

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS**

AMY CONKLIN)	
)	
Plaintiff.)	
)	23-MR-000002 _____
TOWN OF NORMAL, ANGIE HUONKER,)	23-MR-000003
)	23-MR-000004
)	
Defendants.)	

**REPLY TO DEFENDANTS COMBINED MOTION TO DISMISS
AND MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Petitioners, Amy Conklin, Robert Shoraga, and Charles Sila, and hereby provided this consolidated response to the Defendants combined motion to dismiss and motion for summary judgment.

INTRODUCTION

As Plaintiffs pointed out to the Court during the status hearing, the filing by Defendants raises only legal defenses to the claims raises by Plaintiffs and as such the motion to dismiss is indistinguishable from a cross motion for summary judgment in favor of the Defendants based on their presentation of the law. The mere fact the Defendants have oddly combined their motion to dismiss and response to summary judgment in one pleading is something the Court will have to clarify on the record at hearing. Counsel for Plaintiffs is aware of no jurisprudence which allows a motion to dismiss to also be coupled with a response to a motion for summary judgment. Quite simply the Court is faced with issuing a final ruling after determining what it believes is a proper construction of the statutes.

It is also worth mentioning to the Court the Defendants, through their counsel, have chosen to engage in childish and unprofessional rhetoric which reflects poorly on the legal

profession and lacks the dignity the people of Normal deserve when dealing with serious matters of their ability to elect their representatives. On Page 13 of the pleadings, Defendants equivocate these statutorily mandated offices required under state law to some person submitting nominating papers for a dogcatcher or prom king. Then on page 15, the Defendants, through their counsel, accuse Plaintiffs of trying to “rig an election.” Such tactless rhetoric serves no purpose and is beneath the dignity of these proceedings.

I. Article 5 and Article 3.1 do not conflict in Regard to Shoraga and Sila

The Defendants aver to the Court a conflict exists between the statutory provisions of Article 3.1 and Article 5.¹ While Defendants accurately point out that a conflict would be resolved in favor of Article 5, the fact of the matter is there is no conflict. The Town has argued quite successfully in the past in this Courthouse that it is in fact an incorporated town under the Illinois Municipal Code. (See Exhibit A) While the town has chosen to manage itself under a managerial form of government under Article 5 of the Code, it is still an incorporated town and must follow the provisions of Article 3.1 regarding the election of a town supervisor and town collector unless there is a conflict with Article 5.

Municipality means a city, village, or incorporated town in the State of Illinois (See 65 ILCS 5/1-1-2) If a particular section of this Code is limited to cities or villages or incorporated towns or any combination thereof, that intention shall prevail. (See 65 ILCS 5/1-1-4). Division 25 of Article 3.1 addresses the elected officers of Incorporated Towns. 65 ILCS 5/3.1-25-95 is clear which states all incorporated towns over 25,000 must elect a president, clerk, assessor, collector and supervisor. This statement is clear. The statute does

¹ While back in 1970 the Town was successful in arguing in court that it could change its managerial form of government, such a change seems contradictory to the clear language of the statute. Nonetheless, that is the position the Town of Normal now finds itself. As an incorporated town, it manages itself under Article 5 but it still remains an incorporated town and as such must comply with all statutory requirements under the law.

not say all incorporated towns unless the town has chosen to manage itself under Article 5. If the legislature intended to allow an incorporated town to eliminate the need for a town supervisor or town collector if it chose to manage itself under Article 5, the legislature would have said so. As such the only question remaining for the Court is does there exist a conflicting provision in Article 5 in regard to the town collector or town supervisor.

Nowhere in Article 5 do the officers of town collector or town supervisor get mentioned. The Defendants aver this means the legislature intended for the managerial form of government to not include these offices. Such a proposition by the Defendants has no support in statutory construction. Articles 4, 5, and 6 of the Illinois Municipal Code are the three different forms of government which can be chosen in how to manage their affairs. Section 3.1 applies to all of these forms of government, and to the extent there is a conflict, Articles 4,5, and 6 control.

Article 5 is clear when it says, upon this Article 5 becoming effective in any city or village, that city or village and its officers shall be vested with all the rights, privileges, powers and immunities conferred by Article 3 or 4, as the case may be, in force at the time such city or village adopted this Article 5, including the procedures for elections therein described, the officers therein named and the duties and liabilities therein set forth, except as modified by this Article 5. (See 65 ILCS 5/5-1-2) This section specifically says including the procedures for elections therein described in Article 3. There is no reading of the statute which supports the argument that when the Town adopted Article 5 to govern itself as a managerial form of government that it was somehow excluded from the obligations regarding offices mandated upon it as a town. The plain reality is when around 1970 when the Town decided to operate as a managerial form, the legislature had not yet mandated an incorporated

town elect these officers. When the legislature created this mandate, the Town, ignorantly or otherwise, did modify their town code. Nonetheless, the state law requires these offices and as such the nominating papers are in compliance with the election code and must be certified.

II. There is no conflict between Article 3.1 and Article 5 regarding Conklin

The Defendants have pointed out the obvious which is there in no conflict between the two Articles in regard to the position of clerk. 65 ILCS 5/5-2-19 clearly says any city which operates under an alderperson form of government can appoint their clerk. Normal is not a city. It is an incorporated town which they have argued quite diligently in previous litigation. The Illinois Municipal Code is clear that if a particular section of this Code is limited to cities or villages or incorporated towns or any combination thereof, that intention shall prevail. (See 65 ILCS 5/1-1-4). Article 5 allows cities who conduct themselves a certain way to appoint their clerk. Normal is not a city so that doesn't apply. Article 3.1 is clear that an incorporated town must elect its clerk if over 25,000. This is basic statutory construction which defines when differing types of municipalities can elect certain officers and when they may be appointed. There is nothing unconstitutional about that.

III. The Town Charter is not controlling regarding election of the Town Clerk

This Code shall also apply generally to all municipalities incorporated and now existing under a special charter except to the extent that this Code is in conflict with any provision in a special charter, and except as otherwise provided in subsection (1) of Section 1-1-2. In the event that there is a conflict between a provision in this Code and a provision in a special charter, the special charter shall govern except where any such charter conflicts with or is inconsistent with the general election law and except where a provision in this Code is stated to apply to municipalities incorporated under a special charter, or to municipalities whether incorporated

under a general or special act, or words to that effect, or where it is otherwise made manifest that this Code or any other Illinois statute is intended to govern despite the inconsistent provisions in the special charter. (See 65 ILCS 5/1-1-4)

The Defendants left that part of the statute out wherein it states that to the extent there is a conflict with the special charter and the general election law or the statute is specific to a municipality incorporated under special charter such is Normal, the statute shall control. It is clear in this case the legislature intends for the statutory provision to control as it specifically created the statutory requirement for electing these offices for incorporated towns over 25,000 population.

IV. Article 3.1 does not allow the Town Clerk to be Appointed

It is worth noting, the Defendants make reference to Article 3.1 as authority when they believe it supports their position but disregard it, or otherwise discount it, when its provisions cut against their arguments. Does Article 5 control or Article 3.1? For Article 5 makes no mention in regard to the office of clerk for an incorporated town managing itself under this Article. As such, does the office of clerk have the same fate as the town collector or town supervisor as argued by the Defendants meaning this office doesn't exist because Article 5 doesn't expressly provide for it? Or are the Defendants arguing this in the alternative? It is really difficult to tell but nonetheless the Defendants have misinterpreted the provision of Article 3.1 in regard to the clerk. This argument fails for two reasons.

First, the Defendants make reference to 65 ILCS 5/3.1-90 allowing for appointing a town clerk. This provision of the law is in regard to towns with less than 5,000 population. This clearly does not include Normal.

Second, the Defendants are correct that 65 ILCS 5/3-8-2 was superseded and replaced by 65 ILCS 3/1-30.25. The old provision of the law in Article 3 clearly provided a town such as Normal could by ordinance choose to appoint a clerk. However, that provision was eliminated and replaced with 65 ILCS 3/1-30.25. A clear reading of this section only allows for the appointment of officers as specifically provided in Division 30 of Article 3.1. The corporate authorities of municipalities incorporated and existing under special Acts that now provide for or require the election of one or more of the appointed officers referred to in this Division 30... (See 65 ILCS 5/3.1-30-25). Nowhere in Division 30, does the office of clerk exist.

Quite simply the Town of Normal chose to appoint its clerk as allowed by the now repealed Article 3. Once the law changed, as Article 3.1 was adopted by the legislature and Article 3 was repealed, no longer could the clerk of an incorporated town over 25,000 population be appointed. The Town of Normal never changed its practices to accommodate the new law and has been in violation for decades.

V. Huonker has a mandatory duty.

The Defendants continue to promote the defense that their local municipal code is the controlling legal authority. Over and over the Defendants proclaim these offices are not “real” offices because their local ordinance doesn’t recognize them as elected offices. The controlling statute is plain on its face. The municipal clerk shall certify the names of the candidates to the proper election authority as provided by the general election law. (See 65 ILCS 5/3.1-25-95). These provisions do not conflict with any provisions in Article 5. This is a mandatory duty to certify if the election law has been complied with. The election code and Illinois law is clear the clerk must certify the names if compliance with the law is clear on the face of the nominating papers. The nominating papers for each of the elected offices is in compliance with the Illinois

Municipal Code and the Illinois Election Code. The Defendants cannot stand on the proposition that their local election ordinance supersedes compulsory state law.

It is absurd for the Defendants to argue this Court should deny Plaintiffs claims because to do so would cause disorder and confusion and fail to promote justice. The Illinois legislature demands incorporated towns elect these three offices. The Honorable Judge Scott Kording was well aware of this requirement in cause 2022-MR-14 when he ruled in favor of the Town of Normal holding they were an incorporated town as he raised the concern of these offices not being elected. Any disorder and confusion which might exist come from the failure of the corporate authorities to comply with state law for decades because of the apparent desire to believe their local authority supersedes clear Illinois mandates. The injustice which exists is the people of Normal aren't currently electing offices for which the legislature has proclaimed they are entitled. For these reasons, the Court should find the Defendants must certify the nominating papers of the Plaintiffs in each cause.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

STATE OF ILLINOIS)
) SS.
COUNTY OF BOND)

The undersigned hereby certifies, pursuant to the provisions of 735 ILCS 5/1-109, and the penalties therein provided, that a copy of the foregoing instrument was served upon each of the parties hereinafter set forth by e-mail, on January 23, 2023:

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