

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY R. SCHMIDT,  
Appellant,

vs.

RICHARD GAMMICK, WASHOE  
COUNTY DISTRICT ATTORNEY, AND  
PETER SIMEONI, DEPUTY DISTRICT  
ATTORNEY,  
Respondents.

No. 45404

**FILED**

**SEP 29 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing an action for declaratory relief. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

Gary Schmidt, the Vice-Chairman of the Washoe County Board of Equalization (the Board) sought a declaratory judgment that reciting the United States Pledge of Allegiance (the Pledge) at a board meeting when the Pledge was not listed on the agenda does not violate the open meeting law. Peter Simeoni, a Washoe County deputy district attorney, had previously rendered his opinion that reciting the Pledge at a board meeting without it being listed on the agenda would be an open meeting law violation. Schmidt did not recite the Pledge at that board meeting.

The district court dismissed the case because Schmidt did not have standing to bring a declaratory action. We agree. To obtain declaratory relief, "there must exist[, among other things,] a justiciable

controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; . . . .”<sup>1</sup>

In this case, the Pledge was not recited at the meeting, no one is threatening legal action contesting the meeting’s validity under the open meeting law, and the respondents have no real interest in contesting whether the Pledge could have been validly recited. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Second Judicial District Court Dept. 7, District Judge  
Leonard I. Gang, Settlement Judge  
Glade L. Hall

---

<sup>1</sup>Knittle v. Progressive Cas. Ins. Co., 112 Nev. 8, 10, 908 P.2d 724, 725 (1996) (quoting Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

<sup>2</sup>Although Schmidt lacks standing to raise the question whether the recitation of the Pledge must be included on a public bodies’ agenda to avoid a violation of the open meeting law, the open meeting law requires an agenda to recite those topics to be considered or acted upon. NRS 241.020(2)(c). We fail to see how reciting the Pledge at the beginning of a public meeting implicates either requirement.

Washoe County District Attorney Richard A. Gammick  
Washoe County District Attorney Richard A. Gammick /Civil  
Division  
Washoe District Court Clerk