# CLIENT ALERTS

## Right-To-Work Laws Survive Labor Unions' Challenge Under The Michigan Open Meetings Act

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Michigan labor unions have filed several lawsuits challenging the legality of Michigan's right-to-work laws for the private sector and the public sector. One lawsuit filed by labor unions and some anti-right-to-work politicians claimed that the laws should be invalidated under Michigan's Open Meetings Act. The OMA requires that meetings be "open to the public," MCL 15.263, but does not define that phrase. On February 6, 2015, the Michigan Court of Claims, by Judge Deborah Servitto, dismissed the unions' lawsuit in its entirety. The legality of the right-to-work laws, in other words, survived this union challenge under the Open Meetings Act.

The basis of the lawsuit was that the Michigan State Police ordered the closure of the Capitol on December 6, 2012 for safety reasons and that there was an alleged "stacking" of the House gallery on December 6th and 11th with legislative staffers in a purported effort to exclude members of the public from that gallery.

On December 6, 2012, numerous anti-right-to-work protestors entered the Capitol. The State Police received reports that the Capitol was overcrowded with hundreds of people. Because of safety concerns, the State Police, without consulting with any members of the Legislature, ordered that the Capitol building be temporarily closed to incoming visitors. Several hours later, the Capitol reopened as a result of a court order. The Michigan Senate passed the right-to-work laws later that day, and on December 11th, the Michigan House passed those laws.

The Court of Claims concluded that the temporary closure of the Capitol did not violate the Open Meetings Act. It rejected the labor unions' claim that the Capitol was not "'open to the public'" as required by the Open Meetings Act. The Court stated: the "legislative proceedings at the Capitol were open to the public, in spite of the cessation of further admission to the building."

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Regarding the inability of all members of the public who wanted to have "direct, in-person observation of the legislative proceedings" due to the temporary closure of the Capitol, the Court observed that "just as a road is open to public travel even though its capacity is finite, a meeting may be open to the public even where physical access to *all members* of the public is not available." (Emphasis in original).

The Open Meetings Act also requires that meeting be held in a place that is "'available to the general public.'" MCL 15.263(1). The Court noted that the "Capitol was available to the general public even though not all members of the public were allowed inside."

The Open Meetings Act further requires that all "persons shall be permitted to attend any meeting except as otherwise provided in this act." MCL 15.263(1). The Court quoted from a decision in a North Carolina that stated that "'no state has ever determined that *any* or *all* persons who wish to attend a meeting must be permitted to do so to be in compliance with the Open Meetings Law, where the meeting is held in a room of reasonable size for the particular meeting.'" (Emphasis in original). The labor unions claimed that reasonable efforts were not made to accommodate interested members of the public "because more people could have been allowed to enter the building." Rejecting that claim, the Court stated that the State Police's "decision to stop further admission to the building" was an exercise of a State Police Captain's "judgment, not a violation of the OMA" and that the "Legislature is not required to second-guess the judgment of the Michigan State Police."

The Court, in addition, rejected the labor unions' claim that "the legislative sessions should have ceased once legislators were aware that further public admission to the Capitol had stopped." It stated that the Open Meetings Act "does not require legislative adjournments to accommodate the attendance of any and all members of the public who want to be present." Rather, "the OMA is aimed (at) allowing the public to know what the government is doing, but not to give the public the power to bring the legislative process to a halt."

Similarly, the Court rejected the labor unions' claim about the alleged "stacking" of the gallery with legislative staffers. It stated that the "presence of some legislative staff in the gallery does not transform an open meeting into a closed one" and "the public was not entirely excluded."

In sum, the Court concluded that the temporary closure of the Capitol did not violate the Open Meetings Act.

The Court also rejected the labor unions' claim that the right-to-work laws should be invalidated. "The temporary cessation of admission to the Capitol building did not impair the rights of the public as a whole. The public and the media were present in spite of the closure and were able to observe directly and through media coverage." Furthermore, the right-to-work laws were not passed "during the period that the closure was in effect." Consequently, the "public's rights under the OMA were not impaired. Invalidation of" the right-to-work laws thus was "not warranted."

The right-to-work laws empower Michigan unionized workers to end their mandatory union membership when the collective bargaining agreement applicable to them as of the effective date of the right-to-work laws in March 2013 subsequently expires. Other union lawsuits challenging the right-to-work laws remain pending, but the decision by the Court of Claims ended a creative, but flawed, attempt by labor unions and their legislative allies to invalidate the right-to-work laws under the Open Meetings Act. As a consequence of the Court of Claims' decision, the right-to-work laws continue to remain valid and in effect.

If you have any questions about these decisions and the Michigan right-to-work law, please contact the author of this Client Alert, your Butzel Long attorney, or any member of the Labor and Employment Law Group.