

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

TOWN OF KENNETH CITY, FLORIDA,
a municipal corporation of the State of Florida,

Plaintiff,

vs.

CASE NO.:
DIVISION:

TERESA A. ZEMAITIS, in her capacity
as mayoral candidate for the
Town of Kenneth City,

Defendant.

**PLAINTIFF TOWN OF KENNETH CITY'S VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

The Plaintiff, Town of Kenneth City ("Plaintiff" or "Town"), a municipal corporation of the State of Florida, hereby files this action for declaratory and injunctive relief regarding Defendant, Teresa A. Zemaitis ("Defendant" or "Ms. Zemaitis"), in her capacity as mayoral candidate for the Town of Kenneth City, and alleges as follows:

FACTS COMMON TO ALL COUNTS

1. Plaintiff Town of Kenneth City is a municipal corporation duly chartered and operating under the laws of the state of Florida, and located in Pinellas County, Florida.
2. Defendant Teresa A. Zemaitis is an individual citizen residing in Kenneth City, Pinellas County, Florida. She is being sued only in her capacity as mayoral candidate for the Town of Kenneth City.

3. This declaratory judgment action is being brought pursuant to Florida Statute § 86.011. Specifically, the Town is in doubt and is requesting a declaration of rights and status arising under the Town's Charter. Pursuant to Florida Statute § 86.021, the court is being asked to make a determination as to a question of construction and/or validity of the Town Charter as it pertains to Defendant's qualifications and ability to discharge the duties of Mayor, if she wins the mayoral election scheduled for March 10, 2009.
4. Venue is appropriate in this court pursuant to Florida Statute § 47.011, as this action has been brought in the county in which the cause of action accrued and where the Defendant resides.
5. Ms. Zemaitis is currently a "public employee" as she is employed by the Pinellas County School Board (See Ms. Zemaitis' 2007 Statement of Financial Interests – Form 1, attached hereto as Exhibit "A") as a public school teacher.
6. Ms. Zemaitis obtained twenty eight (28) petitions to qualify for the Office of Mayor. On December 15, 2008 Defendant completed all other documents required to qualify as a candidate to run for the Office of Mayor of the Town of Kenneth City. (See Statement of Candidate, Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates, and Loyalty Oath, all attached as Composite Exhibit "B") The County Supervisor of Elections (under contract with the Town) issued a Certificate of Signature Verification on December 18, 2008, advising the

Town and the Defendant that Ms. Zemaitis' petition signatures were verified. (Attached as Exhibit "C") The Town Clerk verbally notified Defendant on December 18, 2008 that she qualified to run as a candidate for mayor; however, the Town Clerk inadvertently failed to notify the Defendant at that time about the Charter limitation identified in Article IV, § 4.01(d).

7. Article IV, § 4.01(d) of the Town of Kenneth City Charter provides in pertinent part as follows:

“The Mayor shall discharge the duties of the office and shall hold no other public office or public employment during the term” (Emphasis added)

A true and accurate copy of the Town Charter is attached hereto as Plaintiff's Exhibit "D".

8. Concern arose over the fact that mayoral candidate Zemaitis was also a Pinellas County public school teacher and thus a "public employee". The Town Clerk referred to Town Attorney Paul Marino the question of what would happen if Ms. Zemaitis won the mayoral race, but failed to resign from her public school teaching position. The Town Attorney in turn requested by letter dated January 15, 2009 a legal opinion from the Office of the Attorney General, a true and accurate copy of which is attached hereto as Exhibit "E".
9. Ms. Gerry Hammond, Senior Assistant Attorney General, responded on January 27, 2009. Unfortunately, she declined to provide an opinion on the issue presented, explaining the Attorney General's office had "no authority

to comment on local legislation such as charter provisions or ordinances.”
A true and accurate copy of that letter opinion is attached hereto as Exhibit
“F”.

10. Even though Ms. Hammond chose not to answer the Town’s inquiry directly and in all respects, she did offer some “general comments” which she hoped “may be helpful in resolving these matters.” She noted that the term “public employee” is defined in Florida Statute § 447 (dealing with the Public Employee Relations Commission) to be “any person employed by a public employer [with specified exceptions], and a ‘public employer’ is defined to include the state or any county, municipality, or special district or any subdivision or agency thereof...” She also pointed out that in another state statute it states “...the district school board shall be deemed to be the public employer with respect to all employees of that school district.”

11. Ms. Hammond was asked to comment on the home rule powers of municipalities in adopting legislation. She highlighted Section 2(b), Article VIII of the Florida Constitution, which provides in part as follows:

Municipalities shall have governmental, corporate, and proprietary power to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

12. Citing the Florida Supreme Court’s opinion in State v. City of Sunrise, 354 So. 2d 1206, 1209 (Fla.1978), Ms. Hammond emphasized that “the only limitation on the power of municipalities under this constitutional section is

that such power must be exercised for a valid municipal purpose.” Based on Senior Assistant Attorney General Hammond’s letter and his own legal research, Town Attorney Paul Marino concluded that, if she won her mayoral election, the Town Charter precluded Ms. Zemaitis from qualifying and discharging the duties of the Office of Mayor unless she first resigned her position as a public employee.

13. Before arriving at his legal conclusions, however, the Town Attorney asked the Town Clerk to research of all Kenneth City Charter Committee Minutes since the enactment of the current Charter in 1982 for guidance in interpreting the Charter. He found them to be void of any reason for the particular wording of the Charter, other than that which is clearly stated in § 4.01(d). One must logically conclude therefore that the electors of Kenneth City, in approving that specific language when they adopted the 1982 Charter, clearly did not want their Mayor to hold any other public office or hold any other public employment. In addition, two subsequent Charter Review Committees, charged with a periodic review of the Town Charter since 1982, found no reason to change the clear and unequivocal language of § 4.01(d) of the Charter pertaining to the limitations placed on the Office of Mayor, including being a public employee.
14. In fact, on July 24, 2002 Ms. Zemaitis was serving as a Council member for the Town of Kenneth City. On that day, she requested that the Town Council appoint a Charter Review Commission (“CRC”) to review the Town Charter consistent with the Charter § 10.02. On September 11, 2002,

the Town Council selected seven Kenneth City residents to serve on the CRC, which met weekly over the next several months and thoroughly reviewed each and every section of the Town Charter. (See Charter Review Minutes dated 2002-2004, attached hereto as Composite Exhibit “G”).

15. As part of the review process the CRC took input from all of the sitting members of the Town Council, including then Council member Zemaitis. She was unable to attend the CRC’s Friday (October 18, 2002) morning meeting due to a mandatory all day training session at her teaching job. Instead, she provided the CRC with a detailed memorandum dated October 15, 2002 (attached hereto as Exhibit “H”) that expressly identified at least nine (9) sections of the Charter that she felt should be amended. While Ms. Zemaitis’ letter to the CRC addressed several related issues (e.g. Charter § 3.07 filling council vacancies and forfeiture of council office due to absence), her written comments did not suggest any changes to the provision at issue here (Article IV, § 4.01 (d)).
16. The CRC voted on various issues as its hearings progressed and finalized its recommendations to the Town Council at its November 22, 2002 meeting (See Nov. 22nd Minutes, attached hereto as Exh. “I”). On January 31, 2003, the CRC Chairman wrote to the Town Council and formally advised it of the CRC’s five recommended changes to the Town Charter (See McDonald letter to Council attached hereto as Exhibit “J”). The CRC’s recommendations included amendments to §3.02 (addressing qualifications of persons seeking to run for office, but who are in a political

organizations) and § 3.04 (Compensation); deleting § 3.14; and amending § 10.02 (as to frequency of CRC process). Finally, the CRC recommended a major amendment to change the Town to a “City Manager” form of government. Even after collectively spending at least a hundred hours reviewing, analyzing, and proposing significant changes to the Charter, there is no indication anywhere in the CRC’s Minutes that anyone anywhere (including Ms. Zemaitis, who was deeply involved in the process) so much as mentioned Article IV, § 4.01 (d), much less took action to modify it.

17. At the Council Workshop held August 25, 2004, Council member Zemaitis brought up at least nine issues that she thought should be on the ballot as potential Charter amendments (See August 25, 2004 Minutes attached hereto as part of Composite Exhibit “K”). Again, none of her comments suggested any changes to the provision at issue here (Article IV, § 4.01 (d)). Ultimately, that Council voted three to two (3-2) against putting any of the recommended changes as a referendum on the ballot (See August 25, 2004 Council Workshop Minutes, p. 3, attached hereto as Exh. “L”).
18. In December 2005, the Kenneth City Town Council, by various ordinances, placed seven separate Charter amendments on the March 14, 2006 ballot; none pertained to Article IV, § 4.01 (d). Likewise, in August 2008, the Kenneth City Town Council, by ordinance, placed a single Charter amendment on the November 4, 2008 ballot; it too did not pertain to

Article IV, § 4.01 (d). (See Ordinances 537, 538, 539, 540, 541, 542, 546 and 563, attached hereto as Composite Exhibit “M”)

19. Returning to more recent events, on January 9, 2009 Ms. Zemaitis again verbally advised the Town Clerk that if she won the March 10, 2009 mayoral election, she would not comply with the Town Charter, as she had no intention of resigning her position as a public school teacher. She alleged that the Charter provision was “unconstitutional and discriminatory.”
20. The Town’s current Mayor is Muriel Whitman. Mayor Whitman has also qualified as a candidate for election to the office of Mayor of the Town of Kenneth City. On March 10, 2009 Muriel Whitman and Defendant Teresa Zumaitis will both be candidates on the ballot for the Office of Mayor of the Town of Kenneth City.

COUNT I - DECLARATORY JUDGMENT

21. The City re-alleges and incorporates by reference the allegations contained in paragraphs 1- 20 above, as though fully set forth herein.
22. The language of the Town Charter is clear. If the Defendant wins her election for mayor, she must, in compliance with the Charter, resign her position as a public school teacher in order to qualify to take the oath of office and discharge the duties of the Office of Mayor. Town Attorney Paul Marino acknowledged that legal conclusion, and, although Senior Assistant Attorney General Hammond stopped short of officially endorsing

the same legal opinion, her general comments and legal research certainly support the same view.

23. Article IV, § 4.01(d) of the Town of Kenneth City Charter is clear, unambiguous, non-discriminatory, and is the result of a constitutional exercise of the Town's home rule powers in adopting legislation. It serves a legitimate municipal purpose.
24. If the Defendant prevails in the Town of Kenneth City mayoral election on March 10, 2009, she has made it clear to the Town that she does not intend to resign from her position as a public employee (public school teacher) with the Pinellas County School Board. Accordingly, if Defendant prevails in the election, there will be an immediate, actual, and justifiable controversy.
25. The "ripening seeds" of this controversy provide this court jurisdiction to adjudicate through this declaratory judgment the conflicting claims of the two parties in interest, as these claims are clearly present and indicative of immediate litigation, though admittedly that conflict will not fully ripen until the March 10, 2009 mayoral election.

COUNT II – TEMPORARY INJUNCTIVE RELIEF

26. The city re-alleges and incorporates by reference the allegations contained in paragraph 1-20 above, as though fully set forth herein.
27. As previously noted, Ms. Muriel Whitman and Ms. Teresa A. Zemaitis are both candidates on the ballot for the position of Mayor of the Town of Kenneth City. That election is scheduled to be held on March 10, 2009.

The results will be certified shortly thereafter by the Pinellas County Canvassing Board consistent with Florida Statutes § 102.012. The County Supervisor of Elections will then notify the Town Clerk and the prevailing candidate of the results.

28. Once again, Article IV, § 4.01(d) of the Town of Kenneth City Charter provides in pertinent part as follows:

“The Mayor shall discharge the duties of the office and shall hold no other public office or public employment during the term.”

29. If Ms. Zemaitis wins the mayoral election, under the clear and unambiguous language of the Charter, she cannot qualify and be given the oath of office as Mayor, unless she first resigns her position as a “public employee” with the Pinellas County School Board.
30. It is the Town Clerk’s non-discretionary duty pursuant to the Town Charter (§ 4.05(a)(2)(i)) to administer oaths of elected office and swear in the Mayor-Elect and any newly elected Council members once she is notified that they have been certified by the Canvassing Board as the successful candidates.
31. There is no regularly scheduled Town Council meeting in mid-March, so the Town Clerk anticipates setting a Special Meeting on or about March 17, 2009 to swear in the newly elected Mayor and members of Council (See Affidavit of Town Clerk Nancy Beelman dated February 18, 2009, attached as Exhibit “N”).

32. The Town has sought a Declaratory Judgment from this court to make a determination of the legal and constitutional validity and effect of the subject Charter provision that precludes a Mayor from also being a “public employee”.
33. If Defendant is sworn into office by the Town Clerk and this court later determines that Defendant was not at any point qualified to serve in that capacity, confusion and irreparable harm will occur to the Town as Defendant’s service as Mayor will constitute a legal nullity. Accordingly, any actions taken by Ms. Zemaitis in her official capacity as Mayor, as well as any votes in which she participates as Mayor sitting on the Town Council, will be subject to serious legal challenge, and may well be stricken as illegal and invalid.
34. For the reasons stated above, it is in the public’s best interest for this honorable court to grant a temporary injunction prohibiting the Town Clerk from administering Ms. Zemaitis the oath of Office of Mayor should she be elected to that position, until such time as this court has adjudicated the Town’s declaratory judgment action and come to a determination of the constitutional validity of Charter § 4.05(a)(2)(i).
35. The granting of the injunction will in no way impede the proper function of the Kenneth City government. The Town Charter mandates at §§ 3.05 and 3.06 that the Vice-Mayor will temporarily serve as the Mayor, presiding over Town Council and otherwise exercising the powers and duties of the Mayor, during the absence or disability of the Mayor.

36. Based upon the opinion of the Town Attorney, the opinion letter from the Office of the Attorney General, the plain language of the Charter, and all applicable statutes and relevant case law, the Town has a substantial likelihood of success on the merits in the underlying Declaratory Judgment action.
37. There is no adequate remedy at law available to the Town to otherwise address this issue and preserve the status quo until the declaratory judgment final hearing is held and the underlying dispute is resolved.
38. Accordingly, Plaintiff requests entry of a temporary injunction, effective immediately, prohibiting the Town Clerk of the Town of Kenneth City from swearing in as Mayor Ms. Teresa Zemaitis if she is elected to the office, until such time as this court has determined all issues raised in the Town's declaratory judgment action, and all litigation regarding these issues has been resolved.
39. Pursuant to Florida Rule of Civil Procedure 1.610(2)(b), no bond should be required of Plaintiff for entry of this temporary injunction. First, Plaintiff is a municipality and thus, under the rule, the court may dispense with the need for a bond, with or without surety, having due regard for the public interest. Second, the necessity of a bond is conditioned upon the payment of costs and damages sustained by the adverse party if that party is wrongfully enjoined. The undersigned attorney is aware of no costs or damages that might be sustained by the Defendant in this case should this court enter an incorrect temporary injunction against the Town Clerk in this

matter for a short period to allow this court the time necessary to fully adjudicate all issues raised in the declaratory judgment action.

40. Pursuant to Fla. R. Civ. Pro. 1.610, this Complaint has been verified by the Town official possessing the most personal knowledge of the facts giving rise to this Complaint – Town Clerk Nancy Beelman.

WHEREFORE, the Plaintiff, Town of Kenneth City, Florida, respectfully requests that Final Judgment and temporary injunctive relief be entered in its favor and against Defendant Teresa Zemaitis, through entry of appropriate orders and judgments, as follows:

1. Granting the Town's Motion for Temporary Injunctive Relief, and prohibiting the Town Clerk from administering the oath of elected office and/or swearing in Defendant Teresa Zemaitis until such time as this court has ruled on all issues raised in the underlying Complaint.
2. Finding that the failure to order such a prohibition will result in confusion and irreparable harm to the Town, and would likely thrust the Town into serious legal jeopardy and unnecessary litigation.
3. Finding that it is in the public's best interest to grant Plaintiff's requested temporary injunction.
4. Finding there is no adequate remedy of law available to the Town to otherwise address this issue and preserve the status quo until the final hearing is held and the underlying dispute is resolved.
5. Finding that no bond will be required of the Town pursuant to Florida Rule of Civil Procedure 1.610(2)(b) because: (1) Plaintiff is a municipality, and

the court finds that it is in favor of the public interest to dispense with a bond; (2) there do not appear to be any actual costs or damages that might be sustained by the Defendant in this case should this court enter an incorrect temporary injunction against the Town Clerk in this matter.

6. Finding that Article IV, § 4.01 (d) of the Town of Kenneth City Charter is clear on its face, that its language is unambiguous, that it serves a legitimate municipal purpose, that it is not arbitrary or discriminatory, that it was properly adopted in 1982 and has been reviewed numerous times by the appropriate electors without any change recommended, and that it is constitutional and therefore enforceable.

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Attorney for Plaintiff,
Town of Kenneth City

VERIFICATION

I, Nancy Beelman, Town Clerk for the Town of Kenneth City, hereby verify the truth and accuracy of the facts contained in this Complaint from personal knowledge.

Ms. Nancy Beelman,
Town Clerk for the
Town of Kenneth City

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, who is personally known to me or has produced _____ as identification and did take an oath.

NOTARY PUBLIC - SIGNATURE

NOTARY PUBLIC - NAME PRINTED

SERIAL NUMBER