

RENDERED: JUNE 3, 2005; 2:00 p.m.
ORDERED NOT PUBLISHED BY THE KENTUCKY SUPREME COURT:
MARCH 15, 2006 (2005-SC-0511-D)

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000840-MR

DOUGLAS HAMILTON; and
L. T. GOGGANS

APPELLANTS

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE DANIEL SPARKS, JUDGE
ACTION NO. 03-CI-00098

DOUGLAS PUGH, Individually,
and in his Official Capacity as
Mayor of the City of Paintsville,
Kentucky

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: HENRY AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.¹

VANMETER, JUDGE: This is an appeal from a summary judgment entered by the Johnson Circuit Court concluding as a matter of law that appellee Douglas Pugh, individually and in his official capacity as mayor of Paintsville, was authorized to remove appellants Douglas Hamilton and L. T. Goggans from their

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

positions as members of the Paintsville Utilities Commission (Commission). For the reasons stated hereafter, we reverse and remand.

Hamilton first was appointed to the Commission in 2002, while Goggans first was appointed during the early 1980's. Both continued to be members of the board up through the time when Pugh took office as mayor in January 2003, with Hamilton's four-year term set to expire in October 2004, and Goggan's four-year term set to expire in September 2006.

Shortly after taking office, Pugh notified appellants by letter that he intended to remove them from the Commission pursuant to the powers vested in him by KRS 83A.080. Appellants filed the action below, denying that they were "nonelected city officers" who fell within the purview of KRS 83A.080, and contesting Pugh's authority to unilaterally remove them from the Commission. The Johnson Circuit Court entered summary judgment in favor of Pugh, finding that he was entitled to unilaterally remove appellants from the Commission. This appeal followed.

Paintsville, a city of the fourth class,² operates under a mayor-council plan whereby the mayor is vested with executive authority.³ Pursuant to local ordinance, the mayor is designated as the "appointing authority with power to appoint

² KRS 81.010(4).

³ KRS 83A.130(3) and Paintsville City Ordinance § 31.21(D)(1).

and remove all city employees, including police officers, except as tenure and terms of employment are protected by statute, ordinance, or contract."⁴ Nonelected city officers, who are appointed by the mayor "with approval of City Council,"⁵ may be removed by the mayor at will "unless otherwise provided by state law or ordinance."⁶

Although the term "nonelected city officer" is not defined by statute or ordinance, KRS 83A.010(10)⁷ defines an "officer" as being

any person elected to a position by the voters or any person appointed to a position which (a) is created by the Constitution, the General Assembly, or a city; (b) possesses a delegation of a portion of the sovereign power of government; (c) has powers and duties to be discharged which are conferred directly or by implication by the city; (d) has duties performed independently and without control of a superior power other than law; (e) has some permanency; (f) requires an official oath; (g) is assigned by a commission or other written authority; and (h) provides for an official bond if required by proper authority.

⁴ Paintsville City Ordinance § 31.21(D)(7).

⁵ *Id.* at § 31.35(B).

⁶ *Id.* at § 31.03(B). See also § 31.35(C).

⁷ Appellee and the trial court also relied on cases such as *Taylor v. Commonwealth*, 305 Ky. 75, 202 S.W.2d 992 (1947), as support for their position that appellants meet the definition of nonelected officers. However, those cases are not persuasive as to the interpretation of KRS Chapter 83A, as that chapter was first enacted in 1980, long after the cases were rendered.

KRS 83A.080 specifies that all nonelected city offices must be created by ordinance, and that

(2) A city may create nonelected offices other than those referred to in this subsection. For purposes of the requirements of this section, the following shall be considered nonelected offices:

- (a) City clerk;
- (b) City manager;
- (c) City administrator;
- (d) Chief of police; and
- (e) Fire chief, other than a volunteer fire chief.

(3) All nonelected city officers shall be appointed by the executive authority of the city and . . . all these appointments shall be with approval of the city legislative body if separate from the executive authority. The officers may be removed by the executive authority at will unless otherwise provided by statute or ordinance.

Consistent with KRS 83A.080, Paintsville City Ordinance § 31.35(D) specifies the six positions which constitute nonelected city offices under local ordinances:

- (1) City Clerk;
- (2) Assistant City Clerk;
- (3) City Treasurer;
- (4) Police Chief;
- (5) Fire Chief; and
- (6) Finance Officer.

Neither the Kentucky Revised Statutes nor the Paintsville City Ordinances specifically include members of the Commission within the definition or scope of nonelected city officers. Nevertheless, Pugh argues that because appellants

were not elected to their positions by the voters, they fell within the definition of nonelected city officers who were subject to at-will removal from office by the mayor. However, we are not persuaded by Pugh's assertion that appellants must be categorized either as elected or as nonelected officers.

Paintsville Code of Ordinance Chapter 39, setting out the city's code of ethics, defines a "city agency" as including "[a]ny board,"⁸ and it defines an "officer" as being:

Any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following:

- (1) The Mayor.
- (2) A City Council member.
- (3) The City Clerk.
- (4) Any person who occupies a nonelected office created under KRS 83A.080.
- (5) A member of the governing body of any city agency who has been appointed to the governing body of the agency by the city.⁹

That section, in other words, includes separate categories of elected officers, nonelected officers, and agency board members. The ordinance further defines standards of conduct applicable to "[e]very officer and employee of the city and every city agency"¹⁰ and § 39.30 requires the filing of annual financial

⁸ Paintsville City Ordinance § 39.04.

⁹ *Id.*

¹⁰ *Id.* at 39.10.

statements by the "following classes of officers, employees of the city and city agencies":

- (A) Elected city officials;
- (B) Candidates for elected city offices;
- (C) Members of the City Planning & Zoning Commission and Board of Adjustment;
- (D) Members of the Board of Ethics created by this chapter;
- (E) Members of the Paintsville Tourism Commission, Paintsville Utilities Commission, and Paintsville Housing Authority; and
- (F) Non-elected officials of the city or any city agency who are authorized to make purchases of materials or services or award contracts, leases or agreements involving the expenditures of more than \$500.

(Emphasis added.)

It is well established that a statute should be read and construed as a whole,¹¹ and every word should be given effect.¹² Clearly, there would be no reason for the ordinances to distinguish between elected officers, nonelected officers, and agency board members if board members should be considered as nonelected officers. Hence, interpreting the Paintsville City Ordinances in the manner urged by Pugh, in order to find that members of the Commission are nonelected city officers who are subject to at-will removal from office by the mayor, would

¹¹ See, e.g., *County of Harlan v. Appalachian Regional Healthcare, Inc.*, 85 S.W.3d 607 (Ky. 2002); *Strong v. Chandler*, 70 S.W.3d 405 (Ky. 2002); *Lexington-Fayette Urban County Health Dept. v. Lloyd*, 115 S.W.3d 343 (Ky.App. 2003).

¹² See, e.g., *Schoenbachler v. Minyard*, 110 S.W.3d 776 (Ky. 2003); *Kidd v. Board of Education of McCreary County*, 29 S.W.3d 374 (Ky.App. 2000).

require us to ignore portions of the ordinance in violation of well-established law. This we decline to do. It follows, therefore, that we must conclude that the trial court erred by finding as a matter of law that Pugh acted within his authority by treating appellants as "nonelected city officers" who could be removed from office by the mayor at will, and this matter must be reversed and remanded for further consideration on its merits.

The trial court's summary judgment is reversed, and this matter is remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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