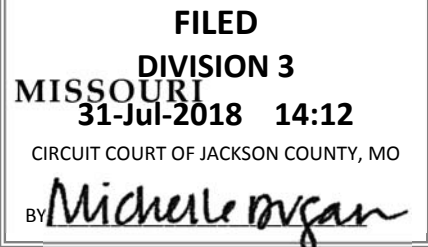


IN THE CIRCUIT COURT OF JACKSON COUNTY,
AT KANSAS CITY



JACKSON COUNTY DEMOCRATIC
COMMITTEE

Plaintiff,

v.

MARY JO SPINO, et al.

Defendants.

Case No. 1816-CV17198
Division 3

JUDGMENT AND ORDER

On July 3, 2018, Plaintiff Jackson County Democratic Committee ("Plaintiff") filed a Petition seeking the following Preliminary and Permanent Injunctions (paragraphs 1 and 2) as well as Declaratory Judgments (paragraphs 3 and 4):

1. Enjoining Defendant Jackson County Board of Election Commissioners (the "Jackson County Board") and Defendant Kansas City, Missouri Board of Election Commissioners (the Kansas City Board") from conducting a primary election for the nomination of general election candidates for the Office of Jackson County Sheriff ("Sheriff")¹;

2. Enjoining the Jackson County Board and the Kansas City Board from counting any votes cast in the primary election for the office of Sheriff²;

3. Declaring that Defendant Mary Jo Spino, in her official capacity as Clerk of the Jackson County Legislature ("Spino") and Defendant Jackson County, Missouri ("Jackson County") lacked legal authority to open or re-open a candidate filing period and/or call a primary election for the office of Sheriff;

¹ The only primary election race addressed in this Judgment/Order is for Jackson County Sheriff. The Court is aware that many other offices, ballot issues and ballot initiatives are included on the primary ballot - those races and issues are unaffected by this Judgment/Order.

² At the time of the hearing in this case, Plaintiff acknowledged that ballots had been printed and it was too late to remove names of candidates for Sheriff from the primary ballot.

4. Declaring that party nominating committees may select a party candidate for the office of Sheriff, with said candidates to be on the ballot at the general election, to fill a vacancy in the office of Sheriff.

Defendants Spino and Jackson County filed a Motion to Dismiss on July 19, 2018. On July 26, 2018, the Court held a hearing regarding said Motion to Dismiss and the issues raised in the Petition. Numerous additional pleadings have been filed, including a Joint Stipulation of Facts and Exhibits ("Joint Stipulation", filed July 26, 2018) and Trial Briefs of the parties, all of which the Court has reviewed and duly considered.

On November 8, 2016, Michael D. Sharp was elected to a four (4) year term as Jackson County Sheriff, commencing January 1, 2017 and ending December 31, 2020 (*Joint Stipulation paragraph 12*). Therefore, the office of Sheriff was not scheduled for primary or general election in the 2018 election cycle (*Joint Stipulation paragraph 10*). As a result, no nominations were solicited or received and no filing period was opened for the office of Sheriff.

On April 19, 2018, Mr. Sharp resigned as Sheriff, creating a vacancy in that office (*Joint Stipulation paragraph 13*). Spino and Jackson County assert that, under the facts in this case, Section 115.361.1 of the Revised Statutes of Missouri governs and establishes the proper procedure to follow in filling the vacant office of Jackson County Sheriff. Therefore, on May 7, 2018, Spino issued a Notice calling for an August 7, 2018 primary election for the vacant Sheriff office and setting forth procedures for said primary election, including opening a five (5) day candidate filing period for persons wishing to declare their candidacy for the office of Sheriff (*Joint Stipulation paragraph 17 and Exhibit 102 to the Joint Stipulation*).

Although not *specifically* stated in the May 7, 2018 Notice, the clear language therein, along with the pleadings and arguments of Spino's counsel in this case, confirm Spino's and Jackson County's assertion and leads the Court to conclude that said Notice and the procedure therein was based on and purported to follow the requirements and provisions of R.S.Mo. §115.361.1. In this lawsuit, Plaintiff challenges the procedure followed by Spino and Jackson County.

As explained herein and based on the facts in this case, Spino's and Jackson County's reliance on the procedures set forth in R.S.Mo. §115.361 was misguided and legally incorrect. Spino and Jackson County were not statutorily authorized to call a primary election for the vacant office of Sheriff and were not statutorily authorized to open a filing period for said office. Therefore, the Court is obligated to enjoin those improper/unauthorized actions and uphold the clear requirements of the applicable statutes.

R.S.Mo. §115.361 is titled, "Filing to be *reopened* ..." (emphasis added). The office of Sheriff was not scheduled for election in 2018 and therefore, no filing period was opened. Because no filing period had been *opened* for sheriff, there was no filing period to "*re-open*" and §115.361 is not applicable. The plain language of the statute supports this conclusion. R.S.Mo. §115.361 permits re-opening a candidate filing period upon death, withdrawal or disqualification of a candidate, none of which occurred here (in fact, none of said circumstances could have occurred here as there was no election and no candidates). As to Mr. Sharp, who was not a candidate, he did not die, he was not

disqualified as a candidate and he did not withdraw his candidacy. Rather, he resigned as Sheriff. Therefore, §115.361 simply does not apply to the facts before the Court.

Spino and Jackson County argue that the most analogous circumstances requiring the application of §115.361 is “withdrawal” as described therein³. However, this argument fails. “Withdrawal” is a statutorily defined process requiring specific actions as set forth in R.S.Mo. §115.359. This process was not followed by Mr. Sharp and it was not applicable to this situation. Mr. Sharp resigned – he did not withdraw his candidacy, nor was he ever a candidate or nominee as there was no election scheduled.

Therefore, based on the facts in this case, Section 115.361 does not apply. Spino’s and Jackson County’s reliance on said statute was misguided and legally incorrect. Spino and Jackson County did not have statutory authority to open or re-open a five day candidate filing period nor did they have statutory authority to call a primary election for Sheriff.

Mr. Sharp’s resignation “creat[ed] a vacancy in [the] office” of Jackson County Sheriff (*Joint Stipulation paragraph 13*). The clear and unambiguous language of R.S.Mo. §115.363.5(1) combined with the plain language of the 2010 Jackson County Charter provide the proper procedure by which that vacancy shall be filled. R.S.Mo. §115.363.5(1) states:

“A party nominating committee may select a party candidate for election to an office in the following cases: (1) For an election called to fill a vacancy in an office.”

³ As discussed herein, making analogies to support the application of R.S.Mo. §115.361 is unnecessary – there is a statute directly on point.

The 2010 Jackson County Charter states (*Joint Stipulation paragraph 14*):

“If the Office of Sheriff becomes vacant, the County Executive shall appoint, as provided in this charter, a person of the same political party as the previous occupant and who meets the qualifications for the position set forth in the charter to hold office until January 1 following the next general election. A successor shall be elected at the next general election for the unexpired or full term as the case may be.” (emphasis added)

Therefore, the proper procedure for filling the vacancy in the office of Sheriff created by Mr. Sharp’s resignation is for candidates to be selected by party nominating committees, with the Sheriff to be elected at the next general election, which is November 6, 2018.

IT IS HEREBY ORDERED that Spino’s and Jackson County’s Motion to Dismiss is **DENIED**. Additionally, as this Judgment/Order resolves all issues before the Court, the hearing scheduled for August 2, 2018 at 3:00 p.m. is **CANCELLED**.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AND THE COURT HEREBY enters Declaratory Judgment that Spino and Jackson County did not have legal authority to open a five day filing period for the Office of Jackson County Sheriff, did not have legal authority to accept declarations of candidacy for said Office and did not have legal authority to call a primary election for said Office. Therefore, all such actions are null and void.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, specifically regarding the Office of Jackson County Sheriff, the primary election of August 7, 2018 was not legally called and is not legally authorized and therefore said primary election is cancelled and declared to be null and void. The Court is aware that primary ballots have been printed which include names of candidates for the Sheriff’s race and absentee primary ballots have been issued and returned. The Court is also aware that other offices,

ballot initiatives and ballot issues are on the primary ballot. Therefore, the primary election shall proceed as scheduled and the previously printed primary ballots shall be used, *subject however* to the specific Orders and Judgments entered herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following Notice shall be prominently displayed by the Jackson County Board and the Kansas City Board in the following two locations in each poll or voting location for the August 2018 primary election: 1) at the point where the election judges issue a ballot to the voter; and 2) adjacent to the posted sample ballot.

NOTICE

Pursuant to Judgment/Order of the Circuit Court of Jackson County, Missouri issued on July 31, 2018, the primary election for the Office of Jackson County Sheriff should not have appeared on the August 2018 primary election ballot and therefore any votes cast for that Office shall not be released or certified by the Election Board.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Jackson County Board and the Kansas City Board are temporarily and permanently enjoined and barred from *formally* tabulating or reporting any votes cast regarding the Office of Jackson County Sheriff for the August 2018 primary election.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Jackson County Board and the Kansas City Board are temporarily and permanently enjoined from releasing and shall in fact **not** release any information which would show the votes cast for the Office of Jackson County Sheriff and shall **not** certify the results for the Office of Jackson County Sheriff in their official certifications issued pursuant to R.S.Mo. §115.507 for the August 2018 primary election.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, because of the vacancy in the Office of Jackson County Sheriff which resulted from Mr. Sharp's resignation, the election to fill that vacancy shall occur at the November 2018 general election and that the procedures/provisions of R.S.Mo. §115.363 and the 2010 Jackson County Charter shall be followed regarding nominations/candidates for said position. Any nominations for the Office of Jackson County Sheriff shall be timely submitted.

IT IS SO ORDERED.

July 31, 2018

Date



HONORABLE DAVID MICHAEL BYRN

CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing were mailed/emailed/faxed on this 31st day of July, 2018 to:

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JAA, Division 3