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IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

SCOTT COUNTY
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CITY OF BETTENDORF, IOWA,

Petitioner,

vs.

SCOTT COUNTY AUDITOR ROXANNA
MORITZ and SCOTT COUNTY, IOWA,

Respondents.

Case No. 115801

RULING ON RESPONDENTS'
MOTION FOR SUMMARY
JUDGMENT

CLERK OF DISTRICT COURT
SCOTT COUNTY, IOWA

On the 27th day of May, 2010, a hearing was held on cross motions for summary judgment. Respondents Scott County Auditor Roxanna Moritz and Scott County, Iowa appeared by their attorney, Robert L. Cusack. Petitioner City of Bettendorf, Iowa appeared by its attorney Gregory S. Jager. The Court, having reviewed the pleadings and having considered the applicable law and the arguments of counsel, enters the following ruling.

FACTS

The underlying facts of this case are undisputed. In January of 2010, a vacancy occurred on the city of Bettendorf's Park Board when Gregory Adamson, the Park Board's Commissioner, was elected to the office of Fourth Ward Council. Had incumbent Adamson not departed his seat on the Park Board prematurely, his position would not have ended until December 31, 2011, with an election transpiring in November of 2011. In early 2010, the Bettendorf City Council appointed Frank Baden to fill the opening.

In March of 2010, Scott County Auditor Roxanna Moritz informed the Scott County municipalities, through written correspondence, that it was her opinion, as well as that of the Iowa Secretary of State, that individuals appointed to fill vacancies in elected city offices should stand for election in the next general elections, as opposed to the next municipal elections. Thus, persons such as Mr. Baden would have to be included on the ballot for election in November of

2010 at the next scheduled general election, instead of November of 2011, which is the next scheduled city election.

On April 21, 2010, Petitioner filed a Petition at Law for Declaratory Judgment, seeking clarification as to whether Mr. Baden is compelled to stand for election at the next city election or the next general election. On May 3, 2010, Petitioner filed a Motion for Summary Judgment, arguing that the language of Iowa Code §69.12 which indicates that appointment to an elected office in Bettendorf endures until the “next pending election,” should be interpreted to mean that an individual so appointed serves in their position until the next city election. On May 14, 2010, Respondents filed their own Motion for Summary Judgment, as well as a reply to Petitioner’s Motion for Summary Judgment, contending that “next pending election” should be interpreted to mean the next general election.

APPLICABLE LAW

Summary judgment is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); Tetzlaff v. Camp, 715 N.W.2d 256, 258 (Iowa 2006). The party seeking summary judgment bears the burden of proof. Id. In ruling on a motion for summary judgment, the court must look at the record in the light most favorable to the party resisting the motion. Lloyd v. Drake University, 686 N.W.2d 225, 228 (Iowa 2004).

At the summary judgment stage, the determination for the court is whether there are issues in dispute and, if so, whether these issues are both genuine and material. Lewis v. Heartland Inns of America, L.L.C., 585 F.Supp.2d 1046, 1054 (S.D. Iowa 2008). For an issue to be considered “genuine,” the evidence must be sufficient, such that a reasonable jury would be persuaded to return a verdict for the non-moving party. Id. at 1055. An issue of fact is “material” for summary judgment purposes only if the dispute is over facts that might affect the

outcome of the suit, given the applicable law. Lewis v. State ex rel. Miller, 646 N.W.2d 121, 124 (Iowa App. 2002). “When the only controversy concerns the legal consequences flowing from undisputed facts, summary judgment is the proper remedy.” Bob Zimmerman Ford, Inc. v. Midwest Automotive, L.L.C., 679 N.W.2d 606, 608 (Iowa 2004).

When ruling on a summary judgment motion, the Court must consider, on behalf of the nonmoving party, every legitimate inference that can be reasonably deduced from the record. Phillips v. Covenant Clinic, 625 N.W.2d 714, 718 (Iowa 2001). An inference is legitimate if it is rational, reasonable, and otherwise permissible under the governing substantive law; on the other hand, an inference is not legitimate if it is based upon speculation or conjecture. Id.

ANALYSIS

At issue is whether Commissioner Baden is required to stand for election at the next city election, which will occur in November of 2011, or the next general election, which will occur in November of 2010. In resolving this issue, the Court first turns to Iowa Code §372.13, which permits a city council to fill a vacancy in an elective city office by appointment or by special election. In the event that the council chooses to fill the vacancy by appointment, any resident in discordance with this decision is empowered to file a petition requesting a special election. However, if the appointment goes unopposed, Iowa Code §372.13 mandates that the appointment is to last until the “next pending election,” as defined in Iowa Code §69.12.

Iowa Code §69.12 defines “pending election” as:

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.

All parties concede that §69.12 can logically be divided into three components, the occurrence of any which may initiate an election for office:

- 1) The office is up for election,
- 2) Any other office is to be filled, or
- 3) Any public question is to be decided by the voters of the same political subdivision.

Further, the parties are in agreement that the phrase “any other office,” as used in Iowa Code §69.12, is limited by the phrase “by the voters of the same political subdivision in which the vacancy exists.” Thus, the dispute in this matter turns on whether the resulting combined phrase, which implicates “any other office that is decided by the voters of Bettendorf,” should be interpreted as meaning offices for which only Bettendorf citizens vote or offices for which Bettendorf citizens also vote.

Petitioner insists that the only reasonable interpretation of Iowa Code §69.12 is that an election is to be held only when the election is to be held by/for the voters of Bettendorf. Petitioner advises that this understanding has been in practice for the past twenty years in Bettendorf and that practical considerations support its implementation. These considerations include saving taxpayer’s money by holding municipal elections concurrently, maintaining manageable general election ballots, and focusing the voting public’s attention on city matters in city elections. Petitioner adds that this position is buttressed by the fact that the State Legislature consciously created a separation between general elections and city elections by scheduling the former to be held on even numbered years and the latter to occur on odd numbered years. *See* Iowa Code §§39.1, 376.1. The policy reason for this temporal division in elections, Petitioner posits, is that the partisan matters involved in general elections should be isolated from the non-partisan matters usually implicated in city elections. Since the State Legislature has purposefully established a separation of city and general elections, Petitioner claims that Iowa Code §69.12 should be interpreted as not requiring Commissioner Baden to stand until the next city election.

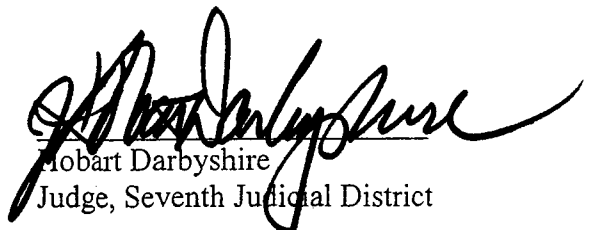
In response, Respondents contend that the policy reasons with which Petitioner undergirds its argument are unpersuasive. Respondents contend that the general election ballot already includes several nonpartisan offices, that including the Park Board election on the general election ballot would fail to affect its manageability, and that any past interpretation of Iowa Code §69.12 is not binding upon this Court. Further, Respondents stress the great importance of the right of the voting public to choose their officers at the polls as soon as practicable.

Despite Respondents' arguments to the contrary, the Court agrees with Petitioner that "next pending election," as it is used in Iowa §69.12, is meant to imply elections for which Bettendorf citizens are the exclusive voters for an office. Respondents have put forth no persuasive argument for why this Court should alter twenty years of stare decisis on this matter and have demonstrated no undue prejudice that will result if Commissioner Baden is not required to stand for election until the occurrence of the next city election in 2011. To the extent that Respondents advocate their position based on the right of citizens to promptly select their own representatives, the Court finds that Iowa Code §372.13 sufficiently affords residents the opportunity to petition for a special election in the event that they wish to voice their will.

RULING

IT IS THEREFORE ORDERED that Petitioner's Motion for Summary Judgment is GRANTED and Respondents' Motion for Summary Judgment is DENIED.

Dated this 15th day of June, 2010.


Robert Darbyshire
Judge, Seventh Judicial District