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STATEMENT CONCERNING ORAL ARGUMENTS

The Appellee, the Board of Supervisors of Jackson County (hereinafter referred to as “the Board of Supervisors”) does not request oral argument in this matter and contends that the facts and legal arguments are adequately presented in the briefs and record and oral argument would not significantly aid the decision process

STATEMENT OF THE ISSUES

The Board of Supervisors is satisfied with the statement of issues as presented by Appellant Lamey (hereinafter referred to as “Lamey”).

STATEMENT OF THE CASE

The Board of Supervisors is satisfied with the statement of the case as presented by Lamey.

SUMMARY OF THE ARGUMENT

The statute relied upon by both Lamey and the Board of Supervisors regarding a vacancy on the Board of Commissioners of the West Jackson County Utility District (hereinafter referred to as “WJCUD”) was not erroneously interpreted by the Board of Supervisors. Because the Board of Supervisors have the duty to fill vacancies on the WJCUD by Mississippi Code Sections 19-5-167 and 25-1-59, there is a necessary inference that the Board of Supervisors must determine if a vacancy exists. Additionally, the substantial evidence presented to the Board of Supervisors supports its decision that Lamey had vacated his office as a commissioner of the WJCUD.

ARGUMENT AND AUTHORITIES

1. In his appeal, Lamey argues that the Board of Supervisors erroneously interpreted Mississippi Code Section 19-5-167, and contends that the Board of Supervisors had no power to take the action of determining that Lamey was no longer qualified to serve as commissioner of the WJCUD because he had moved from the District.

Mississippi Code Section 19-5-167 provides that:

“Any *vacancy* occurring on a board of commissioners shall be filled by the board of supervisors at any regular meeting of the board of supervisors, and the board of supervisors shall have the authority to fill all unexpired terms of any commissioner or commissioners. Notwithstanding the appointive authority herein granted to the board of supervisors, its legal and actual responsibilities, authority and function, subsequent to the creation of any district, ***shall be specifically limited to the appointive function [...]***. See §19-5-167 Miss.CodeAnn.(emphasis added). However Mississippi Code Annotated §25-1-59 provides that if any “[...] officer during the term of his office shall remove out of the state, district, county, or municipality for which he was elected or appointed, such office shall thereby become vacant and the vacancy be supplied as by law directed.” Therefore, if Lamey “removed” out of the district for which he was appointed, then his office became vacant and the vacancy should be filled by the Board of Supervisors.

Although these statutes discuss vacancy, they are silent as to who makes the factual determination as to when the office becomes vacant. However, the Board of Supervisors found the opinion of the Attorney General to be persuasive that it is the appointing authority, i.e. the Board of Supervisors, that make the determination of when the office is vacant. In the Seals opinion, the Attorney General found that the question of whether a school board member had vacated his office by removing from the district should be determined by the appointing authority, and not by the school board. (See MS AG Op, *Seals*, No. 2008-00231(June 13, 2008). In support of this stance, the Attorney General cites the reasoning from a 1979 opinion as follows:

“The County Board of Education, having the duty and responsibility to fill vacancies on the board of trustees of a consolidated district as authorized by [...statute...] carries with it the necessary inference that the County Board of Education, and not the consolidated district trustees, must

determine if, in truth and fact, a vacancy exists. After an affirmative determination by the County Board of Education, an appointment to fill the vacancy should be made forthwith.” See *Seals* quoting MS AG Op. *Griffith* (April 20, 1979).

It is undisputed that it is the duty of the Board of Supervisors in the instant case to fill the vacancies of the WJCUD. As such, there is likewise the “necessary inference” as described in the Attorney General Opinions discussed supra that the Board of Supervisors, and not the commissioner of the WJCUD, must determine if, in truth and fact, a vacancy exists. Here, the Board of Supervisors found that Lamey no longer met the residency requirements to serve as a Commissioner of the WJCUD and that the office had, therefore, been vacated. It is agreed that the Board of Supervisors had no authority to interfere with the WJCUD’s legal and actual responsibilities, authority, and function, but the determination of whether there is a vacancy is part of the Board of Supervisors’ appointive authority. As such, the Board of Supervisors’ action was not beyond its authority to make, and §19-5-167 was not erroneously interpreted.


2. In his appeal, Lamey also argues that the factual determination of the Board of Supervisors that Lamey had vacated his office as WJCUD commissioner was erroneous. Lamey bases his argument on his assertion that he remained qualified to serve as commissioner because he claims that the boundaries of WJCUD have been extended to the area in Harrison County where he lived. This argument is without merit. The local and private legislation creating the WJCUD, Senate Bill 3090, Section 9(n) allows the WJCUD “to extend its services to areas that are not more than one (1) mile beyond the boundaries of the district. (See Section 9(n) of excerpt of Senate Bill 3090(emphasis added) Appellant’s Record Excerpts, page 00063). The legal boundaries of the WJCUD are not extended into Harrison County where Lamey lived. Instead, WJCUD is merely allowed to *extend its service up to one mile beyond the boundaries* in certain enumerated circumstances. (Id.)

Therefore, Lamey's argument that he remained qualified to be a commissioner merely because the WJCUD served the area in Harrison County where he lived is without merit.

CONCLUSION

The Board of Supervisors did not remove Lamey as Commissioner of the WJCUD. Instead, the Board of Supervisors determined that Lamey is no longer a resident citizen residing within the West Jackson County Utility District. As such, the Board *found that the office had been vacated*. The Board of Supervisors actions were within its legal authority under the language of §19-5-167 and §25-1-59. Additionally, the fact that Lamey contends that the area where he lived in Harrison County was served by the WJCUD does not change that determination that he had vacated his office because the service was merely extended to the area, the boundaries of the WJCUD do not actually change.

Respectfully submitted,



Kathy Blackwell Parker
Attorney for the Defendant

Kathy Blackwell Parker (MSB#10061)
Office of the Board Attorney
Post Office Box 998
Pascagoula, MS 39568-0998
Telephone: (228) 769-3371
Facsimile: (228) 769-3119

CERTIFICATE OF FILING

I, , do hereby certify that on December 28, 2009, I will mail via first class United States mail, postage prepaid, the original and three (3) copies of the foregoing Appellee's Brief addressed to Betty W. Sephton, Office of the Clerk of the Supreme Court, 450 High Street, Jackson, Mississippi 39201-1082, to be filed with the Court.

So certified, this the 28th day of December, 2009.


Kathy Blackwell Parker

CERTIFICATE OF SERVICE

I, Kathy Blackwell Parker, do hereby certify that I have this date mailed, via first class United States mail, postage prepaid, a true and correct copy of the foregoing Brief on Behalf of the Appellee to the Honorable William Kulick and the Honorable Matthew Busby, at 801½ Washington Avenue, Ocean Springs, Mississippi 39564, and to the Honorable Kathy Jackson, Circuit Court Judge, P.O. Box 998, Pascagoula, Mississippi 39568-0998

Dated, this the 28th day of December, 2009.


Kathy Blackwell Parker