

Summary of SC93698, *John T. Impey v. Missouri Ethics Commission, et al.*

Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted May 21, 2014; opinion issued June 24, 2014

Attorneys: Impey was represented by R. Todd Wilhelmus of Caskey, Hopkins & Wilhelmus LLC in Butler, (660) 679-4161, and the ethics commission was represented by Matthew J. Laudano of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals a circuit court judgment finding he failed to exhaust his administrative remedies by not seeking review of an ethics commission decision by the administrative hearing commission, a process he argues violates a state constitutional section providing for direct judicial review of final administrative decisions. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. The statutory review process for an ethics commission decision – which is not a final decision – does not violate the state constitution, and the man failed to exhaust his administrative remedies.

Facts: Shortly after John Impey began circulating pamphlets in August 2011 opposing a Houston, Missouri, ballot measure, the state ethics commission received a complaint alleging Impey had violated the law by failing to mark the pamphlets “Paid for by John Impey.” Following an investigation, the ethics commission found there were reasonable grounds to believe Impey had violated the law. Following a probable cause hearing, the ethics commission determined probable cause existed to believe Impey had violated the law in circulating his pamphlets. It issued findings of fact, conclusions of law and an order directing Impey to pay a \$100 fee. The ethics commission also notified Impey that, pursuant to section 105.961, RSMo, he could appeal its decision to the administrative hearing commission no later than 14 days after receiving actual notice of the ethics commission's actions. Impey instead filed a petition for review in the circuit court. The ethics commission moved to dismiss the petition, and Impey responded by alleging the procedures in section 105.961 violate article V, section 18 of the state constitution, providing for direct judicial review of final administrative decisions. The court granted the motion to dismiss, finding Impey failed to exhaust his administrative remedies by failing to seek review in the administrative hearing commission. Impey appeals.

AFFIRMED.

Court en banc holds: (1) Section 105.961 does not violate the article V, section 18 of the Missouri Constitution, which provides that all “final decisions” of administrative bodies “shall be subject to direct review by the courts.” That the order the ethics commission issued to Impey was denominated as the “final decision and order” of the ethics commission and imposes a \$100 fee against him does not demonstrate that the ethics commission's decision is final for purposes of judicial review. Instead, this Court is guided by the intent of the legislature. And the language of section 105.961 indicates the legislature's intent for the ethics commission's decision to be a tentative, contingent decision subject to further agency review. It expressly provides for review of the ethics commission decision by the administrative hearing commission, which exercises

independent and impartial decision-making authority in disputes between agencies and those persons affected by agency action. By permitting the subject of any complaint received by the ethics commission to have the proposed action reviewed by the administrative hearing commission, section 105.961.5 indicates that the legislature intended for the administrative hearing commission to make the final determination when a dispute arises between the ethics commission and the subject of a complaint. Further, administrative hearing commission review is not an “intervening step” between a final agency decision and judicial review; rather, it is the final step in the agency’s probable cause determination.

(2) Impey failed to exhaust all administrative remedies. Pursuant to section 536.100, RSMo – the statute implementing the procedures for compliance with article V, section 18 – a party to a contested case must exhaust all administrative remedies before seeking judicial review. For the purposes of this opinion, this Court assumes the proceedings under section 105.961 constitute a “contested case.” Under those procedures, applying for review by the administrative hearing commission is an administrative remedy that must be exhausted before seeking judicial review. Because Impey did not apply for review by the administrative hearing commission, he forfeited the right to challenge the ethics commission’s decision in any manner, including through judicial review. As such, he is prevented from challenging the ethics commission’s probable cause determination. But nothing prevents Impey from raising other challenges in any action the ethics commission may bring in circuit court to enforce the fee.