DOCKET NO.: NNH-CV-22-6120210

BOSIE KIMBER, ET AL.

V.

RENEE DOMINGUEZ

SUPERIOR COURT

JUDICIAL DISTRICT

NEW HAVEN AT NEW HAVEN

APRIL 25, 2022

Judicial District of New Haven
SUPERIOR COURT
FILED
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MEMORANDUM OF DECISION

FACTS

In this quo warranto action, the plaintiffs, Bosie Kimber and Donarell Elder, have brought suit against the defendant, Renee Dominguez. The parties' joint stipulation of facts filed with the court on March 11, 2022 (docket entry number 105), sets forth the following undisputed facts. On June 30, 2021, the then-current chief of the New Haven Police Department, Otoniel Reyes, retired. The following day, July 1, 2021, New Haven Mayor Justin Elicker appointed the defendant, the assistant chief of police, to serve as New Haven's acting police chief. The defendant continued to serve in the capacity of acting chief of police through December 6, 2021. On that date, Mayor Elicker submitted the defendant's name to the New Haven Board of Alders in order to nominate her for the position of permanent chief of police. At its December 6, 2021 meeting, the Board of Alders rejected the defendant's nomination by voice vote. This action by the Board of Alders triggered a thirty-day period in which Mayor Elicker could resubmit the defendant's nomination for approval to the Board of Alders. On December 10, 2021, however, the defendant withdrew her name from consideration and announced her intention to retire from the police force pending the completion of a search for a permanent police chief.

Despite this course of events, at the request of Mayor Elicker, the defendant remains in the position of acting chief of police and continues to exercise the rights, responsibilities and duties of that office. According to the plaintiff's quo warranto complaint, as of January 1, 2022, the defendant has been improperly acting as police chief in contravention of the mandates of the New Haven charter. Therefore, the plaintiffs have brought this action requesting that the defendant be ordered to vacate her position. The parties have stipulated that the plaintiffs, as New Haven residents and taxpayers, have standing to maintain this action. Additionally, the parties agree that the defendant is a public officer whose title may be challenged in a quo warranto proceeding.

On March 28, 2022, both the defendant and the plaintiffs filed memoranda of law setting forth their respective legal positions (docket entry numbers 107 and 108, respectively.) The defendant further filed a reply memorandum on April 8, 2022 (docket entry number 109). On April 13, 2022, the court conducted a remote oral argument on the issues raised in this case.

DISCUSSION

Under Connecticut law: "When any person or corporation usurps the exercise of any office, franchise or jurisdiction, the Superior Court may proceed, on a complaint in the nature of a quo warranto, to punish such person or corporation for such usurpation, according to the course of the common law and may proceed therein and render judgment according to the course of the common law." General Statutes § 52-491. "Historically, the writ of quo warranto originated as a device to require [Norman kings'] barons to justify their claims to power or to abandon them. . . . Today, unless otherwise provided by statute, a quo warranto action is the exclusive method of trying the title to an office. . . . It lie[s] to prevent the usurpation of a public office or franchise . . . . The purpose of the proceeding, therefore, is to test the actual right to the office and not merely

a use under color of right. . . . In other words, in a quo warranto proceeding, a plaintiff may contest an individual's right to hold an office; however, a challenge to the manner in which a lawful incumbent is exercising the powers, privileges and duties pertaining to an office exceeds the scope of such an action. Thus, the writ of quo warranto developed and has continued as a limited and extraordinary remedy . . . ." (Citations omitted; internal quotation marks omitted.) *Bateson* v. *Weddle*, 306 Conn. 1, 10-11, 48 A.3d 652 (2012). "A successful quo warranto action unseats an illegal office holder and declares the position vacant. . . . It is well established that in quo warranto proceedings the burden is upon the defendant to show a complete title to the office in dispute." (Citations omitted; internal quotation marks omitted.) *Lopez* v. *Board of Education*, 310 Conn. 576, 591, 81 A.3d 184 (2013).

The plaintiffs argue that the defendant improperly continues to exercise the role of acting chief of police based on their interpretation of article IV § 1.A (3) (a) of the New Haven charter. According to the plaintiffs, although this section of the charter allows the mayor to appoint an individual to the office of chief of police temporarily, such an appointment is limited in duration to six months. Following this six-month period, the Board of Alders must approve the nominee, and if that does not occur, the person may no longer continue in office. The plaintiffs contend that any other interpretation would completely abrogate the Board of Alders' authority in approving or rejecting the mayor's nominees and that a temporary appointee cannot serve indefinitely. As the Board of Alders rejected the mayor's nomination of the defendant and she has continued in office for more than six months, the plaintiffs assert that the court should remove the defendant from office.[1]

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[1] The plaintiffs' complaint also cited to § 2-304 of the New Haven Code of Ordinances as authority for their position. This ordinance, which is titled "Limitation on temporary appointments" provides as follows: "No person may serve in a temporary employment position

In response, the defendant argues that the plaintiffs' interpretation of the New Haven charter is incorrect because it "improperly usurps the express powers of the mayor." Specifically, the defendant asserts that the mayor has two obligations as New Haven's chief executive: (1) to provide for public safety and the efficient operation of a city police department and (2) to nominate another individual who meets the requirements of the New Haven charter to act as chief of police. The defendant contends that the mayor is meeting both of these objectives by directing her to maintain her interim appointment until a permanent police chief is approved by the Board of Alders. Furthermore, the defendant argues that the New Haven charter expressly recognizes that an acting chief of police may serve for more than a six-month period and that the Board of Alders does not have the authority to nominate or remove a police chief. The defendant further contends that the New Haven charter is silent on what should occur in this precise factual scenario and therefore the court should err on the side of allowing the defendant to continue in her present role. Additionally, the defendant directs the court's attention to portions of the New Haven city charter that provide that a public official such as the police chief should remain in office until a successor is in place. Finally, the defendant argues that the plaintiffs' position is political in nature and it would be deleterious to the public health and safety of the city of New Haven to force a change in police chief before a qualified permanent candidate is identified.

In order to resolve this dispute between the parties, the court must analyze the language of various sections of the New Haven charter. "The proper construction of the charter presents a question of law . . . . In construing a city charter, the rules of statutory construction generally apply. . . . In arriving at the intention of the framers of the charter the whole and every part of

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with the city beyond one hundred eighty (180) days." During oral argument, the plaintiffs abandoned any reliance on this municipal ordinance. Accordingly, the court will not analyze it in this memorandum of decision.

the instrument must be taken and compared together. In other words, effect should be given, if possible, to every section, paragraph, sentence, clause and word in the instrument and related laws." (Citation omitted; internal quotation marks omitted.) *Strand/BRC Group, LLC* v. *Board of Representatives*, 342 Conn. 365, 375, 270 A.3d 43 (2022). In Connecticut, "[i]t is well settled that [our courts] follow the plain meaning rule pursuant to General Statutes § 1-2z in construing statutes 'to ascertain and give effect to the apparent intent of the legislature [or the municipal body that promulgated the charter].'" (Internal quotation marks omitted.) *Boardwalk Realty Associates, LLC* v. *M & S Gateway Associates, LLC*, 340 Conn. 115, 126, 263 A.3d 87 (2021). "[W]ith respect to the construction of the provisions in a municipal charter, [i]t is well established that, as a creation of the state, a municipality . . . has no inherent powers of its own . . . and that [it] possesses only such rights and powers that have been granted expressly to it by the state. . . . Therefore, [w]here a charter specifies a mode of appointment, strict compliance is required. . . . More specifically, [i]f the charter points out a particular way in which any act is to be done or in which an officer is to be elected, then, unless these forms are pursued in the doing of any act or in the electing of the officer, the act or the election is not lawful." (Citations omitted; internal quotation marks omitted.) *DeMayo* v. *Quinn*, 315 Conn. 37, 41, 105 A.3d 141 (2014).

Article VI § 3 (1) (1) of the New Haven charter provides in relevant part: "The following Appointed Public Officials shall be appointed by the Mayor, subject to approval by the Board of Alders, as set forth in § 1.A (3) of Article IV of this Charter . . . (b) Chief of Police . . . who shall serve subject to the authority of the Mayor." Article IV § 1.A (3) provides in relevant part that the Board of Alders "shall approve the following appointees of the Mayor . . . (a) Chief of Police . . . as set forth in § 3.A (1) Article VI of this Charter. Pending action by the board, which shall

be completed within thirty (30) days of the submission of the nomination, a proposed appointee to a position may perform the duties and exercise the powers of the position; although this provision shall not be applicable to appointees to boards or commissions. A rejected nominee may continue in office in an acting capacity pending resubmission of the candidate's name for approval at the board's next regular meeting; however, a person's name may not [be] submitted more than two (2) times. Other than to membership on a Board or Commission, the Mayor may designate an individual to hold a position in an acting capacity pending the selection of a nominee, but no person may hold such a position for more than six (6) months without being submitted for confirmation by the board."

If read together, these two sections of the New Haven city charter provide for the following process: (1) the mayor has the authority to appoint the chief of police subject to the approval of the Board of Alders; (2) the mayor may appoint a police chief in an acting capacity but within six months that individual must be submitted to the Board of Alders for confirmation; (3) the Board of Alders must take action on the mayor's nominee within thirty days of submission but during that period the temporary appointee may continue in her role; (4) if the nominee is rejected by the Board of Alders she may continue in her acting capacity pending resubmission at the Board of Alders next meeting and (5) the mayor may not submit an individual's name more than two times.

In the present case, Mayor Elicker appointed the defendant to be acting chief of police on July 1, 2021. Within six months, and as required by article IV § 1.A (3) (a) of the New Haven charter, Mayor Elicker submitted the defendant's name for permanent appointment as police chief to the Board of Alders on December 6, 2021. Thereafter, the Board of Alders rejected the defendant's nomination and her name has not been resubmitted by the mayor. The plain

language of the New Haven city charter is clear. Although the mayor has the general authority to nominate the chief of police, that power is subject to the approval of the Board of Alders. Moreover, while the mayor can appoint an individual to be police chief in an acting capacity, that person must be submitted to the Board of Alders for approval within six months. Although there are some mechanisms in the city charter that allow a temporary appointee to remain in office for more than six months (i.e., the Board of Alders has thirty days to act on the mayor's nomination and a rejected nominee can keep the position until her name is resubmitted for consideration at the next Board of Alders meeting), the clear import of the city charter is that an acting police chief cannot remain in place indefinitely. To conclude otherwise would completely thwart and eliminate the Board of Alders' advice and consent role in approving the mayor's nominee. Indeed, if the argument advanced by the defendant's counsel were adopted by this court, there would be nothing that would prevent this mayor, or any mayor of the city of New Haven, from appointing a temporary police chief, having that nominee rejected by the Board of Alders, then allowing the rejected nominee to serve for the rest of the mayor's administration.[2] Such a position is illogical and it is contrary to the express and implied language of the New Haven charter. Therefore, the court must reject this argument as a sufficient basis to support the defendant's position that she is entitled to hold her current office.

In an attempt to avoid this result, the defendant points the court's attention to two additional provisions of the New Haven charter. The first of these, article II § 8 provides: "Whenever any office of an Appointed Public Official shall become vacant by reason of the

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[2] In making this observation, the court is in no way indicating that the current mayor is intentionally attempting to avoid the approval of the Board of Alders. Rather, the court is simply stating that such a course of action is theoretically possible in light of the position espoused by the defendant's counsel.

death, resignation, inability, disability or removal of the person appointed to fill the same, said vacancy may be filled by the authority which made the former appointment, *subject to the provisions of this Charter*." (Emphasis added.) This provision clearly does not apply to the present situation because it presupposes that the office at issue became vacant by either death, resignation, inability, disability or removal. In this matter, the office of police chief became vacant in July, 2021 when the former police chief retired. Moreover, article II § 8 requires that the opening be filled in accordance with the other provisions of the charter and that did not occur here. Similarly, article II § 13.B provides in relevant part that: "All Public Officials, unless prevented by death, inability or suspension or removal, shall hold their respective offices until their successors shall be chosen and shall have duly qualified." This provision of the charter likewise cannot be used to support the current situation in New Haven because it necessarily implies that the public official at issue was appointed in accordance with the law. Otherwise, this section of the charter could also be utilized to bootstrap a mayor's attempt to avoid the review of the Board of Alders.

When making this decision, the court has duly considered the weighty public safety concerns articulated by the office of the New Haven Corporation Counsel. The police chief is no doubt one of the most important offices in the city of New Haven and leaving it vacant is certainly less than desirable. Nevertheless, the New Haven charter sets forth a clear process for filling this position. While the mayor has the authority to nominate an individual to be police chief, the Board of Alders eventually has to approve the individual if she is to serve as the permanent holder of that office. Although the defendant was rejected by the Board of Alders on December 6, 2021, she has continued in office for nearly five months without any definite end

date in sight. Such a course of events is simply not authorized by the current New Haven charter.

For all of the foregoing reasons, the defendant has failed to meet her burden to establish that she is entitled to hold her current office as the New Haven chief of police. Therefore, she is ordered to vacate the position. Judgment shall enter accordingly.[3]

KAMP, J.

[3] In reaching this decision, the court is not making any comment on the defendant's job performance or her abilities to hold the position of police chief. Rather, the court is only focusing, as it must, on the language of the New Haven charter and whether the charter's legal requirements have been followed.