

JAMI BALLENTINE, et al.,
Petitioners,
vs.
WILLIAM PURDY,
and
BOARD OF EDUCATION OF THE
CITY OF ST. LOUIS,
Respondents.

FILED
AUG 31 2006
MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Cause called. Parties appear by and through attorneys. Petitioner's Petition to Remove William Purdy as a member of the Board of Education of the City of St. Louis presented. Evidence submitted by joint stipulation. Legal memoranda filed and oral arguments heard. Cause heard and submitted to the Court.

FINDINGS OF FACT

1. In April, 2005, Respondent William Purdy (hereinafter “Purdy”) ran for and was elected to the St. Louis City Board of Education (hereinafter “Board”) for a four-year term. Joint Stipulation 2.
2. On July 19, 2006, Petitioners filed this action to remove “Purdy” from the “Board”. Petitioners withdrew their separate requests for mandamus and/or prohibition.

3. The “Board” was created by R.S.Mo. §162.571, which authorizes Boards of Education to supervise and govern all public schools within metropolitan school districts. Joint Stipulation 5. The powers and duties of the “Board” are set forth in R.S.Mo. §162.621.1 including:

“[t]he board of education shall have general and supervisory control, government and management of the public schools and public school property of the district in the City and shall exercise generally all powers in the administration of the public school system therein.”

4. The qualifications for membership on the “Board” are set by R.S.Mo. §162.581 which states that members “shall be at least twenty-four years of age, citizens and residents of the City, and shall have been residents and citizens for at least three years immediately preceding their election.” R.S.Mo. §162.581.1. The statute further provides that “Board” members “shall not hold any office, except that of notary public, in the city or state, nor be interested in any contract with or claim against the board either directly or indirectly.” Id. “Purdy” met these qualifications. Joint Stipulation 2.

5. “Purdy” was initially elected to the “Board” in 1991 and served a six-year term from 1991-1997. In 1997, “Purdy” was reelected to the “Board” and served another six-year term from 1997-2003. After a two year hiatus from the “Board”, “Purdy” was elected to a four-year term in 2005 and currently serves as a member of the “Board”. Joint Stipulation 2 and 3

6. “Purdy” has one daughter that has been continuously employed by the “Board” since 1998. “Purdy” has another daughter that has been continuously employed by the “Board” since February, 2000 who was also employed by the “Board”

continuously between 1994-1998. Additionally, "Purdy" has a grandson that has been continuously employed by the "Board" since at least January 1, 2005. Joint Stipulation 4.

7. During the second regular session of the 89th Missouri General Assembly, 1998, Senate Bill No. 781 was passed and became law. Among other things, this Bill amended Section 162.601 of the Missouri Statutes by adding subsection 8 that contained the following language:

"No one may run for school board who is employed by the school district or who is related to an employee of the school district within the second degree of affinity or consanguinity."

This provision of the Bill became effective on August 28, 1998. Joint Stipulation 6.

8. On February 9, 1999, the "Board" pursuant to R.S.Mo. §162.621 amended Bylaw B9112 which sets forth qualifications for membership on the "Board," in order to coincide with the statutory change made by the legislature in 1998. In addition to the qualifications set forth in R.S.Mo. §162.581, Bylaw B9112 includes:

"An employee of the St. Louis Public Schools or a person related to an employee within the second degree of affinity or consanguinity may not run for the Board of Education."

Joint Stipulation 7.

9. During the first regular session of the 92nd Missouri General Assembly, 2003, House Bill No. 511 and Senate Bill No. 686 were merged, passed and became law. Among other things, these bills amended Section 162.601 of the Missouri Statutes and eliminated subsection 8, which contained the prohibition against running for the "Board" if the candidate was employed by, or a relative within the second degree of affinity or consanguinity of the candidate was employed by the "Board". This provision of the Bill became effective on August 28, 2003. Joint Stipulation 8.

10. The “Board” has taken no action concerning its Bylaw B9112 as a result of this change in Missouri law. Thus Bylaw B9112 remains in effect as amended in 1999 including the anti-nepotism provision.

11. In accordance with Sections 162.581 and 162.601 of the Missouri Revised Statutes, three Board of Education members were to be elected at the April 5, 2005 election. At a January 21, 2005 meeting, the Board of Education passed a resolution certifying, among others, “Purdy” as a candidate for the Board of Education. Joint Stipulation 9 and 10 and Exhibits D and E.

12. At the April 5, 2005 election, three Board of Education members were elected, one of whom was “Purdy”. “Purdy” took his oath of office as administered by the Honorable John J. Riley on April 8, 2005. Joint Stipulation 13 and 14 and Exhibits F and G.

13. This Court has jurisdiction over the members of the “Board” and may “remove any member or officers upon proof of conviction, gross misconduct or disqualification for his office.” R.S.Mo. §162.631.

CONCLUSIONS OF LAW

1. The issue for this Court is whether the “Board” may add qualifications to “Board” membership as contained in Bylaw B9112 beyond those qualifications as set forth in R.S.Mo. §162.621. If so, pursuant to the joint stipulation, “Purdy” would be disqualified from serving as a member of the “Board”. If not, pursuant to the joint stipulation, “Purdy” is qualified to continue serving as a member of the “Board”.

2. “Board” Bylaw B9310 states that the “Board’s” bylaws are generally drawn directly from State law, which places a mandatory obligation or direction on the “Board.”

Joint Stipulation Exhibit J. Further Bylaw B9111 expressly provides that “[T]he nomination and election of board members is governed by state law and regulated by the St. Louis Board of Election Commissioners as provided by the relevant provisions of Chapter 115 of the Missouri Revised Statutes.” Joint Stipulation Exhibit H. Bylaw 9112 comports with this by stating the qualifications for “Board” membership are “[A]s per state law. . . .” Joint Stipulation Exhibit I.

3. The “Board” possesses only those powers conferred or necessarily implied by statute. Bd. of Educ. v. State, 47 S.W.3d 366, 370 (Mo. banc 2001). The Missouri Supreme Court held “[A]dministrative agencies possess only those powers conferred or necessarily implied by statute. The scope of power and duties for public agencies is narrowly limited to those essential to accomplish the principal purpose for which the agency was created. The Board was created to supervise and govern St. Louis public schools and school property, not to regulate elections.” Id. at 370.

4. While Article VII of the Missouri Constitution does not prohibit the legislature from adding qualifications or eligibility requirements as to those offices created by statute, i.e., School Board members, the legislature has not delegated that authority to the “Board”. Labor’s Educ. and Political Club Indep. v. Danforth, 561 S.W.2d 339, 345 (Mo. banc 1977.)

5. It is well settled that local school boards are agencies under the Missouri Administrative Procedure Act because they are created by Missouri Statutes from which they derive their rule making and adjudicatory authority. State ex rel. Yarber v. McHenry, 915 S.W.2d 325, 327 (Mo banc 1995); State ex rel. School Dist. of Kansas City v. Williamson, 141 S.W.3d 418, 423-24 (Mo. App. W.D. 2004).

6. The St. Louis City Board of Education is an administrative agency and as such possesses only those powers conferred or necessarily implied by statute. Bd. of Educ. of City of St. Louis v. State, 47 S.W.3d 366-370 (Mo. banc 2001). See also, State ex rel. School Dist. of Springfield R-12 v. Wickliffe, 650 S.W.2d 623-625 (Mo. banc 1983).

7. The authority of an administrative agency such as the “Board” is limited to that granted by statute, and any regulation promulgated must be within the authority of the authorizing statute. Lagares v. Camdenton R-III Sch. Dist., 68 S.W.3d 518, 526-27 (Mo. App. W.D. 2001). If the regulation is in conflict with the legislature’s intent, it is invalid and therefore void. Brooks v. Poole-Leffler, 636 S.W.2d 113, 118 (Mo. App. E.D. 1982). See also, State ex rel. Doe Run Co. v. Brown, 918 S.W.2d 303, 306 (Mo. App. E.D. 1996) and R.S.Mo. 536.014.

8. A local regulation conflicts with state law if a local regulation permits what the statute prohibits or prohibits what the statute permits. St. Charles County Ambulance Dist. v. Town of Dardenne Prairie, 39 S.W.3d 67, 69 (Mo. App. E.D. 2001); see also, Moats v. Pulaski County Sewer Dist. No. 1, 23 S.W.3d 868, 872 (Mo. App. S.D. 2000).

9. Clearly, the “Board” Bylaw 9112 conflicts with R.S.Mo. §162.581. The General Assembly has set forth the qualifications for a School Board member, and the “Board” may not expand or contract on those qualifications. The “Board” is powerless to do so and the added qualifications of Bylaw B9112 prohibiting the candidacy of citizens running for the “Board” if the citizen’s relatives within the second degree of affinity or consanguinity are employed by the district exceeds the “Board’s” authority and is therefore unlawful, illegal and void. R.S.Mo. §536.014 (2) and Osage Outdoor Adver., Inc. v. State Highway Comm’n. of Mo., 624 S.W.2d 535, 537 (Mo. App. W.D. 1981).

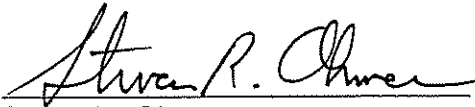
WHEREFORE, IT IS ORDERED, ADJUDGED and DECREED that Petitioner's Petition to remove William Purdy as a member of the Board of Education of the City of St. Louis is hereby DENIED. It is further ordered that Bylaw B9112 is unlawful, invalid and void to the extent of limiting qualifications of board members by relative employee within the second degree of affinity or consanguinity as this conflicts with state law, R.S.Mo. §162.571.

IT IS FURTHER ORDERED that court costs are taxed to the Petitioners.

SO ORDERED:

Date:

September 1, 2006



Steven R. Ohmer
Circuit Judge

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