

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DEPARTMENT**

TIM SWANSON,)
)
Plaintiff,)
)
v.) Case No. _____
)
MAYOR ERIC MIKKELSON)
and)
THE CITY OF PRAIRIE VILLAGE)
)
Defendants.)

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Tim Swanson (“Swanson”), an individual resident of Prairie Village and an applicant for the Ward 3 councilmember vacancy, by and through counsel, alleges for his Petition for Declaratory and Injunctive Relief against Defendants Mayor Eric Mikkelson and the City of Prairie Village the following:

Nature of the Case

1. On March 4, 2024, Prairie Village Ward 3 councilmember Lauren Wolf announced her resignation from the city council.
2. On March 21, 2024, Plaintiff Swanson filed his application for the vacant Prairie Village Ward 3 councilmember position, attached hereto as Exhibit A.
3. Pursuant to K.S.A. § 13-513, the Prairie Village City Council is to fill this vacancy.
4. Defendant Mayor Eric Mikkelson, however, claims to have the authority to fill this vacancy pursuant to City Code and Charter Ordinance.

5. Plaintiff requests a declaratory judgment ruling that the Prairie Village City Council shall fill the Ward 3 councilmember vacancy and declare null and void any provision of the City Code and any Charter Ordinance that purports to provide the Prairie Village mayor the authority to fill this vacancy. Plaintiff further requests injunctive relief to prevent Defendant Mikkelson from filling this vacancy in violation of K.S.A. § 13-513.

Parties

6. Plaintiff Tim Swanson is an individual resident of Prairie Village, Kansas. Swanson is interested in serving on the Prairie Village City Council and, in furtherance thereof, has submitted his application for the vacant Prairie Village Ward 3 councilmember position.

7. Defendant Eric Mikkelson is sued in his official capacity as mayor of the City of Prairie Village. Mikkelson has indicated he intends to exercise his authority to fill the vacant Prairie Village Ward 3 councilmember position in violation of K.S.A. § 13-513.

8. Defendant City of Prairie Village has adopted an invalid provision of the City Code and an invalid Charter Ordinance that appear to provide the mayor with authority to fill this vacancy. As such, the City is a necessary party pursuant to K.S.A. § 60-1712.

Jurisdiction and Venue

9. This Court has jurisdiction over this action pursuant to K.S.A. §§ 60-1701 and 60-901.

10. Venue is appropriate in Johnson County because all parties reside in Johnson County and all relevant actions or events have occurred within the County.

Allegations

11. On March 4, 2024, Prairie Village Ward 3 councilmember Lauren Wolf announced her resignation from the city council.

12. On March 21, 2024, Plaintiff Swanson filed his application for the vacant Prairie Village Ward 3 councilmember position.

13. Pursuant to K.S.A. § 13-513, “[w]henver a vacancy shall occur in the office of councilman, the governing body shall appoint an elector of the ward where the vacancy occurs to be councilman for the balance of the unexpired term.”

14. The “governing body” of the City of Prairie Village is the City Council with the mayor only “considered part of the city governing body for the purposes of voting on the passage of a charter ordinance.” K.S.A. § 12-104.

15. Therefore, pursuant to K.S.A. § 13-513, the Prairie Village City Council shall appoint and fill any councilmember vacancy.

16. Kansans, though, have authorized Kansas cities to opt out of certain legislative enactments. KS Const. Art. 12, § 5(c).

17. To opt out, a city must pass a charter ordinance that “designate[s] specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain[s] the substitute and additional provisions, if any.” *Id.* The charter ordinance must be approved by a “two-thirds vote of the members-elect of the governing body of such city.” *Id.*

18. Here, the City of Prairie Village has adopted a code provision that purports to enable the mayor to appoint a person to fill vacant councilmember positions. Prairie Village Code § 1-208. This code provision is not a charter ordinance and cannot override the dictates of state statute.

19. The City of Prairie Village, though, did adopt Charter Ordinance 26, which purports to opt out of K.S.A. § 13-513.

20. Charter Ordinance 26 states that the City of Prairie Village “hereby elects to and exempts itself from and makes inapplicable to it K.S.A. 13-513.”

21. Charter Ordinance 26, however, does not simply opt the City of Prairie Village out of the mandates of K.S.A. § 13-513. It also purports to “provide[] substitute and additional provisions” regarding the subject matter of K.S.A. § 13-513.

22. Instead of providing substitute language regarding the filling of councilmember vacancies, the Charter Ordinance simply states, “additional provision on the subjects addressed by K.S.A. 13-513 ... relating to the filling of governing body vacancies ... are and will be contained in one or more ordinary ordinances.”

23. Charter Ordinance 26 does not satisfy the mandates of KS Const. Art. 12, § 5(c) and is, therefore, null and void.

24. Article 12, § 5(c) provides that a city may either simply opt out of a legislative enactment or may adopt substitute provisions regarding the topics of a

legislative enactment. If the city chooses to adopt substitute provisions, those provisions must be contained within the charter ordinance.

25. Here, Charter Ordinance 26 violates Art. 12, § 5(c) because it purports to provide substitute provisions for the legislature's enactment of K.S.A. § 13-513. Charter Ordinance 26, however, does not include those substitute provisions within the ordinance. It, rather, directs the public to scour the City's ordinary ordinances to find substitute provisions. This failure to include any substitute provisions within the charter ordinance renders the ordinance null and void under Art. 12, § 5(c).

26. Charter Ordinance 26 is also null and void because it violates the requirements of K.S.A. § 12-3004, which requires that "[n]o ordinance shall contain more than one subject."

27. Charter Ordinance 26 contains at least two subjects. First, it purports to provide substitute provisions regarding the filling of vacant positions on the City of Prairie Village's governing body. Second, it purports to provide substitute provisions regarding the procedures and timing of primary elections. These are two separate topics and Charter Ordinance 26, therefore, violates K.S.A. § 12-3004 and is null and void.

28. Despite these null and void code and charter provisions, the Defendant Mayor has indicated he intends, by or before the Prairie Village April 15 City Council meeting, to appoint a person to fill the vacant Ward 3 councilmember position.

29. Time is of the essence in resolving this dispute.

Claim 1: Request for Declaratory Judgment and Injunctive Relief

30. Plaintiff incorporates by reference paragraphs 1 through 29 of this Petition as though fully set out herein.

31. The City of Prairie Village has a vacant Ward 3 councilmember position.

32. An actual controversy exists with respect to the rights and legal relations of the parties as to the issues raised in this Complaint in that Plaintiff is a candidate for the vacant Ward 3 councilmember position and the Defendants are pursuing an unlawful method for filling that vacant position.

33. Pursuant to K.S.A. § 13-513, the vacant position shall be filled by the Prairie Village City Council.

34. Pursuant to the Kansas Constitution, Article 12, § 5(c), neither Prairie Village Code § 1-208 nor Charter Ordinance 26 create a valid opt-out of this legislative enactment.

35. The Court should declare both Prairie Village Code § 1-208 and Charter Ordinance 26 null and void.

36. The Court should declare that the vacant Ward 3 councilmember position shall be filled by the Prairie Village City Council as required by K.S.A. § 13-513.

37. Pursuant to K.S.A. § 60-901, Plaintiffs are entitled to injunctive relief barring Defendants from enforcing or acting upon Prairie Village Code § 1-208 and Charter Ordinance 26, because such code and ordinance provisions are null and void and in violation of K.S.A. § 13-513.

WHEREFORE, Plaintiff prays for a declaratory judgment against Defendants declaring Prairie Village Code § 1-208 and Charter Ordinance 26 null and void and declaring that the City of Prairie Village shall fill the vacant Ward 3 councilmember position through nomination and appointment by the Prairie Village City Council. Plaintiff further requests injunctive relief barring Defendants from acting upon or enforcing Prairie Village Code § 1-208 and Charter Ordinance 26.

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