

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH RIVET, in his personal capacity and on
behalf of the CITIZENS OF AFFORDABLE BAY
CITY

UNPUBLISHED
August 7, 2012

Petitioner-Appellant,

v

No. 307112
Bay Circuit Court
LC No. 11-003589-AA

CITY OF BAY CITY,

Respondent-Appellee,

and

MICHIGAN MUNICIPAL LEAGUE,

Amicus Curiae.

Before: BECKERING, P.J., AND FITZGERALD AND STEPHENS, JJ.

PER CURIAM.

Petitioner appeals as of right from an order entered on October 21, 2011, by Bay Circuit Court Judge Joseph K. Sheeran affirming respondent's rejection of certain petitions for initiative. We affirm.

Pursuant to the Home Rule City Act, MCL 117.1 *et seq.*, respondent is a home rule city. Section 11.4 of the city charter provides citizens the power of initiative and referendum on all matters "within the scope of the powers of the city." On June 6, 2011, Joseph Rivet submitted petitions to respondent to be considered for placement on the next ballot for the city. The petitions read as follows:

A ballot question stating "Shall the City of Bay City sell its water system pursuant to the authority set forth in [Article] 11, Section 11.4 and Article 12, Section 1 of the City of Bay City Charter for one (\$1.00) dollar to a Public Works Authority created by the County of Bay pursuant to Michigan Compiled Law 123.732 within 180 days of the certification of passage of this initiative?"

A ballot question stating "Shall the City of Bay City sell its sanitary sewer system pursuant to the authority set forth in Article 11 Section 11.4 and Article 12, Section 1 of the City of Bay City Charter for one (\$1.00) dollar to a Public Works

Authority created by the county of Bay pursuant to Michigan Compiled Law 123.732 within 180 days of the certification of passage of this initiative?”

On June 30, 2011, the city attorney issued a written opinion rejecting the petitions. The city attorney determined that the petitions related to administrative, as opposed to legislative, subject matter. Consequently, he rejected the petitions because administrative matters are not subject to an initiative. In addition, the city attorney determined that the petitions failed to substantially comply with the statutory requirements for a petition.

Petitioner appealed to the circuit court and the appeal was denied. The trial court agreed with the city attorney that the subject matter was administrative instead of legislative. The trial court also determined that the petitions did not adequately comply with the statutory requirements. This appeal followed.

Petitioner first argues that the trial court erred in determining that the proposed petitions related to administrative, as opposed to legislative, subject matter. We disagree. Questions of statutory interpretation are reviewed de novo. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008).

The parties do not dispute that the citizens of Bay City have the power to vote on issues by referendum or initiative. The parties further acknowledge that it is well-settled that only legislative matters are subject to initiative or referendum proceedings while administrative matters are not. *Beach v Saline*, 412 Mich 729, 730-731; 316 Nw2d 724 (1983); *West v Portage*, 392 Mich 458, 465-466; 221 NW2d 303 (1974) (addressing whether amendment to zoning ordinance involving particular property was subject to referendum).

On appeal, the parties dedicate significant portions of their arguments to the analysis that this Court should apply when determining whether a particular matter is legislative or administrative in nature. To an extent, we can seek guidance from Justice Levin’s non-binding opinion in *West*, 392 Mich at 465-466, in which he indicated that “the most mundane executive matter[s]” are considered administrative. Similarly, in *Duggan v Clare Co Bd of Comm’rs*, 203 Mich App 573, 576; 513 NW2d 192 (1994), the Court provided the following guidance:

The nature of the act, not its effect, determines whether an action . . . be accomplished by resolution rather than by ordinance. A resolution is the form in which a legislative body expresses a determination or directs a particular action. It is of special or temporary character, whereas an ordinance prescribes a permanent rule for the conduct of government. [Citations omitted.]

Petitioner argues on appeal that case law demonstrates that the distinction between administrative matters and legislative matters often depends on how comprehensive the proposed action is, with more comprehensive actions generally being classified as legislative in nature. Pursuant to that argument, petitioner asserts that the petitions at issue relate to legislative matters because the proposed sale of water and sanitary systems is comprehensive in nature. The petitions direct the city to sell two extraordinary assets: its water and sewerage systems. It is the county which is being asked to create an entity to purchase the asset. Similarly, what the court determined in *Duggan* to be an administrative action was the sale of property to a private party

for a specified use. *Id.* at 575. We note that, in the present case, the county had not created the entity prior to the petitions being filed and cannot be compelled by a city based initiative to do so. In point of fact, unless 2/3 of the county commissioners vote to create such an authority, the petition has no affect. As such, the petition would require the city to offer its asset for sale. That is an administrative action. Our Supreme Court has held that “[a] city holds and manages its municipal utility in a proprietary and *administrative* capacity, as distinguished from its exercise of governmental or *legislative* powers.” *Kalamazoo Municipal Utilities Assoc v City of Kalamazoo*, 345 Mich 318,334; 76 NW2d 1 (1956) [emphases added]. The petitions that respondent rejected directly related to whether respondent should continue to hold and manage two particular municipal utilities, or whether those utilities should be offered for sale to an entity to be created by another governmental unit. In contrast, a petition, correctly drafted, that asked the citizens to determine that the city should no longer operate a water and sewer system would have addressed a permanent policy issue and, therefore, would have been legislative in nature. We find that the petitions, as worded, therefore relate to administrative functions that are not subject to referendum or initiative.

Having determined that the petitions, as written, relate to administrative functions not subject to initiative, we need not address whether the trial court erred in determining that the form of the petitions did not substantially comply with legal requirements.

Affirmed.

/s/ Jane M. Beckering
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens