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RECEIVERSHIP - PENNSYLVANIA

Siger v. City of Chester

Supreme Court of Pennsylvania - January 29, 2024 - A.3d - 2024 WL 316333

Receiver was appointed over financially distressed city, and the Commonwealth Court approved recovery plan.

The Commonwealth Court granted receiver's petition for writ of mandamus that, among other things, required city councilman who was also head of city's department of finance and human resources to share information with receiver. Receiver sought approval of modifications to city's recovery plan, proposing various initiatives relating to administrative duties and professional management within city government, core internal administrative functions and ethics, and economic development.

After evidentiary hearing, the Commonwealth Court struck several initiatives and confirmed plan modification for other initiatives. City requested review, and the Supreme Court assumed King's Bench jurisdiction.

In a case of first impression, the Supreme Court, in an opinion delivering the Opinion of the Court and an opinion in support of affirmance, held that:

- A recovery plan does not "change the form of government" of a distressed municipality;
- Suspension of administrative duties of city's department heads did not violate constitutional provision on removal of elected and appointed officials;
- Municipalities Financial Recovery Act authorized such suspension;
- Sufficient evidence supported finding that allowing department heads to continue exercising their authority would interfere with receiver's powers or goals of recovery plan;
- Act authorized modification of recovery plan to allow receiver to direct city council's removal of items from legislative agenda;
- Receiver was not judicial officer; and
- Requiring city solicitor to disclose city officials' and employees' noncompliance with confirmed plan or court order did not conflict with rule of professional conduct governing representation-related disclosures.

The provision of the Municipalities Financial Recovery Act stating that the confirmation of a recovery plan for a financially distressed municipality, or any modification thereto, "shall not be construed to…change the form of government of the distressed municipality" is an unambiguous instruction to those who might "construe" a recovery plan, such as reviewing courts, that they should not view a recovery plan as "changing the form of government" of a distressed municipality, as changes to governmental operations that may be needed in the interest of financial recovery during a temporary receivership do not permanently alter the municipal government; this provision is not a limitation upon recovery plans.

Mayor and other elected officials did not have any prerogative to interfere with receiver appointed over financially distressed city pursuant to Municipalities Financial Recovery Act, and thus,

receiver's proposed amendment of recovery plan so as to prohibit mayor and other elected officials from interfering with directives of chief of staff and receiver did not violate any such prerogative; Act expressly empowered receiver to issue orders to elected or appointed officials to implement any provision of recovery plan and "refrain from taking any action that would interfere with the powers granted to receiver or the goals of the recovery plan" and stated confirmation of recovery plan imposed "mandatory duty" on city's officials to "undertake the acts set forth in the recovery plan."

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments did not violate constitutional provision stating that impeachment process was necessary to remove elected officials' administrative duties, even though officials were also elected city council members; receiver only sought to suspend officials' duties with respect to their appointed offices, not their duties in their legislative roles as city council members.

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments did not violate constitutional provision stating that appointed officers "may be removed at the pleasure of the power by which they shall have been appointed," even though officials were appointed as department heads by mayor, who opposed receiver's plan modification; receiver did not seek to remove officials from their offices, only to suspend their administrative duties until expiration of receivership.

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments, pursuant to provision of Municipalities Financial Recovery Act stating that confirmation of a recovery plan modification had effect of "suspending the authority of the elected and appointed officials" to the extent such authority conflicted with plan's goals, did not violate Act provision stating legislature generally intended to leave principal responsibility for city's affairs to elected officials, even though officials at issue were also elected city council members; receiver contended officials refused to cooperate with plan, and legislature intended to prioritize plan over local officials' prerogatives.

The Municipalities Financial Recovery Act cannot be read to suggest the authority of local officials must be preserved at all costs, in the face of their dereliction of official duty and notwithstanding conduct on their part that causes a breakdown in the function of municipal government, constitutes a failure to uphold their paramount public duty to safeguard the health, safety, and welfare of their citizens, and poses a threat to the fiscal stability of neighboring communities; indeed, the purpose and the expressly-stated intent of the Act is precisely to remedy such dereliction.

Receiver's proposed modification to financially distressed city's recovery plan so as to suspend administrative duties of officials who served as heads of city's various departments, on basis that officials refused to cooperate with receiver, did not violate provision of Municipalities Financial Recovery Act stating that during fiscal emergency, officials "shall continue to carry out [their] duties…except that no decision or action shall conflict with an emergency action plan, order or exercise of power by the Governor"; receivership operated under other chapter of Act, which authorized receiver to order officials to implement recovery plan and refrain from interference, specific receivership provisions controlled over general provision, and recovery plan superseded emergency action plan.

The section of the Municipalities Financial Recovery Act providing that a receiver's recovery plan has the effect of "suspending the authority of the elected and appointed officials of the distressed municipality…to exercise power on behalf of the distressed municipality" to the extent the officials' authority "would interfere with the powers granted to the receiver or the goals of the recovery plan"

is not limited to situations where the local officials' actions contradict some specific and already extant provision of the recovery plan; rather, the officials' authority may be suspended where its exercise conflicts with, among other things, the goals of the recovery plan.

Sufficient evidence supported Commonwealth Court's conclusion that allowing city's appointed department heads to continue exercising their administrative authority would interfere with receiver's powers or goals of recovery plan, supporting approval of receiver's proposed plan modification to suspend administrative authority of department heads in order to effectuate recovery plan and remedy city's condition; receiver presented evidence that, among other things, official who was head of finance and human resources departments withheld information about his waste of $400,000 in city funds despite writ of mandamus ordering him to share financial information with receiver, and officials stymied receiver's investigations and countermanded receiver's orders to city employees.

A receiver's complete suspension of municipal officials' duties, pursuant to the Municipalities Financial Recovery Act provision authorizing such suspension to the extent the officials' authority "would interfere with the powers granted to the receiver or the goals of the recovery plan," is an extraordinary measure, one that will be warranted only very rarely; if, for example, a receiver sought to take this step immediately upon appointment, with no evidence that the local officials' conduct posed an obstacle to the municipality's financial recovery, it would be entirely appropriate for the Commonwealth Court to reject such an initiative as arbitrary or capricious under its prescribed standard of review of proposed recovery plans and modifications to plans

Provision of Municipalities Financial Recovery Act authorizing receiver to suspend "authority of the elected and appointed officials of [a] distressed municipality…to exercise power on behalf of the distressed municipality" pursuant to city's charter to the extent that officials' authority would interfere with receiver's powers or recovery plan's goals authorized receiver's proposed modification of recovery plan so as to allow receiver to direct city council to remove items from its legislative agenda, where receiver asserted that city council members had history of adding agenda items that could impact city's financial health without providing adequate advance notice to receiver, impacting receiver's ability to provide for city's financial recovery.

A receiver appointed for a municipality under the Municipalities Financial Recovery Act is not a "judicial officer"; a receiver's power is granted by statute, not by an act of the judiciary, the receiver is selected by executive branch officials, whereas the Commonwealth Court's role in a receiver's appointment is limited to confirming the executive branch officials' choice of receiver upon demonstration of the statutory prerequisites for receivership, and the Commonwealth Court exercises no control over a receiver's day-to-day activities and is not authorized to direct a receiver to take any particular action.

Receiver's proposed initiative that would empower him to waive residency requirement for employees of financially distressed city, whose home rule charter gave city council discretion to employ qualified non-residents if no qualified city residents were available for a particular position, was proposed amendment to city's recovery plan, not city charter, and thus, did not violate constitutional requirement that amendment of a home rule charter be by referendum; initiative, which quoted charter provision and stated "this initiative substitutes 'the Receiver' for 'Council,' " sought to vest power in receiver that would otherwise be committed to city council, but did not seek to amend charter itself.

Receiver's proposed modification of financially distressed city's recovery plan so as to require city solicitor to inform receiver if solicitor became aware that any city official or employee was not complying with Commonwealth Court's orders or with recovery plan or plan modification confirmed

by court order would not require solicitor to violate rule of professional conduct generally prohibiting lawyers from revealing information relating to representation of client without informed consent; rule provision contained exception allowing a lawyer to reveal such information to extent lawyer reasonably believed necessary to comply with law or court order, such that disclosure of noncompliance with court orders and court-confirmed recovery plan was consistent with rule.

Receiver appointed over financially distressed city was not required to seek narrower relief in form of writ of mandamus before requesting Commonwealth Court's confirmation of modifications to recovery plan, but rather, had express authority under Municipalities Financial Recovery Act to seek confirmation of proposed modifications based on receiver's determination that such measures, including suspension of administrative duties of appointed department heads, were necessary to achieve financial stability in city.

Under the Municipalities Financial Recovery Act, a receiver's authority is not limited to requiring, directing, and ordering a distressed municipality's officials to take actions to implement a recovery plan, even though a provision of the Act authorizes the receiver to "issue an order to an elected or appointed official of the distressed municipality"; elsewhere, the Act expressly empowers the receiver to "require the distressed municipality" itself, not its officials, to take actions necessary to implement the plan and negotiate intergovernmental cooperations and to "direct the distressed municipality" to take any other actions to implement the plan, thereby treating the municipality as an entity distinct from its officials.

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