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MANDAMUS - OHIO

State ex rel. Clark v. Twinsburg

Supreme Court of Ohio - September 2, 2022 - N.E.3d - 2022 WL 4005808 - 2022-Ohio-3089

Relator sought a writ of mandamus ordering city, city Clerk of Council, and law director to transmit petition to county Board of Elections concerning a referendum seeking to replace resolution, which stated that the planning commission approved project's final site plan with condition that project's building height not exceed 35 feet.

The Supreme Court held that:

- Laches did not bar action;
- Jurisdictional-priority rule did not apply to bar action;
- Relator lacked an adequate remedy in the ordinary course of law due to the proximity of election; and
- Clerk of Council had a mandatory, ministerial duty to transmit referendum petition to Board of Elections for its signature verification after ten days had elapsed from filing of petition.

Laches did not bar action in which petitioner sought writ of mandamus to compel city, city Clerk of Council, and law director to transmit referendum petition to county Board of Elections seeking to replace resolution, which stated that planning commission approved project's final site plan with condition that project's building height not exceed 35 feet, even though case would not have been automatically expedited had petitioner filed sooner than 21 days, absent showing of material prejudice by delay; proximity to election of approximately two months made it likely that even if petitioner had filed at the earliest possible time after the case ripened, court would have ordered case to be expedited.

Jurisdictional-priority rule, providing that as between state courts of concurrent jurisdiction, tribunal whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle rights of parties, did not apply to bar action in which petitioner sought writ of mandamus to compel city, city Clerk of Council, and law director to transmit to county Board of Elections referendum petition to allow for a public vote on referendum seeking to replace resolution, which stated that planning commission approved project's final site plan with condition that project's building height not exceed 35 feet, even though petitioner had filed an administrative appeal in common pleas court before filing mandamus action, since administrative appeal, which could overturn resolution as improper, would not have provided remedy sought of a public vote on referendum.

Petitioner lacked an adequate remedy in the ordinary course of law due to the proximity of election, which was approximately two months away, as would support petition for writ of mandamus to compel city, city Clerk of Council, and law director to transmit to Board of Elections referendum petition seeking to replace resolution, which stated that planning commission approved project's final site plan with condition that project's building height not exceed 35 feet, since an administrative appeal would not have accomplished what petitioner sought of placing referendum on ballot.

City Clerk of Council had a mandatory, ministerial duty to transmit to Board of Elections for its signature verification after ten days had elapsed from filing date of referendum petition seeking to replace resolution, which stated that planning commission approved project's final site plan with condition that project's building height not exceed 35 feet, as would support issuance of limited writ of mandamus directing Clerk to transmit referendum petition and a certified copy of resolution to county Board of Elections, regardless of law director's judicial or quasi-judicial determination that resolution was administrative, rather than legislative, and therefore not subject to referendum.

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