Number 43
July 1992

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Editor

Published by the
Institute of Government,
The University of
North Carolina at
Chapel Hill

Local Government
Law Bulletin

North Carolina Supreme Court Issues Decision on Personnel Records Act

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There are two acts in the General Statutes that govern the release of information maintained by North Carolina cities and counties. The first, the public records law, is found at Chapter 132 of the North Carolina General Statutes[1] and concerns all types of data maintained by local governments. The second, the personnel records law, is much narrower and concerns only personnel records maintained by North Carolina cities and counties; the law is found at G.S. 160A-168 and G.S. 153A-98, respectively.

The personnel records statutes, identical except for the unit of government each covers, have not been interpreted by the North Carolina Supreme Court since their enactment by the General Assembly in 1975. On June 25, 1992, the court issued its first decision interpreting the personnel records act governing county employees, *Elkin Tribune, Inc. v. Yadkin County Board of County Commissioners*.[2]

The issue before the court in the *Elkin Tribune* case was whether applications for employment are public records under G.S. 132 and thus subject to disclosure, or personnel records under G.S. 153A-98 and thus confidential. The court held that the applications were personnel records and that disclosure of those records was prohibited. This bulletin provides a summary of the court's decision.

Case Facts

Early in 1991, the Yadkin County Board of County Commissioners sought applications for the position of county manager. A number of individuals applied for the position, and the county screened them down to five finalists. In May, the Elkin Tribune newspaper, seeking to publish an article on the search for a new county manager, contacted the county and asked for the names of all applicants. The board denied the request, claiming that release of the names was barred by the personnel records act.

The Elkin Tribune company then sought a declaratory judgment in Yadkin County Superior Court, claiming that the applications were public records under G.S. 132-1 and that the newspaper had the right to inspect and copy them. The superior court judge agreed with the Elkin Tribune and ordered the release of the applications to the newspaper. The county appealed, and the North Carolina Supreme Court granted discretionary review prior to determination by the court of appeals. The county refused to release the applications as long as the appeal was pending.

The Supreme Court Decision

The court held that the status of the employment applications was governed by G.S. 153A-98(a). That provision states, in part:

> Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are

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1. Hereinafter the General Statues will be referred to as G.S.

2. No. 431PA91 (N.C. June 25, 1992).

> subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

The court noted that the section provides that "personnel files of . . . applicants for employment maintained by the county" may be disclosed only as provided by the act. There is no further statement in the act directly addressing applicants. But, held the court, even though the definition of a personnel file literally applies only to employees, the definition should be read also to apply to the files of applicants. Thus, the term "any information in any form . . . relating to his application" covers applications for employment. Such a reading "comports with the commonly understood definition of a personnel file," stated the court.

The court next found significance in the fact that the act defines the term *employees* to include former employees but not applicants. Because the act sets out specific information that may be disclosed about employees and former employees, and does not set out specific information that may be disclosed about applicants, the legislature intended that no information about applicants be disclosed.

In reaching the conclusion that the definition of *personnel files* includes applications for employment and thus prohibits their disclosure, the court rejected two arguments put forth by the Elkin Tribune.

First, the court rejected the claim that the applications were not information "gathered by the county" because they were sent in at the initiative of the individuals applying for the manager position. The court summarily disposed of this claim, stating simply that "it is clear the word 'gathered' includes applications that were sent to the county."

Second, the court rejected the claim that if the act was not read to include applicants in the definition of employees, it made no sense. The Elkin Tribune pointed to the language of the act defining a personnel file to include "selection or nonselection," which showed that it was intended to include applicants who were not hired. The court responded by pointing out that the section did not include applicants in the definition of employees, but did include former employees, and that "we can only conclude that the section did not include applicants as employees." The court held that because the plain words of the statute were clear as to legislative intent—in this case, to purposefully exclude applicants from the definition of employees—then it did not need to look further for an interpretation.

The court reversed and remanded the decision of the Yadkin County Superior Court.

Conclusion

The effect of the unanimous decision in the *Elkin Tribune* case is to keep all information maintained by a city or county on applicants for employment confidential. Local governments have no discretion on this matter and are barred from releasing any information about applicants. Thus, unlike current or former employees, for whom such matters as their names, ages, salaries, and most recent personnel action are a matter of public record, applicants for employment with local government enjoy complete confidentiality. Not even their names are subject to disclosure.

This interpretation is consistent with the goal of encouraging individuals who might otherwise suffer repercussions from their current employers to apply for positions elsewhere. Assured of the confidentiality of their applications, they may apply for a job and not risk the embarrassment of having their current employers find out they have applied for another position. In this way, local governments may conduct their recruitment efforts in the same way their private-sector counterparts do.

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