

ORIGINAL

IN THE SUPREME COURT OF OHIO

IRVIN W. HUTH
PO Box 17
Bolivar, OH 44612

Case No. 14-1214

and

MICHELA HUTH
PO Box 673
Bolivar, OH 44612

Relators,

v.

NEW PHILADELPHIA MUNICIPAL COURT
166 East High Avenue
New Philadelphia, Ohio 44663

and

THE HON. RICHARD D. REINBOLD
A Visiting Judge of the New Philadelphia
Municipal Court
166 East High Avenue
New Philadelphia, Ohio 44663

Respondents.

RELATORS' OPPOSITION TO
MOTION TO INTERVENE

Michela Huth

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CLERK OF COURT
SUPREME COURT OF OHIO

Now comes Irvin W. Huth and Michela Huth, and hereby opposes Intervenor Respondents' Motion to Intervene.

Intervenor Respondents ask this Court for leave to intervene in this case. One of the grounds for said intervention is that Relators do not allege any improper or unauthorized conduct by either Respondents, New Philadelphia Municipal Court and Honorable Judge Richard D. Reinbold. This is not a factual statement. The gravamen of the Writ is that the New Philadelphia Municipal Court lacks subject matter jurisdiction to continue to prosecute the criminal cases of the Relators, and that the Court lacked subject matter jurisdiction to prosecute Relators' criminal cases.

Notwithstanding any of the above, and in addition thereto, the Court should note that the in as much as these Intervenor Respondents admit that they represent the Village and Mayor, and they are a private law firm, the statute specifically bars them from prosecuting. R.C. § 2938.13 provides:

In any case prosecuted for violation of a municipal ordinance the village solicitor or city director of law, and for a statute, he or the prosecuting attorney, shall present the case for the municipal corporation and the state respectively, but either may delegate the responsibility to some other attorney in a proper case, or, if the defendant be unrepresented by counsel may with leave of court, withdraw from the case. But the magistrate or judge shall not permit prosecution of any criminal case by private attorney employed or retained by a complaining witness.

*see also Ex. G, Ohio Attorney General Opinion No. 81-094.*¹ Fitzpatrick, Zimmerman and Rose, an Intervenor Respondent, represents the complaining witness(es), and therefore cannot prosecute pursuant to the above statute. A prosecution starts with the filing of criminal cases. If

¹ Available at <http://www.ohioattorneygeneral.gov/About-AG/Organizational-Structure/Opinions/Opinion-Results.aspx?searchtext=1981-094&searchmode=anyword>

Intervenor Respondents cannot prosecute, they are consequently necessarily barred from filing Relators' criminal cases and prosecuting these criminal cases. A point that conveniently was not addressed at all, because there is no defense. While this may not affect any of the other cases, it most assuredly applies in the Relators' criminal cases.

Moreover, "[t]he Supreme Court of Ohio has held that prohibition will not issue against a prosecuting attorney, because a prosecutor is not seeking to exercise judicial or quasi-judicial power." *Baxter v. Erie County Common Pleas Court*, 6th Dist. No. 03-LW-0047, 2003-Ohio-67, ¶7, citing *State ex rel. Gray v. Leis* (1980), 62 Ohio St.2d 102; see also *State ex rel. Parker v. Court* (1980), 61 Ohio St.2d 351, 402 N.E.2d 508. Consequently, the inclusion, into this action, of the Intervenor Respondents, Steven Anderson, Fitzpatrick, Zimmerman & Rose, and the Village of Bolivar, would be nonsensical, as those persons or entities cannot be the subject of a Writ, and Relators could never prove a set facts under which a writ of prohibition would lie against those entities or persons. See *Godale v. Geauga County Court of Common Pleas*, 166 Ohio App.3d 851, 853 N.E.2d 708, 2006-Ohio-2500, ¶ 16.

Relators pray that this Court deny Intervenor Respondents' Motion to Intervene.



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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Response was sent by regular U.S. mail on

August 21, 2014 to the following:

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