

The Murfreesboro Post, Expert Planning Commission followed state law (4.27.12)

An Open Meetings Act expert testified Thursday the Rutherford County Planning Commission followed the law when it ran a public notice in The Murfreesboro Post in May 2010 because there is no requirement to advertise regularly scheduled meetings through any media outlet.

“There is no requirement under Tennessee law that public notices about regular meetings be published in newspapers,” said attorney Elisha Hodge, who is in charge of the Office of Open Records Counsel, a division within the Tennessee Comptroller’s Office.

The Office of Open Records Counsel serves as the primary contact for residents who have concerns about access to public records and helps mitigate disputes regarding open meeting laws.

“It was the opinion of the counsel that the Rutherford County Commission did not violate the Open Meetings Act,” said Hodge, who investigated a complaint filed in June 2010 by Murfreesboro resident Kevin Fisher.

Hodge was the last witness called to the stand during two days of trial, ending more than a year of litigation in Rutherford County Chancery Court over approval for construction of the Islamic Center of Murfreesboro, located on Veals Road.

However, Chancellor Robert Corlew III did not issue a ruling on the case, saying he wanted to finish reading a few depositions before making a decision.

Fisher is one of the plaintiffs suing the Planning Commission on the grounds it did not provide adequate public notice to residents prior to approving construction of the Islamic Center on May 24, 2010, during a regularly scheduled meeting.

The plaintiffs contend public notice about the Planning Commission meeting that was published May 2, 2010, in the print edition of The Murfreesboro Post was not adequate because, at that time, it was not a newspaper of general circulation.

“This is about whether The Murfreesboro Post was a newspaper of general circulation in May 2010,” said attorney Joe Brandon Jr., who is representing opponents of the Islamic Center, during a pre-trial hearing last week. “Today, it is a paper of general circulation.”

Attorney David LaRoche, who represents The Murfreesboro Post, has pushed back against those claims throughout the trial.

“Some of these arguments have been made in an attempt to sway the court of public opinion, where the plaintiffs would probably prefer this trial to be held,” he said Wednesday, during opening arguments.

In November 2011, Corlew ruled the newspaper could intervene in the case to defend itself against allegations it was not a proper medium for public notices, as Brandon has argued.

“The plaintiffs’ self-serving arguments are, at best, without legal basis,” LaRoche said. “At worst, they are blatant untruths.”

He said the locally owned newspaper has been forced to intervene in this lawsuit to “disallow the plaintiffs to make further slanderous statements without legal and factual opposition.”

County attorneys have agreed, saying The Murfreesboro Post was, and remains, an acceptable place for public notices because it meets the legal standard of a newspaper of general circulation.

“There is conclusive proof there was adequate public notice,” county attorney Josh McCreary said. “The Murfreesboro Post has the largest circulation in the county on Sundays.”

When questioned about the matter, Hodge said whether The Murfreesboro Post meets the criteria used to define a newspaper of general circulation is irrelevant, noting the Open Meetings Act does not include any such phrasing of that term.

“If it was not published in The Murfreesboro Post, it would have still met requirements if posted in the (Rutherford County) Courthouse,” Hodge said. “But, it does matter how local governments have historically advertised information about public meetings, which in this case, is The Murfreesboro Post.”

The plaintiffs have also argued an agenda should have been included in the public notice, so that residents would have known members of the Islamic Center wanted to build a 52,000-square-foot mosque.

But those allegations were rebuked, as well.

“Just because a public notice for a regular meeting did not contain an agenda,” Hodge said, “does not mean it failed to provide adequate notice.”