

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

IN RE: JOHN MAXWELL,
SCOTT COUNTY SUPERVISOR

John Maxwell, Appellant.

No. CVCV133686

ORDER

This matter came before the Court on March 26, 2021, on John Maxwell's (Maxwell) appeal of the determination by the panel of the Scott County auditor, recorder, and treasurer that the office of county supervisor that he holds is vacant. The Court conducted the hearing by Zoom. Maxwell was represented by Alan R. Ostergren. The Court had previously permitted Matt Trimble and Carlton Wills to intervene as they were the petitioners who appeared at the proceedings below through counsel.¹ They were represented by James Larew. Assistant Scott County Attorney Robert Cusack was also present for the hearing.

Background Facts and Proceedings Below

The facts of this appeal are not in dispute. Maxwell is a county supervisor and also serves as a member of the North Scott School District school board. Relevant to the present dispute is the fact that Maxwell was elected to be a supervisor in the 2018 general election and qualified for office in January 2019. He was reelected in November of 2019 to the school board and qualified for office shortly thereafter.

More than 25 Scott County voters petitioned the auditor under Iowa Code § 69.2(2) to determine whether the office of supervisor was vacant due to Maxwell's election to and qualification for the position of school board member. Because a

¹ For purposes of this Ruling, the Court will refer to Matt Trimble and Carlton Wills as "Petitioners."

vacancy on the board of supervisors is filled by the panel of the auditor, recorder, and treasurer, those office holders were charged with the determination of whether the office of supervisor was vacant.

The panel held a public hearing on March 15, 2021 and reconvened on March 17 to announce its decision. After deliberation, the panel voted 2-1 to find that the office of supervisor was vacant. The auditor and recorder voted “yes” on the question, the treasurer voted “no.” The motion did not specify when the office of supervisor became vacant. Because of this, the Court must presume that the panel found the office vacant as of March 15, 2021. As will be explained below, however, this is not determinative of the question presented in this appeal.

Maxwell filed a notice of appeal of the panel’s decision on March 17. He posted bond the following day. He has continued to serve as a supervisor as provided by Iowa Code § 69.2(2) during this appeal.

Positions of the Parties

Iowa Code Section 69.2(2) instructs this Court to hear the appeal of a vacancy determination in “equity and determine all questions arising in the case.” The Court will not defer to the legal conclusions of the vacancy panel. As noted above, there are no material facts in dispute as to which offices Maxwell holds and the sequence of qualifying for those offices.

The claim presented to the Court is that the offices of county supervisor and school board member are incompatible. If this is so, then the acceptance of an incompatible office constitutes a resignation of the first. *State v. White*, 133 N.W.2d 903, 904 (Iowa 1965). Offices are incompatible when “there is an inconsistency in the

functions of the two, as where one is subordinate to the other and subject in some degree to its revisory power, or where the duties of the offices are inherently inconsistent and repugnant.” *Id.* at 905.

The *White* decision involved an individual who was simultaneously elected to a local school board and the county board of education. As a member of the county board, he had the power to review decisions of a local school board. This revisory power meant the offices were incompatible. *Id.* As such, the acceptance of the county board position meant, by operation of law, that White had resigned from the local school board.

The Petitioners argue that the offices of supervisor and school board are incompatible because both are involved with the Davenport City Conference Board. Iowa Code § 441.2. The conference board supervises the Davenport City Assessor. The conference board for a city consists of the board of supervisors, the city council, and all school boards in the city. Because the North Scott School District has a small amount of territory within the City of Davenport, it is included in the conference board representation. The conference board members do not vote as individuals, Rather, they participate as part of a voting unit. The conference board has three voting units: county, city, and school. As such, Maxwell is but one member of two voting units.

The Petitioners cited to an opinion of the Iowa attorney general that the offices of mayor and supervisor were incompatible due to the conference board membership. 1993 Iowa Op. Atty. Gen. 11, 1993 WL 137167. The opinion cited the need for the voting units to be represented “fairly and impartially.” The opinion did not cite any specific statutory prohibition against dual office holding nor did it identify how the

interests of a county and a school might be in opposition on a conference board or elsewhere. The opinion was based on the public policy considerations of holding the two offices.

Maxwell cited to several authorities in opposition. He pointed to a 1992 Iowa Attorney General opinion stating that the offices of supervisor and school board member were not incompatible. 1992 Iowa Op. Atty. Gen 150, 1992 WL 470380. Although this opinion does not discuss the conference board membership specifically, it does discuss the property tax relationship between counties and schools. A school board's property tax levy is passed over to the board of supervisors to be included in the levy made by the board against the property in the county. The opinion notes that the board of supervisors has no revisory power over the school's levy and that this ministerial duty creates no incompatibility.

A 2000 opinion of the Iowa Attorney General was also cited by Maxwell. 2000 Iowa Op. Atty. Gen. 00-9-1, 2000 WL 1576494. This opinion held that the offices of county conservation board member and state Natural Resources Commission member were not incompatible. Importantly for Maxwell, the 2000 opinion disclaims reliance on generalized public policy concerns and rather focuses on the statutory duties of the two positions in question. The opinion states that the attorney general's office "narrowly construes the incompatibility doctrine and applies it cautiously to avoid infringing on the interests of those seeking to hold public office and to avoid infringing on the interests of those seeking to have their choice of public officials respected." *Id.* at *1 "In keeping with these principles, we will conclude that two offices are incompatible as a matter of

law only where definite and clear statutory inconsistencies will arise in performing important statutory functions of the offices.” *Id.*

Maxwell directed the court’s attention to guidance published by the Iowa Secretary of State that states a person may simultaneously serve as a county supervisor and school board member. Although the guidance is not itself a legal analysis like an attorney general opinion, it is instructive as to what candidates like Maxwell would be told if they inquired about the permissibility of holding those two offices. The Secretary’s public guidance is also relevant to the Court’s consideration of the claim that public policy does not permit the dual office holding.

Maxwell cited to legislation passed in 2017 that permits a candidate for school and city office to appear on the same ballot. 2017 Iowa Acts Ch. 155, § 23. The amendment was necessary because the legislature combined the elections for school board (held in September of odd-numbered years) and city offices (held in November of odd-numbered years) to one combined city and school election in November of odd-numbered years. 2017 Iowa Acts Ch. 155, § 1. Maxwell argued that, because the legislation would permit a person to be simultaneously elected to positions in two conference board voting units, the 1993 attorney general opinion could not be relied upon any longer.

Maxwell also cited to legislation, Senate File 413 (89th G.A.)SF, that was passed and signed into law shortly before the hearing. The law, Iowa Code Section 39.13, took effect on March 8, 2021, and specifically address the question of conference board makeup by permitting a person who is a member of more than one voting unit to waive participation for one of those units. The law also states that such waiver “does not

cause the person to vacate any elective office.” Iowa Code § 39.13 (2021). Maxwell cited authority for the proposition that a procedural statute should be applied to pending disputes. In response, the Petitioners argued that this law cannot affect a vacancy that occurred when Maxwell qualified for office on the school board in November 2019.

Discussion and Analysis

The parties recognize there is no statutory provision which makes these positions incompatible. While the Petitioners attempt to shoe horn this case into the vacancy provision found in Iowa Code Section 69.2(1)(h), the Court does not find that a supervisor and school board member are “at the same level of government.” The parties’ further show their recognition that the Code does not specifically prohibit a person being a supervisor and a school board member by focusing their arguments on the common law test of incompatibility found in *White*. The Court finds that pursuant to the *White* incompatibility test the positions of supervisor and school board member are not incompatible. The Court will explain the analysis below.

As the Court views it, there are essentially two “prongs” of the *White* incompatibility test. The first involves a review of the functions of the two offices. As outlined earlier, the Court needs to examine whether Maxwell as a school board member would be subordinate to and subject to revision by Maxwell the supervisor. 133 N.W.2d at 905. Or in the alternative whether these two offices are inherently inconsistent and repugnant. *Id.* There is no evidence that the school board is subordinate to the supervisors. Nor is there evidence that a decision made by the school board would be subject to revision by the supervisors. The Petitioners failed to prove incompatibility pursuant to the first prong of the *White* test.

The second prong is a focus on public policy. Here the Court is to examine whether the duties of the two offices render holding both offices improper as a matter of public policy. 133 N.W.2d at 905. “If there be any question of public policy involved,...such policy is a legislative one. ... To base judicial decision upon alleged public policy has its peril and is done only under extraordinary circumstances.” *Brutsche v. Incorporated Town of Coon Rapids*, 272 N.W. 624, 632 (Iowa 1937).

The Court finds that there are no public policy concerns sufficient to create an incompatibility between the offices. The operation of a conference board concerns ministerial work of the property tax system. The Court is confident that any public office holder can and should recuse from a particular vote where there is a concern of a specific conflict of interest. The Petitioners did not identify any structural conflict between the county and the school district that would justify holding the two offices to be fundamentally incompatible.

Next, the Court must turn to the legislature and their intent. Iowa Code Section 441.2 governs the conference boards for counties and cities in Iowa. In the situation before the Court, Maxwell’s election to the school board while he was a sitting supervisor automatically placed him within two of the voting units that make up the city conference board. But this situation is not entirely unique to city conference boards. In a county conference board there is one representative from the school board on the conference board. This representative is appointed by members of all the school boards in the county. The rest of the county conference board is made up of the mayors and the members of the board of supervisors. In theory, Maxwell could be in this same situation in a county conference board.

The Court uses this example to show that the potential for conflict is available in all conference board situations, not simply the seven city conference boards that exist throughout the state. This is where the persuasive nature of all the attorney general opinions factor in. The 1992 and 2000 opinions cited above were sought out by legislators. The Black Hawk County Attorney, another elected official at the county level, was included on both the 1992 and 1993 opinions. Iowa Code Section 441.2 has been in effect as it is written since 1975. All of these facts inform the Court that the legislature had notice of this issue and chose not to categorically prohibit a person from serving as both a school board member and a supervisor.

In addition to the notice provided by the attorney general opinions, the legislature had the opportunity to address this issue in 2017 when they revised the law to permit a candidate to run for school board and city offices in the same election. As documented by the parties, in a county with a city conference board, if a person were elected to the city council and the school board they would hold positions in two separate voting units just as Maxwell does.

The Court finds the Petitioner's argument that this was merely an oversight by the legislature unconvincing. The Court is to give statutes a "reasonable interpretation." *IBP, Inc. v. Harker*, 633 N.W.2d 322 (Iowa 2001). "To ascertain legislative intent, we look to what the legislature said. We do not speculate as to the probable legislative intent apart from the words used in the statute." *Id.* (quoting *State v. Adams*, 554 N.W.2d 686, 689 (Iowa 1996)). This is essential here. The legislature did not specifically exclude individuals who live in a city with a city conference board from running for both positions.

The legislature provided further clarity when they enacted Senate File 413 on March 8, 2021. Senate File 413 addressed the specific issue raised by the Petitioners. The Court notes that Senate File 413 did not specifically state an individual could serve as a supervisor and a school board member. Senate File 413 only created a mechanism to avoid any appearance of conflict and created a method by which the conference board members and the public knew which voting unit the office holder was representing. If the legislature thought these positions were incompatible this was their opportunity to say so. Instead, they created a legal framework to allow office holders to serve in both capacities.

The Court can envision numerous scenarios that might exist in a predominantly rural state like Iowa where certain individuals in certain communities may be the most capable, willing, and able to serve. This could easily result in a person holding multiple offices. The Court finds it is a very reasonable interpretation of Senate File 413 in conjunction with the other statutes already codified. Rather than strictly prohibit individuals from serving, it is in the best interests of the public to create a framework for waiving any perceived conflict.

Finally, the Court is sensitive to the interests of the public. The voters were surely aware that Maxwell was on the school board when they elected him to the board of supervisors and then reelected him to the school board. The ability of the voters to elect candidates of their choice is a factor in the Court's analysis. This is especially true when the issue raised is one of public policy. Both the legislature and the voters have indicated they do not find a conflict through their actions involving Maxwell.

Because the Court finds that the positions of supervisor and school board member are not incompatible, the Court is not going to address the question of retroactivity. Furthermore, the Court will not address the issue raised of when the vacancy occurred which goes hand in hand with the retroactivity issue.

Declaratory Judgment

The Court finds Section 2 of Senate File 413 is constitutional on its face. The Court does not reach the issue of retroactivity for the reasons outlined above.

Ruling

IT IS THEREFORE THE ORDER OF THE COURT:

1. The finding of the panel of the Scott County Auditor, Recorder, and Treasurer that the office of county supervisor held by John Maxwell is vacant is REVERSED.
2. The bond posted by Maxwell shall be exonerated.
3. The costs of this appeal are assessed to the Petitioners.
4. The Motion for Declaratory Judgment is DENIED.



State of Iowa Courts

Case Number
CVCV133686
Type:

Case Title
IN RE: JOHN MAXWELL SCOTT COUNTY SUPERVISOR
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read 'P. A. McElyea', written over a horizontal line.

Patrick A. McElyea, District Court Judge
Seventh Judicial District of Iowa

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