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Schoof v. Nesbit, 2014 MT 6

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Constitutional Law

(1) Plaintiff has standing in claims involving the right to know and right to participate even if she cannot allege an injury different from the injury to the public, overruling Fleenor. (2) The common-law doctrine of equitable tolling may be applied to the 30-day statute of limitations for concealed claims involving the right to know and right to participate.

Brian Schoof had long involved himself in public meetings in Custer County and attended many meetings of the county commissioners. On July 26, 2007, the Custer County Commissioners held an unannounced meeting where they decided to allow county officials to receive cash payments in lieu of contributions to a health insurance program. The public was not informed in advance of the meeting. The minutes of the meeting did not adequately document the decision to adopt the “cash in lieu” policy.

Four years later, on August 17, 2011, Deputy County Attorney Joni Oja revealed the “cash in lieu” policy during a meeting. On September 16, 2011, 30 days after learning of the decision, Schoof filed his claim against the county commissioners to invalidate the decision. Schoof argued the 30-day statute of limitations should be tolled under Montana’s statutory discovery rule; he did not claim that the common-law doctrine of equitable tolling should have been applied.

The district court held that: (1) Schoof’s claims were barred by the 30-day statute of limitations; (2) the discovery rule did not toll the statute of limitations; and (3) infringements of constitutional rights do not constitute an “injury to person or property” as required to toll the statute of limitations under the statutory discovery rule. The district court reasoned that the Legislature would not have amended the statute of limitations that applied to the right to know and the right to participate unless the Legislature believed that the statutory discovery rule did
not apply to those claims. Schoof appealed to the Montana Supreme Court. The Court *sua sponte* requested additional briefing on the issue of whether Schoof had standing to bring his claims.

The Court held that Schoof had standing, even though he did not allege an injury beyond the common interest of all citizens or taxpayers, thus overruling *Fleenor v. Darby School District*. In *Fleenor* the Court held that the plaintiff lacked standing because she failed to allege an injury different from the common interest. Here, the Court reasoned that the rights to participation and open government would be impossible for plaintiffs to bring if a personal stake is required in every case. Further, the Court held that *Fleenor* was wrong to require an injury that was distinguishable from the public injury. Rather, the Court indicated that the proper standard was to analyze whether the injury was concrete or abstract.

In a special concurrence, Justice McKinnon argued that the Court was wrong to apply common-law doctrines of equitable tolling, because neither party had expressly argued for or against the common-law doctrines. Rather, Schoof had argued that the statutory discovery rule should apply. Justice McKinnon reasoned that under Montana jurisprudence on the discovery rule, the 30-day limitation period could be tolled because it was a short period, not set forth with emphatic statutory language, not reiterated in the statute, and because tolling the limitation period was consistent with the policies behind the right to know and the right to participate.

Practitioners should be aware of the relaxed standards announced in this case: first, the relaxed standard for standing in cases involving the right to know and the right to participate, where a concrete injury to the general public could suffice; and second, the relaxed standard for equitable tolling, where common-law principles were applied to toll the statute of limitations on a concealed claim.

Honorable Blair Jones, District Court Judge of the Sixteenth Judicial District.
For Appellant: Peter Michael Meloy, Helena, Montana.

For Appellees: Michael W. Sehestedt, MACo Legal Services, Helena, Montana.

Thomas J. Bourguignon