

Nos. 4-07-0956
4-07-0957

In the Appellate Court of Illinois
Fourth Judicial District

In Re: A petition to abandon the manager form of government of the City of Decatur)	Appeal from the Circuit Court of Macon County
_____)	
Carla Brinkoetter)	Case No. 07-MR-624
Objector-Appellant)	07-MR-625
)	
v.)	Circuit Judge A.G. Webber
)	
Brian Burcham & Stephen Daniels)	
Proponents-Appellees)	

Brief of Appellees

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Argument

The Illinois Municipal Code provides in the first 2 articles for creation and incorporation of towns, villages and cities. Article 3.1 defines the officers' and elected officials' duties. The next articles provide for the alternative forms of operating municipalities. Article 4 provides for the commission form of government which is comprised of a mayor and 4 commissioners who hold all of the executive and legislative powers and run the municipality by division of authority. Article 5 is the manager form of government with a mayor and alderman who are legislative in nature, and all executive functions are carried out by an appointed city manager. Article 6 is the strong mayor form of government where the executive and legislative functions are separated much like state government between the mayor and alderman.

The City of Decatur has been a manager form of government since 1959. R. 11. On October 11, 2007 Brian Burcham and Stephen Daniels submitted petitions to the Circuit Court of Macon County requesting certification of two public questions for submission to the voters of the City of Decatur on the same ballot at the general primary election scheduled for February 5, 2008. These petitions requested that voters be asked whether the manager form of government should be retained and whether the strong mayor form of government should be adopted. C.1.

A written objection was filed and heard on October 26, 2007. C. 11-12 and R. 1-43. The objection raised only 2 issues and the objector acknowledged to the trial court at the hearing that she was only raising two issues. R. 24. The only two issues raised were:

1. The procedure for submitting a petition to abandon an existing form of government and a second petition to adopt a new form of government has been rendered moot by a new statute.
2. A petition to adopt the strong mayor form of government may only be submitted at a general municipal election even when combined with a petition to abandon.

The first issue properly before this Court is whether the statutory scheme of presenting to the public separate questions calling for the abandonment of the existing form of government and the adoption of a new form is a valid procedure.

Article 5 of the Municipal Code, 65 ILCS 5, provides that the 10% of the registered voters for mayor in the last election may sign and submit to the circuit court a petition to abandon the manager form of government. The code specifically provides the wording the petition must contain. 65 ILCS 5/5-5-1 and 65 ILCS 5/5-5-2. The objector did not challenge the wording of this petition, nor did she claim that the proper number of signatures was not obtained. R- 18.

Article 5 says a petition to abandon certified by the court to be sufficient shall be "submitted at an election." 65 ILCS 5/5-5-4. This phrase is limited in a very small way by another section, 65 ILCS 5/5-5-1.1, which says a petition to abandon may not be submitted "at the primary election for the municipality." February 5, 2008 is not a primary election for the City of Decatur. R-12.

Article 5 allows voters to abandon the manager form of government and, if approved, causes the city to return to its previous form of government. 65 ILCS 5/5-1-1. An alternative procedure states the petition to abandon may be accompanied by a second question asking voters if they want to adopt a new form of municipal government. 65 ILCS 5/5-5-6. This section allows petitions to offer either the commission form or the strong mayor form to replace the manager form. The petitioners in this case offered the strong mayor form.

Article 5 has a third scheme. It permits a petition to abandon the manager form of government accompanied by a second petition to abandon the form of government existing before the manager form of government if the city was previously using the commission form of government. A majority vote in favor of dual abandonment results in adoption of a mayor/aldermanic form of government under Article 3.1. 65 ILCS 5/5-5-5.

Article 5 thus specifically addresses and authorizes various combinations of dual petitions that may be submitted at the same election. These dual public questions may be on the same ballot but separately stated. 65 ILCS 5/5-5-6.

These procedures under Article 5 have been in place since at least 1961. In 1987, the Village of Maywood was confronted with a petition to adopt the strong mayor form of government but without an accompanying petition to abandon the existing manager form of government. Objectors raised in the trial and appellate courts the argument that Article 5 requires any petition to adopt a new form of government be accompanied by a petition to abandon the existing manager form of government. The First District Appellate Court agreed with the objectors because of the specificity of the procedures in Article 5, and the rules of statutory construction. The procedure is clear under Article 5: the only method of offering a new form of government is to attach it to a petition to abandon the existing form. Thus, the 1987 stand alone petition to adopt a strong mayor form of government in Maywood was found fatally defective. In re Petition to Change the Form of Government of the Village of Maywood 154 Ill.App.3d 754, 507 N.E.2d 151 (1st Dist 1987).

Article 5 and its procedures have remained unchanged since the Maywood case. What has happened is that the legislature added a provision to Article 3.1 of the Municipal Code in 2002. Article 3.1 can best be described as the article which provides for the duties of city and village officers, city councils, and provides a default form of government if the other specific types are not adopted. Article 3.1 specifically says that if there is conflict between itself and Article 5, then Article 5 controls. 65 ILCS 5/3.1-5-5. In 2002, the legislature added to the very end of Article 3.1 in the "miscellaneous provisions" the following section:

Notwithstanding the provisions of Sections 4-1-1, 5-5-1, 5-5-1.1, 5-5-2, 5-5-3, 5-5-4, 5-5-5, 5-5-6, and any other provisions of this Act, if a municipality adopts a different form of municipal government under Article 4. 5, or 6 then its current form of government is automatically abandoned when the new form of municipal government takes effect.

65 ILCS 5/3.1-55-20

There is only one statement of legislative history to this amendment to Article 3.1. Representative Righter said when offering this section as an amendment to a bill already pending in the legislature:

Thank you Ladies and Gentlemen of the Chamber. Floor Amendment 1 to Senate Bill 1635 would simply allow municipalities if they are choosing to change the form of government that they have in their community to do so by running only one ballot question rather than two. Currently, the Illinois Municipal Code requires communities run both an abandonment question abandoning the former form of government and an adoption for the new form. This would simply allow them to run the abandonment question only. I would be happy to answer any questions. Ill. H.R. Tran. 2002 Reg. Sess. No. 138.

Despite the obvious misstatement of Mr. Righter that the single question now allowed is the abandonment rather than the new form of government, his comments do make clear that the purpose of this section is to "allow" municipalities to avoid the requirements of the Maywood case. Maywood said that Article 5 does not allow implied abandonment, only explicit voter abandonment is permitted. This new section allows voters to simply submit one question to voters requesting the adoption of a new form of government, and, if successful, the section does away with the old form.

Nowhere in this section is there a repeal of Article 5's dual petition provisions. This new section offers petitioners another method to get a change of government before the voters but it contains no language altering the existing methods.

The appellant's position is that this new section of Article 3 "supersedes" Article 5. Page 16 of Appellant's brief. No authority is cited for this proposition and it contravenes established precedent regarding statutory interpretation as well as the position of the objector in the trial court.

Where there is an alleged conflict between two legislative enactments, the court has a duty to construe those statutes in a manner which avoids inconsistency and gives effect to both. State of Illinois v. Mikusch, 138 Ill 2nd 242, 248 (1990); United Citizens of Chicago & Illinois v. Coalition to the Let the People Decide in 1989, 125 Ill 2d 332, 339 (1988)

An implied repeal results only when the terms and necessary operation of a later statute are repugnant to and cannot harmonize with the terms and effect of an earlier statute. People ex rel. City of Salem v. McMackin, 53 Ill 2nd 347, 363 (1972).

The guiding light in interpreting legislative intent is “the language used in the statute, [t]he reason and necessity for the law, the evils sought to be remedied, and the purpose to be achieved.” Stewart v. Industrial Commission, 115 Ill 2d 337, 341 (1987).

It is obvious from the language of the statute and the remarks of Rep. Righter that the legislature was providing an alternative to the requirements of Article 5 as interpreted by Maywood. However there is nothing in the remarks of Rep. Righter or the statutory language to indicate that the intention of the legislation was to repeal the procedures of Article 5. The single ballot and the dual ballot are not repugnant to each other. They are simply alternative choices. All politics is local. There may be good reason to want to join two referenda. If there is an unpopular city manager it may be good politics to have a petition to abandon the manager form of government as a way of focusing the voters’ frustration.

It is important to note that the trial court specifically forced the objector in argument on the objections to state whether 3.1-55-20 “superseded” Article 5.

MR. RUETER: Thank you, Your Honor. May it please the court. Judge, well, first of all, with respect to the objections, it really it comes down to two things that are at issue here as the objections set out.

No. 1 is the effect of the *Maywood* case, the procedure that proponents chose to employ and how that procedure is really kind of obviated by the amendments to the statute in 2002.

THE COURT: Obviated or prohibited, Mr. Rueter?

MR. RUETER: Obviate. I don’t think it’s prohibited. I will get to that in a minute.....

R. 24-25

The objector is now apparently ignoring this judicial admission and changing course in this court.

The second argument made by the objector is that because Article 6 says a petition to adopt the strong mayor form of government may only be submitted at the next general municipal election, 65 ILCS 5/6-2-2, this section impliedly limits the authority of Article 5 which allows for dual petitions (abandonment and adoption) to be submitted at any election except the municipal primary election.

Article 6 deals only with the adoption of a strong mayor form of government and the details of running a municipality under that format. There is no provision for abandonment of the strong mayor form of government in Article 6, nor is there any provision in Article 6 for converting from another form of government to the strong mayor format.

Both Article 4 and Article 5 have provisions for abandonment of their form of government. Article 4 (Commission Form) allows abandonment at any election and says that upon abandonment the municipality reverts to default mayor/alderman form under Article 3. 65 ILCS 5/4-10-1. There are no provisions for a dual public question of abandonment and adoption under Article 4. Therefore, if voters wanted to get rid of the commission form and adopt the strong mayor form they would have to submit their petitions in time for the general municipal election because they would be operating under both Articles 4 and 6 and the restrictions in Article 6 would apply.

However, Article 5 has specifically provided for the combining of two public questions, provided for the consequences of the possible outcomes, explained how the questions are to be placed on the ballot, and most importantly when the ballots may be submitted to the voters.

Article 5 and Article 6 do not really conflict because Article 6 does not deal with dual petitions, so its time table is not relevant to the issue at hand. Even if this Court felt there may be a conflict, the rule of construction followed by the trial court is exactly as dictated by the Supreme Court. Moore v. Green, 219 Ill 2d 470 (2006) (also cited by the Appellant at p. 20 of her brief) says that when the legislature addresses a specific issue in piece of legislation then it controls over the more general. See Moore at 480.

As was found by the trial court, (R. 40). Article 5 specifically addresses and authorizes the procedures used by the proponents. This specificity then makes it the controlling statute according to Moore. Article 5's specificity includes the timing of the submission of the questions to the voters, and as such, must be followed. February 5, 2008 is an election authorized by Article 5 for the proponents' petitions, and therefore the decision of the trial court was correct.

ARGUMENTS WAIVED BY OBJECTOR

The Election Code allows only written objections to petitions to place a public question on a ballot. 10 ILCS 5/28-4 and 10 ILCS 5/10-8. Therefore, any argument beyond the two issues raised in writing in the circuit court are waived, and may not be presented in this Court. Bethard v. Mink 131 Ill.App.2d 1007, 1009, (Ill. App. 1971).

In the event that this Court would deem these agreements are not waived, then the proponents would respond as follows:

The first argument presented in this Court for the first time is that Article 5 requires the petitions to be written so they are conditioned upon both passing. The objector has taken language from the section that allows both petitions to be put on the same ballot and tried to convert it into required language for the petition. No authority is offered for this suggestion. More importantly, Article 5 has a specific section that says what must be included in the petition, and no such conditional language is contained in that section. See 65 ILCS 5/5-5-1. Where the legislature chooses to specifically address a subject then that statute controls, to the exclusion of general language. Moore.

The second argument the objector presents in this Court for the first time is that the petitions presented questions which were impermissibly vague and ambiguous because the propositions do not inform the voters of the possible outcomes based upon the various combinations of voting results. The only authority cited is Lipinski v. Chicago Board of Election Commissioners 114 Ill 2d 95 (1986) which involved a petition for a public question propounded solely under the authority of Article VII of the Illinois Constitution. The court held that when petitions are submitted to the voters under Article VII, the question submitted must provide for a coherent scheme for changing the form of government that does not leave gaps to be filled in by the legislature or municipality. Lipinski just does not apply to the referenda submitted in this case.

Referenda can be initiated by constitutional authority or statutory. 10 ILCS 5/28-1: "Questions of public policy which have any legal effect shall be submitted to referendum only as authorized by a statute which so provides or by the Constitution. ... The method of initiating the submission of a public question shall be as provided by the statute authorizing such public question, or as provided by the Constitution. "

The petitions in this case are statutory. "Whenever a statute provides for the initiation of a public question by a petition of electors, the provisions of such statute shall govern with respect to the number of signatures required, the qualifications of persons entitled to sign the petition, the contents of the petition, the officer with whom the petition must be filed, and the form of the question to be submitted. If such statute does not specify any of the foregoing petition requirements, the corresponding petition requirements of Section 28-6 shall govern such petition." 10 ILCS 5/28-1.

The legislature has authorized the use of public questions to put to the voters the issue of retaining the manager form of government and mandated the language to be used in the format of the petitions. The legislature left the education of the public about the consequences of the change in form to the campaigns for and against the referenda. Many changes occur if a new form of government is adopted: new officers with new duties, new procedures for the city council, the creation of wards and the election of aldermen and many other specifics. These all are consequences of the vote on a public question. All of the consequences cannot be put on the ballot so the legislature chose to put none of them on the ballot. Leaving to political debate and information the consequences of a public question vote does not make it vague - it simply defers to the political process the wisdom of the change requested.

The third argument presented by the objector for the first time in this Court is that the Election Code, 10 ILCS 5/28-1, prohibits these propositions from being heard on February 5, 2008 because no municipal officers are being elected. That section of the Election Code says: "No public question shall be submitted to the voters of a political subdivision at any regularly scheduled election at which such voters are not scheduled to cast votes for any candidates for nomination for, election to or retention in public office..." The incorrectness of this argument is apparent from the quoted language. There is no requirement that municipal officers be up for election because the statute refers to "any" candidate, not just municipal. The prohibition of this section is limited to

elections for the sole purpose of presenting referenda and as long as any candidate is up for election at the same time then a public question can be put on the same ballot.

The final argument raised by the objector in this Court for the first time is that the petition to adopt the strong mayor form of government must contain the date of election and the proponents' petition did not. 10 ILCS 28-2(d) requires a petition to specify the date of the election if the statute authorizing the public question limits the submission to the voters to a specific election date. A strong mayor petition submitted under Article 6 as a stand alone question must comply with this requirement because Article 6 says a petition to adopt may only be presented at a general municipal election. The proponents proceeded under Article 5 and submitted dual petitions and Article 5 does not require submission at a specific election. 65 ILCS 5/5/5/51.1. Therefore, Section 28-2 of the Election Code does not apply.

[A]ccess to a place on the ballot is a substantial right not lightly to be denied. The exercise of that right should not be impeded by unreasonable, frivolous or unnecessarily limiting requirements. *Williams v. Butler* 35 Ill. App.3d 532, 537 (4th Dist. Ill. App. 1976)

CONCLUSION

WHEREFORE, it is requested that the trial court be affirmed.

Brian Burcham and Stephen Daniels, Proponents

By: _____
Jeff Justice – Their Attorney