

**COMMONWEALTH OF KENTUCKY
29TH JUDICIAL DISTRICT
ADAIR CIRCUIT COURT
CIVIL ACTION NO. 16-CI-00070**

CHRIS COOMER et al

PETITIONERS/CONTESTORS

vs.

ORDER

ADAIR COUNTY BOARD OF ELECTIONS et al

RESPONDENTS/CONTESTEES

This matter having come before the Court for Motions for Summary Judgment filed by the Petitioners and the Respondents and Motion to Dismiss by the Respondents heard by the Court on June 28, 2016, the Court having heard said motions and argument of counsel of the Petitioners and Respondents and being fully and sufficiently advised, the Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The facts in this case are not in dispute and this question is an issue of law.
2. This action is an election contest, filed pursuant to KRS 242.120 and KRS 120.155 to contest the results of the local option election held in Adair County, Kentucky on March 22, 2016.
3. The Petitioners, Chris Coomer, Jeanni Abston, Ronnie C. Rodgers, and Charles E. Handy are or were on election day registered voters in Adair County, Kentucky.

4. The Defendants to the action are the Adair County Board of Elections and Shannon Sexton, who intervened in this action, and is a registered voter in Adair County, Kentucky.
5. A local option election was held regarding alcohol sales on March 22, 2016 in Adair County, Kentucky
6. On March 24, 2016, the Adair County Board of Elections certified the results of the local option election with the vote totals being 3,384 yes votes and 2,755 no votes.
7. The Kentucky Republican Party Caucus was held on March 5, 2016 in Adair County, Kentucky.
8. The Kentucky Republican Party Caucus in Adair County was not conducted by the County of Adair .
9. The Adair County Clerk did not conduct nor did the Adair County Clerk's Office issue any ballots or absentee ballots for the Kentucky Republican Party Caucus in Adair County on March 5, 2016.
10. The Petitioners have conceded and withdrew the allegation of improper registration of voters which was Count II of the complaint and Count II was dismissed by the agreement of the parties.

CONCLUSIONS OF LAW

11. KRS 242.030 requires that a local option election must not be held within thirty (30) days of a regular political election.
12. KRS 118.555 states that the methods by which a political party's delegate votes for presidential candidates are determined by a party caucus, a presidential preference

primary or a combination of the two (2) methods is used to determine a party's presidential candidate.

13. KRS 118.561 states that on the first Tuesday after the third Monday in May, in each presidential election year, the Commonwealth of Kentucky shall conduct presidential reference primary elections within each political party.
14. An election contest instituted pursuant to KRS 120.155 is an equity action.
15. In Kentucky, there are three types of elections: primary, general and special. In Norton v. Letton, 111 SW 2d 1053 (KY App 1937), the court defined "general elections are those held upon fixed dates for the choosing of officers for regular periods of time and at which the voters may exercise their choice by casting their ballots." As to special elections, it is defined as "(a)ny election which is not regularly held for the election of officers or for some other purpose which shall come before the citizens at regular fixed intervals."
16. Pursuant to KRS 118.561, the statute sets out when a presidential preference primary election is held "the first Tuesday after the third Monday in May and would be a regular political election.
17. In Buchanan v. Clark, 121 SW 2d 681 (Ky. App. 1938), the court defined a regular political election and special political election and stated that the election within 3 days of a local option election was not a violation of the statute because the election was a special election due to it being called and not set by statute.
18. Summary judgment should only be granted where there is no genuine issues as to any material fact CR 56.03; Scifres v. Kraft, 916 SW2d 779, 781 (Ky. App. 1996). Summary judgment is appropriate "if the pleadings depositions, answers to interrogatories,

stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law”.

19. Summary judgment is “only proper where the movant shows that the adverse party could not prevail under any circumstances.” Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 SW2d 476, 480 (Ky. 1991).

20. “As a general rule of statutory construction, *expressio unius est exclusio alterius* provides that an enumeration of a particular thing demonstrates that the omission of another thing is an intentional exclusion”. Palmer v. Commonwealth 3 SW 763, 764 (Ky. App. 1999)

An election shall not be set aside for trivial causes and that is the case before the court. When applying the above cited statutes and case law to the facts of this case, the Court finds that the caucus held on March 5, 2016 was not an election and that was not a violation of KRS 242.030, in that the local option election held on March 22, 2016 was not within (30) days of a regular political election. The definition of the types of elections recognized in Kentucky were set forth in the case of Norton v. Letton., 111 S.W. 2d 1053 (Ky. App. 1937). A caucus held by the Adair County Republican Party was a meeting and not an election under KRS 242.030. Pursuant to statutory construction of *expressio unius est exclusio alterius*, a caucus and election are not the same. As a general rule of statutory construction, the mention of one thing implies the exclusion of another and if the statute had meant for caucus and election to be the same, it would have made the terms interchangeable and that is not the case.

For the foregoing reasons enumerated above, the Motion for Summary Judgment and Motion to Dismiss filed by the Respondents shall be and are hereby granted and the March

22, 2016, local option election shall be upheld and the petition filed by the Petitioners dismissed. This is a final and appealable Judgment.

GIVEN UNDER MY HAND AS JUDGE of the Adair Circuit Court, this the 14th day of July, 2016.



JUDY D. VANCE
Judge, Adair Circuit Court

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