

SUNSHINE WEEK BACKGROUND INFORMATION

Frequently Asked Questions about Open Meetings Law

What meetings are subject to the Open Meetings Law?

The Open Meetings Law applies to official meetings of public bodies.

A public body is any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function.

In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

Official meetings are those in which a quorum (majority) of body members participate, physically or by simultaneous communication, for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business. A purely social meeting does not constitute an official meeting unless called or held to evade the spirit and purposes of the Open Meetings Law.

Must public bodies keep minutes?

Public bodies must keep minutes of their meetings, open and closed. However, minutes of closed meetings may be kept confidential so long as disclosure would frustrate the purpose of the closed session.

When can a body conduct a closed session?

A body may conduct closed sessions only when required to protect privacy interests in seven, limited circumstances:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award;
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to

close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded;

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body;

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

What must a public body do to conduct a closed session?

The public body must pass a motion at an open meeting, citing one or more of the permissible purposes listed in subsection (a) of this section. A motion based on the "catch-all" provision of (a)(1) shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on the pending litigation exemption shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

What happens when a majority of one public body meets with a minority of another public body?

If a majority of any public body gathers together, the requirements of the Open Meetings Law Apply. Period. The fact that the members are meeting with other public officials does nothing to lessen the requirements on the majority board.

What notice must a public body provide of its meetings?

If a public body has a schedule of regular meetings, that schedule must be kept on file as follows:

- (1) For public bodies that are part of State government, with the Secretary of State;
- (2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) For the governing board and each other public body that is part of a city government, with the city clerk;
- (4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

If a public body holds an official meeting at any time or place other than the regular schedule, the body shall give public notice of the time and place of that meeting as provided in this subsection.

If a public body recesses a meeting, the body may then announce the time and place at which the meeting will be continued.

For any special, non-emergency meeting, the public body shall post written notice of the meeting stating its purpose on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room. Also, the body must provide notice to any media outlet or person who has filed a written request for notice. The notice shall be posted, mailed or delivered at least 48 hours before the meeting. The body may require media to renew their requests annually or individuals to renew their requests quarterly and may charge a \$10.00 fee to persons other than the media.

For an emergency meeting, the public body shall provide notice of the meeting to be given to each media outlet that has requested notice, either by telephone or by the same method used to notify the members of the public body. This notice shall be given at the expense of the party notified. An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

Can a public conduct electronic meetings?

A public body may hold an official meeting by use of conference telephone or other electronic means, if it provides a location and means -- listed in the public notice -- whereby members of the public may listen to the meeting. The public body may charge a fee up to \$25.00 to defray in part the cost of providing the necessary location and equipment.

Can a public body vote by secret ballots?

A public body may not vote by secret or written ballot. If written ballots are used, each member must sign his or her ballot, and the minutes of the public body must show the vote of each member voting. The actual ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved.

Can a public body vote by written ballot?

A public body may vote by written ballot, but those ballots are public records subject to inspection and copying.

Can a public body take a preliminary vote prior to an official meeting?

A public body may not conduct business by polling members to vote one at a time outside an official meeting. The North Carolina Court of Appeals in *Jacksonville Daily News v. Board of Education* has ruled that such a practice violates the law's requirement that a transaction of public business be conducted in public. On its face, the Open Meetings Law requirements only apply to "official meetings," which by definition must include a majority of the members of the body. The *Jacksonville Daily News* holding could be extended, however, to support the argument that public bodies should not debate public business or build consensus through one-on-one meetings or conversations, but no North Carolina court has ever addressed the question.

Can the media make an audio or video recording of the meeting?

Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

What are the penalties for violation of the Open Meetings Law?

Any individual may bring a lawsuit to complaint of violations of the Open Meetings Law. The suing party can seek an order of the court enjoining future violations and/or a reversal of any decisions made at an illegal meeting. The court may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation. However, no individual member may be assessed attorney's fees if the public body or the individual member sought and followed the advice of an attorney.

There are no criminal penalties for violation of the Open Meetings Law.

Are any bodies exempt from the Open Meetings Law?

The Open Meetings Law does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission.

(4) The Legislative Ethics Committee.

(5) A conference committee of the General Assembly.

(6) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.

(7) Law enforcement agencies.

(8) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(9) Any public body subject to the Executive Budget Act (G.S. 143-1 et seq.) and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(10) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.

(11) The Board of Awards.

(12) The General Court of Justice.

Can the city council discuss an issue in one-on-one telephone conversations before a public meeting and then take a vote at a public meeting without any discussion in public?

North Carolina's Open Meetings Law only applies to meetings of a majority of the members of the body and not to one-on-one conversations between or among members. It is possible, therefore, for a public body to evade the spirit of the law without breaking the letter of the law. If the organization actually conducts business via such calls such as reaching decisions that will be implemented and does not come into an open session to officially take action, that activity would be a violation of the open meetings law. April 2002

Can my county commission hold a meeting out-of-town?

There is nothing in the Open Meetings Law that would prohibit a public body from conducting its meetings out-of-town or even out of state. However, the body must still comply with the requirements of the Open Meetings Law, including a statement of when and where the meeting will take place and the obligation to conduct the meeting in a place open to the public. For example, if a county commission wants to tour a manufacturing facility of a company that wants to build a plant within the county, the commission must make arrangements that members of the public who desire to accompany the commission are able to do so. April 2002

What does a public body have to disclose with regard to pending real estate transactions?

The exemption often called the real estate exemption is actually an exemption to protect the discussion of issues to be negotiated on real estate transactions and in employment discussions. This exemption was created in 1994. An attorney general opinion rendered the first month the exemption was in effect opined that ordinarily public bodies must disclose such information as the location of property under consideration, the owner of such property, and the intended use of the property. That interpretation was the subject of litigation at the trial court level in the mid-1990s, but the first case to take that question to the North Carolina Court of Appeals was *Boney v. City of Burlington*. In that case, the Court of Appeals affirmed the interpretation originally given by the Attorney General and held that where the identity of the owner, the location and the intended use were not issues to be negotiated, the city council had an obligation to disclose that information. The court acknowledged that there might be a case in which those issues would be negotiated, but it is hard to imagine such a case. January 2003

When can I get access to minutes of closed sessions?

The open meetings law provides that minutes of closed sessions are public records, but they can be withheld "so long as public inspection would frustrate the purpose of a closed session." G.S. § 143-318.10(e). In reality, this means that some minutes ultimately must be disclosed, while others might remain confidential forever. For example, if a county commission meets in closed session to discuss giving business incentives to a company locating a new factory within the county, those minutes could be kept confidential during the period of consideration. However, once the county commission approves the incentives (which must be done in an open session), and the deal has been reached, there is no basis for keeping the minutes confidential. By contrast, if a school board meets to discuss the performance of a teacher, the record of that discussion will remain sealed forever, because it is confidential under state personnel statutes. Newspapers periodically should request the minutes of past, closed sessions. Doing so will accomplish two goals: It will give you insight into how the public body is operating, and it will allow you to monitor whether they have been compliant with the open meetings law. You might be surprised to read that your city council went into closed session on the basis of the personnel exemption but in fact strayed into a discussion of land acquisition. A review of minutes from past closed sessions is the only way you will discover that type of open meetings violation. January 2003

Does an attorney have to be present for a public body to discuss legal issues in a closed session?

Before the 1994 overhaul of the open meetings law, there were two exemptions that related to the discussion of legal matters: "to consider the validity, settlement, or other disposition of a claim" and "to consult with an attorney." However, the 1994 amendments eliminated the first, generalized litigation exemption and retained only the exemption to allow discussion with an attorney in closed session. Therefore, a public body may now meet in

closed session to discuss legal issues only when the body's attorney is present and participating in the discussion of the pending legal matter. The exemption makes clear that the mere presence of an attorney does not justify a closed session and that general policy matters cannot be discussed in closed session, even if an attorney is involved in those discussions. January 2003

How much can a public body discuss in closed session about personnel matters, and can I ever get them to reveal the reason someone was fired or retired?

A. Ordinarily, the state's laws not only permit - but actually require - the confidentiality of records related to public personnel. There are numerous statutes that govern personnel records, but they all contain essentially the same provisions and provide access to the same information: name, age, date of original employment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. However, situations arise from time-to-time in which public outcry might demand the disclosure of more information. For example, if a teacher is accused of taking indecent liberties with a student, there is legitimate public concern regarding what happens to that teacher. The same personnel laws that require confidentiality of personnel records also provide a basis for the employing agency to release additional information when release of the information is critical to maintenance of public confidence in the system. Therefore, if the situation calls for it, public officials should be educated about these provisions and should be encouraged to exercise their discretion to disclose information that is vital to the public. January 2003

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Frequently Asked Questions About Access to Courts

Do the media have a right of access to the courts of North Carolina?

The North Carolina Constitution provides explicitly that "The courts of North Carolina shall be open" and that "No person shall be convicted of any crime but by the unanimous verdict of a jury in open court." This right was underscored in the opinion of the North Carolina Court of Appeals in *Virmani v. Presbyterian Hospital*. In *Virmani*, the Court accepted a long line of cases recognizing the right of the people to have access to judicial proceedings and judicial records. The court, therefore, overturned the five trial court orders shutting down access to judicial proceedings and records.

Do the media have a right of access to take photographs or videotape in the courts of North Carolina?

Rule 15 of the North Carolina General Rules of Practice provide that electronic media and still photography coverage of public judicial proceedings shall be allowed subject to the discretion of the judge and subject to certain specific limitations.

Coverage of the following proceedings is expressly prohibited: adoption proceedings, juvenile proceedings, proceedings held before magistrates, probable cause proceedings, child custody proceedings, divorce proceedings,

temporary and permanent alimony proceedings, proceedings for the hearing of motions to suppress evidence, proceedings involving trade secrets and in camera proceedings.

Coverage of the following witnesses is expressly prohibited: police informants, minors, undercover agents, relocated witnesses, and victims and families of victims of sex crimes. Coverage of jurors is prohibited.

Frequently Asked Questions About Public Records Law

What records are subject to the public records law?

All records - including documents, tape recordings, photographs, videotapes, or any other record, regardless of form - that are made or received in connection with the transaction of public business are defined as public records.

Are any records exempt?

The law presumes that a record fitting the description of a "public record" shall be publicly accessible unless it falls within a category of specifically exempted records. Among those records which are specifically exempted are confidential communications by legal counsel to a public body, trade secrets, and other "private" records. (For example, tax returns filed by individuals are not publicly available.)

Are settlements reached by public bodies a public record?

Yes. Settlements of legal actions are by definition a public record, with the exception of medical malpractice cases against a public hospital facility. Settlements must be disclosed unless they have been sealed by a court order.

What criminal records are publicly available?

The public records law does not speak to specific forms or reports, but rather speaks to that information which is that of public record. Absent a court order to the contrary, the following information is public: (1) The time, date, location and nature of a violation or apparent violation of the law; (2) the name, sex, age, address, employment and alleged violation of law of a person arrested, charged or indicted; (3) the circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession, or use of weapons, or pursuit, and a description of any items seized in connection with the arrest; (4) the contents of 911 and other emergency telephone calls except that information that would reveal the name, address, telephone number or other information that may identify the caller, victim, or witness; (5) the contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways; (6) the name, sex, age and address of a complaining witness.

Does it matter if a record has been placed in the investigative file of a law enforcement agency or the SBI?

The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record. However, a recent ruling by the North Carolina Court of Appeals held that documents or evidence in the possession of the district attorney are confidential, even if they have been introduced into evidence in a trial.

How long the police department have to keep a 911 recording?

Thirty days.

Are arrests and search warrants public?

Arrests and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and non-testimonial identification orders are public unless sealed by court order.

How quickly does a public body or a public official have to give access to a public record?

A public body or public official must provide access to a public record as promptly as possible.

How much can a public agency charge for a copy of a public record?

A public body can charge only the actual cost of recreating a public record.

Do I have to tell why I want a public record?

No. No person requesting to inspect and examine public records or to obtain copies thereof, shall be required to disclose the purpose or motive for their request.

What if confidential information is mixed with non-confidential information?

Public bodies must provide access to non-public records regardless of whether confidential information is mixed in with non-confidential. However, the North Carolina Public Records Law provides a timetable under which the requestor may bear the cost burden of deleting that information which is confidential.

Does it matter if the records are electronic?

No. Electronic records are public records if they otherwise meet the definition set out above. The person seeking a record may request that it be provided in any format that is available through the public agency.

What if a public body or public agency will not provide access to a record?

Anyone seeking access to a public record who is denied access may bring a lawsuit under the Public Records Law seeking (1) disclosure of the public records wrongfully withheld, and (2) an award of attorneys' fees for the cost of bringing such an action. However, the court may award attorneys' fees against a requestor who brings a

lawsuit if the court determines that the public body is the prevailing party in the lawsuit and (a) the lawsuit was brought in bad faith or (b) the lawsuit was frivolous.

What information is available about public employees?

The following information with respect to every county and city employee is a matter of public record: Name, age, date of original employment or appointment, current position title, current salary, date and amount of the most recent increase or decrease in salary, date of the most recent promotion, demotion, transfer, separation, suspension, or other change in position classification and the office to which the employee is currently assigned.

Are the names of applicants for public employment public?

No.

Are licenses to carry concealed weapons publicly available?

Yes.

What information regarding public employees is public?

Name, age, date of original employment or appointment, current position, title, current salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification and office to which the employee is currently assigned.

Are the disciplinary records of public employees available?

It is a matter of public record if a public employee has been suspended or terminated, but the reason for the suspension or termination is not a matter of public record. However, suspensions and terminations often become matters of public record if the employee files an administrative grievance or a lawsuit.

Is a record subject to public inspection even if it is not final or is in draft form?

Records are public if they are made or received by a public agency in connection with the transaction of public business, regardless of their "status." North Carolina courts have explicitly ruled that it is irrelevant whether a document is a "draft."

When can I find out the names of finalists in a search for public jobs like city and county manager?

North Carolina courts have held that the public does not have a right of access to know the names of candidates for public positions, even when the employing agency has narrowed to a short list of candidates under consideration. Public bodies must make hiring decisions in an open session, and therefore the public has a right of access to the meeting at which a vote is taken to hire a particular person. But the names of other candidates will forever remain secret. April 2002

Can I make a public record request to get information about non-profit organizations in North Carolina?

Non-profit organizations - even if they receive significant amounts of public funds - are not subject to the North Carolina Public Records Law. However, you can obtain a great deal of information about non-profit organizations and government grantees. The federal internal revenue code requires 501(c)(3) non-profit organizations to file Form 990 returns, and the non-profit has an obligation to provide you a copy of its return if you request one. IRC 6104(d)(1)(A) and Regs. 301.6104(d)-3(d)(1)(i). From the 990, you can obtain valuable information about the organization such as a description of program service accomplishments contributors, property owned by the organization, balance sheets, an analysis of income-producing activities, relationships to other organizations and expenditures for political activities.

In addition to the federal tax forms, there are reporting requirements for private organizations that receive state and local funds. Section 159-40 of the General Statutes provides: "(a) If a city or county grants or appropriates one thousand dollars (\$1,000) or more in any fiscal year to a nonprofit corporation or organization, the city or county may require that the nonprofit corporation or organization have an audit performed for the fiscal year in which the funds are received and may require that the nonprofit corporation or organization file a copy of the audit report with the city or county.

These reports are public records, and you should encourage the city and county governments you cover to require such reporting as a matter of sound financial management and stewardship. There is a virtually identical provision for groups receiving state funds:

"(b) Any nonprofit corporation or organization which receives one thousand dollars (\$1,000) or more in State funds shall, at the request of the State Auditor, submit to an audit by the office of the State Auditor for the fiscal year in which such funds were received." April 2002

Can my local water department withhold information about excessive water use by particular customers?

This is an issue that came to the forefront for two reasons: North Carolina encountered a terrific drought in 2002, and the General Assembly amended the Public Records Law to allow withholding of so-called "public enterprise billing information." G.S. § 132-1.1(c). This new exemption allows public utilities to withhold billing information about individual customers. However, some municipalities have given this exemption an expansive reading and have withheld documentation of law enforcement agencies enforcing water-use ordinances. The law clearly applies only to information "compiled and maintained by a city or county or other public entity providing utility services." If law enforcement are involved in patrolling and citing offenders of water-use restrictions, those documents are law enforcement records -- not public utility records - and they should be publicly available pursuant to G.S. § 132-1.4. January 2003

Can I get access to criminal investigation records once a case has been closed?

The criminal investigative records provisions of the public records law do not require the disclosure of investigative records even after a case is closed. G.S. § 132-1.4. There is a provision that permits a judge to order

the release of those records, however, and Judge Howard Manning exercised that discretion in a case last year. In 2002, the City of Raleigh became involved in litigation against a mining company, and the company requested records from the city attorney's office related to the matter from 1985 through the present. The City refused access, claiming attorney-client privilege in the communications and claiming that the documents constituted criminal investigative records. Judge Manning found that the records were criminal investigative records, because they related to the City's enforcement of mining ordinances; but he ordered that the records from 1985 to 2000 be disclosed because the statute of limitations on prosecutions had run and because the attorney-client privilege under the public records law expired after three years. January 2003

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CASE STUDY

July 1998: Boney stands up for First Amendment

This month, Amanda and I have turned over the legal column to Jay Ashley of The Alamance News. Jay's account of a recent episode involving his boss, Tom Boney, says more than we could ever say about standing up for the First Amendment, freedom of the press, the people's right to know, and the constitutions -- state and federal. We have, of course, reported Tom to the State Bar for practicing law without a license.

As the case involving the student charged with bringing a gun to Southern Middle School began, the boy's attorney, Robert Steele, made a motion to close the hearing to the public, setting off a confrontation with The Alamance News which had a reporter present to cover the case.

Chief District Court Judge Kent Washburn responded to Steele's motion by saying "that cat's already out of the bag," referring to the previous report in The Alamance News about the case and the naming of Daniel Paul Bowman as the juvenile charged with carrying a pistol on school grounds.

But Washburn expressed his intention to grant the request, saying that he would not close the case if the newspaper reporter, the only person in the audience who did not have a participatory role, would agree not to print Bowman's name "unless he's bound over to Superior Court."

Tom Boney, Jr., editor and publisher of the newspaper, was summoned to court and protested the proposed closing. He cited the state constitution's wording that "all courts shall be open" and told the judge he had "no authority to close" the case and that Boney had "a right to attend the proceedings."

Judge Washburn heard Boney's citations of the law, then left the bench for about five minutes.

He returned and again repeated his condition that the case could be heard in the open, if the publisher would agree not to print the name if Bowman was remanded as a juvenile.

Boney refused and said the state "constitution supersedes any statutory" laws.

Judge Washburn said if Boney would "not conform to the conditions" for attending the case, "then it's closed."

He added that "the point may be moot in a few minutes," suggesting that he intended to send the case to Superior Court "in light of what has happened in other cases in other states," ostensibly referring to shooting deaths at other schools across the nation within the past few months.

Boney again quizzed the judge about his basis for closing the case and Judge Washburn said the laws of the legislature empowered him to close the juvenile hearing.

Washburn said he was relying on those provisions from state statutes which specified that the judge had discretion to close a juvenile hearing when requested to do so by a defendant.

Boney repeatedly cited the North Carolina Constitution, Article I, Section 24, which includes the proviso, "All courts shall be open."

Boney also cited various North Carolina court cases which have upheld the right of the public and press to attend trials, reading to the judge from some of the opinions.

He cited former Alamance County Superior Court Judge Marsh McLelland's written opinion in the "Little Rascals" case, in which the jurist concluded "that these unambiguous provisions of the state constitution establish an absolute right on the part of the press and public to attend" that trial. McLelland referred to both the provision Boney insisted applied as well as Article I, section 24 which requires that "No person shall be convicted of any crime but by the unanimous verdict of a jury in open court."

Boney also cited state precedent in a North Carolina Court of Appeals case last year in which the court unanimously held that "a trial court's discretion to close court proceedings and seal records is subject to constitutional limitations."

Further, Boney said if Washburn was not satisfied with the North Carolina constitution and court rulings, he insisted that U.S. Supreme Court cases had also established a "presumptive right" under the U.S. Constitution for the public and press to attend all phases of criminal trials that could only be abridged by the holding of a hearing.

Boney outlined the specific requirements necessary for a hearing as "demonstrating the existence of an overriding interest that is likely to be prejudiced if the court remains open" and requiring a "written order" from the judge specifying why the court must be closed after such a hearing on closure were held.

"I'm not going to delay this hearing any further," he said, and noted that the previous coverage of the Bowman case was accomplished by Boney "being here [in juvenile court] without permission."

The editor argued for the "great public interest." He also said, "very respectfully," that the judge was acting "clearly beyond your rights" as regards state constitutional law and said he intended "to remain in court unless you arrest me."

A half dozen deputies surrounded the editor, who sat down in the pew and faced the judge, refusing to move.

"I don't want to put you in jail," the judge said, "but it looks like you are hell bent to go." "Under what provisions am I being removed?" Boney asked.

The judge cited chapter 7A-640 and said he was protecting the rights of the juvenile "at the stage of the adults courts. When it gets there, you can report on what happens."

Boney said the judge had "no authority to close the court" and that he "regrets your actions." He said he thought the judge was "trampling the rights of the citizens" and that he did "intend to stay."

The bailiffs remained around the seated editor as Judge Washburn called defense attorney Steele and assistant prosecutor Misty Carden to the bench for a conference. After they spoke, Steele met with the boy's parents in an adjacent room and returned to the courtroom. He withdrew his motion to close the case.

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By Jay Ashley