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[Hudlow v. City of Rogers, Ark.](#)

United States District Court, W.D. Arkansas, Fayetteville Division - October 21, 2013 - Slip Copy - 2013 WL 5707785

City Treasurer was summarily fired by the Mayor without notice or cause. Treasurer brought action alleging that Mayor and City violated 42 U.S.C. § 1983 and Ark.Code Ann. § 16-123-105 (deprivation of rights) and Ark.Code Ann. § 21-1-601 et seq. (Arkansas Whistleblower Act) when they terminated him from his position. Specifically, he argued that he had a constitutionally protected property interest in his continued employment as City Treasurer, of which the defendants deprived him without due process.

The District Court noted that the essential question was whether, as a matter of law, Rogers Code § 2-234 - which requires cause and a 2/3 vote of the city council - provided the sole procedure for properly terminating a person in the position of City Treasurer. If so, Treasurer could only be terminated for cause, and thus, he had a constitutionally protected property interest in continued employment.

To answer this question, the Court looked first to the Arkansas Code. Arkansas law allows a city of the first class with a mayor-council form of government (like the City of Rogers) to provide, by ordinance, for the election or appointment of its City Treasurer. Ark.Code Ann. § 14-43-405(2). It further allows the council of any such city to provide, by ordinance, for the removal of any appointive officer upon a majority vote of the council. Ark.Code Ann. § 14-42-109(a)(2).

Pursuant to these statutes, the City of Rogers enacted Rogers Code §§ 2-227 and 2-234. Section 2-227 states that the City Treasurer shall be appointed by the mayor and confirmed by a vote of two-thirds of the City Council. Section 2-234 states that the City Treasurer may be removed from office for cause upon a two-thirds vote of the City Council. These sections are found within Article III, Division 5 of the Rogers Code of Ordinances, which sets out all sections specifically relevant to the position of City Treasurer.

By stating that removal pursuant to § 2-234 must be “for cause,” it appears the City of Rogers has created a property interest in employment for the position of City Treasurer, which can only be deprived after due process. However, the defendants argue that § 2-234 was not intended to be the only vehicle for removing a City Treasurer. They contend that Ark.Code Ann. § 14-42-110 provides an alternate manner of removing a City Treasurer, without cause.

Arkansas Code Annotated § 14-42-110(a)(1) provides that a mayor of a city of the first class may appoint and remove all department heads, unless the city council votes, by a two-thirds majority, to override the mayor’s action. That this section (titled “Removal and appointment power”) is separate from the aforementioned § 14-42-109 (titled “Removal of officers”) suggests that the two sections are intended to apply to two different types of positions: officers and department heads.

The defendants argue that Treasurer was a department head and, as such, was subject to the removal provision in § 14-42-110. However, the Rogers Code itself contradicts that assertion.

Rogers Code § 2-228 requires a City Treasurer to take an oath of office. The ordinance references Ark. Const. art. 19, § 20—which requires all public officers to take an oath of affirmation before entering the duties of their respective offices—and Ark. Code Ann. § 14-42-106—which provides, in part, that all municipal officers, whether elected or appointed, must take the oath proscribed for officers by the Arkansas Constitution. Likewise, Rogers Code § 2-229 requires a City Treasurer to give a good and sufficient surety bond to the city before entering the discharge of his duties. That section also references § 14-42-106, which further provides that a city council may require its officers to post such a bond. Ark. Code Ann. § 14-42-106(c). Clearly, the drafters of the Rogers Code perceived the City Treasurer as an officer.

Based on the foregoing, the Court found that the Treasurer for the City of Rogers is an officer. The Court further finds that, since the removal of officers and department heads are treated differently under Arkansas law, the removal provisions for a department head in § 14-42-110 are inapplicable to the removal of the Rogers City Treasurer. Therefore, the City Treasurer can only be removed for cause pursuant to Rogers Code § 2-234.

As the City Treasurer, Treasurer could only be removed from office for cause, and only upon a two-thirds vote of the City Council. Thus, he had a legitimate expectation of continued employment, of which he could not be deprived without due process. Treasurer was not afforded a hearing prior to his termination. Therefore, the Court found that he was deprived—without due process—of a property interest in continued employment.