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GOVERNANCE - ALASKA

Alsworth v. Seybert

Supreme Court of Alaska - April 25, 2014 - P.3d - 2014 WL 1663391

Group of citizens brought action against two borough assembly members, alleging various violations of borough and state conflict of interest laws and common law conflict of interest doctrine. After the borough took official action facilitating the assembly members' defense, the citizens moved to enjoin the assembly members from using their official positions to defend the lawsuit or pursue personal financial gain.

The superior court granted a preliminary injunction under the balance of hardships standard, concluding that the citizens faced the possibility of irreparable harm if the injunction were not granted and that the assembly members were adequately protected by the injunction. The injunction barred the assembly members from taking various actions in their official capacities, including speaking about a local mining project.

The Supreme Court of Alaska held that:

- Trial court should have applied probable success on the merits standard, rather than balance of hardships standard, and
- Injunction barring borough assembly members from speaking about mining project was unconstitutional prior restraint on speech.

Preliminary injunction did not adequately protect assembly members, and therefore trial court should have applied probable success on the merits standard, rather than balance of hardships standard, in determining whether to grant injunction in action by citizens against assembly members alleging conflicts of interest. Enjoining assembly members from speaking about mining project, conducting official borough business, and accepting borough money for legal defense imposed serious harm on assembly members, and assembly members' injuries were not "relatively slight in comparison" to citizens' alleged injury in the absence of the injunction, nor could they be indemnified by a bond.

Preliminary injunction barring borough assembly members from taking various actions in their official capacities, including speaking about a local mining project, imposed an unconstitutional prior restraint on speech, where assembly members' enjoyed no less speech protections as elected officials than did private citizens under the federal and state constitutions.

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