

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000545-MR

KAREN F. GIBSON,
PIKE COUNTY JUDGE/EXECUTIVE

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE DANNY P. CAUDILL, JUDGE
ACTION NO. 02-CI-00059

MAGISTRATES OF PIKE COUNTY,
KENTUCKY, VIA RODNEY KEENE;
VERNON JOHNSON; FOSTER THACKER;
HILMAN DOTSON; STIRL EDDIE
HARRIS; AND JOHND A BILITER, PIKE
COUNTY TREASURER

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND PAISLEY, JUDGES.
PAISLEY, JUDGE. This is an appeal from an order entered by the
Pike Circuit Court concerning a petition for declaratory
judgment regarding the rights of certain employees. For the
reasons stated hereafter, we affirm.

Appellant, the Pike County Judge/Executive, filed this action seeking a declaration of rights after appellees, the Pike County magistrates, determined that Section 610(6) of the county's Fiscal Administrative Code (code) prohibited the payment of wages and benefits to certain employees who ran for paid elective offices in Pike County. Appellees responded by seeking injunctive relief to compel appellant to enforce the code provisions. The trial court determined that Section 610(6) did not apply to three employees who served as the county judge/executive's assistants, but that it did permit the termination of the employment of three employees of the county's road and solid waste departments. Partial injunctive relief was granted to each party, and this appeal followed.

Appellant contends that the trial court erred by failing to find that Section 610(6) is unconstitutional because it treats similarly situated individuals differently without any rational justification for doing so. We disagree.

Section 610 provides in pertinent part that:

(6) Any employee of the Court who files as a candidate for any paid political office shall be deemed to have resigned. . . .

(7) If, based upon a majority vote by the entire Court, an employee is found to have violated Section 610 of this Administrative Code, the employee will be suspended for thirty (30) days without pay for the first violation and terminated for the second violation.

Although other sections of the administrative code are not available to us on appeal, the parties do not challenge the trial court's statements that the code defines "court" as the Pike County Fiscal Court, which consists of "all magistrates and the Judge/Executive."

Our review of KRS Chapter 67, pertaining to cities, counties and other local units, shows that for purposes of this appeal there is no conflict between Section 610 and the pertinent statutes. KRS 67.040(1) and KRS 67.080(1)(f) provide that a fiscal court, consisting of the county judge/executive and three elected county commissioners, shall "[e]stablish all appointive offices, set the duties of those offices, and approve all appointments to those offices." The fiscal court's executive powers include employing personnel to perform public functions such as those relating to county roads, police and fire protection. See, e.g., KRS 67.083(3)(t) and (u). Generally, the authority of a county judge/executive "to appoint, supervise, suspend, and remove county personnel" is subject to fiscal court approval. KRS 67.710(7). However, "[n]otwithstanding the provisions of KRS 67.710(7)," exemptions exist for certain persons who serve at a county judge/executive's pleasure, including "a deputy county

judge/executive, and a reasonable number of other assistants, secretaries, and clerical workers." KRS 67.711(1).

Here, the trial court exempted from the application of Section 610(6) three people who served at the pleasure of the county judge/executive, including an assistant, a deputy assistant, and a secretary. See KRS 67.711(1). Clearly, a rational basis exists for making distinctions in the manner of applying the code to such statutorily-exempt employees, as compared to the method of applying the code to employees who are subject to fiscal court review. See Roberts v. Mooneyhan, Ky. App., 902 S.W.2d 842, 843 (1995). We conclude, therefore, that equal protection was not violated by the different treatment of exempt and nonexempt employees. Moreover, there is no merit to appellant's argument that equal protection was violated by the fiscal court's past failure to fire persons such as deputy jailers, deputy sheriffs, or deputy county clerks who ran for office, as such persons are hired and supervised by individual elected officials rather than by the fiscal court. We conclude, therefore, that the court did not err when entering its order.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Doug Hays
Pikeville, Kentucky

BRIEF FOR APPELLEES:

R. Roland Case
Pikeville, Kentucky