

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT OF MICHIGAN

ATTORNEY GENERAL BILL SCHUETTE,

Plaintiff,

-v-

Case No. 12-010638-AW
Hon. John H. Gillis, Jr.

REV. DAVID MURRAY, et al.,

Defendants.

OPINION

I. Introduction

This action is presently before the Court on cross motions for summary disposition pursuant to MCR 2.116(C)(8)(failure to state a claim), and (10)(no genuine issue as to any material fact). For the reasons more fully explained below, the Court will deny plaintiff's motion and grant defendants' motion.

II. Facts and Procedural History

By way of background, MCL 380.11 provides that "[e]ach school district, except a school district of the first class, shall be organized and conducted as a general powers school district regardless of previous classifications." School board members of a general powers school district are all elected at large. MCL 380.11a(7).

In 1999, the Michigan Legislature enacted the Michigan School Reform Act, 1999 PA 10, which added Part 5A, MCL 380.371-MCL 380.375 to the provisions of the Revised School Code (Code), MCL 380.1 *et seq.*, creating a school reform board for a qualifying

school district,¹ notably a school district of the first class, i.e., a school district with a pupil membership of at least 100,000 enrolled on the most recent pupil membership count day, MCL 380.371(c); MCL 380.402. At that time, the Detroit Public Schools (DPS) represented the only qualifying first class school district. In November 2004, the school electors of the DPS voted in favor of an 11-member school board (Board) comprised of four members elected at large and seven members elected from voting districts. MCL 380.403a; MCL 380.410; MCL 380.411a; MCL 380.412a.

In 2008, the pupil membership of the DPS did not reach the threshold required for qualification as a first class school district, and has remained below a 100,000 pupil membership ever since. Nevertheless, the members of the Board have continued to be elected as if the DPS were a first class school district; in November 2009, four members of the Board were elected at large, and in November 2011, the remaining seven members of the Board were elected by voting districts.

Plaintiff filed suit against the Board members in 2012, seeking permanent injunctive relief, a declaratory judgment, and a writ of quo warranto on the ground that they were not properly elected and must be removed from office.

III. Standard of Review

A motion for summary disposition based on MCR 1.116(C)(8) tests the legal sufficiency of a complaint. *Badiee v Brighton Area Schools*, 265 Mich App 343, 351; 695 NW2d 521 (2005). All well-pled allegations must be accepted as true and construed in a

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The powers and duties of an elected school board are suspended during the term of a reform school board. MCL 380.373.

light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The motion must be granted if no factual development could possibly justify recovery. *Id.*

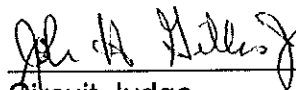
Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.* In deciding a motion under this rule, the trial court must consider "the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial." *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

IV. Analysis


Plaintiff argues that as a result of the reduction in pupil membership, the DPS no longer qualifies as a first class school district, but rather, a general powers school district for purposes of, among other things, electing members of the Board. It necessarily follows, then, per plaintiff, that the Board is not presently entitled to elect seven of its members by voting districts, which is the process reserved for a first class school district. In this regard, plaintiff insists that the Board must amend its by-laws to reflect the change in status of the DPS, and alter the method of electing Board members to comply with the requirements applicable to a general powers school district. According to plaintiff, the seven Board

members elected in 2011 unlawfully hold their offices and should be removed² since their election by voting districts rather than at large was not in conformity with the election process of a general powers school district.

Even assuming, arguendo, that plaintiff's complaint is not barred by laches, it is undisputed that the Code does not specifically address the effect of a decline in pupil membership on the status of a first class school district, nor does the Code expressly provide the election procedure for school board members in the event that a school district loses its classification as a first class school district due to declining enrollment. These issues are properly clarified by the Legislature. See *Atlas v Wayne County Board of Auditors*, 281 Mich 586, 599; 275 NW 507 (1937)(function of judiciary is to determine existing rights, not to enact or repeal legislation); *State Bar of Michigan v Galloway*, 124 Mich App 271, 279; 335 NW2d 475 (1983)(separation of powers doctrine prohibits judiciary from encroaching on legislative functions). Under the circumstances, the Court will deny plaintiff's motion for summary disposition, and grant defendants' motion for summary disposition.


Circuit Judge

DATED: 2-5-13

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WAYNE COUNTY CLERK
BY 
DEPUTY CLERK

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Plaintiff claims that upon removal, the vacancies created would be filled by appointment.

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Hon. John H. Gillis, Jr.

Defendants.

ORDER

At a session of said Court held in the Coleman
A. Young Municipal Center, Detroit, Wayne
County, Michigan, on this:

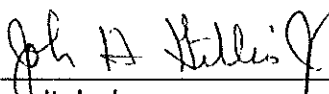
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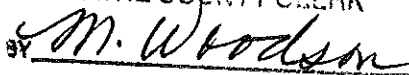
PRESENT: **JOHN H. GILLIS, JR.**

Circuit Judge

The Court being advised in the premises and for the reasons stated in the
foregoing Opinion,

IT IS ORDERED that plaintiff's Motion for Summary Disposition is **DENIED**, and
defendants' Motion for Summary Disposition is **GRANTED**.


Circuit Judge

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CATHY M. GARRETT
WAYNE COUNTY CLERK

DEPUTY CLERK