

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-000585-MR

CARL TOTH; WILLIAM TOTH;
MARK GRAY, AUGUST PROPERTIES, LLC;
MARK EDWARDS; AND LEES, INC.

APPELLANTS

v. APPEAL FROM MERCER CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 03-CI-00341

MERCER COUNTY BOARD OF ELECTIONS;
DARYL CATLETT, RALPH ANDERSON, ANN ROBINSON,
RONNIE COMPTON, BRUCE HARPER,
MERCER COUNTY BOARD OF
ELECTIONS COMMISSIONERS;
MERCER COUNTY JUDGE-EXECUTIVE JOHN TRISLER;
CITY OF HARRODSBURG; CHARLES M. DEDMON
AND HELEN W. DEDMON

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

KNOPF, JUDGE: The facts of this action are not in dispute. On November 7, 2000, the City of Harrodsburg held a local option election to legalize the sale of alcoholic beverages by the drink. That option was voted down by the voters. In 2003, a

new petition was filed to place the question on the ballot. The matter was placed on the ballot at the general election held on November 4, 2003. The option passed by a margin of seventeen votes. There are no allegations of fraud or other irregularities in that vote.

Thereafter, the appellants filed a complaint contesting the election. The appellants point out that KRS 242.030(5) states that "[n]o local option election [concerning sale of alcoholic beverages by the drink] shall be held in the same territory more than once in every three (3) years." The appellees argue that the statute requires strict adherence to the three-year limitation. Because November 4, 2003, was less than three 365-day years after November 7, 2000, the appellees argue that the vote to pass the local option is invalid. The trial court rejected this argument and this appeal followed.

After thoroughly reviewing the applicable law, we find the trial court's reasoning to be persuasive, and we adopt the following portion of the trial court's opinion:

In brief, the plaintiff/contestants argue that KRS 242.030(5), made applicable to the limited sales of alcohol by the drink pursuant to KRS 242.185(6), required strict adherence to a 365 day calendar year application to the three (3) year limitation placed on questions related to any vote concerning alcohol sales in the same territory. The defendants/contesteas, collectively, argued that the Legislature in enacting KRS 242.185(6), by plain and clear

language permitted questions on the limited sale of alcohol by the drink to be placed upon the ballot during a general election, as was done here, and that the procedure used by the County Judge/Executive was consistent with the Legislative intent in that enactment or, in the alternative, in substantial compliance with that statute. The day of General Election having been set by the Kentucky Constitution, Section 148, on the first Tuesday following the first Monday [in November] in each year, the fact that the election held on this question in the third year was placed on a day, without regard to a date, creates a conflict between these two arguments.

It is clear to the Court from the language of our Supreme Court in Temperance League of Kentucky v. Perry, Ky., 74 S.W.3d 730, 735-736 (2002) that elections on issues relating to alcohol sales arising under Section 61 of our Constitution take on no different character than those referenced in other Sections of our Constitution. In essence, as the Court noted, an election is an election. Temperance League, 74 S.W.3d at 735. It is equally clear, even under KRS 446.010 which defines the term "year," that the statute allows for another definition of the term "year" when the context of the statute in question "requires otherwise." The Court holds that in this action the context of the statutes in question require a different interpretation or meaning of the word "year" to mean election year as set forth by the Kentucky Constitution § 61. The plaintiffs' argument that the election on the limited sale of alcohol by the drink required the County to expend additional funds for a special election three days after the general election in order to comply with KRS 242.0303(5) is simply inconsistent with the right granted to Counties by the Legislature to place such question on the ballot at a general election. KRS 242.185(6); Temperance League, 74 S.W.3d at 735 (" . . . absent the

permissive 'may' in the last sentence of § 61, a local option election must be held on the general election day set forth in § 148 . . ."). While obviously intending that the question not be presented until the general election falling in the third year from any previous election on the issue, any further distinction in the term of an election held on this issue would clearly be abhorrent to the Legislative intent of KRS 242.185(6) as written.

The Court also holds that the three (3) day difference between the general election of 2000 and the general election of 2003 would otherwise be such a minimal intrusion on the three (3) year directive, that it simply does not justify voiding an election that in all other respects was a fair and accurate election and, most importantly, a valid measure of the sense of the people in the City of Harrodsburg. The law has long been settled in this state that the Court will not invalidate an election because of slight technicalities or irregularities. Kelly v. Gruelle, Ky., 183 S.W.2d 39 (1944). A shortcoming in the three-year period by less than one percent (1%) cannot by any stretch of the imagination be considered as justifying the nullification of an otherwise valid election.

Accordingly, the judgment of the Mercer Circuit Court is affirmed.

ALL CONCUR.

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