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MUNICIPAL GOVERNANCE - MISSISSIPPI

McAdams v. Perkins

Supreme Court of Mississippi - December 8, 2016 - So.3d - 2016 WL 7180151

Unsuccessful candidate in city's mayoral election filed bill of exceptions challenging city council's resolution to employ counsel, which was the same law firm employed by the city's mayor, to represent the city's interest in upholding the validity of the election.

The Circuit Court reversed, finding that the resolution was beyond council's scope or power and in violation of the Mississippi Constitution. Mayor appealed.

The Supreme Court of Mississippi held that:

- Mayor was not estopped from raising issues on appeal by virtue of her certification of bill of exceptions;
- Resolution was permitted under statute allowing municipalities to employ legal counsel for defense of "any claim, demand, or action";
- Resolution was permitted under "home rule" statute;
- Resolution did not authorize an unconstitutional donation of public funds to a private individual; and
- Mayor had authority to pursue appeal without specific authorization from council.

On appeal of trial court's decision determining that city council was not permitted to pass resolution employing counsel to defend city's interest in mayoral election contest, city's mayor was not estopped from raising issues by virtue of her certification of bill of exceptions, which was filed by her election opponent and challenged the resolution. Although the bill of exceptions reflected the actions taken and the decision made, the mayor's signature did not constitute an agreement with opponent that the resolution was prohibited by law or otherwise improper.

Statute allowing municipalities to employ legal counsel for the defense of "any claim, demand, or action" permitted city council to employ counsel to defend city's interest in mayoral election contest, even though the contest was an action between private litigants and no claims were asserted against city's mayor in her official capacity; city was permitted to employ legal representation to defend all "claims" challenging official actions of municipal officers, to require that formal litigation be filed against the city before the council may retain legal representation would place a significant limitation on the council's authority, and if legislature had intended such a limitation, it would have limited the statute's language to "demand or action brought."

City council's resolution to employ counsel to represent city's interest in mayoral election contest did not authorize a donation of public funds to a private individual in violation of the Mississippi Constitution, even though city's mayor employed the same counsel to represent her personally. Resolution did not authorize payment of mayor's personal attorney's fees, and fact that counsel's services could provide "overlapping support" to both mayor and council and result in decreased attorney's costs to the mayor did not transform the resolution into an unlawful donation.

City's mayor had authority to pursue appeal on behalf of city without specific authorization from city council. statute governing mayoral powers provided that mayor had superintending control of all the officers and affairs of the municipality, and there was no evidence that the council voted to prohibit the appeal or objected to it.

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