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SUMMARY
February 22, 2024

2024COA18

No. 22CA2181, *Anzalone v. Board of Trustees* — Administrative Law — Colorado Sunshine Act — Open Meetings Law — Executive Sessions — Formal Actions

Reason for Publication: *Sentinel Colorado v. Rodriguez*, 2023 COA 118, summarily concluded that a city council's decision to dismiss a pending censure proceeding amounted to formal action under Colorado's Open Meetings Law. In this case, a division of the court of appeals directly addresses whether the adoption of a censure in an executive session was a formal action subject to the Open Meetings Law or merely an expression of a town board's personal opinion concerning the performance of a colleague. In rejecting the town's argument, the division is required to address several arguments not addressed in *Sentinel*. In addition, the case involves a somewhat unique factual pattern arising from what

appears to be an increasing practice of using public censures and executive sessions to control the actions/statements of board members.

Court of Appeals No. 22CA2181
Rio Grande County District Court No. 21CV30032
Honorable Crista Newmyer-Olsen, Judge

Laura Anzalone, Trustee of the Town of Del Norte,

Plaintiff-Appellant,

v.

Board of Trustees of the Town of Del Norte and Town of Del Norte,

Defendants-Appellees.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division II

Opinion by JUDGE SCHUTZ
Fox and Berger*, JJ., concur

Announced February 22, 2024

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 Laura Anzalone was an elected trustee of the Board of Trustees (Board) for the Town of Del Norte (Town) from April 2018 through April 2022. In October 2021, the Board publicly censured Anzalone due to her alleged misconduct. Anzalone sued the Town and Board alleging, as relevant here, that the censure was void because it constituted a formal action taken in violation of the Colorado Open Meetings Law (OML). The district court disagreed and dismissed Anzalone’s OML claim against the Town and Board.¹ Anzalone appeals that decision, arguing that the court’s order was contrary to the OML. We agree and therefore reverse.

I. Background

¶ 2 Del Norte is a statutory town. See § 31-4-301(1), C.R.S. 2023. The Board exercises the Town’s corporate and legislative authority. *Id.* The Board consists of seven trustees, including the mayor.

¶ 3 Anzalone alleged that, in early October 2021, the Town’s mayor informed her that he had received unspecified complaints about her behavior and that he “had the votes to remove her from office.” Although Anzalone alleged that her requests for a

¹ In the same order, the district court dismissed Anzalone’s claims brought under C.R.C.P. 106. Anzalone does not appeal that ruling.

description of the allegations against her were denied, subsequent events revealed that the alleged misconduct arose out of her interactions with the public concerning code enforcement issues, her attempt to call a special meeting of the Board, and her communications with Town employees concerning optimum timing for staff replacement.

¶ 4 At its regular public meeting held on October 13, 2021, the Board scheduled a public hearing to be held on November 2, 2021, to address the possible removal of Anzalone from her position as trustee. Two days later, the mayor requested a special meeting of the Board, which was set for October 18. The notice setting that meeting included the Board’s agenda: “(1) [C]onference with Town Attorney for the purpose of receiving legal advice on specific legal questions concerning Trustee removal under [section] 24-6-402(4)(b)[, C.R.S. 2023; and] (2) Action by Town Board as a result of Executive Session relating to Trustee removal.”

¶ 5 Five trustees attended the special meeting and resulting executive session, as well as the Town attorney, Town clerk, code enforcement officer, treasurer, and police chief. Anzalone did not attend. After approximately four minutes in open session, the

Board approved a motion to convene in executive session. The executive session lasted approximately ninety minutes.

¶ 6 After exiting the executive session, and returning to the public hearing, a trustee read aloud a written motion to censure Anzalone. After the motion was read, the Town attorney suggested additional grounds to support the first allegation of misconduct: Anzalone “allegedly created confusion in the public as to who has authority to enforce the town code.” The Board agreed to this additional language and unanimously approved an amended motion for censure, which stated as follows:

The Town Board of Trustees of the Town of Del Norte has received credible information from Town staff that Trustee Laura Anzalone has performed the following acts:

1. Trustee Anzalone has taken it upon herself to assume duties belonging to the Code Enforcement Officer by encouraging citizens to file complaints concerning the Del Norte lighting ordinance and has interfered with the Town Code Enforcement Officer’s procedure and protocol[,] making it difficult for her to perform her essential functions[, which] creates confusion in the public as to who has the authority to enforce the town code. In doing so she has incurred liability for the Town in acting outside the scope of her proper authority.

2. Trustee Anzalone has attempted to call a Special Meeting of the Board of Trustees by contacting the Town Clerk and using the following language “We as Trustees . . . ask to have a special meeting to be held for the purpose of discussing Town procedure and Trustee appointees . . .” This correspondence did not have the concurrence of other Board Trustees, was deceptive, and such meeting would normally be a Work Session of the Board, which, when attempted to be called between regular meetings, could only be called by the Mayor.

3. Trustee Anzalone has stated to the Town Clerk/Administrator that there should be a replacement of Town Staff every few years thereby making their job performance more difficult, their tenure uncertain, imposing unnecessary stress upon their personal lives, and creating unnecessary tension in the work environment.

I, therefore, move that Trustee Anzalone be censured by the Board of Trustees for the above misconduct and warned that future similar infractions may result in her removal from office.

¶ 7 After approving the amended censure motion, the Board cancelled the November public meeting that was set to address Anzalone’s removal from office. Approximately five and a half minutes after the Board completed its executive session, it adjourned the public meeting.

¶ 8 Anzalone sued the Town and the Board, claiming, among other things, that the censure violated the OML. The Town and Board moved to dismiss the OML claim. The district court denied the motion, rejecting the defendants' argument that the approval of a censure can never trigger the provisions of the OML.

¶ 9 Anzalone subsequently filed a motion for summary judgment, in which she requested that the district court find that the Town and Board violated the OML by approving the censure in executive session. The Town opposed the motion, arguing that the censure did not involve the Town and Board's policy-making authority. The district court agreed with the Town and denied the motion for summary judgment on the grounds that Anzalone did not demonstrate a link between the censure and the policy-making powers of the Town and Board.

¶ 10 The district court thereafter issued a case management order requesting the parties to brief whether Anzalone's allegations triggered the OML. After reviewing the briefs, the district court issued a written order denying Anzalone's OML claim, concluding that the "Board's opinion of [Anzalone's] performance as a trustee, which took the form of a censure, does not fall under the [OML]."

Although no dispositive motion was pending at the time, given the procedural context and substance of the court’s order, we treat it as a grant of summary judgment in favor of the Town and Board on the OML claim.

II. Discussion

A. Standard of Review and General OML Law

¶ 11 Summary judgment is appropriate when “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” C.R.C.P. 56(c). “The moving party has the burden of establishing the lack of a triable factual issue, and all doubts as to the existence of such an issue must be resolved against the moving party.” *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988). “The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts” *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). We review a district court’s grant of summary judgment de novo. *Shelter Mut. Ins. Co. v. Mid-Century Ins. Co.*, 246 P.3d 651, 657 (Colo. 2011). On review, our task is to determine whether a genuine issue of material fact existed and whether the district court

correctly applied the law in granting the defendants' motion. *City of Fort Collins v. Colo. Oil & Gas Ass'n*, 2016 CO 28, ¶ 9.

¶ 12 Similarly, we review the district court's application of the OML de novo. *Intermountain Rural Elec. Ass'n v. Colo. Pub. Utils. Comm'n*, 2012 COA 123, ¶ 9.

¶ 13 The OML applies to all "local public bod[ies]." § 24-6-402(1)(a). It requires that meetings of local public bodies, along with records of those meetings, be open to the public, with limited exceptions. § 24-6-402(2)(a), (d). The parties agree that the Town and Board are local public bodies subject to the OML.

¶ 14 Section 24-6-401, C.R.S. 2023, articulates the broad policy that is the foundation of the OML: "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." The Colorado Supreme Court has embraced a broad interpretation of the OML to facilitate its salutary objectives:

The OML is intended to "afford the public access to a broad range of meetings at which public business is considered." *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 652 (1978). We have sought to honor this aim by interpreting the OML broadly "to further the legislative intent that citizens be given a

greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved.” *Cole v. State*, 673 P.2d 345, 347 (Colo. 1983).

Bd. of Cnty. Comm’rs v. Costilla Cnty. Conservancy Dist., 88 P.3d 1188, 1193 (Colo. 2004).

¶ 15 To accomplish the OLM’s purposes, section 24-6-402(2)(b) mandates that

[a]ll meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

Additionally, section 24-6-402(2)(c)(I) requires the governmental entity to provide an appropriate notice of any public meeting:

Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public.

¶ 16 The OML contemplates that, under certain circumstances, a local public body may need to proceed in executive session to protect privileged matters, including to receive legal advice. *See*

§ 24-6-402(4)(b). But “no adoption of any proposed policy, position, resolution, rule, regulation or formal action, except the review, approval, and amendment of the minutes of an executive session . . . shall occur at any executive session that is not open to the public.”² § 24-6-402(4).

¶ 17 Consistent with the statutory limitations on executive sessions, the supreme court has counseled that a local public body may not take formal action in an executive session and then avoid the OML violation by “rubber stamping” the decision through a formal action taken in a public session. *See, e.g., Costilla County*, 88 P.3d at 1194. If a local public body holds a meeting in violation of the OML, any resolution, rule, regulation, ordinance, or formal action made at the meeting is invalid as a matter of law. *Id.* at 1193; *see also* § 24-6-402(8).

² Section 24-6-402(2)(d.5)(II), C.R.S. 2023, mandates the electronic recording of any executive session of a local public body. Subject to certain conditions, the statute authorizes the recording to be discontinued for that portion of the executive session during which the body receives legal advice. § 24-6-402(2)(d.5)(II)(B). Based on the record, it appears no electronic recording was made of any portion of the executive session held in this case. The parties do not address this omission.

B. Analysis

¶ 18 The district court agreed with the Town and Board’s assertion that “not all municipal decisions are subject to the [OML].” The court reasoned that Anzalone’s “OML [c]laim is not viable because the [c]ensure does not consider the formation of public policy, nor is the [c]ensure a proposed policy, position, rule, regulation or formal action under the OML or corresponding case law.” In reaching this conclusion, the district court relied heavily on *Costilla County* and *Intermountain*. We agree that both cases are relevant to the disposition of this dispute, but we conclude these opinions, and the statutory authority on which they are predicated, mandate a result different than that reached by the district court.

1. *Costilla County* and *Intermountain*

¶ 19 The supreme court’s decision in *Costilla County* involved a mining company whose operations caused waste seepage into a nearby stream. *Costilla County*, 88 P.3d at 1190. Following the discovery of the seepage, the mining company and two state agencies arranged a lunch at a restaurant to discuss the company’s efforts to comply with a cease-and-desist order and take corrective action. *Id.* Two members of the Costilla County Board of County

Commissioners (BOCC), which constituted a quorum of the BOCC, also attended the lunch. The BOCC did not publish a notice of public meeting concerning the restaurant gathering and made no recording or minutes of the discussions. These events prompted the Costilla County Conservancy District to sue the BOCC for allegedly violating the OML. *Id.* at 1190-91.

¶ 20 The supreme court first acknowledged section 24-6-401's declaration that "the formation of public policy is public business and may not be conducted in secret." *See Costilla County*, 88 P.3d at 1193. The court reasoned that this policy declaration "suggests that the OML applies to meetings that are convened for the purpose of policy-making rather than . . . merely discussing matters of public importance." *Id.* The court therefore determined that "[f]or a meeting to be subject to the requirements of the OML, there must be a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting." *Id.* at 1194.

¶ 21 Therefore, the court ruled as follows:

[W]e hold that a local public body . . . is required to give public notice of any meeting attended or expected to be attended by a

quorum of the public body when the meeting is part of the policy-making process. *A meeting is part of the policy-making process when the meeting is held for the purpose of discussing or undertaking a rule, regulation, ordinance, or formal action.* If the record supports the conclusion that the meeting is rationally connected to the policy-making responsibilities of the public body holding or attending the meeting, then the meeting is subject to the OML, and the public body holding or attending the meeting must provide notice.

Id. at 1189 (emphasis added). The court amplified that “[s]uch a link exists, for example, when the meeting is convened to discuss or undertake one of the actions enumerated in the remedy provision of the OML such as a rule, regulation, ordinance, or formal action.”

Id. at 1194. “Or [a link] may exist where the record demonstrates that a meeting was held for the purpose of discussing a pending measure or action, which is subsequently ‘rubber stamped’ by the public body holding or attending the meeting.” *Id.*

¶ 22 Applying these principles to the restaurant meeting, the court found that “at the time the meeting was held, the [BOCC] was not considering any policy-making decisions or actions regarding the mine” and “nothing in the record indicates that the meeting led to any rule, resolution, or formal action by the [BOCC] or that the

[BOCC] subsequently ‘rubber stamped’ any policy suggested or discussed at the . . . meeting.” *Id.* at 1195. Thus, the court concluded that the meeting was not subject to the OML because “[n]othing in the record establishes any connection between the . . . meeting and the policy-making function of the [BOCC].” *Id.* at 1196.

¶ 23 The dispute in *Intermountain* arose after members of the Public Utilities Commission (PUC) exchanged emails that discussed proposed legislation pending before the General Assembly. 2012 COA 123, ¶ 1. The plaintiff, a cooperative electric utility subject to the contemplated legislation, sued the PUC, its director, and its commissioners, contending that the emails constituted “meetings” subject to the OML and that because the PUC did not give public notice of the meetings, any formal action resulting from the alleged meetings was invalid. *Id.*

¶ 24 Although the parties did not dispute on appeal that the exchanged emails constituted a “gathering” (e.g., a meeting), they disputed whether the emails discussed “public business” within the meaning of the OML. *Id.* at ¶ 12.

¶ 25 Citing *Costilla County*, the *Intermountain* division reasoned that a meeting is subject to the OML if it is rationally connected to the policy-making responsibilities of the public body holding the meeting. *Id.* at ¶ 17. The division also acknowledged *Costilla County*'s conclusion that such “policy-making responsibilities’ of a public body are limited to taking action with regard to rules, regulations, ordinances, or formal actions.” *Id.* Thus, the division reasoned that “to prevail on a claim under the OML, a party must point to a pending action by the public body holding the meeting with regard to a rule, regulation, ordinance, or formal action by that public body that has a meaningful connection to the gathering in question.” *Id.* The division concluded that the email exchange did not constitute formal action because the decision whether to formally adopt the legislation was solely within the policy-making functions of the General Assembly, not the PUC. *Id.* at ¶ 26.

¶ 26 In reaching this conclusion, the court rejected the utility company’s argument that the PUC’s successful invocation of the deliberative process privilege supported a conclusion that the disputed emails resulted in the PUC making a decision.

The mere fact that a public body reaches a “decision” does not necessarily mean that making the decision is a “formal action.” If anything, the fact that the e-mails were subject to the deliberative process privilege indicates that they were not part of the PUC’s “policy-making responsibility.” The deliberative process privilege ordinarily “covers recommendations, advisory opinions, draft documents, proposals, suggestions, and other subjective documents that reflect the personal opinions of the writer *rather than the policy of the agency.*” Here, forming an opinion about drafts of the [the pending legislation] was incidental to, and not part of, the PUC’s policy-making function. Reaching and presenting an opinion about the proposed [legislation] were therefore not a “formal action” of defendants.

Id. at ¶ 30 (citation omitted). Because the emails did not relate to the PUC’s policy-making function and the PUC took no formal action, the division concluded that the emails were not subject to the OML. *Id.* at ¶ 31.

2. The District Court’s Reasoning

¶ 27 Returning to the facts of the present dispute, the district court reasoned that “[t]he resolution of [Anzalone’s OML] [c]laim largely turns on whether (a) the Board discussed ‘public business’ during the executive session . . . , and (b) whether the [c]ensure constitutes a ‘proposed policy, position, resolution, rule, regulation, or formal

action.” The court noted that “a meeting must be part of the policy-making process to be subject to the requirements of the OML.” See *Costilla County*, 88 P.3d at 1194. Because the OML “contains rules relating to the ‘formation of public policy’” but leaves “public policy” undefined, the court referred to a dictionary definition of that phrase: “the body of laws and other measures that affect the general public.”³

¶ 28 The court then concluded that the Board’s executive session was not subject to the OML because the censure resulting from that meeting was merely an expression of the Board’s opinion on Anzalone’s performance as a trustee and “d[id] not have anything to do with laws or measures that affect the general public.” But in reaching this conclusion, the district court failed to recognize that the censure was a formal action and therefore, under *Costilla County*, involved the Town’s policy-making powers.

3. The Executive Session and Censure Were Subject to the OML

¶ 29 It is important to recall the context that gave rise to the executive session and the resulting censure. The purported

³ The court quoted Dictionary.com, <https://perma.cc/BZC8-KAT6>.

justification for the Board's actions was that Town residents and employees made complaints concerning actions that Anzalone took in her capacity as a trustee. Irrespective of the propriety of Anzalone's alleged discussions with Del Norte's residents about code enforcement, her efforts to call a special meeting of the Board, or her discussions with Town employees about the appropriate turnover rate of Town positions, these topics related to matters that affect the residents of Del Norte and Anzalone's role as a trustee.

¶ 30 Similarly, efforts to remove a duly elected trustee from her elected office,⁴ or to formally censure her, are matters that affect the residents of Del Norte. After all, they elected her to the position.

¶ 31 And contrary to the Town and Board's arguments on appeal, their conduct leading up to the adoption of the censure reflected their perception that the Board was contemplating the exercise of its policy-making powers. When the allegations of misconduct were

⁴ The parties' briefs do not discuss, and we therefore do not decide, whether, or under what circumstances, the board of trustees of a statutory town has the legal authority to remove a duly elected trustee. We also note, however, that section 24-6-402(4)(f)(II), C.R.S. 2023 precludes a local public body engaging in "discussions concerning any member of the local public body" during an executive session.

originally raised, the Board, at its October regular public meeting scheduled a formal public meeting to address whether it should pursue removal of Anzalone from office. Consistent with the contemplated policing-making function implicated by such action, the Board scheduled the removal discussion for a public hearing and provided notice of that meeting to the public pursuant to the OML. Similarly, when the Board decided to hold an interim meeting to receive legal advice on the pending removal action, it scheduled a special meeting and provided the public with notice pursuant to the OML.

¶ 32 The posted agenda for the special meeting stated the first agenda item was an executive session pursuant to section 24-6-402(4)(b) of the OML to receive legal advice from the Town attorney concerning Anzalone’s removal. The second agenda item was described as “*Action* by Town Board as a result of Executive Session related to Trustee removal.” (Emphasis added.) Thus, the procedures followed, as well as the substance of the planned action, reflected the Town’s and Board’s understandings that they were contemplating formal action on a matter subject to the OML.

¶ 33 The Board’s actions at the special meeting reflected the same understanding. A roll call at the commencement of the meeting confirmed that a quorum of the Board was present. The Board then proceeded immediately to the executive session. Although there is a dispute whether the Board adequately articulated the subject matter of the executive session in accordance with the OML, there is no question that the Board was purporting to act under the authority of the OML when it proceeded to executive session.

¶ 34 For reasons that are not explained, the executive session was apparently not recorded. *See supra* note 2. But there is no doubt based on the agenda, the length of the executive session, and the content of the censure resolution — which was presented and immediately approved by the Board after the executive session ended — that the Board discussed Anzalone’s possible removal and censure during the executive session.

¶ 35 The district court did not focus on these considerations, but rather rested its conclusion on Anzalone’s purported failure to “demonstrate a meaningful connection between the [executive session] and the policy-making powers of the [Board].” *Costilla County*, 88 P.3d at 1194. But in doing so, the court failed to give

effect to the supreme court’s holding in *Costilla County*, which expressly states that such “a link exists . . . when the meeting is convened to discuss or undertake one of the actions enumerated in the remedy provision of the OML such as a rule, regulation, ordinance, or *formal action*.” *Id.* (emphasis added). Therefore, the Board need only have discussed or undertaken, as relevant here, formal action during the executive session for it to be subject to the OML.

¶ 36 The district court cited these portions of *Costilla County* but concluded that the censure was not a formal action because it merely expressed the Board’s personal opinion concerning Anzalone’s performance. We find this reasoning unpersuasive for multiple reasons.

¶ 37 First, the district court relied on the United States Supreme Court’s opinion in *Houston Community College System v. Wilson*, 595 U.S. 468 (2022). In *Houston*, the board of the community college censured one of its member trustees for making certain statements. *Id.* at 471-72. But *Houston* did not present the question of whether the censure constituted a formal action by the board that triggered any applicable open meetings laws. Rather,

the issue in *Houston* was whether the censure resolution amounted to retaliatory action in violation of the trustee's First Amendment right to free speech. *Id.* at 472-73. In analyzing this issue, the Supreme Court noted that local public bodies have long enjoyed the right to censure their members for perceived improprieties. *Id.* at 475-76. The Court also noted that the censure did not prevent the affected trustee from doing his job or deny him any privilege of office as a trustee. *Id.* at 479. Thus, the Court reasoned, the censure could not "have materially deterred an elected official like [the trustee] from exercising his own right to speak." *Id.*

¶ 38 The district court noted that this censure resolution, like that presented in *Houston*, did not prevent Anzalone from continuing to do her job as trustee and did not deny her any privilege of her office. But even if we accept this conclusion for the sake of

argument,⁵ we conclude it does not support the district court's order. *Houston* focused on whether the censure deprived a trustee of his right to free speech. But that is not an issue in this case. What is an issue is the public's right to observe the discussion and exercise of the Town's policy-making functions. Irrespective of its impact on Anzalone, the censure resolution constituted a formal action⁶ of the Board and was thus part of its policy-making function. Such action is subject to the OML.

¶ 39 This conclusion is consistent with a recent decision by a different division of this court. *See Sentinel Colo. v. Rodriguez*, 2023

⁵ We note that the censure resolution took Anzalone to task for her purported interaction with the residents of Del Norte and Town employees. The censure also stated that "similar infractions may result in her removal from office." There is a persuasive argument that the content of the censure may well have interfered with Anzalone's ability to continue to perform her trustee duties, as she thought appropriate, in serving the residents of Del Norte. But we need not resolve this issue to decide this case and therefore do not address it further. *See, e.g., Sedgwick Props. Dev. Corp. v. Hinds*, 2019 COA 102, ¶ 31 (if it is not necessary to decide an issue, we refrain from doing so).

⁶ We do not need to decide whether all censures issued by a board against a trustee always trigger the OML. It is sufficient to conclude that this censure resolution, which was adopted at a public meeting called to address the potential removal of a trustee and attended by of a quorum of the trustees, was subject to the OML.

COA 118. The dispute in *Sentinel* arose out of public statements made by an Aurora City Council member publicly criticizing police employees, which resulted in the initiation of censure proceedings against the council member. *Id.* at ¶ 3. On appeal, the division concluded that a local newspaper was entitled to obtain the recording of an executive session at which the Aurora City Council approved the dismissal of the pending censure proceedings, reasoning as follows:

The record shows that at the . . . executive session the City Council adopted a “position . . . or formal action” in deciding to end [the council members] censure proceedings, in violation of the OML. See § 24-6-402(4) (“[N]o adoption of any . . . position, . . . or formal action . . . shall occur at any executive session that is not open to the public.”).

The City Council’s formal action is shown in the letter that accompanied the March 28 agenda, which states that special counsel was “directed and instructed” at the March 14 executive session “to end the investigation prior to any public hearing” and to “enter into a stipulation” to dismiss [the council member’s] censure charges.

Id. at ¶¶ 31-32.

¶ 40 While we appreciate that the district court did not have the benefit of *Sentinel* when entering its order, nonetheless the decision

illustrates the proper application of the OML to the present dispute. Although *Sentinel* involved a censure action rather than a removal action, the executive session in *Sentinel*, as here, was held to receive legal advice and address the pending disciplinary action. In *Sentinel*, the formal action taken in executive session resulted in the dismissal of the censure charges. Here, the formal action taken in executive session was the adoption of the censure resolution and the decision to terminate the removal effort. In both cases, the result was the same: the formal action taken in executive session violated the OML.

¶ 41 We are not persuaded by the Town and Board's efforts to distinguish *Sentinel*. As best we understand their argument, the Town and Board contend that censure proceedings were expressly authorized by Aurora's home rule charter. Because the censure was legally authorized, the argument continues, Aurora's adoption of the censure was a formal action. Because statutory towns do not have an express statutory grant of censure authority, the Town and Board posit that the censure was not a formal action. We disagree.

¶ 42 In the first instance, the effort to separate the Town's authority to issue a censure from its statutory authorities is strained at best.

The Town and Board’s legal authority to act, including any associated inherent authority to discipline Board members, derives from the Colorado Constitution and statutory law. In any event, the argument fails to recognize the big picture: adopting a resolution to discuss the possible removal, or alternatively the censure under threat of future removal, of a duly elected public official clearly constitutes a formal action involving the public’s business and is subject to the OML.

4. The Board Took Formal Action in Executive Session

¶ 43 We recognize that the Town and Board did not stipulate that the censure resolution was discussed or that formal action was taken during the executive session. And because of its ruling, the district court did not hold a trial or otherwise resolve this alleged factual dispute. But based upon the undisputed facts before the district court, we conclude as a matter of law that the Board exercised its policy-making process during the executive session. *See, e.g., Fox v. I-10, Ltd.*, 936 P.2d 580, 582 (Colo. App. 1996) (“[T]he correctness of legal conclusions based on undisputed facts is a question of law subject to review on appeal.”), *aff’d*, 957 P.2d 1018 (Colo. 1998).

¶ 44 There were no substantive discussions of Anzalone’s removal or censure during the public meeting before the commencement of the executive session. The Board convened in executive session for approximately ninety minutes. In addition to the Board, various Town employees attended the executive session, along with the Town’s attorney, who was there to provide legal advice concerning Anzalone’s removal. After exiting the executive session, the Board proceeded to take “[a]ction . . . as a result of the [e]xecutive [s]ession relating to [Anzalone’s] removal.” The Board did not conduct a hearing, took no evidence, and received no public comment after exiting the executive session. Rather, the Board immediately moved to censure Anzalone and read aloud the multi-paragraph written censure motion. After accepting a suggested addition from the Town attorney, the Board proceeded to unanimously approve the amended censure resolution. In all, approximately five and a half minutes passed from the completion of the executive session to the adjournment of the public meeting.

¶ 45 These undisputed facts lead to the inevitable conclusion that the Board discussed in executive session the pending removal proceedings, the alleged misconduct by Anzalone, the substance of

the censure resolution, the adoption of the censure resolution in lieu of removal, and the resulting cancellation of the November public meeting that had been set to address Anzalone's removal. These actions involve the Town's policy-making functions and could not be undertaken in executive session.

¶ 46 To the extent the Town and Board argue that no formal action was taken during the executive session because the censure was formally adopted during the final five and a half minutes of the public meeting, we conclude that this argument is precluded by the "rubber stamping" principle. *See Costilla County*, 88 P.3d at 1194. There is no rational way to conclude that the substance of the censure resolution was not discussed and agreed upon during the executive session. And no evidence was received during the public session that supports the substantive conclusions contained in the censure. Thus, we conclude that the vote taken in open session was merely a rubber stamping of the policy-making functions and formal action taken during the executive session. *See id.*

5. Remedies

¶ 47 The statutory consequence of the Town's and Board's violation of the OML is clear. The censure is invalid as a matter of law. *See*

§ 24-6-402(8); *Costilla County*, 88 P.3d at 1193. Thus, the district court erred by dismissing Anzalone’s claim to invalidate the censure resolution under the OML.

¶ 48 For the reasons stated, Anzalone is entitled to an order declaring the censure resolution invalid. She has therefore prevailed on her claim under the OML. Anzalone has also requested an award of her costs and attorney fees incurred in pursuing the OML claim, both before the district court and on appeal. She is entitled to that relief:

The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees.

§ 24-6-402(9)(b); *see also Zubeck v. El Paso Cnty. Ret. Plan*, 961 P.2d 597, 601-02 (Colo. App. 1998) (“Under the provisions of the OML, plaintiffs are entitled to an award of attorney fees upon a finding that the governmental entity has violated any of the provisions of the law.”).

¶ 49 Thus, we remand this case to the district court to determine Anzalone's reasonable costs and attorney fees incurred in pursuing her OML claim before the district court and on appeal.

III. Disposition

¶ 50 The judgment is reversed. The case is remanded to the district court to enter an order declaring the censure resolution invalid and to determine the amount of Anzalone's reasonable attorney fees and costs. *See S. Colo. Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein*, 2014 COA 171, ¶ 40; C.A.R. 39.1.

JUDGE FOX and JUDGE BERGER concur.