**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. 2009-0283, Robert P. Hull & a. v. Grafton County & a., the court on March 31, 2010, issued the following order:**

The petitioners, Robert P. Hull and John J. Babiarz, appeal an order of the trial court refusing to set aside a bond vote taken by the Grafton County delegation on February 11, 2008, and awarding the petitioners attorney's fees in an amount less than they requested. The petitioners argue that the trial court erred in: (1) failing to invalidate the bond vote after finding that a meeting of the Grafton County Commissioners that preceded the delegation meeting violated RSA chapter 91-A, the Right to Know Law; (2) concluding that the "recess meeting" was not a meeting governed by RSA chapter 91-A; and (3) calculating the amount of the attorney's fees award. We affirm.

We turn first to the trial court's finding that an early morning gathering of the Grafton County Commissioners (gathering) violated the Right to Know Law, a finding that has not been appealed. The question before us is whether that violation required that a vote taken during a subsequent meeting of the county delegation on the same date be invalidated. RSA 91-A:8, II (2001) provides that a "court may invalidate an action of a public body or agency held in violation of the provisions of this chapter, if the circumstances justify such invalidation." The word "may" is permissive in nature; thus, we review the trial court's decision to determine whether its exercise of discretion is sustainable. Lambert v. Belknap County Convention, 157 N.H. 375, 381 (2008).

The trial court found that no action was taken at the gathering that could be invalidated and that the gathering had no impact upon the subsequent bond vote taken by a different body, the county delegation, compare RSA 24:1 with RSA 653:1, IV and RSA 653:1, IV (a). In its well-reasoned order, the trial court made several other findings to support this conclusion; these findings are supported by the record. See Cook v. Sullivan, 149 N.H. 774, 780 (2003) (supreme court defers to trial court's judgment on such issues as resolving conflicts in testimony, measuring credibility of witnesses and determining weight to be given evidence). Accordingly, we conclude that the trial court's denial of the petitioners' request to invalidate the subsequent delegation vote due to the gathering of the county commissioners is sustainable.

The petitioners also argue that the trial court erred in determining that a gathering that took place during a recess of the county delegation meeting was not a meeting for purposes of RSA chapter 91-A. RSA 91-A:2, I, which defines "meeting," was amended during the course of this litigation; the trial court noted

that the parties had relied upon the predecessor statute and construed its language to determine whether a meeting took place.

The former language of the statute defined a meeting as "the convening of a quorum of the membership of a public body, as provided in RSA 91-A:1-a, to discuss or act upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power." After hearing testimony and taking a view of the area, the trial court determined that a meeting did not take place because a "quorum of the Delegation did not come together, meet or assemble." The trial court further found that "[e]ven if a quorum was present in the Partitioned Area, a quorum did not discuss the correctional facility or the failed bond vote." These findings are supported by the record and support the trial court's finding that no meeting took place. We are unpersuaded by the petitioners' contention that this finding would allow a public body to avoid the open meeting requirement of the Right to Know Law by "skip[ping] a call to order and arrang[ing] itself in groups smaller than a quorum, although in the same room and within listening distance of each other." That actions taken in a similar hypothetical setting might result in a violation of the Right to Know Law does not alter our conclusion that, in this case, the record supports the trial court's finding that a meeting did not take place.

Finally, the petitioners argue that the trial court erred in reducing their request for attorney's fees. We review a trial court's award of attorney's fees under an unsustainable exercise of discretion standard, and if there is some support in the record for the trial court's determination, we will uphold it. See LaMontagne Builders v. Brooks, 154 N.H. 252, 261-62 (2006). The trial court found that the petitioners sought relief on "four distinct claims," and that they prevailed on one claim and part of another. The trial court found the claims analytically severable and thus reduced the amount of the award to exclude time spent on unsuccessful claims. See id. at 261. The court also found that "the claims on which the petitioners prevailed consumed a relatively small part of trial and many trial witnesses had no knowledge of the events forming the basis for these claims." The trial court also reduced the requested hourly rate for petitioners' counsel, finding that the petitioners had failed to establish that the requested rate was customary in the area and that their counsel regularly charged that rate for similar litigation. These factors are properly considered in determining the reasonableness of fees. See Couture v. Mammoth Groceries, Inc., 117 N.H. 294, 296 (1977). Because there is support in the record for the trial court's determination, we affirm.

Affirmed.

DALIANIS, HICKS and CONBOY, JJ., concurred.

**Eileen Fox,**
**Clerk**