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Arthur B. Williams

January 6, 2014

Wayne County Supreme Court
Hon. John B. Nesbitt
Hall of Justice
54 Broad Street
Lyons, New York 14489

RE: Jack Bailey, Andrew DeWolf vs. Village of Lyons
Index No. 76640

Dear Judge Nesbitt:

I am writing at this time in my capacity as Lyons Village Attorney and in response to the apparent ex parte application made by Jack Bailey and Andrew DeWolf requesting a Temporary Restraining Order and Preliminary Injunction.

Although likely intended as an ex parte application and without a return date or knowing what the Court may do, I wanted to respond to the Petitioners' request.

First and foremost, the Petitioners lack standing to initiate the instant proceeding. GML § 779 (6) specifically states "the contact person or any individual who signed the petition may seek judicial review of such determination in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules." Neither Jack Bailey nor Andrew DeWolf signed the Petition in question. There is no statutory authority that allows petitioners to bootstrap standing from the original Dissolution Petition.

The premise of GML § 779 is to afford the Village residents a chance to be heard in regards to moving forward with a Plan of Dissolution. Likewise, GML § 785 allows for Village residents to be reheard on whether to dissolve the village once the Plan of Dissolution and the cost thereof has been adopted.

Petitioners want to claim standing by having the Court believe this whole process is one issue. The immediate Petition is distinct the authority for which is found in GML § 785. The first petition to which Petitioners signed asked the question "should the Village of Lyons be dissolved?" The second petition after residents were presented with the Plan of Dissolution and the cost thereof was whether the elector initiated dissolution plan should take effect?

Without going into the myriad of cases on standing, the legislature in this case specifically affords standing to those individuals that signed the instant (second) petition. Standing is afforded those who signed the Petition so that those residents could be heard if their signatures were challenged or obtained under fraud or duress. For example, if a signatory to the Petition was disqualified because he or she moved within the Village or whose signature was coerced has the authority to commence an Article 78 Petition. No one who has signed the instant petition has come forward alleging a disqualification or fraud.

Jack Bailey and Andrew DeWolf are not signatories to the second petition and are precluded by statute from commencing an Article 78 proceeding.

Just as Jack Bailey and Andrew DeWolf wanted to be heard on dissolution, a sufficient number of residents want to be heard now that the Plan of Dissolution has been adopted. Why should those persons not be heard? At a subsequent referendum all Village residents can then be heard once and for all as to dissolve the Village or not.

Petitioners want to invalidate over 165 signatures for a variety of reasons ranging from an illegible signature to an incomplete address. As the Court is well aware, a person's signature is a person's signature, be it legible or not. An illegible signature is not a disqualification. Village residents who recently moved to within the Village limits are still registered voters and entitled to vote notwithstanding the Board of Elections not yet having updated its records.

I do not believe that the Petitioners "rights" respecting the subject of this action" have been violated which would give them grounds to request a Preliminary Injunction or Temporary Restraining Order. Petitioners are trying to use the General Municipal Law as both a sword and a shield. The statute worked in their favor when upholding signatures on the first petition notwithstanding the fact that various residents may have moved within the corporate limits of the Village while at the present time Petitioners want to use the same statute to try and prevent a second vote as to dissolution. The Petitioners' rights have not been violated inasmuch as they did not sign the second petition and as such there are no grounds for any temporary relief pursuant to CPLR § 6301.

Additionally, Petitioners cannot evidence any "immediate and irreparable injury, loss or damage" that will result from the second petition resulting in a Referendum on Dissolution. Additionally, CPLR § 6313 does not allow for temporary relief against a public officer, board or municipal corporation of the State to restrain the performance of statutory duties. The second petition having been filed, the Village Clerk is thereafter obligated to certify (or not certify) the results and for the Village Board to thereafter schedule a referendum.

For all of the foregoing reasons it is respectfully requested that no temporary relief be granted and that the Petitioners' application be dismissed for lack of standing.

Very truly yours,
NESBITT & WILLIAMS

COPY
Arthur B. Williams

cc: Village of Lyons
J. Bailey
A. DeWolf

ABW/mlv