IN THE CIRCUIT COURT OF THE COUNT OF ST. LOUIS

STATE OF MISSOURI

FILED
MAR 01 2021
JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY
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MAR 02 2021
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CIRCUIT CLERK, ST. LOUIS COUNTY

State of Missouri ex inf. Beth Orwick,	)	
in her official capacity as County Counselor of	)	
St. Louis County and ex rel. Lisa Clancy in her	)	
official capacity as a member and Chair of the	)	
St. Louis County Council, and Ernest Trakas,	)	
in his official capacity as a member and Vice	)	
Chair of the St. Louis County Council,	)	Case No. 21SL-CC00193
Relator,	)	
	)	Division No. 19
vs.	)	
Tim Fitch, Shalonda Webb, Mark Harder,	)	
Rita Days, and Kelli Dunaway, each in their	)	
official capacity as members of the St. Louis	)	
County Council,	)	
	)	
Respondents.	)	

JUDGMENT

Introduction

This matter is before the Court on a Petition for Quo Warranto. A revision to the St. Louis County Charter, a change in representation in one of St. Louis County's seven council districts and a four-three vote have combined to create a dispute among the council members as to who is the rightful Chair of the St. Louis County Council (the "Council").

The St. Louis County Counselor has filed this Petition to confirm her opinion that the January 5, 2021 vote of the Council was effective to elect Councilperson Lisa Clancy Chair of

the Council for 2021 and to prevent any other members of the Council from acting in those roles. Rule 98.02(b)(2). Contrary to the January 5, 2021 vote, Respondent Councilperson Rita Days and Councilperson Mark Harder are acting as Chair and Vice-Chair respectively by virtue of a subsequent vote they claim controls.

Because one of the four votes for Councilperson Clancy was cast by Councilperson Rochelle Walton Gray, whose term ended on December 31, 2020 and whose holdover status under the Missouri Constitution ended before the January 5, 2020 vote, Councilperson Clancy was not elected by a majority of the St. Louis County Council and the petition for a Writ of Quo Warranto declaring Councilperson Clancy Chair and Councilperson Trakas Vice-Chair, or ousting Councilperson Days and Councilperson Harder from those respective positions, is DENIED.

Facts[1]

The St. Louis County Charter (the "Charter") provides at Section 2.020 that the Council consists of seven members representing seven individual districts. Section 2.040 of the Charter provides that the three even-numbered districts, Districts 2, 4 and 6 are elected in the Presidential election year. So, representatives of those districts were elected on November 3, 2020. That election resulted in the re-election of Councilperson Kelli Dunaway (District 2) and Councilperson Ernest Trakas (District 6).

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[1] This matter was submitted as a motion for summary judgment. The facts recited herein consist of official governmental actions. With the exception of the swearing of Councilperson Webb's oath, which is discussed as a matter of disputed fact below, the Court finds the factual matters recited herein to be agreed to by the parties. Because the facts admitted by both parties are sufficient to negate the Relators' right to quo warranto, Respondent's motion for summary judgment is granted. ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 381 (Mo. banc 1993).

With respect to District 4, Councilperson Shalonda Webb was newly elected to represent that District on November 3, 2020. The incumbent Councilperson for District 4, Councilperson Gray, was defeated in her party primary by Councilperson Webb on August 4, 2020.

On August 4, 2020, St. Louis County voters approved amendments to the Charter. One of those amendments to Section 2.040 changed the terms of Councilpersons. Before the amendment, the terms ran for four years from January 1st following the general election. After the amendment, the terms run for four years from the second Tuesday in January following the general election.

Section 2.050 of the Charter was not amended in 2020. It provides that the Council shall select from its members a chair and a vice-chair whose term of office shall be for one year "at its first regular meeting in every calendar year." Id.

After the general election, the Council set a meeting for January 5, 2020. At its January 5, 2020 meeting, Councilperson Clancy, Councilperson Trakas, Councilperson Dunaway and Councilperson Gray voted to elect Councilperson Clancy Chair and Councilperson Trakas Vice-Chair. Councilperson Webb did not participate in this meeting because, due to the amended Charter, her term did not begin until January 12, 2021. Respondents Councilperson Tim Fitch, Councilperson Days and Councilperson Harder attended the January 5, 2021 Council meeting and voted against the election of Councilperson Clancy and Councilperson Trakas as Chair and Vice-Chair.

On January 15, 2021, Councilperson Gray having departed and Councilperson Webb having begun her term, the Council purported to rescind the January 5, 2020 vote and elect Councilperson Days and Councilperson Harder as Chair and Vice-Chair of the Council,

respectively. Since that time, there has been confusion and dissention at Council meetings with two members of the Council professing a right to preside and occupy the role of Chair and two members of the Council professing a right to occupy the role of Vice-Chair

Analysis

Quo Warranto

A proceeding in quo warranto provides a remedy for the usurpation, unlawful holding or unlawful execution of any office. State ex. inf. Joyce-Hayes v. Twenty-Second Judicial Circuit, 864 S.W.2d 396, 398 (Mo. App. E.D. 1993); State ex inf. Peach v. Goins, 575 S.W.2d 175, 183 (Mo. banc 1978) (quo warranto is proper remedy to determine title to office). The burden of proof in Quo Warranto is upon the Informant or Relator who must establish her right to relief by a preponderance of the evidence. State ex. inf. Ashcroft v. Alexander, 673 S.W.2d 36, 38 (Mo. banc 1984).

The Interplay Between Section 2.040 and 2.050

The effect of the 2020 amendment to Section 2.040 of the Charter relating to terms of Councilpersons and the non-amendment of Section 2.050 relating to the election of Chair and Vice-Chair is that the Council may, as it did on January 5, 2020, convene a meeting for the purpose of electing a Chair and Vice-Chair before newly elected councilpersons begin their terms.

Respondents argue that the Court should interpret the Charter not to allow this procedure because doing so would produce the illogical result that took place on January 5, 2020: that a lame duck councilperson could tip the vote and frustrate the will of the incoming Council. Specifically, they argue that "its first regular meeting in every calendar year" in Section 2.050

should be interpreted so that "its" refers only to the "new" Council once any newly elected members begin serving on the second Tuesday in January and not to the Council as it might exist before that time. "Its" is more plainly interpreted to mean of or belonging to the Council at any time. Therefore, for 2020, the first regular meeting of the calendar year, or "its first regular meeting" occurred on January 5, 2020.

Respondents point out that the outgoing Council did not have to rush to set its first meeting of 2020 before Councilperson Webb was seated and that in some cases, as in 2020, a Chair might be selected in part by outgoing Councilpersons who will not serve under her. Indeed, there is evidence in the record that some members of the Council and Councilperson-elect Webb objected to the setting of the January 5, 2020 meeting. Assuming these arguments to be true they are not so compelling and do not present situations so absurd to adopt an interpretation of "its" other than its most plain and natural interpretation.

Likewise, the Court will not presume the non-amendment of Section 2.050 to set a schedule for electing a Chair which includes newly elected Councilpersons is an oversight to be corrected by a judicial opinion. It might have been an oversight, and it might have been an oversight that was exploited on January 5, 2020 but it is for the political process, not this Court, to determine whether indeed an oversight occurred and how any oversight should be corrected.

Dealing with Vacancies Created by the Amendment to Section 2.040

A second effect of the 2020 amendment to Section 2.040 of the Charter was the creation of three twelve-day vacancies on the Council. Relators concede that the terms of the Council persons representing the even-numbered districts of the Council ended on December 31, 2020 notwithstanding the 2020 amendments to Section 2.040 of the Charter which provided that their

successors would not enter office until January 12, 2021. They agree that an extension of those terms beyond four years would violate Article VI, Section 10 of the Missouri Constitution which limits the terms of county officers to four years.

Relators rely on Article VII, Section 12 (the "holdover provision") and argue that from January 1, 2021 until the new terms began on January 12, 2021, those Councilmembers held over until their successors were "duly elected or appointed and qualified."

The Missouri Supreme Court has observed that the holdover provision is intended to "guarantee a continuity of tenure, to make sure that the public, for whose benefit the office has been created, will at all times have an incumbent to perform the duties thereof." State ex rel. Voss v. Davis, 418 S.W.2d 163, 170 (Mo. 1967). With respect to Councilmembers Dunaway and Trakas, who were re-elected on November 3, 2020, the holdover provision very elegantly addresses the twelve-day gap created by the 2020 amendment to Section 2.040 regarding the timing of terms of office. In the case of those districts, there was no successor seeking to cut off the right of holdover held by the incumbent because the successor and the incumbent were the same person. The application of the holdover provision to Councilperson Gray, whose successor was elected on November 3, 2020, requires further consideration.

Councilperson Gray's Successor was Elected and Qualified Before January 5, 2020

Relator's position is that first, the holdover provision requires a successor be elected and "qualified" before an incumbent's service is cut off and that Councilperson Gray held over until January 12, 2021 because Councilperson Webb was not her "qualified" successor until her term of office commenced on that date.

Again, the holdover provision allows an incumbent to hold over beyond her term until a successor is "duly elected or appointed and qualified." Mo. Const. Art. VII, Section 12. There is no dispute that on January 1, 2021, Councilperson Webb had been duly elected to serve by virtue of her election on November 3, 2021. In order for Relators' position to prevail, the term "qualified" in the holdover provision must be interpreted to modify elected as well as appointed. Our limited precedent in this area offers no definitive answer this question.

In State ex rel. Attorney General v. Seay, the Missouri Supreme Court interpreted a provision of Missouri's 1865 Constitution that differs from the present holdover provision. That provision stated a circuit judge shall serve during the judge's term of office but may continue until a successor "shall be elected and qualified." 64 Mo. 89, 90 (1876). Without the intervening "or appointed," Seay is not directly instructive to this question.

In State ex inf. Dalton v. Mouser, 284 S.W.3d. 473 (Mo. banc 1955), the question surrounded the current holdover provision of the Missouri Constitution but answered the question in the case of a successor who was "appointed and qualified." In such a case, appointment and qualification was held to cut off the holdover right of the incumbent who had been defeated in the last general election. Id. at 474.

The Court need not reach the question of whether "qualified" modifies both "elected" and "appointed" in the holdover provision. Both Seay and Mouser suggest that "qualified" requires only the taking of the requisite oath of office and not, as Relators suggest, the beginning of the term for which the successor was elected. Therefore, because Councilperson Webb was elected and qualified before the January 5, 2020 vote upon which Relators rely for their claim to the office of Chair and Vice-Chair, Councilperson Gray's hold over right was extinguished before

that vote even if "qualified" modifies "elected" in the holdover provision as Relators argue it does.

In Seay, the incumbent's term as circuit judge was held to have ended without the right of hold over upon the (1) election of a successor, (2) his qualification through the taking of the oath of office and (3) the end of the incumbent's term. 64 Mo. at 105. "When that occurred, [Incumbent's] right to hold over ceased, and the death of that successor, before his term commenced, did not revive in [Incumbent] a right...which ceased when [Successor] qualified." Id. (emphasis added). Applying Seay to the present case, Councilperson Webb had been (1) elected (November 2020), (2) had sworn her oath (January 5, 2021) and (3) her predecessor's term of office had ended (December 31, 2020) before the January 5, 2021 vote.

Likewise Mouser suggests that "qualified" requires something other then the beginning of a succeeding term. "Following the (general) election and prior to entering upon the duties of said office or qualifying to do so [elected successor] died." 284 S.W.2d at 474. Though not as directly as Seay, Mouser suggests that "qualified" can mean something less than "having begun the next term in office."

Of course, the suggestion of Seay regarding the 1865 Constitution and the suggestion of Mouser regarding our current Constitution are consistent with the purpose of the holdover provision itself which is to provide for the continuity of government in an office without a viable successor. In such an instance, the Constitution prefers an incumbent, even perhaps one turned out by the voters, to a vacancy "to insure that the public interest will not suffer from the neglect of duties which would result from the want of an incumbent." Davis, 418 S.W.2d at 170.

In the present case, and in any case involving a duly elected successor who has taken the oath of office, there exists no such danger of a lengthy, harmful period of vacancy. Indeed, to the extent Councilperson Webb reflects the current will of her constituents, the public interest described in Davis was not served by the hold over of Councilperson Gray, whom Councilperson Webb defeated in the August primary election, and who voted contrary to the preference of her successor in the election for 2021 Chair and Vice-Chair as evidenced by Councilperson Webb's vote at the January 15, 2021 meeting.

Moreover, in the present case, interpreting "qualified" to mean "having entered into the term of office" would give no effect to the limiting language "until their successors are elected or appointed and duly qualified" in the holdover provision because Councilperson Webb could do nothing to cut off the holdover rights of Councilperson Gray, whom she defeated in her party primary months earlier and whose term of office had by all accounts ended before the important vote for Chair and Vice-Chair. To allow the County to amend its Charter and change the effective date of officers' terms while providing no practical way for an elected successor to cut off an incumbent's right to hold over would allow it to effectively violate the Missouri Constitution's proscription against terms of more than four years.

The Effect of Councilperson Webb's Efforts to Take Her Oath of Office

We come now to the issue of whether Councilperson Webb had done enough before the January 5, 2020 meeting to cut off Councilperson Gray's right to hold over. The parties do not stipulate to these facts.

The record reflects that Councilperson Webb did take her oath of office on January 4, 2021 and presented it to the St. Louis County Clerk in advance of the January 5, 2020 meeting. Respondents Statement of Uncontroverted Material Facts, Ex. 6; Ex. 14.[2]

The relators have denied that Councilperson Webb effectively took her oath and presented an affidavit of the County Clerk that she was not present for the oath and that, in any event, she would not have witnessed or sworn Councilperson Webb herself because she did not believe Councilperson Webb authorized to take her oath of office before the beginning of her term. The Court finds that Councilperson Webb did, in fact, swear her oath on January 4, 2020 and presented it to the County Clerk before the January 5, 2020 meeting as she alleges.

The Clerk's affidavit is likewise accepted as true but it only establishes that the Clerk would not have sworn her if requested due to her understanding of the rules applicable to the term of Councilperson Webb. Moreover, there is substantial evidence in the record that the presence of the County Clerk is a requirement that has not been enforced in the past with respect to other councilpersons.

In light of the foregoing discussion of the Missouri Constitution, the Clerk's understanding of the effect of a successor's swearing an oath of office during a vacancy is incorrect. The taking of an oath by the duly elected or appointed successor to a vacant office, even if it does not initiate the successor's term, can cut of the hold over rights of the incumbent.

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[2] Relators filed a motion to strike the Respondent's Statements of Uncontroverted Material Facts, essentially claiming there was no schedule for a dispositive motion and the amount of uncontroverted material facts was burdensome. That Motion is denied. The Court acknowledges this case has been resolved on a fast track but coming to a judgment was the desire of all parties throughout this case. Moreover, the relators did a thorough job responding to the Statement of Uncontroverted Material Facts simultaneously with the filing of their motion to strike.

The Clerk's affidavit was based on a misunderstanding of this rule and, therefore, is not relevant to the Court's ruling on Relator's Petition.

Conclusion

Councilperson Gray's right to hold over during the vacancy in District 4 of the council created by the 2020 charter amendments having been cut off, relators did not receive a majority of the votes for Chair and Vice-Chair at the January 5, 2020 council meeting. Relators petition presumes that Councilperson Clancy and Councilperson Trakas were duly elected Chair and Vice-Chair of the Council. For the foregoing reasons, that is not the case. Respondents summary judgment motion is GRANTED. The Verified Petition for Quo Warranto is DENIED.

3 - 2 - 2021

Date

Circuit Judge