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September 9, 1997

Andy Williams
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Bill Jump
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RE: H.A. Williams et. al. v. Danny J. Cruz, Mayor
Colfax County District No. 96-40-CV

Dear Andy, Carlos and Bill:

I enclose a copy of the Judgment which was entered September 3, 1997, by Judge Nelson in the above matter. Judge Nelson has entered the Judgment which we requested to be entered, so this represents an absolute rejection by the Court of the Mayor's position on virtually every point raised.

An appeal from this Judgment would have to be taken by 5:00 p.m. on October 3, 1997. There still remains a motion for reconsideration pending which will be held September 29, 1997. That is on the limited question of whether the Judge understood that you were reimbursed for your attorneys fees. That was already a matter of record. I do not think that will affect the Judge's decision in any way.

I will keep you advised.

Best regards.

Very truly yours,


John P. Davidson

JPD/lms

COLFAX
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**EIGHTH JUDICIAL DISTRICT
COUNTY OF COLFAX
STATE OF NEW MEXICO**

NO. 96 - 40 - CV

**H.A. WILLIAMS, CARLOS
GUTIERREZ, and WILLIAM JUMP
in their capacities of Trustees of the
Town of Springer, New Mexico,**

Plaintiffs,

v.

**DANNY J. CRUZ, Mayor of the Town
of Springer, New Mexico,**

Defendant.

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JOHN P. DAVIDSON, ATTY. AT LAW

JUDGMENT

THIS MATTER came before the Court on the 2nd day of June, 1997, for hearing on three motions, including (1) the Defendant Mayor Danny J. Cruz' Motion for Relief from Partial Judgment; (2) the Defendant Mayor Danny J. Cruz' Motion for Summary Judgment; and (3) the Plaintiffs' Cross Motion for Summary Judgment. The Plaintiffs appeared by their attorney John P. Davidson. The Defendant Mayor Danny J. Cruz appeared in person with his attorney Jere K. Smith, McClaugherty, Silver & Downes, P.C. The Court heard arguments of counsel and is familiar with the pleadings and memoranda of authorities filed by the parties.

**DEFENDANT MAYOR DANNY J. CRUZ' MOTION FOR RELIEF FROM
PARTIAL JUDGMENT**

With respect to the Motion for Relief from Partial Judgment, the Court finds that the Court has jurisdiction over the parties and the subject matter for a variety of reasons. First, the Plaintiffs have standing to bring this action as individuals, which includes their capacities as citizens of the Town of Springer, taxpayers in the Town of Springer, and as individual Trustees of the Town of Springer. Consequently, the Plaintiffs, acting as individuals, even as individuals with official capacity, are not required to comply with the Open Meetings Act. Second, even if the Plaintiffs were, as suggested by the Defendant, necessarily acting as the Town because they together constituted a majority of the Board of Trustees, which this Court does not determine, the action of filing the suit was approved and ratified by the Town through the action of the Board of Trustees in approving payment of attorney fees for the parties at a public meeting held on April 8, 1996, which was held pursuant to notice in compliance with the Open Meetings Act. The suit could have been brought by less than a majority of the Trustees in their individual capacity, and the fact that a majority of the Trustees join in the suit in their individual capacity does not convert this into a suit by the Town of Springer or the Board itself. Third, the Town itself is not a party, although it could have been joined, and the Defendant Mayor Danny J. Cruz has made no attempt to join or require joinder of the Town as a party. Fourth, the Defendant Mayor Danny J. Cruz stipulated, as reflected by a Stipulation filed herein on April 10, 1996, that the Plaintiffs are

interested parties. Accordingly, the Court finds that the Motion is not well taken and should be denied.

MOTIONS FOR SUMMARY JUDGMENT

With respect to the Motions for Summary Judgment, the Court finds that the pleadings and affidavits show that there is no genuine issue as to any material fact bearing on the issues presented by the parties' respective Motions for Summary Judgment. The Court further finds that the Defendant Mayor Danny J. Cruz' Motion for Summary Judgment should be denied as a matter of law. The Court further finds that the Plaintiffs are entitled to declaratory judgment as a matter of law, but declines to issue the injunctive relief sought by Plaintiffs. To the extent that it may be necessary or helpful for clarification, the following is the basis of the Court's decision.

EXISTENCE OF A CASE OR CONTROVERSY

The Court finds that there is a case or controversy justifying decision of the issues presented, and that the issues have not been mooted by the Defendant Mayor Danny J. Cruz' recognition of the applicable law during the pendency of the case.

VIOLATION OF OPEN MEETINGS ACT AT APRIL 16, 1996 MEETING

The Court finds that the Defendant Mayor Danny J. Cruz has not shown, as a matter of law, a violation of the Open Meetings Act at the April 16, 1996 meeting when the Board of Trustees voted to disapprove the Defendant Mayor Danny J. Cruz' suspension of the

Police Chief, for two reasons. First, the uncontested facts show that the Defendant Mayor Danny J. Cruz allowed the vote to be conducted without objection and that he did not advise the Board of his concern about the Open Meetings Act. The Board learned of the concern when advised by the Attorney General more than three months later, after the initial hearing in this matter. The Defendant Mayor Danny J. Cruz is accordingly estopped from subsequently raising the possibility of a violation of the Act at a later time, even if a violation did occur. Second, the uncontested facts show that an emergency existed, creating an exception to the obligation of the Board to comply. The emergency arises from the status of the police force at that time, which is reflected by the Stipulation of April 10, 1996, which states that the Town had only two other police officers employed.

PRIOR PARTIAL JUDGMENT ENTERED APRIL 25, 1996

In order to combine the prior rulings of the Court in this action into one final judgment, the prior Partial Declaratory Judgment of the Court entered April 25, 1996, is incorporated in this Judgment and set forth below.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

1. The Partial Declaratory Judgment entered herein on April 25, 1996, be, and it hereby is, declared final and is incorporated herein.

2. The Defendant Mayor Danny J. Cruz acted without authority in attempting to terminate the employment of Police Chief Edward Martin on March 26, 1996.


3. The Police Chief is an appointed officer of the Town of Springer, and he continues in office until his successor has been appointed and is qualified, pursuant to NMSA 1978, Section 3-11-5.

4. Following the disapproval of the Defendant Mayor Danny J. Cruz' suspension of the Police Chief on April 16, 1996 by the Board of Trustees of the Town of Springer, the Defendant Mayor Danny J. Cruz had no authority and has no present or continuing authority to suspend the Police Chief Edward Martin on the basis of any reason known to the Defendant Mayor Danny J. Cruz as of April 16, 1996 including, but not limited to, those reasons set forth in the March 16, 1996 memorandum prepared by Dennis Manzanares and set forth orally by the Defendant Mayor Danny J. Cruz in a closed meeting of the Board held in Springer, New Mexico, on June 17, 1996.

5. The Police Chief Edward Martin continues in office notwithstanding the Defendant Mayor Danny J. Cruz' attempt to suspend him following the disapproval of the prior suspension at the April 16, 1996 meeting, pursuant to NMSA 1978, Section 3-11-6.

6. Nothing in this Judgment shall preclude the Defendant Mayor Danny J. Cruz from submitting any additional or new name to the Board of Trustees for appointment as Police Chief pursuant to NMSA 1978, Section 3-11-5, as he may determine to be his statutory responsibility.

7. Nothing in this Judgment shall prevent the Defendant Mayor Danny J. Cruz from suspending the Police Chief Edward Martin on the basis of any reason arising after April 16, 1996, other than those reasons set forth above, subject to review and approval or disapproval by the Board of Trustees as provided by NMSA 1978, Section 3-11-6.


PEGGY J. NELSON, District Judge

Prepared by:

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By: 

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Submitted to:

McCLAUGHERTY, SILVER & DOWNES,
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By: _____

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