

FILED

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

2010 MAY -3 AM 10: 32

CLERK OF DISTRICT COURT
SCOTT COUNTY, IOWA

City of Bettendorf, an Iowa municipal Corporation, Petitioner)
)

Vrs.)

Scott County Auditor Roxanna Moritz,)

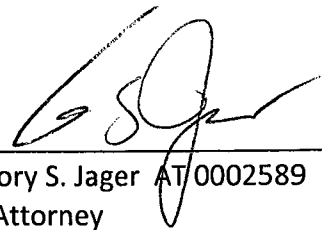
and)

Scott County Iowa, Respondents)

LAW 115801
MEMORANDUM BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

Comes Now the undersigned on behalf of the City of Bettendorf, and hereby submits this memorandum brief in support of its motion.

CITY OF BETTENDORF
PETITIONER

By: 

Gregory S. Jager AT/0002589
City Attorney
1609 State St
Bettendorf, Iowa 52722
Ph 563 344 4004
Fx 563 344 4012
gjager@bettendorf.org

Background

There are no factual disputes in this case. The only issue is whether 69.12 of the State Code mandates that Frank Baden, appointed to the vacant office of Park Board Commissioner, must run for the seat in November, 2010, rather than November 2011. Summary judgment is appropriate when the record, viewed in light most favorable to the non-moving party, shows that there is no issue of material fact, and the moving party is entitled to judgment as a matter of law. Moore v. Eckman, 762 N.W. 2d 459 (Iowa 2009). As is clear from a reading of the law, 69.12 requires Mr. Baden to run in November 2011.

Statutory Scheme for Filling Vacant Elected Offices

The Iowa Legislature has provided in Section 372.13(2) that City Councils may fill vacancies by appointment or by special election. When the Council chooses appointment, it must follow a mandated procedure, which includes publishing notice of the intent to appoint. If any resident of the city disagrees with the approach, the resident may file a petition calling for a special election. (For the office of Park Board Commissioner where the candidates often run unopposed, and even finding someone to serve can be a challenge, there is seldom any controversy over using the appointment option.)

Once appointed, the appointment is valid until the next pending election, as defined in 69.12 of the Code:

69.12:

“As used in this section, ‘pending election’ means any election at which there will be on the ballot either the office in which the vacancy exists or any other office to be filled or any public question to be decided by the voters of the same political subdivision in which the vacancy exists.”

69.12 is clear and does not mandate mixing city elections with state or federal elections.

The State Legislature has established the procedure for General Elections (state/federal office); they are held on the first Tuesday after the first Monday in November, of even numbered years. 39.1 Code of Iowa. For City Elections, the election shall be the first Tuesday following the first Monday in odd numbered years. 376.1 Code of Iowa. The Legislature has determined that city elections should not coincide with general elections. There are policy reasons for this, such as the fact that general elections are generally partisan matters, whereas city elections are generally non-partisan, but the key is that the interpretation of 69.12 must be considered in terms of this statutory framework.

The Court has already ruled that the purpose of 69.12 is to save taxpayer money. Good v. Crouch 397 N.W. 2d 757 (Iowa 1986). That is, 69.12 exists to minimize the cost to taxpayers, by requiring that to fill an office via election, the election should occur concurrent with other elections, saving time and money. 397 N.W. 2d at 760. It does not mandate that the election required after appointment to an elected office be concurrent with the next election held. To understand Section 69.12, the section should be broken into three component parts, the occurrence of any part triggering an election for the office:

- 1) The office is up for election (in this case, November 2011)
- 2) Any other office to be filled OR
- 3) Any public question to be decided by the voters of the same political subdivision (in this case, none scheduled).

Within these three categories, the item at issue is number two. Because the State legislature has established a framework keeping City elections distinct from General elections, the section should be read to further that purpose. The goal of statutory construction is to determine legislative intent. City of Waterloo v. Bainbridge, 749 N.W. 2d 245 (Iowa 2008).

What is "Any other office" and how is it "filled?"

Ambiguity in a statute does not arise merely because the parties dispute the meaning of a statute, but when ambiguity does arise, the ultimate goal is to give effect to legislative intent, by considering the language of the statute, the objects sought to be accomplished, and the evil sought to be remedied. The court works to give a sensible, workable, practical and logical construction. In the interest of S.M.D., Minor Child, 569 N.W. 2d 609 (Iowa 1997).

If there is ambiguity in 69.12, the ambiguity comes in two parts:

- 1) Is the second clause in the definition of pending election, "any other office" modified by phrase "by the voters of the same political subdivision in which the vacancy exists?"
- 2) If the answer to the first question is yes, then does the phrase "any other office to be filled...by the voters of the same political subdivision in which the vacancy exists", actually mean "any other office in which the voters of the same political subdivision get to vote?"

If the phrase "any other office to be filled" has no modifier, then the appointment is only until any office, anywhere is filled. Logically, that makes no sense. Simply because Le Claire holds an election to fill a Mayor's office, that should not be a trigger to force an election in Bettendorf for a Park Board seat. Constructions resulting in unreasonable as well as absurd consequences must be avoided. State v. Conner 292 N.W. 2d 682 (Iowa 1980). Further, such an interpretation would run counter to 69.12's purpose as a money saving vehicle.

Indeed, the Attorney General has recognized that "other office to be filled" is modified by the phrase "by the voters of the same political subdivision", opining in 1975 that a city vacancy is not to be filled at a school board election. Opinion 75-2-2 (attached hereto for the convenience of the court.) Apparently, in Bettendorf, which has the Bettendorf school district totally encompassing the First Ward, a School Board election would not be a suitable time for a concurrent special election for an appointed First Ward Alderman, for example. It is therefore generally understood and accepted that not all elections trigger a requirement that an appointed official must then run.

That leaves the question, if not all elections, which elections?

The obvious answer to that question, and to the second question posed above, is City elections. Again, this most reasonable interpretation is also the one followed for at least the past twenty (20) years. If the election involves an office voted upon "by the voters of the same political subdivision" or put another way, an election held for/by the voters of Bettendorf, then the office is up for election. This interpretation is consistent with prior Attorney General opinion, as well as the State statutory framework for separate City elections.

The alternative interpretation, that the election is held whenever the voters of Bettendorf vote in an election, is inconsistent with the language of the statute. "By the voters of the same political subdivision" is simply not the same as "whenever the voters of the same political subdivision vote".

The Iowa Supreme Court has already indicated that 69.12 of the Code is a timing statute, that is, it "suspends the filling of vacancies in public offices until another election is being held." Good, 397 N.W. 2d at 760. If cost saving is the key, then the statute need not be read to frustrate the already existing framework for municipal elections. With the understanding that there are some elections in which a concurrent city election would not be appropriate, and with the legislative scheme that separates City from General elections, the appropriate interpretation of "office to be filled" is "office to be filled by the voters of the same political subdivision at the next city election."

There are also practical considerations and sound public policy reasons for separating City from general elections. It keeps separate partisan elections from the generally nonpartisan city elections. (After all, as is often said, fixing a pothole is neither a Republican nor Democratic based action.) It keeps the general election ballot more manageable. (See S.F. 2194, signed by the Governor, March 10, modifying 49.30 of the Code to allow for multiple ballots at general elections. Apparently, there are so many matters placed on the general election ballot that not everything fits on one ballot.) In addition, it keeps the voting public focused on city matters for city elections, rather than splitting the attention of the public over many different offices, covering many different jurisdictions. In short, there is much to be said in support of keeping elections for City offices separate from elections for other offices.

Impact of Twenty years of Consistent Interpretation

The section the court is now called upon to interpret was enacted in 1974. For at least the past twenty (20) years, the section has been interpreted to keep elections for city offices on the schedule for city elections. Courts have recognized the value of historic consistency in the concept of stare decisis.

“From the very beginning of this court, we have guarded the venerable doctrine of stare decisis and required the highest possible showing that precedent should be overruled before taking such a step....This is especially true in this case because we often infer legislative assent to our precedents from prolonged legislative silence.” McElroy v. State of Iowa, 703 N.W. 2d 385 (Iowa 2005)

The undersigned acknowledges that the past practice in how the parties have interpreted and operated under the statute is not considered stare decisis. However, the principle of consistent application of law provides guidance to parties in the conduct of their affairs and should not be idly dismissed. There has been no showing of harm or injustice in the requirement that city appointees serve until a city election. Further, when the statute provides that after appointment the citizenry can still call for a special election (372.13 (2a)), there is ample opportunity for the will of the public to be heard and followed. When no petition is forthcoming, then obviously the public is comfortable with the decision of the Council to appoint, and there is no need to force an early election, to the detriment of the statutory framework.

Conclusion

With no issue of material fact, this matter is appropriately resolved via summary judgment. In looking at Chapters 39 and 376 of the Code, the statutory framework of separate elections for general versus city matters is revealed.

Past practices in the City of Bettendorf shows that for at least the past twenty (20) years, 69.12 has been interpreted to keep elections for city office, even after persons are appointed to those offices, separate from the general election, consistent with the state statutory framework.

The intent of the legislature is clear. Section 69.12 of the State Code is clear.

But even if sufficient confusion about 69.12 exists, the Attorney General in 1975 opined that the section "office to be filled" must be read in conjunction with other parts of the section. It is no stretch to interpret "office to be filled" to time the filling of the office to a City election. After all, both clause one (office up for election) and clause three (public question to be decided) of "pending election" are both city events decided at City elections. Why should the second clause be interpreted differently than the first or third clause?

And finally, there is public purpose in keeping city elections, which are generally non-partisan, and after focused on delivery of services, from state or national elections, which have focus on matters of greater scope than such things as the hours of operation of parks or delivery of garbage collection service.


For all these reasons, Petitioner prays the court grant summary judgment to it, with the effect that Frank Baden, appointed Park Board Commissioner, serves until the next City Election in November 2011.

Respectfully submitted,

Gregory S. Jager
For: CITY OF BETTENDORF

Proof of Service:

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause via hand delivery.



Gregory S. Jager

3rd day of May, 2010

Copy to:

Robert L. Cusack
Assistant Scott County Attorney
400 W. 4th St
Davenport, Iowa 52801

from a very strict construction of §8, is not supported elsewhere in the law and I think is aimed against "ownership" of a game in the sense that one also promotes, sponsors and operates it for a profit. After all, anyone else could bring such lawful gambling paraphernalia onto the premises for social purposes, whether he plays in the game or not. Any other construction would likely lead to an unenforceable absurdity. Accordingly, your third question is answered in the affirmative.

August 13, 1975

ELECTIONS: Vacancies in Office; Election to Fill. §69.12, Code of Iowa, 1975. A vacancy in the municipal office could not be filled at the regular school election held on the second Tuesday in September pursuant to §277.1, because the municipality under §69.12 would not comprise the "same political subdivision" as the school district. (Haesemeyer to Synhorst, Secretary of State, 8-13-75) #75-8-2

The Honorable Melvin D. Synhorst, Secretary of State: Reference is made to your letter of July 11, 1975, in which you request an opinion of the Attorney General as to whether or not vacancies in municipal offices should be filled at the regular school election in September.

Section 69.12, Code of Iowa, 1975, provides in relevant part:

"When a vacancy occurs in any elective office of a political subdivision of this state, and a method for electing a person to the vacant office for the remainder of the unexpired term is not otherwise provided by law, the vacancy shall be filled pursuant to this section. As used in this section, 'pending election' means any election at which there will be on the ballot either the office in which the vacancy exists, or any other office to be filled or any public question to be decided by the voters of the same political subdivision. * * *" (emphasis added)

In our opinion, the words "same political subdivision" at the end of the quoted portion of §69.12, relate back to the earlier uses of the same term in the beginning of the section, i.e., "when a vacancy occurs in any elective office of a political subdivision . . ." Thus, a vacancy in the municipal office could not be filled at the regular school election held on the second Tuesday in September pursuant to §277.1, because the municipality would not comprise the "same political subdivision" as the school district.

August 15, 1975

SCHOOLS: School buses — §321.373(5)(6). Privately-owned school bus painted national school bus chrome may be used without repainting during temporary periods when not under contractual arrangement with school district. (Nolan to Monroe, State Representative, 8-15-75) #75-8-3

The Honorable W. R. (Bill) Monroe, State Representative: Some time ago you submitted the following question to this office for an opinion:

"Given a situation of ownership by a private party of a bus used during the school year to transport children to or from school, said bus meeting all rules and Laws as to equipment, color, etc., and a proper agreement with a school district for such operation. Can said owner, in spite of subsection 6 of section 321.373 operate that vehicle on any public highway for purposes such as private transportation of adults, not school enrollees, during a period when said bus is not under contract or arrangement with a School district while said bus is still painted the color known as national school bus chrome?"

The section of the Code to which you refer is, in our view, not controlling in this situation since there appears to be no dispute but that the vehicle is a "school bus". Section 321.373(6), Code of Iowa, 1975, provides:

"No vehicle except school buses shall be operated on any public highway if the vehicle is painted the color known as national school bus chrome. . . ."

Under §321.373(5), the following appears, which we believe is more pertinent to your inquiry:

"Vehicles owned by private parties and used as school buses shall have reversed or covered the words 'school bus' wherever they appear on the vehicle when the vehicle is not in use as a school bus. It shall be unlawful to operate flashing stop warning signals on such privately-owned vehicles except as provided in section 321.372."

From this language, we believe it is clear that a privately-owned "school bus" may be used on the public highway while still painted the color known as national school bus chrome and when such bus is not currently transporting children to and from school. We note that even under subsection 6 of §321.373, a person purchasing a vehicle formerly used as a school bus shall have ten days after such purchase to re-paint the vehicle.

It is our view that where a vehicle is operated from year to year for the transportation of children to and from school as a school bus, such vehicle does not fall under the classification of a "vehicle formerly used as a school bus". Accordingly, it is our opinion that such vehicle need not be re-painted to a color other than national school bus chrome during the seasons when school is not in session.

August 18, 1975

LIBRARIES: Regional Library Trustees — Chapter 303B, Code of Iowa, 1975. Regional library trustees are not state officers and ordinarily the Attorney General would not represent them in the case of liability in the absence of some overriding state interest. (Nolan to Porter, State Librarian, 8-18-75) #75-8-4

Mr. Barry L. Porter, State Librarian: This letter is written in response to your inquiry dated January 28, 1975, requesting an opinion on the following question:

"Will the State Attorney General's office represent the Regional Library System in the case of liability? Will this representation cover them as an organization or will it cover the Regional Trustees as individual members?"

The Regional Library System, established under Chapter 303B, Code of Iowa, 1975, creates seven political subdivisions in which trustees are elected by the eligible electors of the seven representative districts. Regional trustees are, therefore, not state officers and ordinarily in the absence of an overriding question of state interest, the Attorney General's Office would not represent these regional trustees in legal matters.

You indicate that the regional trustees are concerned about possible liability in the case of law suits against either the region or the trustees. Under §517A.1, Code of Iowa, 1973, any political subdivision of the

Text: SF2193Text: SF2195Complete Bill History

Senate File 2194

SENATE FILE
 BY COMMITTEE ON STATE
 GOVERNMENT

(SUCCESSOR TO SSB
 3184)

A BILL FOR

1 An Act making technical changes to the laws relating to
 2 elections and voter registration and including effective
 3 date and applicability provisions.
 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
 TLSB 5442SV (1) 83
 sc/nh

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1 1 Section 1. Section 43.4, unnumbered paragraph 4, Code
 1 2 Supplement 2009, is amended to read as follows:
 1 3 Within ~~fourteen~~ sixty days after the date of the caucus
 1 4 the county central committee shall certify to the county
 1 5 commissioner the names of those elected as party committee
 1 6 members and delegates to the county convention. The
 1 7 commissioner shall retain precinct caucus records for
 1 8 twenty=two months. In addition, within fourteen days after
 1 9 the date of the precinct caucus, the chairperson of the county
 1 10 central committee shall deliver to the county commissioner all
 1 11 completed voter registration forms received at the caucus.
 1 12 Sec. 2. Section 43.30, Code 2009, is amended by striking the
 1 13 section and inserting in lieu thereof the following:
 1 14 43.30 Sample ballots.
 1 15 1. The commissioner shall prepare sample ballots for each
 1 16 political party. The sample ballots shall be clearly marked as
 1 17 sample ballots and shall be delivered to the precinct election
 1 18 officials for posting in the polling place pursuant to section
 1 19 49.71, subsection 2.
 1 20 2. The commissioner shall make sample ballots available to
 1 21 the public upon request. The sample ballots shall be clearly
 1 22 marked as sample ballots. A reasonable fee may be charged for
 1 23 printing costs if a person requests multiple copies of sample
 1 24 ballots.
 1 25 Sec. 3. Section 43.38, Code 2009, is amended to read as
 1 26 follows:
 1 27 43.38 Voter confined to party ticket.

5 8 redistricting commission in all unincorporated portions of
 5 9 each county, and by the city council of each city in which it
 5 10 is necessary or deemed advisable to establish more than one
 5 11 precinct. Precincts established as provided by this chapter
 5 12 shall be used for all elections, except where temporary merger
 5 13 of established precincts is specifically permitted by law
 5 14 for certain elections, and no political subdivision shall
 5 15 concurrently maintain different sets of precincts for use in
 5 16 different types of elections. Election precincts shall be
 5 17 drawn so that:

5 18 Sec. 16. Section 49.13, subsection 2, Code Supplement 2009,
 5 19 is amended to read as follows:

5 20 2. ~~To the extent necessary~~ For all elections in which
 5 21 a partisan office is on the ballot, election boards shall
 5 22 include members of the two political parties whose candidates
 5 23 for president of the United States or for governor, as the
 5 24 case may be, received the largest and next largest number of
 5 25 votes in the county at the last general election. Election
 5 26 boards may also include persons not members of either of these
 5 27 parties. However, persons who are not members of either of
 5 28 these political parties shall not comprise more than one-third
 5 29 of the membership of an election board.

5 30 Sec. 17. Section 49.26, subsection 2, paragraph b, Code
 5 31 Supplement 2009, is amended to read as follows:

5 32 b. If the commissioner concludes, pursuant to paragraph
 5 33 "a", that voting will probably be so light as to make counting
 5 34 of ballots by the precinct election officials less expensive
 5 35 than preparation and use of automatic tabulating equipment,
 6 1 paper ballots ~~shall~~ may be used. ~~The~~ If paper ballots are
 6 2 used, the commissioner may shall use ballots and instructions
 6 3 similar to those used when the ballots are counted by automatic
 6 4 tabulating equipment.

6 5 Sec. 18. Section 49.30, Code 2009, is amended to read as
 6 6 follows:

6 7 49.30 All candidates and issues on one ballot == exceptions.

6 8 All constitutional amendments, all public measures, and the
 6 9 names of all candidates, other than presidential electors, to
 6 10 be voted for in each election precinct, shall be printed on one
 6 11 ballot, except that separate ballots are authorized ~~under the~~
 6 12 ~~following circumstances:~~

6 13 1. ~~Where optical scan ballots are used, if when~~ it is not
 6 14 possible to include all offices and public measures on a single
 6 15 ballot, In the event that it is not possible to include
 6 16 all offices and public measures on a single ballot, separate
 6 17 ballots may be provided for nonpartisan offices, judges, or
 6 18 public measures.

6 19 2. ~~Where conventional paper ballots are used, separate~~
 6 20 ~~paper ballots shall be used:~~

6 21 a. ~~For the election of township officers in precincts~~
 6 22 ~~including both incorporated and unincorporated areas or more~~
 6 23 ~~than one township.~~

6 24 b. ~~For public measures.~~

6 25 c. ~~For judges.~~

6 26 Sec. 19. Section 49.43, subsection 1, Code Supplement 2009,
 6 27 is amended to read as follows:

6 28 1. If possible, all public measures and constitutional
 6 29 amendments to be voted upon by an elector shall be included
 6 30 on a single ballot which shall also include all offices to be
 6 31 voted upon. However, if it is necessary, a separate ballot may
 6 32 be used as provided in section 49.30, ~~subsection 1.~~