

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 13, 2025

[Cite as *03/13/2025 Case Announcements #2, 2025-Ohio-855.*]

MERIT DECISIONS WITHOUT OPINIONS

2025-0167. State ex rel. Shabazz v. Russo.

In Mandamus and Procedendo. On relator's emergency motions for peremptory or alternative writ of prohibition, mandamus, and/or quo warranto and for an expedited ruling. Motions denied. Twon Billings's motion for leave to intervene denied. Respondent Cuyahoga County Court of Common Pleas Judge Anthony Russo's motion to dismiss granted. Respondent Willa Hemmons's motion to replace Cuyahoga County Prosecutor's Office with a special prosecutor denied as moot. Cause dismissed.

Fischer, DeWine, Deters, and Hawkins, JJ., concur.

Shanahan, J., concurs but would deny the motion to replace Cuyahoga County Prosecutor's Office on the merits.

Kennedy, C.J., dissents, with an opinion joined by Brunner, J.

KENNEDY, C.J., joined by BRUNNER, J., dissenting.

{¶ 1} I agree with the majority's decision to deny Twon Billings's motion to intervene as a relator and respondent East Cleveland Law Director Willa Hemmons's motion to replace the Cuyahoga County Prosecutor's Office with a special prosecutor as counsel for respondent Cuyahoga County Probate Judge Anthony Russo. But I dissent from the majority's judgment granting Judge Russo's motion to dismiss and instead would issue an alternative writ, order Judge Russo to answer, and set a schedule for the filing of evidence and briefs, which would moot Shabazz's motion for a peremptory writ and motion to expedite.

{¶ 2} In this original action, we confront the question of whether the Revised Code or East Cleveland’s City Charter controls who will serve as East Cleveland’s mayor or acting mayor.

{¶ 3} The Cuyahoga County Grand Jury indicted East Cleveland Mayor Brandon King for multiple corruption-related felonies. A three-judge commission suspended him from office pursuant to R.C. 3.16, which outlines a procedure for suspending public officials charged felonies related to their public duties. After a mayor is suspended, R.C. 3.16(E)(4) provides that the county’s probate judge shall appoint an “interim replacement” for the duration of the mayor’s suspension.

{¶ 4} East Cleveland’s city charter, however, has its own procedure for determining who is mayor or acting mayor when the sitting mayor is suspended from office. Section 114 of the charter lists two separate lines of succession—one that applies when the mayor is “temporarily unable for any cause to perform his or her duties,” making the successor East Cleveland’s *acting mayor*, and another that applies in cases of the mayor’s “death, resignation, removal or long-term absence,” making the successor the actual *mayor*.

{¶ 5} Over a century ago, the people of Ohio decided that the city charter should control. The Home Rule Amendment, Ohio Const., art. XVIII, § 3, adopted in 1912, provides municipalities with full and complete political power in all matters of local self-government. *Newburgh Hts. v. State*, 2022-Ohio-1642, ¶ 24. Shortly after the Constitution granted municipalities home-rule power, this court recognized that it “vests in cities adopting a charter the power to prescribe the manner of the selection of their own purely municipal officers.” *State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. 339 (1919), paragraph one of the syllabus.

{¶ 6} So, because the three-judge commission suspended Mayor King, the city charter controls who will be mayor or acting mayor, not R.C. 3.16(E)(4). As such, I would deny Judge Russo’s motion to dismiss, issue an alternative writ, and order Judge Russo to answer.

{¶ 7} I therefore dissent.

Facts and Procedural History

{¶ 8} According to relator Lateek Shabazz’s complaint, the Cuyahoga County Grand Jury indicted King on multiple corruption charges, including felony counts of theft in office and having an unlawful interest in a public contract. After that, Cuyahoga County Prosecutor Michael C. O’Malley, in accordance with R.C. 3.16(B)(1), initiated the process for suspending a

public official charged with a felony. That process required the chief justice to appoint a three-judge commission to determine whether to suspend King from his position. The commission determined that under R.C. 3.16(C), King’s “administration of, or conduct in the performance of the duties of, [his] office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public.” The commission suspended King, but he retains his title.

{¶ 9} Under R.C. 3.16(E)(4), once a city’s mayor is suspended from office, the county’s probate judge appoints the official’s interim replacement. Judge Russo announced that he would take applications for the position and then appoint an interim mayor.

{¶ 10} Shabazz, claiming to be East Cleveland’s city council president, commenced this original action on February 3, asking for a writ of quo warranto and a writ of prohibition or, in the alternative, a writ of mandamus. He seeks a writ of quo warranto declaring that Hemmons is not East Cleveland’s acting mayor. And he requests a writ of prohibition preventing Judge Russo from appointing an interim mayor, or a writ of mandamus ordering Judge Russo to name him East Cleveland’s interim mayor.

{¶ 11} Shabazz also filed motions for an emergency peremptory or alternative writ and for an expedited ruling in this action.

{¶ 12} Shabazz alleges that he is East Cleveland’s acting mayor because he is the president of the East Cleveland City Council and Section 114 of the East Cleveland City Charter makes the president of the city council the acting mayor when the mayor has a long-term absence. He argues that R.C. 3.16(E)(4) is inconsistent with Section 114, and that under home rule, the charter should control.

{¶ 13} Judge Russo moved to dismiss Shabazz’s complaint, and both the judge and Hemmons oppose Shabazz’s motions for emergency relief. Hemmons has also moved to replace the Cuyahoga County Prosecutor’s Office with a special prosecutor as counsel for Judge Russo, claiming that there is a conflict of interest, and she filed a “response to complaint.” In addition, East Cleveland city-council member, Twon Billings, has filed a motion for leave to intervene as a relator.

Law and Analysis

{¶ 14} Before the people adopted the Home Rule Amendment, “the source and extent of municipal power was derived from the enactments of the General Assembly.” *Cincinnati Bell*

Tel. Co. v. Cincinnati, 1998-Ohio-339, ¶ 20. “[M]unicipalities could exercise only those powers delegated by statute.” *Geauga Cty. Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 1993-Ohio-55, ¶ 13. “Such power, being legislative only, could be withdrawn from the municipalities, or amended, at any session of the Legislature. . . . [A]nd there was neither stability of law, touching municipal power, nor sufficient elasticity of law to meet changed and changing municipal conditions.” *Buckeye Community Hope Found. v. Cuyahoga Falls*, 1998-Ohio-189, ¶ 10, quoting *Perrysburg v. Ridgway*, 108 Ohio St. 245, 255 (1923).

{¶ 15} The Home Rule Amendment remedied that problem. It provides that “municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const., art. XVIII, § 3. Article XVIII, Section 7 states that “[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of [Article XVIII], exercise thereunder all powers of local self-government.”

{¶ 16} “Passage of the Home Rule Amendment provided municipalities with ‘full and complete political power in all matters of local self government.’” *Cincinnati Bell Tel. Co.* at ¶ 20, quoting *Perrysburg* at 255. “In the event of a conflict with state law, the charter prevails on matters of local self-government. . . .” *State ex rel. Pennington v. Bivens*, 2021-Ohio-3134, ¶ 11.

{¶ 17} Included in the power of local self-government is the authority to select municipal officials—“there could not be a more forthright statement to the effect that the selection of municipal officers is a matter of purely local concern.” *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 215 (1948). Through their city charters, cities can set the method for appointing their local officials, even when the General Assembly has provided for a different procedure. *Fitzgerald v. Cleveland*, 88 Ohio St. 338, 351-352 (1913).

{¶ 18} A city’s charter with a procedure for replacing a suspended mayor “finds its validity in the Constitution itself, and not in the enactments of the General Assembly,” *State ex rel. Taylor v. French*, 96 Ohio St. 172, 183 (1917). And of course, “a statutory enactment cannot trump a constitutional provision.” *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 46.

{¶ 19} This court has previously addressed the constitutionality of “provisions in a city’s charter, relative to appointments to fill vacancies in the legislative body.” *See Devine v.*

Hoermle, 168 Ohio St. 461, 462 (1959). In *Devine*, a dispute arose over who had the authority to fill a vacant seat on the Columbus City Council. *See id.* at paragraph two of the syllabus. Under the circumstances in that case, a statute empowered the mayor to fill the vacancy. *Id.* at 462. However, Columbus’s city charter granted the appointment power exclusively to the city council. *Id.* at 463.

{¶ 20} The court held that the city charter controlled, reasoning that “[w]here [a city’s] charter provisions specify who shall make such appointments, statutory provisions authorizing an appointment by someone else cannot apply in the absence of their adoption by other provisions of the charter.” *Id.* at 462.

{¶ 21} Here, as in *Devine*, a statute and a city charter both dictate the method for replacing a suspended municipal official. R.C. 3.16(E) sets forth a statutory procedure for replacing a suspended public official charged with a felony related to his or her public duties. Its relevant portion provides that when a public official is suspended, “an interim replacement official shall be appointed by the probate judge of the court of common pleas.” R.C. 3.16(E)(4). Under the statute, then, Judge Russo would appoint an “interim” mayor for East Cleveland. *Id.*

{¶ 22} East Cleveland’s charter, originally adopted in 1916, outlines the method for filling a “vacancy” in the mayor’s office. It provides two lines of succession for when the mayor is unable to perform his or her duties. The first applies “when the Mayor is absent from the city, or is otherwise not accessible, or is temporarily unable for any cause to perform his or her duties.” In that case, “the order of succession as *Acting Mayor* shall be as follows: Director of Finance, Director of Law, and the Director of Public Service.” (Emphasis added.) The second line of succession applies “[i]n the case of death, resignation, removal or long-term absence of the Mayor.” In that case, “the order of succession as *Mayor* shall be as follows: President of Council, Vice President of Council and ranking Council member based upon aggregate years of service.” (Emphasis added.)

{¶ 23} The Home Rule Amendment makes the city charter paramount in questions of local self-government. Evidence and briefs would have helped us determine who is entitled to be mayor or acting mayor—i.e., whether King is “temporarily unable for any cause to perform his duties” or whether King’s suspension constitutes a “long-term absence.” Additionally, evidence and briefs would shed light on whether Hemmons, who is allegedly holding herself out as acting mayor, is eligible for the position. Section 112 of East Cleveland’s charter requires that the

mayor reside in East Cleveland, but Shabazz states that Hemmons is not an East Cleveland resident.

Conclusion

{¶ 24} I agree with the majority's resolution of Billings's and Hemmons's motions. I would deny Shabazz's motion for a peremptory writ and motion to expedite as moot. And for the reasons stated above, I would deny Judge Russo's motion to dismiss and issue an alternative writ. Accordingly, I dissent.
