

## In The Circuit Court of the Ninth Judicial Circuit

McDonough County, Illinois

Steven Wailand,

Plaintiff,

v.

13-MR-46

City of Macomb, a Municipal

Corporation et al.

Defendant

Opinion

This cause was before the court on April 8, 2013, for hearing on a Temporary Restraining Order, Preliminary Injunction, and/or Permanent Injunction and the Writ of Mandamus. Plaintiff Steven Wailand appeared in person with his attorneys Diane Cohen and Jacob Huebert. The City of Macomb and the city officials were represented by City Attorney Kristen Petrie. McDonough County Clerk, Gretchen DeJaynes, was in person represented by Assistant State's Attorney Ken Wang. Kay Hill appeared in person pro se. The court heard testimony from City Clerk, Melanie Falk, and McDonough County Clerk, Gretchen DeJaynes. Further, the plaintiff presented the plaintiff's verified complaint as part of the plaintiff's case. At the conclusion of the hearing, the court entered an order sealing the results of the supplemental election that was to take place on April 9, 2013. The results are to remain sealed until further order of court. The court then set the matter for further hearing on April 26, 2013. This hearing was set to allow for the city and county to present further evidence in support of their opposition to the plaintiff's case. However, the city and county have advised the court that no further evidence will be presented. All parties including Kay Hill advised the court that the hearing scheduled for April 26, 2013, could be vacated because no new evidence would be presented by any of the parties, and that the court had all the evidence needed to decide the case.

Factual Background

On February 26, 2013, the City of Macomb held a consolidated primary election pursuant to the Macomb municipal code and pursuant to the Illinois Election Code (10 ILCS 5). Two candidates appeared on the February 26, 2013, ballot for Alderman of the Second Ward for the City of Macomb, namely: Steven Wailand and Kay Hill. The voters were to vote for one of the two candidates. Thirty-three people voted for Alderman of the Second Ward for the City of Macomb. Steven Wailand received 17 votes and Kay Hill received 16 votes. The results of the election were certified by the McDonough County Clerk. The voting results are in no way contested. No one disagrees with the vote totals. However, there was a decision by the City Clerk that a supplemental election would be required because

neither candidate had received "50 percent plus one" of the votes. Meaning, that Steven Wailand had not won by two votes. Melanie Falk testified that since Steven Wailand had not received "50 percent of the vote plus one", that a supplemental election would have to take place between the same two candidates. Melanie Falk testified that the "50 percent plus one rule" had been the rule for as long as she had worked for the city, which had been since 1986. However, Melanie Falk did admit that the "50 percent plus one rule" is not specifically defined in the city code but that the word "majority" has always to her knowledge meant "50 percent plus one". Melanie Falk did admit that the city had never had two candidates in the February election go on to a supplemental election. Gretchen DeJaynes testified at the hearing. She also testified about the "50 percent plus one" rule and that she received this rule from the city. Based on the verified complaint, Steven Wailand sought out clarification as to why he was not declared the winner. Steven Wailand filed this law suit after it was apparent that the city did not feel he had won the February 26, 2013, election.

#### Municipal Code of Macomb, Illinois

The Municipal Code of Macomb in section 2-3 sets out the Election procedures to be followed for electing city officers including Alderman. Section 2-3(5) states in part as follows:

"Candidates receiving majority elected; supplementary elections. The candidate receiving a majority of the votes cast for mayor, clerk, treasurer, alderman at-large, and city alderman in each ward or wards at any general election shall be declared elected. If no candidate receives a majority of such votes, a supplementary election shall be held at the time prescribed in subsection (1) of the section. At such supplementary election, the names of the candidates receiving the highest and second highest number of votes at the preceding general election and no others shall be placed on the official ballot; provided, however, that, if there be any candidate who under the provisions of this section would have been entitled to a place on the ballot at the supplementary election except for the fact that some other candidate received an equal number of votes, then all such candidates receiving such equal number of votes shall have their names printed on the ballot as candidates at such succeeding supplementary election. The candidate receiving the highest number of votes at such supplementary election shall be declared elected....."

The Municipal Code of Macomb defines nontechnical and technical words as "Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning."

#### Issue Before the Court

The main issue before the court is what does the word "majority" mean? The city claims that it means "50 percent plus one" or "win by two". The plaintiff claims that the word majority means something more than 50 percent.

### Legislative Construction Doctrine

There are certain doctrines of legislative construction that this court must use in deciding the issue as presented.

"A statute or ordinance must be construed to give it efficient operation and effect as a whole. There is no occasion for construction if the language is plain and unambiguous." Highcrest v. Woodridge, 377 N.E.2d 315.

"Where absurd consequences result from a particular construction, such construction will be avoided if the statute will reasonably permit a different construction." "The words of a statute will be construed in their ordinary sense and with the meaning commonly attributed to them under such construction unless such construction will defeat the manifest intention of the legislature" Moweagu Coal Corp., 195 N.E. 607

"It is also well settled that where several constructions may be placed upon a statute, the court should select that construction which leads to a logical result, and the court should avoid a construction which the legislature could not have contemplated." Orbach v. Axelrod, 427 N.E.2d 399

"The best indication of legislative intent is the statutory language, given its plain and ordinary meaning" Illinois Graphics Co. v. Nickum, 639 N.E.2d 1282 (1994)

### Decision

The court takes into account all the evidence including testimony and verified pleadings. The court has evaluated the demeanor of the witnesses. Further, the court takes note of the doctrines of legislative construction, along with the language found in the Municipal Code of Macomb, Illinois, along with the laws of the State of Illinois and the Illinois Constitution.

This court finds that the word "majority" is unambiguous and requires no construction. As stated in the Municipal Code of Macomb, Illinois, it should receive its "common and approved usage of the language". Black's Law Dictionary defines "majority" as "a number that is more than half of a total; a group of more than 50 percent<the candidate received 50.4 percent of the votes--barely a majority". The city could not produce sufficient evidence to support its belief that "majority" had been defined as "50 percent plus one". The city argues that the city has always interpreted the word "majority" in that way. However, just because it has always been done that way, does not make it right. Further, if the city had wanted this to be the rule, then the city should have submitted the question by referendum and let the voters decide if that is how they want the "consolidated primary election" to be handled. (Article 7 Illinois Constitution Section (7)) Nowhere in the code did the city let the voting public know that the city meant majority to mean "50 percent plus one". The court is confident that anyone reading the code would determine that if a candidate received more than 50 percent of the vote at the February election, that the candidate would be declared the winner.

This court finds that the "50 percent plus one" rule leads to illogical results. Especially if only two people are running for one office. If only two people are running for one elected position, then one of the two will always receive more than 50 percent of the vote. Unless, of course, there is a tie. Then, and only then, would the two candidates have to face off again in a supplemental election. To say that the "50 percent plus one" rule does not lead to illogical results ignores what took place on February 26, 2013, in the City of Macomb Second Ward Alderman race. Mr. Wailand received 51.5% of the vote. He had 17 votes and Mrs. Hill had 16 votes. But yet, he was not declared the winner under the unwritten, undefined rule of the city. This just does not make any sense. This court has read numerous election law cases over the last month. This court never read a case where the winner filed the lawsuit. Every case dealt with the loser filing a suit claiming that he or she was really the winner. The loser would claim that the votes were not counted correctly, or that for some reason some of the votes should be thrown out. But in the case before this court, Mr. Wailand, despite receiving a majority of the votes cast, had to file a lawsuit to be declared the winner. Mr. Wailand is saying "Hey, I won. There is no question that I got more votes than the other candidate, there is no question as to the number of votes I got, no question that the people who voted were eligible voters, please tell someone I won." It is not logical to require the winner to come to court to argue that he won.

It is not logical to have a person receive more than 50 percent of the vote but yet, not be the winner. This is not how America decides who should be elected. Roberts rules of order even agrees with this premise.

"In determining the result of a vote, what constitutes a majority? Answer: The word "majority" in this context means, simply, more than half. The use of any other definition, such as 50 percent plus one, is apt to cause problems. Suppose in voting on a motion 17 votes are cast, 9 in favor and 8 opposed. Fifty percent of the votes cast is  $8\frac{1}{2}$ , so that 50 percent plus one would be  $9\frac{1}{2}$ . Under such an erroneous definition of a majority, one might say that the motion was not adopted because it did not receive 50 percent plus one of the votes cast, although it was quite clearly, passed by a majority vote".

Therefore, judgment is entered in favor of the plaintiff and against the defendants. Further, the word "majority" is given its common meaning "a number that is more than  $\frac{1}{2}$  of the total. More than 50 percent".

The Macomb City Clerk is instructed to notify Steven Wailand that he has been elected to the office of Second Ward Alderman and to notify him of the meeting in May. At the May city council meeting, Steven Wailand shall be sworn in as Second Ward Alderman for the City of Macomb.

Any certification that is required shall be completed naming Steven Wailand as the winner of the February 26, 2013 election for Second Ward Alderman.

No evidence was presented to the court on the issue of attorney fees. Absent a statutory provision allowing attorney fees, fees will not be awarded. Therefore, attorney fees are denied. However, costs incurred by the plaintiff will be paid by the city. Reasonable costs include filing fees, service fees, cost of transcript fees. Attorney Cohen may present the court with the costs incurred and a supplemental order will be entered.

The results of the April 9<sup>th</sup> Second Ward Alderman race are null and void. However, the court understands that the results will still be required to be mailed to the State Board of Election. However, the State Board of Election shall be advised that the election results are null and void as the supplemental election should have never taken place. However, considering the appeal rights of the parties, the results should not be destroyed until the time for an appeal has expired. The County Clerk is allowed to let her employees to have access to the entire election results. However, the results of the April 9, 2013 election shall not be given to any individual, to any group, to any news organization, as the results are null and void.

The court has prepared an order in conformity with this letter opinion. The only other order that will need to be entered is the plaintiff's costs.

A handwritten signature in cursive script, appearing to read "James G. Clark". The signature is written in dark ink and is centered on the page.

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Order

After full hearing on all issues and after a letter opinion being issued, and the court advised in the premises;

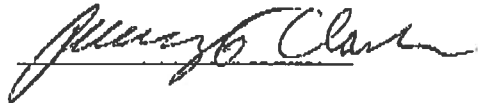
Wherefore, It Is Ordered As Follows:

1. The Court declares that the word "majority" as used in the City of Macomb Municipal Code Section 2-3(5) means "a number that is more than half of the total".
2. Steven Wailand is declared elected to the office of Second Ward Alderman for the City of Macomb as he received the "majority" of the votes at the February 26, 2013 election in that he received 17 votes and Kay Hill received 16 votes.
3. The Macomb City Clerk shall notify Steven Wailand that he has been elected to the office of Second Ward Alderman and to notify him of the meeting in May.
4. At the Macomb City Council meeting in May, Steven Wailand shall be given the oath of office and seated as Second Ward Alderman for the City of Macomb.
5. Any and all certifications that are required shall be completed naming Steven Wailand as the winner of the February 26, 2013, election for Second Ward Alderman for the City of Macomb.
6. Attorney fees are denied.
7. Costs are awarded in favor of the plaintiff and against the defendant, The City of Macomb. Reasonable costs include filing fees, service fees, cost of transcript fees.
8. The election results of the April 9, 2013 consolidated election for Second Ward Alderman race for the City of Macomb are null and void. The McDonough County Clerk is authorized to release the results to the State Board of Elections but to advise them of this court's decision. The results should be maintained for 30 days following the entry of this order in case an appeal is filed in this manner.
9. The McDonough County Clerk is granted leave to allow her employees to have access to the entire election record from April 9, 2013, consolidated election to allow them to deal with

election results on races not involving the Second Ward Alderman election for the City of Macomb. However, at no time are they to give out any of the results to the Second Ward Alderman race as the race has been declared null and void.

- 10. Failure to abide by this order will be subject to contempt.
- 11. Attorney Cohen shall submit the costs to this court for a supplemental order to be entered.

Date 4/26/13



Judge