NOT FOR PUBLICATION -- UPLOAD TO WWW.VID.USCOURTS.GOV

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION

THE DAILY NEWS PUBLISHING CO, INC. d/b/a THE VIRGIN ISLANDS DAILY NEWS Appellant, v. **HONORABLE LORRAINE L. BERRY, et. al.** Appellees.	**D.C. Civ. App. No. 1998-213** Re: Terr. Ct. Civ. No. 98/723

On Appeal From the Territorial Court of the Virgin Islands

Considered: May 26, 1999
Filed: March 14, 2000

BEFORE: **THOMAS K. MOORE**, District Judge, District Court of the Virgin Islands; **STANLEY S. BROTMAN**, Senior District Court Judge for the District of New Jersey, Sitting by Designation; **EDGAR D. ROSS**, Territorial Court Judge, Division of St. Croix, Sitting by Designation.

APPEARANCES:

Adriane Dudley, Esq.
Cathy Smith, Esq.
St. Thomas, U.S.V.I.
Attorneys for Appellant,

Yvonne L. Tharpes, Esq.
St. Thomas, U.S.V.I.
Attorney for Appellees.

OPINION OF THE COURT

PER CURIAM.

Appellant Daily News Publishing Co., Inc. d/b/a the Virgin Islands Daily News ["Daily News"] appeals the Territorial Court's denial of injunctive relief. Citing the Virgin Islands Government in the Sunshine Act ["Sunshine Act"], the Daily News had sought a temporary restraining order ["TRO"] and an injunction requiring Senator Lorraine L. Berry and seven other senators[1] [the "eight senators" or "appellees"] to open their meetings to reporters from the Daily News and enjoining the appellees from withholding such access to future meetings.

The Territorial Court denied the TRO on September 17, 1998. On October 7th, the appellees filed a motion to dismiss. The court heard argument on the preliminary injunction on October 13th, and on November 4th it granted the motion to dismiss. Appellant filed a timely notice of appeal on November 16, 1998.

On August 23, 1999, while this appeal was pending, the Legislature of the Virgin Islands passed Bill No. 23-0077 amending the Sunshine Act, and the Governor signed the bill into law three weeks later. *See* Act of Sept. 14, 1999, Act No. 6293, 1999 V.I. Sess. Law (amending Sunshine Act) [the "1999 Amendment"

[1] The other senators were Carol M. Burke, Roosevelt David, Adlah Donastorg, Miguel Camacho, Holland Redfield, Judy M. Gomez, and Vargrave A. Richards.

or "Amended Act"].[2] The 1999 Amendment deleted entirely section 253(b)(1) and effectively moved that deleted language to the end of section 253(b)(5), so that the revised definition section now reads:

> For the purposes of this chapter-
> . . . .
> (b) "Governmental agency" or "agency" means all of the following:
> (1) *(deleted)*
> (2) All governing and/or administrative boards and commissions, including . . . ;
> . . . .
> (5) . . . .
> Said term does not include the courts of the Virgin Islands *or the Legislature of the Virgin Islands or any of its Standing and Special Committees*.

Id. (emphasis added).[3] To further clarify that political conferences and caucuses are to be excluded from the Sunshine Act's provision of openness, the 1999 Amendment inserted a new section 254(g), which reads in relevant part:

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[2] The bill's Preamble specifically addressed the appellant's argument by stating that "the Legislature never intended caucuses, majority or minority bloc conference or any other informal gathering, to be considered 'meetings' of a 'government agency' and therefore open to the public."

[3] The following shows the entire change to § 253(b):

> For purposes of this chapter -
> . . . .
> (b) "Governmental agency" or "agency" means all of the following:
> (1) ~~The Legislature of the Virgin Islands and all of its Standing and Special Committees;~~
> (2) All governing and/or administrative boards and commissions, including . . . ;
> (5) . . . .
> Said term does not include the courts of the Virgin Islands *or the Legislature of the Virgin Islands or any of its Standing or Special Committees*.

> (g)(1) . . . .
> (2) nothing in this chapter shall be construed as extending the provisions hereof to deliberations of political conferences and caucuses so long as the political conferences and caucuses are not called for the purpose of circumventing the requirements of this subsection.

Id.

It has long been settled that a federal court has no authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *See Mills v. Green*, 159 U.S. 651, 653 (1895). *See also Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). For that reason, if an event occurs while a case is pending on appeal that makes it impossible for the court to grant "any effectual relief whatever" to a prevailing party, the appeal must be dismissed. *See Mills*, 159 U.S. at 653.

Such an event may be the expiration or repeal of the legislation being challenged, where the plaintiff has sought only prospective relief. An order enjoining the enforcement of a challenged statute which no longer exists would be meaningless, and the action should be dismissed as moot. *See, e.g., New Orleans Flour Inspectors v. Glover*, 160 U.S. 170 (1895) (repeal); *Burke v. Barnes*, 479 U.S. 361, 363-65 (1987) (expiration).

A case may also be rendered moot when the challenged statute

is materially altered by amendment. *See, e.g., Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (per curiam) ("substantia[l] amend[ment]" of challenged regulation mooted controversy over its validity). Where, as here, the challenged law is revised in such a way that the law no longer applies to the appellant, there is no live controversy for judicial decision. Since the appellant has not sought damages, the pre-Amendment Sunshine Act has no bearing on this matter. With no live controversy remaining before us, the appeal must be dismissed.

DATED this 14th day of March, 2000.

ATTEST:
ORINN ARNOLD
Clerk of the Court

By:_____/s/_____
Deputy Clerk

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St. Thomas, U.S.V.I.
Attorneys for Appellant,

Yvonne L. Tharpes, Esq.
St. Thomas, U.S.V.I.
Attorney for Appellees.

ORDER OF THE COURT

For the reasons set forth in the accompanying Opinion of even date, it is hereby

ORDERED that the above-captioned matter is **DISMISSED.**

ATTEST:
ORINN ARNOLD
Clerk of the Court

By:_____/s/_____
Deputy Clerk

Copies to:
Hon. Thomas K. Moore
Hon. Stanley S. Brotman
Hon. Edgar D. Ross
Adriane Dudley, Esq.
Cathy Smith, Esq.
Yvonne L. Tharpes, Esq.
Mrs. Jackson
Mrs. Francis
Jeffrey H. Jordan