


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	C/A No. 2011-CP-23-6290
K&S Food Services, Inc. d/b/a Hailee's	)	
Bar and Grill,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	ORDER
	)	
City of Mauldin, and Mauldin City	)	
Council,	)	
Defendants-Respondent.	)	
	)	
	)	
	)	

On February 7, 2013 this matter came before the Court upon Motion filed by counsel for the Plaintiff for recovery of attorney fees and costs from the Defendant for a violation of the Freedom of Information Act by the City of Mauldin. Plaintiff seeks recovery of attorney's fees in the amount of \$19,670.00 and costs of \$271.87.

**STATEMENT OF FACTS**

After Hailee's Bar and Grill was annexed into the City of Mauldin, the Mauldin City Police Officers responded to an inordinate number of calls to Hailee's. A high percentage of these calls were after 2:00 a.m.

In July, 2011, City Council passed an Ordinance requiring that all bars in the City close at 2:00 a.m. Hailee's sued the City raising five causes of action and seeking an injunction to prohibit the City from applying its Ordinance to Hailee's (2011-CP-23-4773). The Court denied the injunction and dismissed all five causes of action.



On August 16, 2011, Mauldin City Council held a hearing to determine if Hailee's business license should be revoked. On September 19, 2011, just prior to the start of a Council meeting, Council signed an Order in which it revoked Hailee's business license. Hailee's then initiated a second case against the City in which it raised three causes of action including a FOIA claim. Subsequently, the Court dismissed two causes of action but found that Council violated the Freedom of Information Act by signing the Order before the Council meeting rather than during the Council meeting.

### FINDINGS

There are six factors to be considered when determining an award of attorney's fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and, (6) customary legal fees for similar services. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997) and Glasscock v. Glasscock, 304 S.C. 158, 161 403 S.E.2d 313, 315 (S.C. 1991) cites:

(1) The nature, extent, and difficulty of the case

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The Freedom of Information Act ("FOIA") issue in this case involved an uncomplicated, straight forward matter, that is, whether or not Council should have executed the Order revoking the business license of Plaintiff during a public meeting. The Court finds that the FOIA issue presented was not complicated and did not require sophisticated legal services or extensive work by Plaintiff's counsel.



(2) The time necessarily devoted to the case

Plaintiff's counsel submitted an Affidavit to the Court itemizing the time he allegedly devoted to the FOIA claim which listed a total of 56.5 hours. The Court finds that this amount of time was excessive in light of the simple, straight forward nature of the issue in controversy. For example, counsel listed 7.55 hours to prepare the FOIA cause of action in the Complaint which was only two pages in length in which a substantial portion was verbatim quotes of provisions of the Act. Counsel has previous experience handling FOIA cases. The amount of time expended by counsel for preparing the FOIA cause of action was excessive. In addition, counsel included a number of time entries for work that was largely clerical in nature and required little or no time by counsel. Further, counsel listed time preparing for and appearing at Court hearings. Those hearings, however, were primarily devoted to issues concerning the separate legal action (2011-CP-23-4773) and other issues in the instant case which were unrelated to the FOIA claim. The time listed for those services was excessive. The Court concludes that the time listed by counsel related to the FOIA issue was excessive.

(3) Professional standing of counsel

The Court finds that counsel for the Plaintiff has been in private practice for twenty-eight years, has substantial prior experience in government litigation, and enjoys a good professional reputation.

(4) Contingency of compensation

Counsel for the Plaintiff did not represent to the Court that he was representing the Plaintiff on a contingency. Therefore, the Court concludes that this is not a factor for consideration.



(5) Beneficial results obtained

Counsel for the Plaintiff initiated two separate lawsuits against the Defendant captioned as 2011-CP-23-4773 and 2011-CP-23-6290. In the first lawsuit, all five causes of action were dismissed by the Court. In the instant case, the Court dismissed the two substantive causes of action leaving only the FOIA claim. The Court therefore concludes that the results obtained were not particularly beneficial to the Plaintiff.

(6) Customary legal fees for similar services

Counsel asserts that he should be awarded fees at an hourly rate of \$350.00. Considering the uncomplicated nature of the issue, market rates for similar services in this area and fees in similar cases, the Court concludes that the fee rate sought by the Plaintiff is excessive.

In assessing a reasonable fee the Court is mindful of the fact that the revenues of the City of Mauldin are used to provide services to its citizens. The award of attorney's fees impacts the municipal services it provides to its citizens. Accordingly, the Court must find a balance between competing interests. In addition, the Court notes that while City Council violated the FOIA by not executing the Order of Revocation during a public meeting, it did not attempt to conceal its action from the public because the Order of Revocation was disseminated to the media which subsequently reported the action taken by Council. Therefore, although Council did not comply with the FOIA, the violation was not egregious.

**CONCLUSION**

Considering all of these factors, the Court finds that the Plaintiff should be awarded attorney's fees and costs in the amount of \$1,500.00.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant pay to the Plaintiff the sum of \$1,500.00.

**IT IS SO ORDERED!**

March 8, 2013  
May



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Letitia Verdin  
Judge, Thirteenth Judicial Circuit

