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MUNICIPAL GOVERNANCE - VIRGINIA

Fauber v. Town of Cape Charles

Court of Appeals of Virginia, Norfolk - January 30, 2024 - S.E.2d - 2024 WL 330737

Former town employee who had worked as the director of public works and utilities brought wrongful-termination action against town and mayor, alleging that mayor's exercise of powers of town manager during temporary vacancy in office of town manager pursuant to town's charter by firing director violated Virginia Constitution section providing that a person elected to the governing body of a locality is ineligible, during the term of office for which he was elected or appointed, to hold any office filled by the governing body.

The Northampton Circuit Court granted defendants' summary judgment motion. Former director appealed.

The Court of Appeals held that:

- Plain language of town charter empowered mayor to exercise town manager's powers and duties until a successor town manager was appointed, including to remove town employees like director;
- Former director failed to rebut presumption of constitutionality of town charter provision permitting mayor to simultaneously exercise duties and powers of town manager during vacancy in town manager position until successor was appointed;
- Mayor's inability to unilaterally eliminate director position did not prevent mayor from firing director during vacancy of town manager position;
- Question whether mayor could have unilaterally amended town ordinance that created director position was not material; and
- Mayor's summary-judgment deposition testimony answered in a way that suggested he was the town manager did not create a material fact issue.

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