

GASPARD *v.* WHORTON.

5-3629

394 S. W. 2d 621

Opinion delivered October 18, 1965.

1. MANDAMUS—APPEAL & ERROR—REVIEW.—Where trial court in mandamus proceeding did not reach the question of appellant's entitlement to copy voter records notwithstanding evidence having disclosed that request was made and permission denied, Supreme Court reaches the merits of the case upon trial de novo.
2. MANDAMUS—RIGHT TO INSPECT AND COPY VOTER RECORDS—STATUTORY PROVISIONS.—Ark. Stat. Ann. § 3-1127 and § 3-1133 which provides that voter records shall be made available for public inspection entitled appellants to inspect and copy voter records as requested.
3. MANDAMUS—APPEAL & ERROR—REVIEW.—Since denial to the public of reasonable access to public records by public officials is not conducive to the perpetuation of our form of government, decree of trial court reversed and cause remanded with directions that writ of mandamus issue.

Appeal from Madison Chancery Court; *Thomas F. Butt*, Chancellor; reversed and remanded.

*Bob Scott*, for appellant.

No brief filed for appellee.

JIM JOHNSON, Associate Justice. This appeal arises from dismissal of a petition for writ of mandamus. Appellant petitioners, Joseph B. Gaspard and others, sought to require appellee Charles Whorton, Jr., Madison County Clerk, to allow appellants to copy the list of applications for absentee ballots, the individual applications for absentee ballots and the accompanying absentee voters statements for the November 3, 1964, general election in Madison County. After hearing on January 6, 1965, the Madison Chancery Court found that appellants had failed to prove that appellee refused to permit them to photocopy these records and dismissed the petition, from which petitioners have appealed.

The trial court did not reach the question of entitlement—whether appellants were entitled to copy these records. The ruling turned on the fact question of whether proper request was made by appellants to appellee to permit them to copy these records. Our review

of the evidence discloses that an unmistakable request was made and permission clearly denied. Thus this court reaches the merits on trial de novo.

Appellants asked to copy (1) the list of applications for absentee ballots, (2) the applications for absentee ballots, and (3) the voters statements which accompanied the absentee ballots (as distinguished from the list of all persons who voted in the election). Ark. Stat. Ann. § 3-1127 and § 3-1133 (Repl. 1956) specify that the list of applications, the applications and the statements of voters "shall be made available for public inspection during regular business hours" and are therefore public records. This being true we find that appellants were entitled to copy these records and should have been given permission to do so. See *Whorton v. Gaspard*, (opinion delivered September 20, 1965), 239 Ark. 715, 393 S. W. 2d 773. *The denial to the public of reasonable access to public records by public officials is not conducive to the perpetuation of our form of government.*

The decree of the trial court is accordingly reversed and the cause remanded with directions that the writ of mandamus issue.