes, sir.

THE COURT: I can hear Mr. Mattox, and then of course you close, Mr. Wellford, but it does concern me that even though the Court concluded all those things, that this is a type of thing which isn't

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likely to occur again in view of what seems to be the attitude that has been taken by at least the Henrico board as shown by the subsequent meeting with them, and I realize we are not going outside the record, but you both put that

subsequent meeting into issue, and I don't have to be blind to the fact that most of the supervisors said there aren't going to be any secret meetings out here-- And, please don't take anything that I am saying as an individual is for or against them, I think the issue is really becoming relevant because we are getting down to that point, even with the Supreme Court's ruling of last week that you can inquire into a reporter's mind as to what mental gymnastics he went through to arrive where he did, that we are coming to a point where the governments, including city councils and including courts, are going to be able to operate free of the media, the news media.

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[THE COURT continuing]

But, here we have got an act which is rather strong in its language, and it even gives its own rule of construction both pro and con, it shall be

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broadly construed and its exemptions narrowly construed, and then following the Virginia Beach case they go back in and do something more. I agree with you, all they did was just

simply get that passing language, that only on two occasions had the Virginia Beach Council met in executive session, and they said that once is enough. But, you have got to find something more than that, you have got to find that there has been an actual violation of the Act.

And, what has this court got to move on? Nothing but the stipulations. And, I thank you gentlemen because I can see where you could've brought a lot of people in here and had a lot of testimony and we wouldn't have arrived at such a concise case. But, I just want to hear from you two about could the court find that there has been a violation and take no action, and if it could, should it.

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THE COURT: Ladies and gentlemen, nothing that I will say or do will in any way reflect upon the conduct of any member of the Richmond City Council

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or its attorneys, nor anyone else who was involved in this case, but on the facts from the stipulations, including the tape recording, on the pleadings, and upon the argument, I have no difficulty in finding that there was no actual or

potential litigation within the meaning of the Freedom of Information Act.

When I read the answer as amended, and just amended by the Court, I find this paragraph most interesting, "By way of defense, which defendant Thompson joins if necessary," he wasn't present at the meeting but further defending himself herein, the defendants say that "defendant Marsh is an attorney practicing in Virginia and further that he called the meeting which is the subject matter of this action for the purpose of relating and did in fact relate to those present in closed session and part with the assistance of the Manager of the City of Richmond and a member of the Manager's staff, that the City of Richmond found it necessary to litigate the validity of certain recent legislation and take other action." (What other action? Declare war? I don't think so.) "Unless the counties of Chesterfield and Henrico would agree to certain concessions," and I end the quote there. I don't think I need to say a great deal more.

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I am simply not persuaded that Exemption (6), under which Council proposed to act, existed. And, if it did exist, Council went far beyond that exception as stated in the answer and the agenda under the heading "And Other

Matters."

I cannot agree with Mr. Cronk, who says that once the Council is in executive session properly, that it can then move over to any of the other five exceptions because--Well, because they are in there properly under one exception would not give them leave to move to the other exceptions unless the other exceptions were stated in the resolution to close the session to the public.

Again, I want to emphasize that there was no bad faith on the part of anyone involved. I think simply that they were mistaken in their approach. There is nothing here that says that they can't in a proper case go into executive session on any of the six exceptions.

Whether the Act was good or bad, it is not for the Court to say, but I can find no actual or potential litigation discussed within the meaning of the Act. Or, if it was, the business that was transacted, and the discussions that took place, went far beyond Exemption No. (6).

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Now we come to the question of what to do about it. There is no question about any punitive action, it is not even asked for, and if it were it wouldn't be granted. This is a suit in equity, and there's nothing that requires

the Court to render a judgment on its opinion at the moment. I have expressed before and I express again that I don't think that Council meant to do anything wrong, and indeed this case may be appealed and the Supreme Court may say that it did not do anything wrong, but at this moment, on consideration, I feel that the Act was violated, but that it isn't likely to happen again.

It may be that an injunction ought to be issued, but what would it say? It wouldn't say anything except to follow the law, and you can't go into executive session on one of these six grounds and discuss other matters, and you can't have a resolution that uses the words "and other matters relating to regional cooperation." But, this thing is new to them, it's new to everybody, and it is certainly creating lots of litigation all over the country. So, I don't know that it would do any particular good at the moment to enter an injunction right now, or whether to just simply say that's the

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opinion of the Court and take the question under advisement. That puts you in a position where you can't appeal it. It may be that the City wants to appeal it, and it may be that the plaintiffs want some finality.

But again, what would the Court say, except follow the law. Then if they don't, of course it puts them in the double jeopardy, you might say, as violators if they do not, which I have no idea they will not, but it puts them in double jeopardy as both violators of the statute and the injunction. But, an injunction against persons who are acting in sincerity, even though wrongly, is a harsh thing just to hand out willy-nilly. I think courts are too often inclined to want to do that.

Is there any reason the Court has got to enter an injunction right this moment, or to do anything?

MR. WELLFORD: Let me suggest to the Court, that short of injunction, I had sketched an order, and I believe that the form was submitted to Mr. Cronk and Mr. Mattox, at least addressing the procedures to be followed when they choose to close a meeting and instructing them as to the Court's finding to what legal matters does it contemplate with-

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out the broad injunctive language which I had drawn enjoining them from closing a meeting, except as specifically permitted under the statute which is, as the Court says, an injunction to do what the law tells you.

* * * * * *

MR. WELLFORD: I understand. What I had thought, for example, if this is in line with the Court's finding, is language such as this. "It is therefore adjudged, ordered, and decreed, that in order to comply with Section 2.1-344(b) of the Code of Virginia, City Council, if it wishes to go into executive session, must: (1) State and record in open meeting specifically what subjects will be discussed in executive session and the specific subparagraph of Section 2.1-344(a) which is relied upon; should Subparagraph (6) of Section 2.1-344(a) be relied upon, the specific legal matter to be discussed shall be stated and recorded.

"(2) Record in open meeting an affirmative

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vote by members to go into executive session.

"(3) Discuss in executive session only those matters specifically disclosed in open meeting pursuant to (1) above.

"And that after going into executive session to discuss a given matter, if City Council wishes to discuss in executive session other matters which properly may be discussed in executive session, City Council must reopen the meeting and once again follow the procedure outlined in (1) through (3) above."

All I am suggesting is that to avoid further conflict on the same issues that have been brought to the Court today, that it might be that this type of direction will be beneficial.

THE COURT: I am not saying that I am going to adopt that exact language, but I am going to give counsel for the other side a chance to go over it, and if they want to make any corrections--

MR. MATTOX: I might like to make an observation, Your Honor. That is way beyond this case, this is not the suit for that. There is nothing in the pleadings before this Court that would permit this Court to do any of the things that Mr. Wellford just discussed. If he wants to bring a declaratory judgment suit over here, or another type of suit for the

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Court to interpret the statute, fine, but that's not what is before you right now.

The Court has decided that the City Council was in violation of the Act. If you want to impose a penalty or injunction, that's something else. I don't think there is any need for that myself, that's just my own personal view, but to do this is beyond the facts in this case

before Your Honor.

THE COURT: It was simply offered as an alternative, as I understand it.

MR. WELLFORD: As an alternative.

THE COURT: So, I don't have much choice, as you put it, Mr. Mattox.

MR. WELLFORD: As an alternative, Your Honor. But, I might say, that he is exactly dead wrong. The statute has specifically set forth the procedures that must be followed to close a meeting, and we have put in the evidence the motion which was made by Mr. Kemp which was deficient, the vote called for by the Mayor which was irregular, the closure of the meeting for so-called legal matters, and evidence that they discussed things way beyond the items which they purported to close it on and which their counsel today has argued to the Court was quite permissible. This is part of what this case is about, and this is

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the kind of direction that we would like to have.

You will note that on the record Mr. Wheeler asked the Mayor, will you tell us specifically why you are closing the meeting, and Mr. Rennie did the same thing. This case has precisely this point, and this is one of the violations

of F.O.I. that we want the Court to instruct Council on, if not enjoin.

THE COURT: Well, I didn't want to enjoin them, but Mr. Mattox' view is that that's the only choice I have. I am not sure that that's true in this case.

MR. MATTOX: No, sir, I didn't say that.

THE COURT: Either to or not to. What other choice do you think I have?

MR. MATTOX: I think the Court has served its purpose in this matter at the moment, I have no problem with that. What I am saying is that beyond this case, it's beyond this case for the Court to interpret the Act and tell the City Council what you must or must not do. I don't think that's the case before you. That's the same thing as just a plain-out injunction saying to obey the law.

THE COURT: All right, gentlemen, each of you submit a decree within ten days after having exchanged them with each other, and I will consider

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them. Then if I want further argument on the matter, I will do so. The ruling has been made, and it's just a matter of what decree is going to be entered and when I will enter it.

* * * * * *

ORDER

[Entered May 8, 1979]

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the papers formerly read; upon the answer of the defendants, upon the amended petition and amended answer thereto; upon the evidence stipulated by the parties and filed herein; and was argued by counsel.

Upon consideration whereof, the Court finds that the Richmond City Council, meeting on March 6, 1979, with the governing bodies of the Counties of Henrico and Chesterfield, on a motion which did not comply with the requirements of Va. Code Ann. § 2.1-344(b) closed the meeting to the public and the press and discussed in closed meeting on the representation that they were "legal matters" within the meaning of the Freedom of Information Act the following subjects:

> The location and construction of the proposed circumferential highway,
>
> The probable effect of the highway on the location of future industrial and commercial development within the region,
>
> The effect that the recent "annexation legislation package" (House Bills 599,602, and 603) will have upon the three jurisdictions,
>
> The relative tax burdens of the City and the adjacent counties,

The cost of the regional services and facilities that are provided by the City,

Potential procedures for the counties to participate in the cost of regional services and facilities,

A proposal for improving the tax inequities in the Richmond region,

in violation of the open meeting requirement of Va. Code Ann. § 2.1-343, a part of the Virginia Freedom of Information Act, and that discussions of these matters which in fact took place in executive session were outside the scope of the exemption for "legal matters" contained in Va. Code Ann. § 2.1-344(a)(6).

It is therefore ADJUDGED, ORDERED and DECREED the individual defendants, except Aubrey H. Thompson, members of the City Council of the City of Richmond, are hereby permanently enjoined from closing any meeting to the public and the press except for the purposes specifically permitted by §§ 2.1-344(a)(1) through (6) of the Code of Virginia, and from considering any matter which is not so specifically permitted during any closed portion of any meeting.

It is further ADJUDGED, ORDERED and DECREED, the defendants having relied on the "legal matters" exemption embodied in § 2.1-344(a)(6), that the term "legal matters" as used in § 2.1-344(a)(6) shall include only those legal matters as to which the public disclosure of facts or opinions would

likely damage the City's interests and as to which confidentiality is reasonably essential to protect those interests.

It is further ADJUDGED, ORDERED and DECREED, that in order to comply with § 2.1-344(b) of the Code of Virginia, City Council, if it wishes to go into executive session, must:

(1) state and record in open meeting what subjects will be discussed in executive session and the specific subparagraph of § 2.1-344(a) which is relied upon.

(2) record in open meeting an affirmative vote by members to go into executive session;

(3) discuss in executive session only those matters specifically disclosed in open meeting pursuant to (1) above,

and that after going into executive session to discuss a given matter, if City Council wishes to discuss in executive session other matters which properly may be discussed in executive session, City Council must reopen the meeting and once again follow the procedure outlined in (1) through (3) above, unless it be included in the original motion.

MOTION TO VACATE
ORDER OF MAY 8, 1979

[Filed May 25, 1979]

Come now the defendants, undersigned by counsel, who reiterate their objections to entry of the Court's Order of May 8, 1979, which said objections, heretofore made, are as follows:

1. That injunctive relief is neither indicated nor permissible in this case, the Court having found that repetition of the conduct here complained of is unlikely.

2. That, without waiving any other objection, the motion which closed the meeting of March 6, 1979, to the public did comply with the requirements of § 2.1-344(b), Code of Virginia, inasmuch as the said motion makes specific reference to and quotes the language of § 2.1-344(a)(6).

3. That, without waiving any other objection, the subject of the closed meeting on March 6, 1979, was potential litigation and the alternatives thereto which constituted a matter within the purview of § 2.1-344(a)(6); that the Court's ruling to the contrary flies in the face of the presumption articulated in WTVR Radio - TV v. Virginia Beach, 216 Va. 892 (1976) at 895.

4. That, without waiving any other objection, the injunctive relief ordered by the Court on May 8, 1979, is broader in its terms than is justified by the evidence inasmuch as the Court's Order of May 8, 1979, permanently enjoins

the defendants from closing any meeting to the public [a] "... except for the purposes specifically permitted by § 2.1-344(a)(1) - (6) of the Code of Virginia ..." and [b] to open a properly closed meeting and go through the procedure specified in the said Order for closing a meeting in order to discuss in closed session matters properly discussed therein, but not included in the original motion; whereas, the evidence itself and the pleadings as well are exclusively concerned with § 2.1-344(a)(6) and there is no suggestion therein of exceeding the limits of § 2.1-344(a)(1) - (5) or of failing in the particular stated as [b] above.

5. That, without waiving any other objection, so much of the Court's Order of May 8, 1979, as directs that " ... the term 'legal matters' as used in § 2.1-344(a)(6) shall include only those legal matters as to which the public disclosure of facts or opinions would likely damage the City's interests and as to which confidentiality is reasonably essential to protect those interests" represents construction not warranted by the terms of § 2.1-344(a)(6) itself.

ORDER

[Entered May 25, 1979]

Came this day the defendants, by counsel, and moved the Court to vacate its Order of May 8, 1979, and the same, by

stipulation of counsel for the parties hereto, was submitted to the Court without argument.

And it appearing to the Court that the said Motion recites objections together with the grounds therefor which were made and advanced by defendants in argument on May 8, 1979, and thereupon considered and overruled by the Court, and no further reason being now made in support of defendants' Motion to Vacate Order of May 8, 1979, the same is overruled.

ASSIGNMENTS OF ERROR

1. That the trial court erred in overruling the councilmen's demurrer and in subsequently granting an injunction inasmuch as the relief sought cannot be granted in this case.

2. That the trial court erred in ruling that the closed meeting of March 6, 1979, was outside the purview of § 2.1-344(a)(6) of the Code of Virginia.

3. That the trial court erred in ruling that the motion offered on March 6, 1979, for the purpose of closing the meeting to the public did not comply with the requirements of § 2.1-344(b).

4. That the trial court erred in awarding an injunction which is broader in its terms than warranted by the evidence before the Court even if it could be said that an injunction is proper in this case.

5. That the trial court erred in construing § 2.1-344(a)(6) of the Code of Virginia to mean that the term "legal matters" as used therein "shall include only those legal matters as to which the public disclosure of facts or opinions would likely damage the City's interests and as to which confidentiality is reasonably essential to protect those interests".