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CIRCUIT COURT RULING AFFIRMING INDEPENDENT INSPECTOR GENERAL JURISDICTION OVER ASSESSOR'S OFFICE

In 2012, the Cook County Office of the Independent Inspector General ("OIIG") initiated an investigation into allegations that an employee in the Cook County Assessor's Office ("Assessor") had improperly received a homeowner's exemption to which he was not entitled. As part of that investigation, the OIIG requested documents from the Assessor pursuant to the OIIG Ordinance. When the Assessor refused, the OIIG issued a subpoena for the records. The Assessor objected to the subpoena on the grounds that the OIIG only has authority to investigate County government under the Offices of the Cook County Board President and does not have such authority regarding separately elected Cook County officials like the Assessor.

On June 7, 2013, the OIIG filed a two-count complaint against the Assessor seeking (i) a declaration that the Cook County Assessor must cooperate with the OIIG's investigation, and (ii) a finding that the Assessor must comply with the subpoena issued by the OIIG. The Assessor has taken the position that the OIIG Ordinance that authorizes the OIIG to conduct investigations of separately elected Cook County officials is unconstitutional and that the OIIG therefore lacks jurisdiction over his office.

On August 21, 2014, the Cook County Circuit Court entered the attached Memorandum Opinion and Order upholding the jurisdictional scope of the OIIG Ordinance by granting the OIIG's motion for summary judgment. The court specifically found that the Assessor must produce to the OIIG any and all subpoenaed materials requested by the OIIG as part of an official investigation into misconduct within operations of County government. Attorneys representing the Assessor indicated in open court that the Assessor's will be seeking an appeal to the Appellate Court and a stay of enforcement of the OIIG's outstanding subpoena.

Please contact Patrick Blanchard, Inspector General, if you have any questions concerning this litigation.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

PATRICK M. BLANCHARD, in his official capacity as Independent Inspector General of Cook County, Plaintiff, v. JOSEPH BERRIOS, in his official capacity as Assessor of Cook County, Defendant.	Case No. 2013 CH 14300 Calendar 03 Honorable Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Defendant, Joseph Berrios, in his official capacity as the Cook County Assessor's Motion for Summary Judgment and Plaintiff, Patrick M. Blanchard, in his official capacity as Independent Inspector General of Cook County's Cross-Motion for Summary Judgment pursuant to Section 2-1005 of the Illinois Code of Civil Procedure. For the reasons that follow, Defendant's Motion is denied and Plaintiff's Motion is granted.

INTRODUCTION

At issue in this case is the constitutionality of a Cook County ordinance authorizing the Cook County Inspector General to issue a subpoena to the Cook County Assessor seeking information from the Assessor's office regarding an allegedly improper homeowner's exemption awarded by the Assessor.

BACKGROUND

In or around 2007, the Board of Commissioners of Cook County (the "County") created the Office of the Independent Inspector General ("IG"). Cook County Code of Ordinances § 2-281 (2007) ("IG Ordinance"). The purpose of the IG is to "detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government." Id. at § 2-283. The duties of the IG include investigating "corruption, fraud, waste, mismanagement, unlawful political discrimination, and misconduct in operations of County Government under the Offices of the President as well as the separately elected County officials . . ." Id. at § 2-284. Every County employee, official, and agent has a duty to cooperate with the IG in any investigation undertaken by the IG. Id. at § 2-285.

The powers of the IG include the power to "issue subpoenas to request documents or testimony related to an investigation." Id. at § 2-286 (2013). Once the IG issues a subpoena, the person to whom the subpoena is directed may file an objection to the subpoena. At that point, the IG "shall consider the grounds for the objection and may resolve the objection through negotiation." Id. The IG is authorized to seek enforcement of subpoenas issued through the State's Attorney of Cook County. Id.

The investigatory files and summary reports concerning alleged corruption, fraud, waste, mismanagement, unlawful political discrimination, or misconduct are confidential and can only be released to "the President, the head of any department or bureau to whose office the investigation pertains, the Chief of the Bureau of Human Resources, accused, Purchasing Agent where applicable and to the separately elected official to whose office the investigation pertains." Id. at § 2-289.

Upon conclusion of any investigation, the IG shall submit a confidential summary report to "the President, the appropriate head of any department or bureau to whose office the investigation pertains, the Chief of the Bureau of Human Resources, and . . . to the Board of Ethics." Id. at § 2-288. If the IG has "conducted any investigation regarding the office, or an employee . . . of a separately elected official, the Inspector General also shall submit the confidential summary report to the elected official." Id.

Here, the IG commenced an investigation of the Cook County Assessor's Office (the "Assessor's Office"). Specifically, the IG launched an investigation regarding how an employee in the Assessor's Office allegedly received a homeowner's exemption to which he was not entitled. As part of its investigation, on or about August 15, 2012, the IG sent a written request to the Assessor's Office requesting information, including documents related to the homeowner's exemption granted by the Assessor's Office to the Assessor's employee and/or his spouse. The Assessor, however, refused to provide the information and instead, directed the IG to submit a Freedom of Information Act ("FOIA") request to the Assessor's Office.

The IG, however, did not submit a FOIA request to the Assessor's Office. Instead, on August 23, 2012, the IG served a subpoena on the Assessor's Office for the documents relating to the homeowner's exemption granted by the Assessor's Office to the Assessor's employee, as well as the employee's personnel file relating to his employment with the Assessor's Office.

On August 31, 2012, the Assessor's Office filed a timely objection to the subpoena, in which it stated that the IG did not have the authority to issue a subpoena against a separately elected official pursuant to the IG Ordinance.

On June 7, 2013, the IG filed a two-count Complaint against Joseph Berrios, in his official capacity as Assessor of Cook County (the "Assessor"). Count I sought a declaratory judgment that the Assessor must comply with the subpoena issued by the IG. Count II asked the Court to find that, pursuant to the subpoena issued by the IG, the Assessor has a duty to produce all subpoenaed materials to the IG. The Assessor filed a Section 2-619 motion to dismiss the

complaint arguing, amongst other things, that the IG lacked authority under the IG Ordinance to file suit to enforce the subpoena. The Court entered a briefing schedule on the motion.

While the parties were briefing the motion to dismiss, the County amended the IG Ordinance, specifically Section 2-286, which now grants the IG authority to seek enforcement of its subpoena in the Circuit Court of Cook County. Cook County Code of Ordinances § 2-286 (2013). The IG Ordinance went into effect immediately upon adoption, on or about September 11, 2013.

On or about November 4, 2013, the IG served another subpoena on the Assessor's Office (the "November Subpoena"), identical in all relevant respects to the subpoena served on or about August 23, 2012.

On or about November 14, 2013, the Assessor's Office sent a letter, through its attorney, to the IG again asserting its objection, namely that article VII, sections 6(a), 6(f) and 4(c) of the Illinois Constitution precludes the applicability of the Cook County Ethics Ordinance and the Cook County Independent Inspector General Ordinance to a separately elected official, such as the Assessor. Pl.'s Am. Compl., Ex. J.

On or about December 6, 2013, the IG filed an Amended Complaint against the Assessor seeking to enforce the November Subpoena (the "Complaint"). Count I of the Complaint seeks a Declaratory Judgment that the Assessor must comply with the November Subpoena issued by the IG and in Count II the IG seeks an order that the Assessor has a duty to produce to the IG any and all subpoenaed materials requested by the IG. The Assessor again moved to dismiss the IG's Amended Complaint under Section 2-619 and on January 15, 2014, the Court denied the Assessor's motion. The Assessor now moves for summary judgment and the IG has filed a cross-motion for summary judgment.

STANDARD OF REVIEW

Summary judgment should be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" and the "moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010); Safeway Ins. Co. v. Hister, 304 Ill. App. 3d 687, 691 (1st Dist. 1999). The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant. Medow v. Flavin, 336 Ill. App. 3d 20, 28 (1st Dist. 2002). While the non-moving party is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to judgment. Pielet v. Pielet, 407 Ill. App. 3d 474, 490 (2d Dist. 2010). A party may obtain summary judgment when the question is purely one of law. Smith v. Rengel, 97 Ill. App. 3d 204, 205 (4th Dist. 1981). In ruling on a motion for summary judgment, the court is required to strictly construe all evidentiary material submitted in support of the motion for summary judgment and liberally construe all evidentiary material submitted in opposition. Kolakowski v. Voris, 83 Ill. 2d 388 (1980).

Where cross-motions for summary judgment are filed, the parties acknowledge that only a question of law is at issue and invite the court to decide the issues based on the record. Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill. 2d 281, 309 (2010). However, even where parties file cross-motions for summary judgment, the court is not obligated to grant summary judgment. Mills v. McDuffa, 393 Ill. App. 3d 940, 949 (2d Dist. 2009). It is possible that neither party alleged facts, even if undisputed, that were sufficient to warrant judgment as a matter of law or despite the parties' invitation to the court to decide the issues as questions of law, a genuine issue of material fact may remain. Mills, 393 Ill. App. 3d at 949.

DISCUSSION

The Assessor argues that he is entitled to summary judgment as a matter of law because: 1) as applied[1] to the Assessor, a separately elected constitutional officer, the IG Ordinance is unconstitutional because it exceeds the County's home rule authority as it does not pertain to the County's government and affairs; and 2) the IG Ordinance constitutes an unconstitutional change in the form of County government. The IG conversely argues that he is entitled to summary judgment as the IG Ordinance pertains to the County's government and affairs and the IG Ordinance does not change the form of government. The Court addresses each argument in turn.

Home Rule Authority

The Assessor argues that the IG Ordinance does not pertain to the County's local government and affairs. The framework, according to the Assessor, for determining whether the exercise of a home rule power is constitutional requires a determination of: 1) whether the subject pertains to local government and affairs under article VII, section 6(a) or, instead, is the subject of a vital state policy, and then, if the subject pertains to local government; 2) whether the legislature expressly preempted the local exercise of power, citing Palm v. 2800 Lake Shore Drive Condo. Ass'n, 2013 IL 110505. The Illinois Supreme Court, notes the Assessor, has already determined that the assessment of real estate does not pertain to the County's local government affairs within the contemplation of article VII, section 6(a), citing Chi. Bar Ass'n v. Cnty. of Cook, 102 Ill. 2d 438 (1984). Nor does the granting and processing of homestead exemptions pertain to the County's local government and affairs, according to the Assessor. Rather, the Illinois Property Tax Code, states the Assessor, vests this authority in the Assessor. The Assessor maintains that under the Illinois Property Tax Code, it is the Assessor who has the authority to hire and supervise his employees and moreover, establishes that it is the Illinois Department of Revenue, not the County, which has the authority to audit and investigate the Assessor's Office. In addition, notes the Assessor, the General Assembly's recent amendment to the Illinois Property Tax Code to add the Erroneous Homestead Exemption, vests the Assessor not only with the jurisdiction to investigate erroneously granted homestead exemptions, but also the power to pursue administrative civil remedies. The Assessor concludes that the IG lacks jurisdiction to declare that any homestead exemption was erroneously granted as such authority

[1] In an "as-applied" challenge, the challenging party contests only how the statute or ordinance was applied against him or her within a particular context, and as a result, the facts of his or her particular case become relevant. Napleton v. Vill. of Hinsdale, 229 Ill. 2d 296, 306 (2008).

rests exclusively with the Department of Revenue. The operation of the Assessor's Office, asserts the Assessor, is governed by the Illinois Property Tax Code and does not pertain to the County's local government and affairs, citing Heller v. Cnty. Bd. of Jackson Cnty., 71 Ill. App. 3d 31 (5th Dist. 1979).

The IG, on the other hand, responds that the framework for determining whether the IG Ordinance is a constitutional exercise of its home rule power consists of determining whether: 1) the home rule power at issue pertains to the County's local government and affairs; and 2) has the General Assembly specifically preempted the home rule power, citing Palm, 2013 IL 110505, and City of Chi. v. Stubhub, Inc., 2011 IL 111127. The Cook County Board, notes the Assessor, created the IG Office to detect, deter, and prevent, among other things, "fraud" and "waste." The investigation of fraud and waste in a County office run with County funds, concludes the IG, pertains to the County's local government and affairs. The Illinois Property Tax Code, contends the IG, does not limit the authority of a County to investigate how its funds are being spent. Since the investigation of fraud and waste pertains to the County's local government and affairs, argues the IG, the next step is to determine whether the state legislature has specifically preempted home rule on this subject. The General Assembly, asserts the IG, has not specifically preempted the Cook County Board's home rule authority to investigate fraud and waste in the Assessor's Office. The IG concludes that the IG Ordinance is a valid exercise of the County's home rule power.

The Court begins its analysis by examining the responsibilities and authority of the Assessor. The Property Tax Code empowers the office of the assessor in counties of 3,000,000 or more with the authority to appoint a chief deputy assessor, other deputies and other support staff. 35 ILCS 200/3-50, 3-55 (West 2010). The Assessor is responsible for numerous functions relating to the assessment of property under the Code, including specific duties with respect to the granting and processing of various homestead exemptions. See 35 ILCS 200/15-167(c), 168(d), 170, 172(c), 173(d), 175(i), and 177(i) (West 2010). The operation of the Assessor's Office is overseen by the Illinois Department of Revenue. 35 ILCS 200/8-10 (West 2010). Section 8-10 of the Illinois Property Tax Code authorizes the Illinois Department of Revenue to supervise the Assessor's Office, and grants the Department of Revenue, among other things, the power to institute proceedings, actions, and prosecutions to enforce the laws relating to the penalties, liabilities, and punishment to public officers, persons, or officers or agents of corporations for failure or neglect to comply with this Code. 35 ILCS 200/8-10(4) (West 2010). It is against this backdrop that the Court considers whether the IG Ordinance is a valid exercise of the County's home rule authority.

It is undisputed that Cook County is a home rule unit. See Ill. Const. art VII, § 6. Home rule is predicated upon the assumption that problems affecting municipalities and their residents should be met with solutions tailored to local needs. Shillerstrom Homes v. City of Naperville, 198 Ill. 2d 281, 286 (2001). As the Illinois Supreme Court recently observed, under the 1870 Illinois Constitution, the balance of power between state and local governments was heavily weighted toward the state. Stubhub, 2011 IL 111127 at ¶ 18. "The 1970 Illinois Constitution drastically altered the relationship between our state and local governments, giving

municipalities more autonomy." Id. The grant of power to a home rule unit is found in article VII, section 6(a) of the 1970 Constitution and provides as follows:

> Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax and to incur debt.

Ill. Const. art. VII. § 6(a).

The terms of this grant are broad and imprecise and were purposely left without definition. Ampersand, Inc. v. Finley, 61 Ill. 2d 537, 539 (1975). Section 6(a) was written with the intention to give home rule units the broadest powers possible. Palm, 2013 IL 110505 at ¶ 30. This power, however, is not unlimited. The General Assembly may preempt the exercise of a municipality's home rule power by expressly limiting that authority. Id. at ¶ 31. Under article VII, section 6(h), the General Assembly "may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit." Id., citing Ill. Const. art. VII, § 6(h). If the legislature intends to limit or deny the exercise of home rule powers, the statute must contain an express statement to that effect. Id.

If the legislature does not expressly limit or deny home rule authority, a municipal ordinance may operate concurrently as provided in article VII, section 6(i):

> Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

Id., citing Ill. Const. art. VII, § 6(i).

Under section 6(i), home rule units may continue to regulate activities even if the state has also regulated those activities. Id. at ¶ 32. To restrict the concurrent exercise of home rule power, the General Assembly must enact a law specifically stating that the home rule unit is limited. Id.

Prior to Stubhub, Illinois courts traditionally employed a three-part test in reviewing the constitutionality of an exercise of home rule power. Shillerstrom Homes, 198 Ill. 2d at 289-90. The first element of that inquiry required the court to determine whether the challenged exercise of local government power pertains to local government and affairs, as mandated by section 6(a). Id. at 289. If so, courts then considered whether the General Assembly preempted the use of home rule powers in the relevant area. Id. If the legislature had not preempted the area, courts then determined "the proper relationship" between the local ordinance and the state statute. Id.

at 289-90. In determining whether a particular problem is statewide rather than of local dimension, courts examined the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it. Id. at 290. The vital state policy analysis was treated as the third part of the test, to be considered after a court determined whether the local ordinance pertained to the home rule unit's government and affairs and whether the legislature expressly preempted the exercise of home rule authority. Palm, 2013 IL 110505 at ¶ 36.

In Stubhub, however, the Illinois Supreme Court held that the existence of a vital state policy was more analytically appropriate under section 6(a) rather than section 6(i). Palm, 2013 IL 110505 at ¶ 36. "If a subject pertains to local government and affairs and the legislature has not expressly preempted home rule, municipalities may exercise their power." Id., citing Stubhub, 2011 IL 111127 ¶ 22 n.2. As the court noted in Palm:

> In those circumstances, the 'proper relationship' between the local legislation and the state statute is established by section 6(i), providing that home rule units 'may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.'

Palm, 2013 IL 110505 at ¶ 36.

Thus, the first determination a court must make is whether the challenged home rule power pertains to the local government and affairs. Id. An ordinance pertains to local government and affairs where it addresses local, rather than State or national problems. Shillerstrom Homes, 198 Ill. 2d at 290.

As such, the first issue before the Court is whether the IG Ordinance pertains to the County's local government and affairs within the meaning of article VII, section 6(a) of the Illinois Constitution. The Assessor argues that the IG Ordinance does not pertain to the County's local government and affairs because Illinois law already provides for how alleged fraud or waste in the Assessor's Office is to be addressed, and it is not by the County. Rather, asserts the Assessor, it is the Assessor or the State's Attorney who can investigate erroneously issued homestead exemptions. The IG counters that the investigation of fraud and mismanagement of County funds pertains to the local government and affairs of Cook County. The Court agrees. The purpose of the IG is to "detect, deter, and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination or misconduct in the operation of County government." Cook County Code of Ordinances § 2-283 (2007). It can hardly be disputed that the investigation of corruption, fraud, and mismanagement of County agencies pertains to the County's local government and affairs. The County has an interest in the efficient and lawful administration of County funds. Indeed, the county board is the manager of county funds and business and is ultimately responsible to the public for the total operation of county government. Loop Mortg.

Corp. v. Cnty. of Cook, 291 Ill. App. 3d 442, 447 (1st Dist. 1997). As such, the Court finds that the IG Ordinance, the purpose of which is to investigate fraud and waste in the operation of County government, pertains to the local government and affairs of Cook County.

The Assessor, however, maintains that the assessment of real estate is a function which the Illinois Supreme Court has already determined does not pertain to the County's local government and affairs, citing Chi. Bar Ass'n v. Cnty. of Cook, 102 Ill. 2d 438 (1984). The Court respectfully disagrees.

In Chicago Bar Association, Cook County enacted an ordinance authorizing the addition of a third member to the Cook County Board of Appeals, staggered the terms of the present two commissioners and changed the manner of election of the present commissioners, among other things. Chi. Bar Ass'n, 102 Ill. 2d at 439. The Chicago Bar Association and four individual real estate taxpayers in Cook County brought a declaratory judgment action challenging the County authority to alter the Cook County Board of Appeals. Id. The trial court found the ordinance invalid and the County appealed. Id. On appeal, the County argued that it had the authority under section 6(a) of the Illinois Constitution to establish a third commissioner on the Cook County Board of Appeals because the assessment of real estate pertains to the County's local government and affairs and that the County's interests in the assessment of real estate predominates over that of any governmental entity. Id. at 440. The Chicago Bar Association, on the other hand, argued that the assessment, collection, and distribution of real property taxes pertains to and affects the government and affairs of not only the county of cook, but also the multitude of taxing bodies that levy taxes on real estate situated in cook county. Id. at 441. The appellate court, based on the supreme court holding in Bridgman v. Korzen, 54 Ill. 2d 74 (1972), ruled that the collection of property taxes does not pertain to the government and affairs of the county, that the assessment of property taxes, which requires greater discretion, then cannot pertain to the county's affairs. Id. at 440-41. The supreme court affirmed the appellate court, finding that the interest of Cook County in the assessment of taxes was no greater than those of other taxing bodies. Id. The court found no distinction between the collection and assessment of real estate taxes. Id.

In this case, unlike Chicago Bar Association, the IG Ordinance does not change the form or structure of the Assessor's Office nor does it alter the manner in which the Assessor is elected. Nor does the IG Ordinance empower the IG to assume the powers of the Assessor in determining homestead exemptions. Finally, the IG Ordinance, unlike the ordinance in Chicago Bar Association, does not conflict with the Revenue Act.

The Assessor contends that it is the Illinois Constitution and the Illinois legislature, not the County, that controls the Assessor's duties and responsibilities, citing, Carver v. Sheriff of LaSalle Cnty., 203 Ill.2d 497 (2003), and Moy v. Cnty. of Cook, 159 Ill.2d 519 (1994). The Court finds Carver and Moy inapplicable.

In Carver, the Illinois Supreme Court held that the Local Government and Governmental Employees Tort Immunity Act requires a county to pay judgments rendered against the Sheriff's

office, an independently elected official. Carver, 203 Ill. 2d at 522. In Moy, the Illinois Supreme Court held that an employee-employer relationship does not exist between a county and its sheriff, who is a county officer and thus a county could not be held vicariously liable for the Sheriff's alleged negligence in a wrongful death action. Moy, 159 Ill. 2d at 532.

The Court does not take issue with the proposition advanced by the Assessor, namely that the Assessor, like the Sheriff, is a County official and the County has no authority to control the office of the Assessor. The County, however, through the IG Ordinance, does not purport to control the office of the Assessor.

The Court having found that the IG Ordinance pertains to the County's local government and affairs, must next determine whether the General Assembly has specifically preempted home rule power in this arena. The Assessor has cited various statutes that authorize the Illinois Department of Revenue to oversee the Assessor's Office, as well as the authority to investigate the Assessor's Office. What the Assessor has failed to cite, however, is any statute by which the General Assembly has specifically preempted a home rule unit's authority to investigate fraud or waste in one of the municipalities' agencies. Put differently, the Assessor has not cited any statute by which the General Assembly has specifically preempted the exercise of the type of home rule power at issue in this case. The evidence, in fact, is to the contrary. The Assessor points out that the General Assembly recently amended the Illinois Property Tax Code to add the Erroneous Homestead Exemption, which vests the Assessor with the jurisdiction to investigate erroneously granted homestead exemptions and the power to pursue administrative civil remedies, subject to administrative review law. 35 ILCS 200/25-40, 25-45. The General Assembly in the Erroneous Homestead Exemption did not specifically preempt municipalities from investigating alleged improper awarding of homestead exemptions. Had the General Assembly intended to do so, it would have said as much. "When the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so." Pedersen v. Vill. of Hoffman Estates, 2014 IL App (1st) 123402, ¶ 32. "Moreover, comprehensive legislation is insufficient to preempt home rule authority; the legislation in question must contain express language that the area covered by legislation is to be exclusively controlled by the State." Stubhub, 2011 IL 111127, ¶ 66 (Thomas, J., dissenting), citing City of Chi. v. Roman, 184 Ill. 2d 504, 517 (1998). The fact that the General Assembly has enacted some statutes regarding the oversight and investigation of the Assessor's Office does not render the IG Ordinance invalid or beyond home rule authority.

Change In The Form Of Government

Next, the Assessor argues that the IG Ordinance, by commanding the Assessor to tender his official records relating to the awarding of a property tax exemption as well as the personnel file of one of his employees to the IG, constitutes an unconstitutional change in the form of government in violation of article VII, section 6(f) of the Illinois Constitution because it diminishes the Assessor's statutory supervisory duties over his employees and the property tax records he is charged with maintaining, citing Dunne v. Cnty. of Cook, 164 Ill. App. 3d 929 (1st Dist. 1987) and Pechous v. Slawko, 64 Ill. 2d 576 (1976).

The IG responds that article VII, section 4(d) of the Illinois Constitution unequivocally provides the County Board the power to provide additional duties and the County Board's exercise of its constitutional power to provide a duty to the Assessor to cooperate with a subpoena does not constitute a change in the form of government. The IG points out that article VII, section 4(d) of the Illinois Constitution provides that county officers "shall have those duties . . . provided by county ordinance." Ill. Const. art. VII, § 4(d). The Illinois Counties Code, notes the IG, provides that county boards may "impose additional duties . . . upon county officers," as long as they do not alter those duties, powers, and functions specifically imposed by law, citing 55 ILCS 5/5-1087 (West 2010).

Article VII, section 6(f) of the Illinois Constitution provides:

> A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article.

Ill. Const. art. VII, § 6(f).

Article VII, section 4(d) of the Illinois Constitution provides:

> County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

Ill. Const. art. VII, § 4(d).

Under the plain language of section 4(d), a county officer shall have the duties, powers, and functions provided by law and those provided by county ordinance. Those duties, powers, and functions of the County Officer, on the other hand, derived from common law or precedent can be altered by law or county ordinance. There is nothing in section 4(d) that prohibits or restricts a county from adding additional duties and functions to a county officer.

The IG maintains that under the Constitution and the Illinois Counties Code, the County has the authority to impose upon the Assessor, the additional duty to cooperate with the IG's investigation. The Court agrees.

Section 5-1087 provides that "no county board may alter the duties, powers, and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers, or functions or impose additional duties, powers and functions upon county

officers. In the event of a conflict State law prevails over county ordinance." 55 ILCS 5/5-1087 (West 2010).

The IG Ordinance requires the Assessor, like every other county officer, to cooperate with and comply with the IG. There is nothing in the IG Ordinance that takes away any power of the Assessor nor does the IG Ordinance diminish the duties of the Assessor's Office. The Court finds the cases cited by the Assessor, Dunne and Pechous, distinguishable.

In Dunne, a statute gave the Cook County board president power to appoint all officers and employees of Cook County except those whose election or appointment was otherwise provided for by law. Dunne, 164 Ill. App. 3d at 931. However, Cook County commissioners passed an ordinance which gave them the right to hire and fire members of their personnel staff. Id. The President of the Cook County Board filed a complaint seeking a declaration that the resolutions were unconstitutional. Id. at 932. The trial court granted the plaintiffs' motion for summary judgment, finding that the power to hire and fire the employees in question is vested in the executive officer of Cook County and that the resolutions were unconstitutional because they attempt to alter the form of county government, without referendum approval, in violation of article VII, section 6(f) of the Illinois Constitution. Id. The appellate court affirmed. Id. at 937. The appellate court found that because the relative powers of the county board and the chief executive were affected, a change in the form of government had taken place. Id. at 936.

In Pechous, the defendants, aldermen of Berwyn, enacted ordinances removing from office the superintendent of streets, the commissioner of public works, the city collector, and the city attorney and appointing replacements for them. Pechous, 64 Ill. 2d at 579. State statute and the municipal code of Berwyn, however, provided for the appointment of those officials by the mayor with the approval of the council. Id. Removal of those appointees was in the discretion of the mayor. Id. The plaintiffs, including the mayor, brought an action challenging the power of the aldermen to exercise the power of appointment and removal. Id. at 580-81. The trial court granted the plaintiffs' motion for summary judgment, finding that the power to appoint and remove municipal officers lies solely with the mayor. Id. at 581. The supreme court affirmed the trial court, finding that the city council of Berwyn had not secured by referendum the authority to appoint or remove municipal officers. Id. at 585.

Dunne and Pechous are plainly distinguishable from the case at hand. In Dunne and Pechous, the legislative body attempted to take power given by statute to the chief executive officer and transfer it to the legislative body of government, without submission for approval by referendum. Dunne and Pechous both involved power disputes between the executive and legislative branches of government. Such is not the case here. The IG Ordinance does not transfer any powers to the IG, nor does the IG Ordinance alter the relative powers of the branches of government. As such, the Court finds that the IG Ordinance does not constitute a change in the form of government.

CONCLUSION

For the reasons previously stated, Defendant, Joseph Berrios's Motion for Summary Judgment is denied and Plaintiff, Patrick M. Blanchard's Cross-Motion for Summary Judgment is granted. The Court finds that the Assessor must produce to the IG any and all subpoenaed materials requested by the IG as part of an official IG investigation into misconduct within operations of County government. As such, the Assessor is ordered to comply with the November 4, 2013 subpoena by producing copies of any and all subpoenaed materials to the IG. This matter is hereby dismissed in its entirety.

ENTERED:

ENTERED
JUDGE FRANKLIN ULYSSES VALDERRAMA-1968
AUG 21 2014
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Franklin U. Valderrama, Judge Presiding

DATED: August 21, 2014