FILED
SEP 9 1977
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, ex rel, DAN JOHNSTON, Polk County Attorney, and RICHARD C. TURNER, Attorney General of Iowa,

Appellants,

vs.

ROLLAND E. GREFE, Individually and as President of the Des Moines Area XI Board, and PAUL LOWERY, Individually and as Superintendent of Area XI, HAROLD F. WELIN, DAVID S. LONGNECKER, MAX W. KREAGER, WILLIAM C. PRICE, WALTER L. HETZEL, ROSS C. CRAMLET, HARRY G. BLOOMQUIST and CECIL R. GALVIN, Individually and as members of the Board of Directors of Area XI,

Appellees.

Filed September 9, 1977

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2-58734

Appeal from Polk District Court - Harry Perkins, Judge

Appeal from dismissal of petition in quo warranto. AFFIRMED.

Richard C. Turner, Attorney General of Iowa, Elizabeth A. Nolan, Assistant Attorney General, and Dan Johnston, Polk County Attorney, counsel for appellants.

H. Richard Smith, of Ahlers, Cooney, Dorweiler, Haynie & Smith, counsel for appellees.

Heard by Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.; Allbee, C. J., not participating.

DONIELSON, Acting C. J.

Plaintiff appeals the trial court order dismissing its petition in quo warranto. The petition had challenged several actions taken by the Board of Directors of the Des Moines Area Community College.

In 1973, the college board purchased a .36 acre lot near the school. Thereafter, the students of the college's Building Trades Program built a home on the lot. The Board of Directors subsequently decided to use the property as a residence for the college's superintendent, Paul Lowery.[1] A three-year employment contract with superintendent Lowery specified that Lowery would live in the house built on that property and pay a nominal rent of $50 per month. The contract also provided Lowery with annual compensation of $27,500, the maximum allowed at that time by Iowa statute.

In its petition in quo warranto, the state alleged that the use of the house by Lowery constituted a fringe or additional benefit, which caused Lowery's salary to exceed the maximum as set forth in § 280A.23(9), The Code (1973), as amended by Acts 1973 (65 G.A.), Chapter 110, § 12, effective August 15, 1973. Plaintiff also alleged that the board violated § 280A.35, The Code (1973), by owning 1.979 acres more than the amount allowed by law.

In dismissing plaintiff's petition, the trial court concluded that the plaintiff had not met its burden of stating a cause of action in quo warranto. The court held that in order to sustain such an action, the plaintiff must show that the challenged actions were so far beyond the powers of the board's members as to constitute a forfeiture of office. This holding was in accordance with rule 299(b), Rules of Civil Procedure, which permits the state to bring a quo warranto action against a "public officer who has done or suffered to be done, an act which works a forfeiture of his office."

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[1] This decision was based not only upon a desire to keep the present superintendent, but also upon an interest in establishing a policy that would require future superintendents to reside in the Ankeny community in close proximity to the college. The superintendent's residence there would not only insure the efficient operation and management of the college, but would assist in the protection of the college property. The record reflects that the superintendent's residence was used for both formal and informal college functions and business.

The trial court found that the contractual provisions requiring the superintendent to live in the house in question benefited the school rather than the superintendent. Accordingly, the court concluded that the house did not constitute an "additional benefit" under § 280A.23(9), The Code (1973), and, therefore, the superintendent's salary did not rise above the statutory maximum. This portion of the court's decree was not appealed.

The court also concluded that the fact that the college's land holdings exceeded the 320 acre maximum set forth in the statute did not entitle plaintiff to relief. In arriving at this conclusion, it noted that the plaintiff's evidence had not clearly established that the board knew before making the purchase of land in question that the college's holdings already exceeded the statutory maximum by 1.979 acres.[2] The court also noted that the board expected the Iowa State Highway Commission to condemn 18.1 acres of its land.

The court acted with sound discretion in recognizing that the highway commission expected to condemn 18 acres of the college's land, and that the board's members did not have knowledge that the college's land holdings exceeded 320 acres. The court correctly considered all of the circumstances in the case and concluded that the plaintiff had not demonstrated that the board's actions were "willful", a showing necessarily required by the underlying rules upon which an action in quo warranto is based, see rules 299-305, R.C.P., and the severity of the remedy of removal from office. State v. Civic Action Committee, 238 Iowa 851, 860, 28 N.W.2d 467 (1947). We not only feel that this small variance does not constitute willfulness, but we also believe that it does not even rise to the level of mere negligence. See 65 Am.Jur.2d Quo Warranto § 42 (1972).

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[2] The college acquired its campus in two parcels. The first consisted of approximately "240 acres, more or less." Later, the college purchased just under 80 acres. In a letter dated April 22, 1975, defendants' consulting engineering firm revealed that the campus actually contained 321.979 acres (excluding the .36 acre lot where the superintendent's house was constructed). The defendants became aware of the exact extent of this excess land only after receipt of this letter, well after this lawsuit was commenced.

Quo warranto is a very special and limited remedy, premised upon a complete lack of power as opposed to an improper use of conferred powers. [3] Furthermore, it can only be employed to review pure questions of law. 74 C.J.S. Quo Warranto § 11 (1951); State v. Board of Supervisors of Linn County, 232 Iowa 1092, 1093-1094, 6 N.W.2d 877, 878 (1942). We feel that the court correctly interpreted the law in dismissing this petition.

The trial court correctly stated that even if the total acreage should be reduced to the statutory maximum, the court was powerless to order the board to sell the house and lot as requested by plaintiff. The board might choose to sell other real estate, and any decision regarding this matter is within the discretion of the board. The court also made it clear that if the highway commission does not condemn the land, the defendant would be required to take steps to come within the statutory acreage requirements. Clearly, the court's action was consistent with rule 303(d), R.C.P., which states that "if a party has merely exercised powers or privileges to which he was not entitled, but which does not warrant forfeiture under the law, the judgment shall prohibit him from the further exercise thereof."

Finding no error, we affirm the judgment of the district court.

AFFIRMED.

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[3] In its Conclusions of Law, the trial court found that at all relevant times the board had powers conferred by statute:

> "to hire a superintendent pursuant to contract (Section 279.14, Iowa Code, 1973); to enter into contracts and take other necessary action to insure sufficient curriculum, efficient operation and management of the college and maintain and protect the physical plant, equipment and other property of the school (Section 280A.23(5), Iowa Code, 1973); to establish policy, make rules and regulations for its own government and that of the administrative, teaching and other personnel of the school and aid in the enforcement of such laws, rules and regulations (Section 280A.23(6), Iowa Code, 1973); and to acquire land for use by the college, including sites for the erection of structures by students (Sections 280A.19 and 297.22, Iowa Code, 1973)."