

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL WAYNE CREW,
Appellant,
vs.
NEVADA BOARD OF PAROLE
COMMISSIONERS,
Respondent.

No. 44510

FILED

OCT 12 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This proper person appeal challenges a district court order dismissing a complaint that alleged open meeting law violations with respect to a parole board hearing. First Judicial District Court, Carson City; William A. Maddox, Judge.

Below, appellant Russell Wayne Crew filed a complaint for declaratory relief, asserting that respondent Nevada Board of Parole Commissioners violated Nevada's open meeting law, NRS Chapter 241, when it conducted part of his parole hearing in closed quarters. Upon the parole board's subsequent motion to dismiss under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted, the district court concluded that the parole board was a quasi-judicial body exempt from open meeting law requirements and dismissed Crew's complaint. Crew has appealed.

On appeal, Crew contends that the parole board, as a public body, is subject to the open meeting law. Specifically, while Crew concedes that the board is a quasi-judicial body, he argues that quasi-judicial bodies

are not per se exempt from open meeting law requirements. The parole board disagrees.

We rigorously review a district court order dismissing a complaint under NRCP 12(b)(5) for failure to state a claim.¹ For this purpose, a complaint's factual allegations are liberally construed, with every fair inference drawn in favor of the non-moving party, and the complaint is properly dismissed only when it appears that the plaintiff could prove no set of facts that, if accepted as true, would entitle him to relief.²

This court recently has considered whether the parole board is subject to Nevada's open meeting law, in Witherow v. State, Board of Parole Commissioners.³ In that case, we concluded that "[p]arole hearings involving [decisions to grant, deny, or revoke parole] are quasi-judicial proceedings that are exempt from the Open Meeting Law."⁴ In so concluding, we recognized that the open meeting law's exemption for judicial proceedings⁵ extends to quasi-judicial proceedings.⁶ Accordingly,

¹Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997).

²Id.

³123 Nev. ___, ___ P.3d ___ (Adv. Op. No. 33, September 20, 2007).

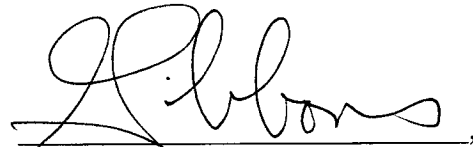
⁴Id. at ___, ___ P.3d at ___.

⁵NRS 241.030(4)(a).

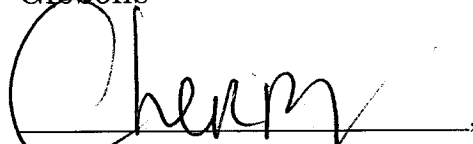
⁶Witherow v. State, Bd. of Parole Comm'rs, 123 Nev. at ___, ___ P.3d at ___ (citing Stockmeier v. State, Dep't of Corrections, 122 Nev. 385, 390, 135 P.3d 220, 223 (2006)).

as parole board release hearings are quasi-judicial and thus not subject to the open meeting law, Crew failed to state a claim upon which relief could be granted, and we affirm the district court's order dismissing his complaint.⁷

It is so ORDERED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

⁷We have considered Crew's argument with respect to the constitutional separation of powers provision, see McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983) (providing that constitutional issues may be considered even if raised for the first time on appeal), and we conclude that it is without merit. See, e.g., Galloway v. Truesdell, 83 Nev. 13, 20-21, 422 P.2d 237, 242-43 (1967) (explaining the judiciary's role in Nevada's tripartite government system); Jensen v. Labor Council, 68 Nev. 269, 281, 229 P.2d 908, 913 (1951) (citing with approval Ex parte Speer, 23 P.2d 239, 241 (Idaho 1933), which noted that, generally, once a court has executed its duty to interpret the law, authority to change the law thus interpreted belongs to the legislature), overruled on other grounds by Vegas Franchises v. Culinary Workers, 83 Nev. 422, 424-25, 433 P.2d 263, 265 (1967).

cc: Hon. William A. Maddox, District Judge
Russell Wayne Crew
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk