E-FILED 2017 FEB 28 1:19 PM POLK - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY

TOM SLOCKETT, Petitioner, v. IOWA ETHICS & CAMPAIGN DISCLOSURE BOARD, Respondent.	CVCV049899 **ORDER**: Ruling on Amended Petition for Judicial Review

This matter came before the Court for hearing on December 15, 2016. Petitioner, Tom Slockett, personally appeared with his attorneys of record, Rita Bettis and Joseph Fraioli. Attorney Megan Tooker appeared and argued on behalf of Respondent, Iowa Ethics and Campaign Disclosure Board. After considering the Amended Petition, Answer, and the written and oral arguments of counsel the Court finds as follows:

FINDINGS OF FACT

Petitioner served as the Johnson County Auditor from 1977 until 2012, when allegations arose claiming Petitioner engaged in various behaviors in violation of ethics and campaign regulations. Specifically, it was alleged Petitioner made and received phone calls related to his campaign for re-election from his private cellular device, while physically present in his government office, and during normal hours of operation. Petitioner acknowledged that the calls occurred, but maintained none of the campaign-related calls were made from a phone paid for with public monies.[1] Five days before the primary election was to take place, Respondent publicly reprimanded Petitioner, concluding, in part, his conduct violated Iowa Code section 68A.505 (2011). Respondent concluded when Petitioner placed campaign-related calls on his private device, while utilizing his publicly provided office, his actions constituted an “expenditure" of public monies for the purpose of endorsing a ballot objective. Petitioner’s physical presence

[1] Petitioner did, however, acknowledge that some calls he made may have been returned through the number associated with his position as Johnson County Auditor—although no calls were ever initiated in this manner.

inside his office at the time the calls were made formed the sole basis for the reprimand issued by Respondent. Shortly thereafter, Petitioner lost his bid for re-election.

PROCEDURAL BACKGROUND

On May 21, 2015, Petitioner filed his original Petition for Judicial Review. The District Court found Respondent had not yet rendered a final agency action for the Section 68A.505 question and, as such, remanded the case back to Respondent on December 8, 2015, so that it could enter a final agency action. On May 2, 2016, Respondent issued its final agency action. On May 31, 2016, Petitioner filed the present Amended Petition for Judicial Review, which challenges the validity of Respondent's reprimand.

Petitioner appealed and on November 9, 2013, he filed a motion for summary judgment. Respondent had the case transferred for hearing before Administrative Law Judge Jeffery Farrell. ALJ Farrell, after hearing oral arguments on the Motion, issued a ruling in favor of Petitioner on April 1, 2013. In finding for Petitioner, ALJ Farrell held that: (1) Petitioner was not a "governing body" within the meaning of the statute; and (2) Respondent failed to demonstrate how resources were "expended" by being present in the office and placing the calls. In response to this ruling, counsel for Respondent filed a statement of exceptions. Ultimately, on June 4, 2014, Respondent rejected the ruling and scheduled a rehearing in front of the entire Iowa Ethics and Campaign Disclosure Board. Respondent considered the matter on October 2, 2014, but no further action was taken.

POSITIONS OF THE PARTIES

Petitioner alleges six grounds for relief pursuant to Iowa Code section 17A.19(10)[2]. Principally, Petitioner's argument regarding Section 68A.505 is twofold: (1) Respondent

---

[2] Specifically, Petitioner asserts subsections (a)–(c), (k), (l), (n) which state:

> The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

lacked the authority to reprimand under this code section as Petitioner does not qualify as a "governing body" under the law; and (2) even if Petitioner is a governing body, the conduct presented in this case was not in violation of the law as written.

Respondent counters Petitioner's position as Johnson County Auditor placed him within the purview of the law and by making the calls, despite the use of a private cellular phone, while present in his publicly provided office constituted an expenditure of public monies.

While Petitioner raises novel constitutional arguments concerning protected political speech, the Court finds the language of the statute to be dispositive.[3]

STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of an administrative agency's action. Upon review, the district court acts in an appellate capacity to correct errors of law on the part of the agency. *City of Sioux City v. GME, Ltd.*, 584 N.W.2d 322, 324 (Iowa 1998). The Court "may grant relief if the agency action has prejudiced the substantial rights of the petitioner and the agency action meets one of the enumerated criteria

---

> a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.
>
> b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
>
> c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
>
> . . .
>
> k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.
>
> l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.
>
> . . .
>
> n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

Iowa Code § 17A.19(10)(a)–(c), (k), (l), (n) (2017).

[3] One well-established, bedrock principle of judicial restraint is that Courts do not consider constitutional questions unless it is necessary for the disposition of the case. *See City of Des Moines v. Lohner*, 168 N.W. 2d 779, 782 (Iowa 1969) (citing *Bond v. Wabash, St. Louis & Pacific Ry. Co.*, 718, 25 N.W. 892, 894 (Iowa 1885); *Dubuque & Dakota Ry. Co. v. Diehl*, 21 N.W. 117, 120 (Iowa 1884)).

contained in Section 17A.19(10)(a) through (n)." *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)). The standard of review in such cases "depends on the aspect of the agency's decision that forms the basis of the petition for judicial review." *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (citing *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006)).

On petitions for judicial review, "[a] reviewing court may . . . be asked to review an agency's interpretation of law." *Id.* In addressing the deference a court must afford an agency's interpretation of law, the Iowa Supreme Court has stated:

> The level of deference afforded to an agency's interpretations of law depends on whether the authority to interpret that law has "clearly been vested by a provision of law in the discretion of the agency." If the agency has not been clearly vested with the authority to interpret a provision of law, such as a statute, then the reviewing court must reverse the agency's interpretation if it is erroneous. If the agency has been clearly vested with the authority to interpret a statute, then a court may only disturb the interpretation if it is "irrational, illogical, or wholly unjustifiable."

Id. (internal citations omitted). Under this standard, "clearly vested" does not necessarily require the grant of interpretive authority must be express. *See Swiss Colony, Inc. v. Deutmeyer*, 789 N.W.2d 129, 133 (Iowa 2010) (citing *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 11 (Iowa 2010)). "In the absence of such an explicit grant of authority, [the court] must determine whether the legislature, nevertheless, 'clearly' vested the agency with the power to interpret the statute by implication." *Id.* (citing Iowa Code § 17A.19(10)(c)). "In order for this court to find that a statute or phrase has been 'clearly' vested with an agency by implication, such an intention must be unambiguously manifest." *Id.* This necessarily "requires a careful look at the specific language the agency has interpreted as well as the specific duties and authority given to the agency with respect to enforcing particular statutes." *Burton*, 813 N.W.2d at 257 (quoting *Andover Volunteer Fire Dep't v. Grinnell Mut. Reins. Co.*, 787 N.W.2d 75, 79–80 (Iowa 2010)).

The Statute at issue here is Iowa Code section 68A.505. It bars the use of public monies for political purposes. Specifically, Section 68A.505 states,

> The state and the governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue.
>
> This section shall not be construed to limit the freedom of speech of officials or employees of the state or of officials or employees of a governing body of a county, city, or other political subdivision of the state. This section also shall not be construed to prohibit the state or a governing body of a political subdivision of the state from expressing an opinion on a ballot issue through the passage of a resolution or proclamation.

This Court must first examine the express language within the statute to determine whether the Iowa Legislature clearly vested Respondent with interpretive authority. A plain reading of the statutory language, and surrounding statutory language, does not indicate the legislature intended to vest interpretive authority in Respondent. In looking beyond the statutory language, Respondent has been granted rulemaking authority in order to ensure the provisions of this law are complied with. *See* Iowa Code § 68B.32A(1), (13) (2017) (establishing the Iowa Ethics and Campaign disclosure Board's rulemaking authority); *see also* Iowa Code § 68A.101 (2017) ("The Iowa ethics and campaign disclosure board shall administer this chapter as provided in sections 68B.32, 68B.32A, 68B.32B, 68B.32C, and 68B.32D."). The grant of rulemaking authority alone, however, is not dispositive of whether interpretive authority has been "clearly vested." *See Renda v. Iowa Civ. Rights Commn.*, 784 N.W.2d 8, 13 (Iowa 2010) ("[W]e have not concluded that a grant of mere rulemaking authority gives an agency the authority to interpret all statutory language."). Indeed, Respondent utilized its rulemaking authority when it enacted Administrative Code rule 351—5.1(68A) in an attempt to clarify the meaning of the term "expense" in Section 68A.505. In discussing the inherent ability of agencies with rulemaking authority to interpret statutes in order to enforce them, the Iowa Supreme Court noted:

E-FILED 2017 FEB 28 1:19 PM POLK - CLERK OF DISTRICT COURT

> When a term is not defined in a statute, but the agency must necessarily interpret the term in order to carry out its duties, we are more likely to conclude the power to interpret the term was clearly vested in the agency. *See* Renda, 784 N.W.2d at 12. This is especially true "when the statutory provision being interpreted is a substantive term within the special expertise of the agency." *Id.* at 14. However, "[w]hen a term has an independent legal definition that is not uniquely within the subject matter expertise of the agency," or when the language to be interpreted is "found in a statute other than the statute the agency has been tasked with enforcing," we are less likely to conclude that the agency has been clearly vested with the authority to interpret that provision of the statute. *Id.*

Burton, 813 N.W.2d at 257. In the present case, the term "expense" is not a term defined in the statute. *See* Iowa Code § 68A.102. Nor is the definition of this term within the Respondent's special expertise. The term "expense" can be found throughout the Iowa Code and is certainly not unique to Chapter 68A. *See, e.g.*, Iowa Code § 279.45 (2017) (governing administrative expenditures for school districts); Iowa Code § 404A.1(6) (2017) (defining expenditures in the context of Historic Preservation and Cultural and Entertainment Districts tax credits). While some interpretive authority is inherent in Respondent's ability to perform its duties, this Court finds such authority does not "clearly vest" in Respondent's interpretive authority by the legislature. Accordingly, this Court will afford Respondent's interpretation of law no deference. With this non-deferential standard in mind, the Court turns to the merits.

CONCLUSIONS OF LAW

The primary issue before the Court, and the issue the Court finds dispositive, is whether Petitioner and his conduct fall within the parameters of Section 68A.505.

The first question is whether Petitioner as the county auditor is subject to the restrictions of the statute. In dictating who must comply with the "expense" restriction, the statute provides, "[t]he state and the governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes." Iowa Code § 68A.505. While the Court is inclined to agree with Petitioner that the position of county auditor, strictly construed, would not fall

under any of the parties listed above, the use of the term "permit" indicates the law is meant to extend beyond just the state and governing body and encompasses any position falling under their supervision. Since the position of county auditor is subject to the authority of the board of supervisors—clearly a governing body within the meaning of Section 68A.505—Petitioner would be subject to the expenditure restriction.

The second question presented is whether Petitioner's conduct is of the type prohibited by Section 68A.505, namely "expenditure of public moneys for political purposes." *See id.* In interpreting the meaning of a statute, "[w]hen a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms." *State v. Anderson*, 782 N.W.2d 155, 158 (Iowa 2010) (citing *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998)). "In determining plain meaning, '[s]tatutory words are presumed to be used in their ordinary and usual sense and with the meaning commonly attributable to them.'" *Id.* (quoting *State v. Royer*, 632 N.W.2d 905, 908 (Iowa 2001)). Black's Law Dictionary defines expense as, "[a]n expenditure of money, time, labor, or resources to accomplish a result." *Expense*, Black's Law Dictionary (10th ed. 2014). In other words, there must be some cost to accomplish the desired result. *See id.* Respondent argues by being physically present in the office of the county auditor during normal business hours and making calls on a private cellular line, Petitioner expended public monies in order to further his campaign. Other than his mere presence in his office, no other resource is alleged to have been implicated in violation of Section 68A.505.

Respondent's assertions on this issue are vague and unparticularized. During oral argument Respondent stated, if Petitioner had the same conversations in the hallway of the Administration Building he would not be in violation of Section 68A.505. Rather, it is only when Petitioner crossed the threshold of his publicly provided office did he violate Section 68A.505. Respondent's demarcation (hallway vs. office) makes no logical sense. The statute is formulated to ask one simple question: what public moneys were expended for a political purpose? Respondent does not contend the *time* Petitioner spent on his private cell phone is a quantifiable "expenditure of public money." Respondent has made

no showing that Johnson County diverted public resources or incurred additional costs or expenses because of Petitioner's conduct.[4] Petitioner's mere physical presence inside his office, which is inside a government-owned building, cannot be what is meant by the term "expense" as used in its "ordinary and usual sense and with the meaning commonly attributable to [it]." *Anderson*, 782 N.W.2d at 158. While certainly distasteful, the Court concludes Petitioner's conduct was not tantamount to, nor did it require an expenditure of public moneys for political purposes. Accordingly, Respondent's interpretation of Section 68A.505 was in error and, thus, the reprimand cannot stand.[5]

IT IS THEREFORE ORDERED, the Decision from the Iowa Ethics and Campaign Disclosure Board to issue a reprimand against Tom Slockett should be and is hereby **REVERSED**.

So Ordered.

[4] The Court doubts, very seriously, that Johnson County paid for heating, cooling, and lighting Petitioner's office, separate and distinct from payments made to heat, cool and light the Administration Building as a whole.

[5] Because the Court resolves the matter on statutory grounds, it does not reach Petitioner's constitutional claims.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV049899	TOM SLOCKETT VS IOWA ETHICS AND CAMPAIGN DISCLOSURE

So Ordered

David Porter, District Court Judge,
Fifth Judicial District of Iowa