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Public denied access to constitutional drafts

By MEGAN POINSKI

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Daily News Photo by Chris Walsh Constitutional Convention President Gerard Luz James II and Secretary Mary Moorhead at Tuesday's session.

ST. THOMAS - The Fifth V.I. Constitutional Convention's executive committee has barred public access to drafts of convention documents until each section has been ratified.

At Tuesday's session, convention staff refused to give the public copies of the documents that the delegates were there to debate, amend and pass, claiming the documents were still in draft form and therefore were not required to be open to the public.

Convention President Gerard Luz James II, a professional funeral director, compared the new policy to the preparation of bodies brought to his funeral home. Quite often, James said, people beg to be able to see the body of a loved one before it has been embalmed.

"If I show them the body, it will make a wrong impression because it will look completely different when we are done with it," James said. "That's the same way with this document. We don't want people to get the wrong impressions."

Delegate Mary Moorhead, who recently was elected as the convention's secretary, said heated public debate over constitutional issues prompted the change. She said the airwaves are filled with people calling into radio talk shows and discussing ideas floated

in convention meetings that might not end up being incorporated into the final draft.

She also cited an example: "Former Judge Ross, I sent information to him about what we were working on, and he made an editorial about how backward we are being," referring to former V.I. Superior Court Judge Edgar Ross.

Moorhead said that if Ross had concerns about the constitution document, he should have brought those concerns to the delegates directly.

At all prior sessions of the convention, the documents under discussion had been readily available to anyone who attended.

No special requests for documents were necessary, and documents often were projected on a screen so everyone at the session could follow along while changes were made.

Moorhead said Tuesday that she has requested that all drafts be removed from the convention's website and asked every committee chairperson not to allow the public to have access to the written drafts.

Moorhead and James both said that the public would have access to finalized documents after they were voted on by the convention.

Many delegates who are not on the executive committee were unaware of the new stance being taken by the convention. Several were shocked by the decision and said they could not understand how the new policy could be useful.

"We're not some kind of private club. We're writing this for the people," said delegate Craig Barshinger, who let news reporters borrow his draft documents to make copies for themselves and members of the public in attendance.

A Daily News reporter questioned James about the policy, noting that since the Constitutional Convention is a governmental body funded by the public, the working draft documents are classified as public records under territorial law.

James disagreed.

"This time, it's going to be my way," he told a Daily News reporter. "All of the rough drafts of what we are working on are just for our information. They are not public records."

James also said The Daily News should be careful with what it publishes about the situation because "the people of this community know what kind of a person I am."

James said he based his position on the legality of the new policy on court rulings identified by the convention's legal counsel.

Attorney Lloyd Jordan cited case law that he said sets a precedent for withholding information that has not yet been completely ratified by a governmental body.

Three of the cases he provided are from state courts - one from Wisconsin, one from California, one from Illinois and one from Kansas - and have no impact on Virgin Islands law.

None of those cases involved the development of a constitution or the operations of a constitutional convention.

He also cited a Virgin Islands case decided by the District Court Appellate Panel in 2000. In that case, The Daily News sued the V.I. Legislature for having closed-door caucus meetings at which a majority of Senate members were present. In response to that lawsuit, the Senate quickly passed legislation that exempted its caucuses from the Government in the Sunshine Act, which requires virtually all meetings of government bodies to be open to the public.

The case had nothing to do with government documents.

Despite withholding the documents, the drafts were read aloud, in public, during Tuesday's session when delegates informally discussed those portions of the proposed constitution.

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