

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND COUNTY

HARBOR TELEGRAPH-2103 L.L.C.,
BLOOMFIELD ACRES ACQUISITION
COMPANY L.L.C., HARBOR TELEGRAPH-
1881 L.L.C., HARBOR TELEGRAPH 1899
L.L.C., and HARBOR VOGUE PLAZA L.L.C.,
("HARBOR COMPANIES"),

Plaintiffs,

and

No. 01 036872 CZ

CITY OF PONTIAC, a municipal corporation,

Intervening Plaintiff,

-v-

OAKLAND COUNTY BOARD OF COMMISSIONERS,
COMMISSIONER SHELLY TAUB, and
COMMISSIONER DAVID BUCKLEY,

Defendants,

and

CHARTER TOWNSHIP OF BLOOMFIELD, a
municipal corporation,

Intervening Defendant
and Cross-Plaintiff,

and

L. BROOKS PATTERSON,

Defendant and
Cross-Defendant.

EXHIBIT

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DECLARATORY JUDGMENT

At a session of said Court held in the Courthouse
in the City of Pontiac, County of Oakland and
State of Michigan on January 29, 2002.

PRESENT: HONORABLE RICHARD D. KUHN, CIRCUIT JUDGE

This matter is before the Court on the Charter Township of
Bloomfield's Order to Show Cause. On January 11, 2002, the
Court, by Opinion and Order, found that the county executive wa

authorized under MCL 45.561 to veto Resolution #01305, and requested the submission of supplemental briefs on the alternative issue of mandamus. The parties filed supplemental briefs, and the Court is now prepared to address the following issue: whether the February 5, 2002 vote on the detachment issue should go forward, notwithstanding the county executive's veto of the resolution setting an election, and the board of commissioner's failure to override the veto.

As a preliminary matter, the county executive argues that the mandamus issue is not properly before the Court because Bloomfield did not seek it. However, paragraph 7 of "Proposed Intervening Defendant Charter Township of Bloomfield's Emergency Motion for Intervention; Emergency Motion to Add Oakland County Executive L. Brooks Patterson as a Party Defendant; and Emergency Motion for Immediate Consideration" states in part: "Consequently, a writ of mandamus is an appropriate remedy available to Bloomfield Township." The Emergency Motion for Immediate Consideration was the basis for the show cause order. Therefore, the mandamus issue is properly before the Court.

The County Executive also argues that Bloomfield lacks standing. For the reasons stated in the January 11, 2002 Opinion and Order, the Court finds that Bloomfield has standing.

The first issue is whether the county executive's veto of Resolution #01305 was a ministerial duty. It is clear that the board of commissioner's duty under MCL 117.6 and 117.8 was ministerial. In *Bray v Stewart*, 239 Mich 340, 345 (1927), the court reviewed a board of supervisors' (now board of commissioners) resolution to submit to the electorate the issue of incorporating certain land. Before passing the resolution, the board was required to determine whether the petitions at issue met statutory requirements. In reviewing the board's duty under the same acts at issue here, the home rule acts, the court stated:

The duty devolving on the board of supervisors is purely ministerial. They are not permitted to exercise any judgment except to determine whether the requirements of the statute relative to the petition have been complied with.

Bloomfield and the board of commissioners argue that if the board's duty was purely ministerial, the county executive's duty must also be purely ministerial. The Court agrees. To find otherwise would be to ignore the intent of the legislature. "The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature." *Tuscola County Abstract Company, Inc. v Tuscola County Register of Deeds*, 206 Mich App 508, 513 (1994).

The Legislature's clear intent in passing the home rule acts was that if a petition seeking to incorporate, detach, add or consolidate territory met the statutory requirements, the electors of each city, village or township to be affected were entitled to vote on the matter. In this case, a petition to detach certain property from the City of Pontiac to the Charter Township of Bloomfield was circulated and signed by the requisite number of qualified electors who were freeholders residing within Pontiac and Bloomfield. Thus, the only issue is whether the petition met the requirements of the act.

The petition must substantially comply with the requirements of the act that the petition accurately describe the proposed boundaries of the territory to be detached. *Burton Township v Genessee County*, 369 Mich 180, 186 (1963); MCL 117.7. "[S]uch petition shall have attached to it a map or drawing showing clearly the territory proposed to be ... detached" MCL 117.6.

Here, the Court finds that the legal description and map of the territory proposed to be detached both substantially comply with the requirements of the act.

The first issue concerns the accuracy of the legal description of the property to be detached. The legal description must make plain, "to one understanding legal

descriptions", what land is included. *Burton, supra*, at page 4. The legal description references "T2N, R10E, Bloomfield Township". To one understanding legal descriptions, this description would refer to the "township" mapped as part of the rectangular survey system, not to the legal entity known as the "Charter Township of Bloomfield". (See Exhibit 5 to "Intervening Defendant/Cross Plaintiff Bloomfield's Answers to Questions posed by the Court.") Therefore, the Court finds that the reference to "Bloomfield Township" is an accurate part of the legal description of the property to be detached.

The next three issues concern the accuracy of the map that was attached to the petition. On the map, there is again a reference to "T2N, R10E, Bloomfield Township", not to the legal entity of "Charter Township of Bloomfield". This reference appears on the lower left-hand section of the map, with an arrow pointing to a marker. The reference and marker are properly located outside the boundary of the area shown as the "Detachment Area". There is nothing misleading about this reference.

The map does cover a tiny triangular piece of property subject to an Act 425 Agreement. This piece of property is not subject to detachment and should not have been included in the area shown as the "Detachment Area". However, the area, only 176

square feet or 0.004 acres, is so small that its inclusion did not prevent the map from showing clearly the territory proposed to be detached.

Finally, the map shows the detachment area as well as a smaller adjoining area, apparently included for reference. The issue is whether the map clearly shows which of the two areas is proposed to be detached. The larger detachment area is outlined with a dark, heavy border. The smaller adjoining area is not. Both areas show lot and sidwell numbers. Although the map could have been clearer, that is not the test. The test is whether the map clearly shows the territory proposed to be detached. Here, given the border around the territory at issue, the Court finds that it clearly shows the territory proposed to be detached.

Having concluded that the petition met the statutory requirements, the final issue concerns the proper remedy. In *Straus v Governor*, 459 Mich 526, 532 (1999), the court, while discussing the propriety of injunctive relief against the Governor, stated:

We do note that the Supreme Court has recently recognized that declaratory relief normally will suffice to induce the legislative and executive branches, the principal members of which have taken oaths of fealty to the constitution identical to that taken by the judiciary, Const 1963, art 11, section 1, to conform their actions to constitutional requirements or confine them within constitutional limits. ... Only when declaratory relief has failed should the courts even begin to consider additional

forms of relief in these situations. ... [Citations omitted.]

At this time, the Court will grant declaratory relief, rather than issue a writ of mandamus.

For all of the reasons set forth above, the Court finds that both the board of commissioners and the county executive had a purely ministerial duty to review the petition regarding the detachment of territory from the City of Pontiac to the Charter Township of Bloomfield, to see whether it met the statutory requirements set forth in MCL 117.6 and 117.7. The Court finds that the petition substantially complied with the statutory requirements. Therefore, the Court finds that the voters of both the City of Pontiac and Charter Township of Bloomfield are entitled to vote on the detachment issue. "Where the very worst that can happen is the taking a vote of the people upon a question of general interest", *French v County of Ingham*, 342 Mich 690, 699 (1955), quoting *Kern v Board of Supervisors of St. Clair County*, 160 Mich 11, 124 NW 941, 942, that vote should not be denied the people unless the petition clearly fails to meet the statutory requirements. Here, the petition met the statutory requirements. The vote on the detachment issue should go forward on February 5, 2002, notwithstanding the county executive's veto.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the voters of the City of Pontiac and the Charter Township of Bloomfield have the right to vote on the detachment issue on February 5, 2002.

RICHARD D. KUHN

RICHARD D. KUHN, CIRCUIT JUDGE

A TRUE COPY

G. WILLIAM CADDELL

Oakland County Clerk - Register of Deeds

By

John Hutchinson

Deputy