

Overview

Pat McCrory and fellow Democratic council member Ella Scarborough voted in favor of a resolution in September of 1994. They were notified six months before the night of the vote that the resolution involved their employer, Duke Power. We're confident that both McCrory and Scarborough would have recused themselves as they routinely did, but six months later there was no mention of Duke Power in either the resolution or discussed at the council meeting. The council voted on several land deals that night, and Pat McCrory and Ella Scarborough's vote had no affect on the outcome of the decision. The Supreme Court's decision reaffirmed that fact years later and found that there was "no abuse" in the case.

FACT CHECK

Emails (3/22/1994; 3/28/1994)

Six months before the vote, internal Duke emails were sent indicating that both Pat McCrory and Ella Scarborough were contacted about the case.

"I will contact Pat McCrory to let him know what this is about. He may be able to influence others, but he will most likely have to not vote given the possible conflict of interest." (*Email from Larry Sheppard, 3/22/1994, 10:51:37*)

"Bill, I spoke with both Ella and Pat regarding and CMUD effort to get the City to agree to request fee ownership of the right of way for the water intake line across County property. They both understood and were appreciative of the notice.

Both indicated they saw no evidence in the agenda that this would be covered in their meeting tonight. I contacted John Freeze who reiterated that CMUD told him the matter would be considered this evening. John is following up with CMUD. I told Ella and Pat that I would be happy to provide any assistance or answer questions on this matter." (*Email from Larry Sheppard, 3/28/1994, 11:00:47*)

There is no evidence that Pat or Scarborough influenced the council or the extent of their knowledge of the issue.

Council Meeting (9/12/1994)

Mayor Vinroot was present at the city council meeting and presided over the vote, not McCrory. (*Minutes Book 106, City of Charlotte, [9/12/1994](#), p.26*)

Note: Pat McCrory did not call the vote.

McCrory only presided over A PORTION of the DISCUSSION, and minutes show that Mayor Vinroot returned BEFORE the discussion was finished and BEFORE the vote was called. (*Minutes Book 106, City of Charlotte, [9/12/1994](#), p.25*)

The issue at hand was determining whether to condemn the property through “fee simple” or “easement” ownership by the city. Charlotte-Mecklenburg Utility Department director determined and testified that the fee simple route would be a preferable and cost-effective route to take for the city in the long term.

Duke Power was never mentioned in the discussion. Neither was Crescent Land. (*Minutes Book 106, City of Charlotte, [9/12/1994](#), p.25*)

Minutes show that the council voted on several other land condemnation issues not related to the Cook Farm (*Minutes Book 106, City of Charlotte, [9/12/1994](#)*)

The Resolution read before the vote occurred did not mention Duke Energy or Crescent Land. (*Minutes Book 106, City of Charlotte, [9/12/1994](#), p.25*)

Scarborough a DEMOCRAT and also a DUKE EMPLOYEE, did not recuse herself. She also voted in the majority.

- **Scarborough was also working for Duke Energy in 1994**
“Scarborough, who left Duke Energy last fall after 22 years” (Taylor Batten, “ELLA SCARBOROUGH SAYS HER U.S. SENATE RACE IS FOR EVERYDAY PEOPLE,” *Charlotte Observer* (North Carolina), 2/3/1998)
- **Scarborough ran against McCrory for mayor in 2001** (*“Longtime Charlotte leader Susan Burgess dies,” Charlotte Business Journal, 6/16/2010*)

Pat McCrory and Ella Scarborough Routinely Recused Themselves when an Issue Before the Council Involved Duke

- “Council members routinely abstain from votes involving their employer or companies with which they're involved. Mayor Pat McCrory and council member Ella Scarborough, for example, never vote on contracts or issues involving their employer, Duke Energy.” (*JIM MORRILL, “COUNCILMEN*

TANGLE OVER CITY CONTRACTS, CONFLICT," Charlotte Observer, 7/26/1997)

- "Mayor Pat McCrory and council member Ella Scarborough won't vote on the uptown arena plan. Both have a conflict of interest because they work for Duke Power, which owns the land where the arena would be built. That leaves 10 council members to make the decision." (*AMES ALEXANDER, "ARENA FANS, FOES FOCUS ON BILL TO PUBLIC," Charlotte Observer (North Carolina), 2/2/1997)*)

Strong majority supported this measure, including every Democrat on the council: The vote was 9-2 (*YEAS: Baker (R), Campbell (R), Cannon (D), McCrory (R), Majeed (D), Martin (D), Scarborough (D), Spencer (D) and Wheeler (R); NAYS: Jackson (R), Reid (R)*) (*Minutes Book 106, City of Charlotte, [9/12/1994](#), p.26*)

NOTE: Mayor doesn't vote unless breaking a tie, but he was present at the time. Even if Scarborough and Pat recused themselves, the motion still would have passed.

McCrory's only comments during the discussion (*Minutes Book 106, City of Charlotte, [9/12/1994](#), p.24*)

Mr. McCrory asked if there were any legal things which the Council should discuss in this particular matter before they proceed?

Mr. Boyd said that is one thing the Council may want to consider as far as discussing this matter in depth, but that is the Council's decision to decide whether to pursue or not. There are some reason why Council may want to do that.

Mr. McCrory asked if Council still has the option to defer this and would that cause any problems with CMUD?

Mr. Bean said it would cause problems if they deferred this matter .

Supreme Court Case (1998)

City of Charlotte vs. Cook 348 NC 222

BACKGROUND

The lawsuit involved a project to supply additional drinking water for Mecklenburg County. The pipeline that was to be constructed across a dairy farm. The pipeline that was to run under the landowner's land connected the raw water intake structure on Lake Norman and a water treatment plant in north Mecklenburg County. The City had to condemn property for the pipeline.

LEGAL ISSUE

The question was whether the property should be condemned in “fee simple” or by “easement”. Either way the landowners (husband and wife who owned a dairy farm) were to be compensated for the condemnation of the property (a process known as eminent domain). The trial court allowed the City acquire a “fee simple” interest in the property rather than an “easement.”

MAJORITY RULING

The opinion reversed the Court of Appeals and remanded the case. There is no mention of any unethical conduct by the Mayor in the Court of Appeals Opinion. The Supreme Court opinion that reversed the Court of Appeals states that the City Council’s vote to condemn a fee simple estate rather than merely an easement, in land across which pipeline would travel. The Supreme Court ruled that the City Council’s action was not arbitrary and capricious, even though the mayor pro tem, who voted with the City Council to condemn the fee simple title, was employed by the power company from which the city would purchase its power.

FACTS IN THE SUPREME COURT OPINION:

- 1) The City of Charlotte brought the condemnation action against landowners seeking fee simple title to part of the property in order to construct a pipeline for a new water treatment plant over fourteen years ago.
- 2) The Supreme Court ruled in favor of the City of Charlotte and found that the city’s decision to condemn fee simple interest, as opposed to merely an easement, was supported by the record and was not unlawful (arbitrary and capricious).
- 3) **Duke Energy was not named as a party in the lawsuit and Pat McCrory was not a party in the lawsuit.**
- 4) The “West Headnotes” lists all notes on legal issues as involving “Eminent Domain”
- 5) There is no Headnote” which indicates there was a legal issue about unethical conduct of the mayor pro tem and there is no finding of unethical conduct in either the majority opinion or Justice Lake’s dissenting opinion.
- 6) The word “ethical” is only used in the opinion, which refused to accept the attorney’s claim that the action taken by the City of Charlotte was unlawful or unethical.
- 7) **There is no allegation or finding of any unlawful or unethical action taken by the Mayor Pro Tempore (Pat McCrory) in Justice Lake’s dissent.**
- 8) The three basic principles on which Justice Lake dissented had nothing to do with the Mayor Pro Tem’s conduct (voting to condemn and take the property in fee simple rather than easement).

NOTE: *The emails and statement by Pat about knowledge or lack of knowledge about Duke Power are briefly mentioned. That was not the reason for the dissent. Lake felt the property should have been condemned through easement not in fee simple.*

NOTE: Supreme Court did not mention Scarborough in their opinion, even though she was mentioned in the emails and did not recuse herself as well.

Despite council vote in 1994, McCrory was elected mayor, kept Charlotte government “clean,” and was reelected "seven times with an average of 63 percent of the vote."

("We recommend McCrory for governor" Charlotte Observer, 10/5/2008) (Jim Morrill, "In his 2nd try for governor, a new image for McCrory," Charlotte Observer, 10/15/2012)

Duke Energy is One of the Largest Contributors to Walter Dalton, Bev Perdue the Democratic Party

Democrats Borrowed \$7.9 Million from Duke Energy to Pay for the National Convention

- "To make up the difference, the host committee was forced to tap the \$10 million line of credit that Charlotte-based Duke Energy had guaranteed to woo the convention to Charlotte in February 2011. Duke Energy said the committee borrowed \$7.9 million from the line of credit, which it must repay by Feb. 28." ("Charlotte DNC committee comes up \$12.5 million short," Charlotte Observer, 10/18/2012)
- "The company whose CEO is leading fundraising efforts for the 2012 Democratic National Convention in Charlotte is also guaranteeing the party a \$10 million line of credit for the event. (Jennifer Epstein, "Republicans cry foul over Democratic National Convention credit line," Politico, 3/14/2011)

Over The Last Two Election Cycles, Duke Energy Has Contributed More Than \$855,000 To The Democrat Governors Association (DGA). (Center for Responsive Politics [Website](#))

- So Far, During The 2012 Election Cycle, Duke Energy Has Contributed \$405,500 To The DGA, Making It the Second Largest Contributor to the Group This Cycle. (Center for Responsive Politics [Website](#))
- During The 2010 Cycle, Duke Energy Contributed \$450,000 To The DGA. (Center for Responsive Politics [Website](#))

Duke Energy, Its Subsidiaries and Employees Have Contributed At Least \$112,877 To Dalton and Perdue. (National Institute on Money In State Politics [Website](#))

- **Between 2004 and 2010, Duke Energy contributed \$58,080 to Dalton (35 Contributions).** (National Institute on Money In State Politics [Website](#))

- **Between 2004 and 2010, Duke Energy contributed \$54,797 to Perdue (37 Contributions).** (National Institute on Money In State Politics [Website](#))

Recipient	Amount
DALTON, WALTER H	\$ 58,080
PERDUE, BEV	\$ 54,797
Total	\$ 112,877