



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
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Confirmation Nbr. 2180881

GARRY KANTER

CV 21 944014

vs.

Judge: ASHLEY KILBANE

CITY OF CLEVELAND HEIGHTS AND CITY
COUNCIL, ET AL

Pages Filed: 4

COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

GARRY KANTER)	CASE NO.
3624 Cummings Rd.)	
Cleveland Heights, Ohio 44118)	JUDGE:
)	
Plaintiff)	COMPLAINT
)	
vs.)	
)	
CITY OF CLEVELAND HEIGHTS)	
40 Severance Circle)	
Cleveland Heights, Ohio 44118)	
)	
CITY OF CLEVELAND HEIGHTS)	
COUNCIL MEMBERS)	
Jason Stein, Kahlil Seren,)	
Mary Dunbar, Melody Joy Hart,)	
David Russell, Michael N. Ungar)	
)	
40 Severance Circle)	
Cleveland Heights, Ohio 44118)	
)	
Defendants)	
)	

Garry Kanter, for his Complaint states as follows:

1. Garry Kanter is a resident of Cleveland Heights, Ohio.
2. Defendant Cleveland Heights is a political subdivision of Ohio that, pursuant to Section 7, Article XVIII of the Ohio Constitution, has exercised its power of local self-government via promulgation of a Charter dating back to August 9, 1921.
3. Pursuant to Article 3, Section 1, of the Cleveland Heights Charter the legislative power of the City “shall be vested in a Council of seven members at large.” Defendants Jason

Stein, Kahlil Seren, Mary Dunbar, Melody Joy Hart, Davida Russell and Michael N. Ungar, are all duly elected members of Cleveland Heights City Council.

4. Ohio's Sunshine Law, Ohio Rev. Code Section 121.22 provides in pertinent part as follows:

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

* * *

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

5. Cleveland Heights City Council is a "public body" subject to the requirements of R.C. 121.22 that restricts when Cleveland Heights City Council can limit public access to its meetings (G)(1) which provides in pertinent part:

(G)(1) **To consider the appointment**, employment, dismissal, discipline, promotion, demotion, or compensation of a **public employee or official**, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing . . . If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting [Emphasis added].

6. On November 2, 2020 the City Council passed Resolution #120-2020, creating the Racial Justice Task Force (RJTF).

Section I provides in pertinent part:

There is hereby established the Cleveland Heights Racial Justice Task Force ("Task Force"). The Task Force **shall be composed of twenty-five (25) members, who shall serve without compensation** [Emphasis added].

Section 2 provides in pertinent part:

To accomplish this goal, the Task Force will **prepare a report that summarizes the Task Force's efforts and aforementioned recommendations, and includes recommendations** on whether the City should establish a Commission or Commissions to serve purposes similar to the Task Force's purposes on an ongoing basis. **The Task Force shall adjourn and complete its work not later than nine months after its first meeting, unless this period is extended by Council action** [Emphasis added].

7. On January 19, 2021 the Council Committee of the Whole agenda included these items:

2. Racial Justice Task Force discussion on how to proceed with appointments
3. Executive session to discuss the appointment of a public official

8. Prior to entering executive session, the City's Law Director was asked his opinion regarding the use of executive session to appoint members to the RJTF, and responded that the discussion by Council members as to prospective appointees was the proper subject of an executive session and then Council proceeded into executive session to discuss the applicants and/or their appointment.

9. The members of RJTF are not "a public employee or official" and therefore, by entering into executive session to discuss the applicants and/or appointments to RJTF, Members of Cleveland Heights City Council violated R.C.121.22.

10. Further, R.C. 121.22(C) provides in pertinent part:

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

11. Plaintiff submits that by failing to keep minutes Defendants violated this provision.

12. R.C. 121.22(I)(1) provides that “any person may bring an action to enforce this section” and that “[u]pon proof of a violation . . . the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.”

WHEREFORE, Plaintiff Garry Kanter, requests that this Court issue an injunction prohibiting the City’s Council members from going into executive session in the future to discuss applicants for and/or appointment to any task force, commission or committee where the members are not “a public employee or official,” and that the Defendants pay him a civil forfeiture of \$500, court costs and attorney’s fees.

Respectfully submitted,

/s/ Garry Kanter

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