

HANS WILIANDER, Election Commissioner, Plaintiff
v.
GOVERNOR ERHART ATEN and MAYOR FICHITA BOSSY,
Defendants

Civil Action No. 15-80
Trial Division of the High Court
Truk District
May 15, 1980

Action involving the question of interpretation of certain municipal ordinances and the effect of these ordinances on the incumbent Mayor and Council Members. The Trial Division of the High Court, Burnett, Chief Justice, treated the action as one for declaratory relief, and held that plaintiff Election Commissioner had standing to bring the action, and that newly enacted municipal ordinances providing for four-year terms for both Mayor and Council Members were not applicable to incumbent Mayor and Council Members who were elected to two-year terms and election after two-year terms of incumbents as necessary, and therefore it was ordered that the amended ordinances should be construed as not applicable to the incumbents, and an election after the two-year period was necessary.

1. Courts—Generally

The courts must determine whether laws or acts of a legislature or council are or are not in conformity with provisions of federal and state constitutions or municipal charters.

2. Actions—Standing

Generally, in order to show standing in a case involving the interpretation of law, a person must show that he has an interest in the question in that the enforcement or nonenforcement of the law would be an infringement on his rights, and that he would be directly affected.

3. Actions—Standing

A public official has the right to know whether a change in his duties has been legally effected, and therefore would have standing to bring suit on the issue.

4. Actions—Standing

State Election Commissioner had standing to bring action involving the question of interpretation of certain ordinances as to whether an election was necessary, since a public official has the right to know whether a change in his duties has been legally effected.

5. Statutes—Election Laws—Construction

Where Mayor and Council Members were elected to two-year terms pursuant to municipal ordinance, and during their tenure the municipal ordinance was amended to provide for a four-year term for both the

Mayor and Council Members, amended ordinances were not applicable to the incumbent office holders, who therefore had to stand for election after a two-year term, since to hold otherwise would constitute a legislative appointment of these office holders.

BURNETT, *Chief Justice*

Plaintiff, Hans Wiliander as State Election Commissioner, brings this action involving the question of interpretation of certain Moen Municipal Ordinances and the effect of these ordinances on the incumbent Mayor and Council Members who were elected in 1978. Plaintiff's complaint seeks several remedies, largely either inappropriate or unnecessary to resolve the problem. I have determined that what we actually have here is merely a difference of opinion between plaintiff and defendant's interpretation of these ordinances, and the Court is therefore treating this action as one for declaratory relief to construe said ordinances.

This cause of action arose out of the following factual situation, as stipulated by both parties.

Article III, Section 2, of the Moen Municipal Charter provides that the Magistrate and other elected officers shall be elected for terms of not less than one year or more than four years as may be determined by ordinance.

Moen Municipal Ordinance No. 4, Sections 3 and 4, state that the Mayor and Councilmen are elected for a period of two years and that the election date falls on the last Friday in April in even-numbered years.

The last election occurred in 1978, and at the time of that election Moen Municipal Ordinance No. 4, Sections 3 and 4 were in effect.

On September 28, 1979, Moen Municipal Ordinance 2-79 was approved by the Governor of the State of Truk. Municipal Ordinance 2-79, Section 7, provides that members of the Moen Municipal Council will serve in the Municipal

Council for a four-year term. Section 10 states that election of council members shall be held every four years, on the last Friday in April during an even-numbered year.

Also, on September 28, 1979, Moen Municipal Ordinance 6-79 was approved by the Governor. The stated purpose and intent of this Ordinance is to amend Sections 3 and 4 of Moen Municipal Ordinance No. 4. Section 3 of Ordinance 6-79 provides that the Mayor shall serve for a four-year term.

Defendants herein take the position that Ordinances 2-79 and 6-79 increase the terms of the incumbent Mayor and Municipal Council Members who were elected in 1978, thereby rendering unnecessary an election for these positions this year.

Plaintiff, as the State Election Commissioner, seeks clarification from this Court on this issue.

Defendants have basically raised four arguments in defense of their position.

1) Defendants argue that their position is proper and is in accord with the law.

2) Secondly, they argue that this Court should decline jurisdiction over this matter because it involves a political question.

3) They also contend that plaintiff has no standing to bring this action.

4) Finally, they argue that this case is moot since the date the election should have taken place has already passed.

[1] With regard to the mootness, political question and standing arguments, I find them to be without merit in this case. The substantive issue is still viable and it is clear that the function of this Court is to clarify the type of issue presented here. Courts must declare the law as it is and construe it. Courts must determine whether laws and acts of a legislature or council are or are not in conformity

with provisions of federal and state constitutions or municipal charters. See generally 16, 16A Am. Jur. 2d Con. Law §§ 306–308.

[2] Generally, with regard to plaintiff's standing, a person must show that he has an interest in the question in that the enforcement or nonenforcement would be an infringement on his rights. The party generally must be directly affected. Plaintiff herein is the Election Commissioner for Truk State pursuant to Truk State Law No. 27-1-6, Section 15, and is required by law to conduct the election of Mayor, Councilmen and other officials (Section 5, Municipal Election). Without court clarification of this issue, he is unable to properly know and carry out his official duties and responsibilities.

[3, 4] It is clear that a public official has the right to know whether a change in his duties has been legally effected. Also, public officials have been held to have standing where there is a question of general and public interest. Additionally, courts in unique circumstances have relaxed the standing requirement where "fundamental rights" would be denied. See generally 16 Am. Jur. 2d Con. Law §§ 190–194.

As to the substantive issue of whether the Moen Municipal Council has by Municipal Ordinances 2-79 and 6-79 extended the term of the incumbent Mayor and Council Members, in this case, I find it has not.

The cases and authority relevant to this issue appear somewhat scant, but from the overwhelming weight of the authority, it is clear that in the present case Municipal Ordinances 2-79 and 6-79 cannot refer to those elected in 1978, and therefore will apply only to those elected in 1980 and subsequently.

It has been said that the legislature is without power, directly or indirectly, to extend the term of the incumbent of an elective office where the term is fixed by the constitu-

tion or where the term is limited by such instrument and the effect of the extension is to exceed the limit of tenure fixed. Moreover, courts have held similarly in cases where the constitutional limit is not exceeded, or where there may be no limit applicable to a particular office, if the effect is to destroy the elective character of that office. In this connection courts have declared that a legislative extension of the term of an incumbent is virtually an appointment of the office for the extended time, and is void if the office is one that the legislature may not fill by direct appointment. See 63 Am. Jur. 2d Public Officers and Employee Section 147.

Volume 97 of American Law Reports prints in entirety *Board of Elections v. State ex rel. Schneider*, 128 Ohio St. 273, 191 N.E. 115, 97 ALR 1417 (1934) as the leading case to its annotation entitled "Power of legislature to extend term of public office." The court in *Board of Elections*, supra, appears to have extensively reviewed many of the pertinent cases in both its own jurisdiction and others and concluded that the General Assembly could not present to an incumbent an extra term of office.

This rule is also supported by other cases cited in 97 ALR 1428-43. *People ex rel. Eldred v. Palmer*, 154 N.Y. 133, 47 N.E. 1084 (1897) excerpted in 97 ALR 1438 states:

The court said that the legislature had the option to prescribe either one or the other of two periods,—that is to say, a term of either two or four years,—but not having exercised it, the minimum period should be taken as the duration of the term; that the statute increasing the term of the incumbent to four years was subversive of the principles of the elective system, and was in effect, an attempt on the part of the legislature to appoint to office, and by its fiat, without the concurrence of the electors, to protect the present incumbent in the possession thereof for a term for which he never had been elected.

[5] It is clear that these offices must be filled by election, and that the incumbents were elected for specific two-year terms. To allow the Ordinances to extend the terms to four years, would constitute, in effect, a legislative appointment in violation of the Municipal Charter.

The terms to which incumbents were elected has expired. In order not to interfere with the conduct of municipal business, it will be necessary for them to continue to act, in a holdover capacity, until their successors are duly elected and qualified. It may be expected that responsible public officials will proceed at once to conduct an election as mandated by the charter.

Based upon the foregoing and good cause appearing; therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Municipal Ordinances 2-79 and 6-79 are duly enacted valid and legal ordinances; that said ordinances shall be construed not to extend the term of office of those presently holding office but shall be construed to have effect over elections subsequent to their enactment; and that present office holders shall continue in office until new officers are duly elected and qualified.