

IN THE SUPERIOR COURT OF HENRY COUNTY

STATE OF GEORGIA

ELIZABETH MATHIS,)
)
 Plaintiff,) CIVIL ACTION FILE NO. 08-CV-2118-M
)
 vs.)
)
 HENRY COUNTY BOARD OF)
 ELECTIONS AND REGISTRATION,)
 JANET SHELLNUTT, in her official)
 Capacity as Director of Elections of the)
 Henry County Board of Elections and)
 Registration, and HENRY COUNTY)
 REPUBLICAN PARTY,)
)
 Defendants.)

ORDER

This is an action for declaratory judgment, mandamus, and equitable relief. The case was presented to the Court on April 30, 2008 on an expedited basis by consent of the parties.

The facts are undisputed, and were stipulated. On April 28, 2008, the Plaintiff, Elizabeth Mathis, attempted to qualify as a candidate in the Republication primary election for Chairman of the Henry County Board of Commissioners. The Defendants informed her that she is ineligible. This decision was based solely on a local act of the General Assembly, Ga. Laws 1987, p. 4462, which amended the 1974 local act creating the Board of Commissioners of Henry County by adding the following provision:

No person shall be eligible to seek election to or to serve as a member of the board if such person holds or is seeking election to any other federal, state, or local office.

The Board of Commissioners of Henry County is composed of six members. Five members of the board are elected from single member districts. The sixth member of the

board is the Chairman, who is elected on a county-wide basis. See, Ga. Laws 1974, pp. 3680-1; Ga. Laws 1990, pp. 5232, 5234. The Plaintiff is currently a member of the board, serving District No. 2. She was elected to this position in 2004 and took office January 1, 2005. Her current term of office will expire of December 31, 2008.

If Ga. Laws 1987, p. 4462 applies to the Plaintiff and is enforceable, she is ineligible to qualify as a candidate in the Republican primary election for Chairman unless she first resigns her position as Commissioner for District 2. In this action, she argues that the law in question does not apply to her, or, if it does, that it is unenforceable because it violates the State Constitution. The Court will address each of these arguments in turn.

Plaintiff's first argument is that the 1987 act does not apply to her because it only applies to board members who are seeking election to "other" offices. The Plaintiff currently holds office as a county commissioner and is seeking to qualify to run for the office of county commissioner. Based on this, she reasons that the office she is seeking is not one of the "other" offices to which the 1987 act refers. The Court finds this argument to be unpersuasive. One of the obvious purposes of the 1987 act was to prevent a member of the Board of Commissioners from continuing to hold office while running for a different office. The position of elected county-wide Chairman is a different office from the single member district commission seat held by the Plaintiff. It is, therefore, one of the "other" offices referred to in the 1987 act.

The correctness of this construction of the 1987 act is reinforced by the practical effect of the construction urged by the Plaintiff. If the Plaintiff's interpretation of the 1987 act is correct, it would allow the five persons representing single member districts on the Board of Commissioners to continue to hold those offices while running for the

position of Commission Chairman, but any person holding any other federal, state, or local office who wished to run for Chairman would be forced to resign the other office before being allowed to qualify. This is not a result the General Assembly is likely to have intended.

Plaintiff next argues that the 1987 act was repealed by the 1990 act creating the position of Chairman. This argument is based on Section 2 of the 1990 act, which appears at Georgia Laws 1990, p. 5237, and provides, “All laws and parts of laws in conflict with this Act are repealed.”

The 1990 act was not a comprehensive revision of the legislation creating the Board of Commissioners. It added the Chairman’s seat, described his or her powers and duties, established rules of eligibility to hold the office, and provided for the term of office and annual salary. It did not expressly repeal the 1987 act, and contained no provisions which conflict with the 1987 act. Since the 1987 act is not in conflict with the 1990 act, it was not repealed.

Finally, the Plaintiff argues that the 1987 act is unenforceable because it violates Article II, Section II, Paragraph V of the Constitution of the State of Georgia of 1983. This provision of the State Constitution provides:

The office of any state, county, or municipal elected official shall be declared vacant upon such elected official qualifying, in a general primary or general election, or special primary or special election, for another state, county, or municipal elected office or qualifying for the House of Representatives or the Senate of the United States if the term of the office for which such official is qualifying for (sic) begins more than thirty days prior to the expiration of such official’s present term of office.

This provision of the State Constitution prohibits any state, county, or municipal elected official from continuing to hold his or her office after qualifying to run for

another office, if the two terms of office overlap by more than thirty days.¹ Ga. Laws 1987, p. 4464 is more restrictive than the constitutional provision and requires the office holder to give up his or her current seat to run for another office without regard to whether the two terms overlap. Plaintiff argues, essentially, because the rules on the subject whether a person may continue to hold one office while running for another are contained in the State Constitution, the General Assembly was without power or authority to enact inconsistent legislation on the same subject. The Court is constrained to agree.

In Lucas v. Woodward, 240 Ga. 770, 243 S.E.2d 28 (1978), the Supreme Court of Georgia considered the constitutionality of a provision of the local act establishing the office of County Commissioner of Rockdale County which required that a person be a resident of the county for five years before becoming eligible to hold the office. The State Constitution at that time contained a provision which required a person to be a resident of the county for two years to be eligible to hold a county office. The Supreme Court held that the five year residency requirement violated the Constitution and was unenforceable. The Court reached this conclusion even though the residency requirement contained in the local act was not in direct contravention of the residency requirement contained in the Constitution, and instead was merely inconsistent with the constitutional mandate in that it imposed a greater restriction. The Court said, “Where the Constitution has prescribed the qualifications which allow and prevent eligibility to a public office, the General Assembly cannot by statute *add to or take from* those conditions of eligibility.” Lucas, 240 Ga. at 775, 243 S.E.2d at 31 (Emphasis supplied).

¹ This provision does not prevent Plaintiff from continuing to hold the office of District 2 Commissioner while she is running for the office of Chairman, because her term as District 2 Commissioner will end before the term as Chairman begins.

Under the rule enunciated in Lucas, the 1987 act challenged by the Plaintiff cannot stand. The 1987 act is not in contravention of Article II, Section II, Paragraph V of the State Constitution, because it does not purport to authorize what the Constitution prohibits. However, the act is inconsistent with the Constitution in that it imposes a disqualification to hold office which is more restrictive than the disqualification contained in the Constitution. Since the local act attempts to “add to” the rule set out in the Constitution, it is invalid under Lucas.

Accordingly, Georgia Laws 1987, p. 4464 is declared to be unconstitutional, void, unenforceable, and of no effect; and the Defendants are permanently restrained and enjoined from taking any action concerning Plaintiff’s application to qualify as a candidate in the Republican primary for Chairman of the Board of Commissioners of Henry County which is based on Georgia Laws 1987, p. 4464.

IT IS SO ORDERED, this ____ day of May, 2008.

Wade Crumbley
Judge, Henry Superior Court
Flint Judicial Circuit