

FILED DISTRICT COURT
Third Judicial District *

MAY 15 2013

SALT LAKE COUNTY

By DC Deputy Clerk

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

UTAH DEMOCRATIC PARTY, a political
party pursuant to U.C.A. §§ 20A-8-101, et.
seq.,

Petitioner,

vs.

LEGISLATIVE RECORDS COMMITTEE
and OFFICE OF LEGISLATIVE
RESEARCH AND GENERAL COUNSEL,
political subdivisions of the State of Utah,

Respondents.

JUDGMENT ON THE RECORD

Case No. 120906505

Judge L.A. Dever

The Motion for Summary Judgment filed by Respondents Legislative Records Committee and Office of Legislative Research and General Counsel (hereinafter collectively "Respondents") and the Motion for Judgment on the Record filed by the Petitioner Utah Democratic Party (hereinafter the "Party") came regularly for hearing on April 30, 2013, before the above entitled Court, the Honorable L.A. Dever, Third Judicial District Court Judge, presiding.

The Petitioner was represented by counsel, Joseph E. Hatch, and the Chairman of the Party, Senator Jim Dabakis. The Respondents were represented by counsel, Robert H. Rees and RuthAnne Frost. The Court has reviewed the record of documents and pleadings before the Legislative Records Committee and the transcript of the hearings before the Legislative Record Committee held on August 6 and August 20, 2012. The Court has also read and reviewed the pleadings filed herein and the memorandum and reply memorandum filed by the parties in support of their respective positions.

The Court, having heard oral argument and taken the matters under advisement, is now prepared to enter its judgment. Some of the Court's findings and conclusions in support of this Judgment were made from the bench and on the record.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. This Court has subject matter jurisdiction to hear the Party's Petition for Judicial Review pursuant to Section 3.3(1)(a) of the Utah Legislature Policies and Procedures for Handling Records Requests which reads:

Any party to a proceeding before the Legislative Records Committee may petition for judicial review by the district court of the Legislative Records Committee's order.

The Respondent's position that it did not deny access to records is correct. However, the Committee did deny a request for a fee waiver and it allowed an appeal of that denial. When that appeal was made by the Plaintiff, it was denied. The Respondent's position that this Court only has jurisdiction to hear cases involving denial of access is not

well taken. The procedures drafted by the Respondent, pursuant to U.C.A. § 63-2-703 (2011 & Supp. 2012), grant to an aggrieved party the right to petition the District Court for a review of the Legislative Records Committee Order. The procedures do not limit the review to only a denial of access but specifically state a party may petition for a review of the Order. The Order in this case was a denial of the fee waiver. Therefore, the Court has jurisdiction.

2. Subsequent to the filing of the Petition for Judicial Review, the Utah Legislature caused to be released to the public the documents for which the Respondent Office of Legislative Research and General Counsel had requested the Party to pay a \$9,250.00 fee. The documents were released without the Party having to pay the fee. It is undisputed that the Legislative leadership determined that it was in the public's interest to release the documents and they were released. The public release of documents rendered moot that portion of the Party's request for relief.



3. Because the Party chose not to appeal the decision of Michael E. Christensen, director of Respondent Office of Legislative Research and General Counsel and rendered on December 23, 2011, to the Respondent Legislative Records Committee, and instead paid Respondent Office of Legislative Research and General Counsel the requested \$5,000.00; the Party lost any ability it had to seek judicial review of the propriety of the \$5,000.00 fee.

4. The Party has requested an award of its attorney's fees and costs pursuant to Utah Code Ann. § 63G-2-802(2). The Respondents' denial of the Party's fee waiver request is a "denial of a records request" within the meaning of the statute. Since the requested documents were released to the public after the filing of the complaint in District Court and without the Respondents requiring the Party to pay the charged \$9,250.00, the Party is the prevailing party under the statute.

5. The Party is hereby awarded its reasonable attorney's fees and costs for the prosecution of this matter, not including any fees or costs incurred in the Party's efforts to have \$5,000.00 payment returned from Respondents. Counsel for the Party is to file an appropriate affidavit for fees pursuant to Rule 73, Utah Rules of Civil Procedure. The Respondent shall have ten (10) days, from the date the Affidavit for Fees is filed, to file their objection thereto and request a hearing if appropriate.

Dated this 15th day of May, 2013.

THIRD JUDICIAL DISTRICT COURT


THE HONORABLE  JUDGE

MAILING CERTIFICATE

I hereby certify that on this 15th day of May, 2013 a true and correct copy of the foregoing Judgment On The Record was sent by first class mail, postage prepaid to the following:

Robert H. Rees
RuthAnne Frost
Office of Legislative Research and General Counsel
Utah State Capitol Complex
W210 House Building
Salt Lake City, UT 84114-5210

Joseph E. Hatch
5295 South Commerce Drive, Ste 200
Murray, UT 841009

Deputy Court Clerk

