

COMMONWEALTH OF KENTUCKY
29TH JUDICIAL CIRCUIT
ADAIR CIRCUIT COURT
CIVIL ACTION NO. 14-CI-00211

BEN ARNOLD, ET AL

PLAINTIFFS

VS.

ORDER

ADAIR COUNTY BOARD OF ELECTIONS, ET AL

DEFENDANTS

*** **

This matter having come before the Court for a Bench Trial on February 26, 2015, the Court having heard lengthy testimony and examined all exhibits regarding same, and being fully and sufficiently advised, the Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This action is an election contest, filed pursuant to KRS 120.155 and KRS 120.165, and Sections 1, 2, 3, 4, and 6 of the Constitution of the Commonwealth of Kentucky, to contest the results of the election for the office of Mayor of the City of Columbia, Kentucky, which was held on November 4, 2014.

2. Plaintiff Ben Arnold is the unsuccessful write-in candidate for aforementioned office, and Plaintiffs Ruth Smith and William Burton are, or were on election day, registered voters of the City of Columbia.

3. The Defendants to this action are the Adair County Board of Elections, the Adair County Clerk, the City of Columbia, Curtis Hardwick, successful candidate for Mayor, and June Parson, unsuccessful candidate for Mayor.

4. During the course of the trial, the Court heard sworn testimony from thirteen witnesses for the Plaintiffs and six witnesses for the Defendants, and reviewed numerous exhibits supporting the contentions of each party.

5. Additionally, at the request of the parties, the Court has examined the precinct rosters,

including voters' names and signatures, city/county designation coding, method of identification, and poll workers' initials, following the trial.

6. During Election Day, and the days following, poll workers and election officials received numerous complaints from voters. The majority of those complaints centered around the fact that some polling locations had run out of paper ballots, and the fact that many voters who were actually city residents were denied their right to vote in the city races, and that some county residents were permitted to vote in the city races.

7. In the midst of the numerous complaints, poll workers were instructed to permit voters who pay city taxes to vote in the city races.

8. Election precinct maps were not properly updated, nor provided to poll workers, for the November election. Several areas within the city limits of Columbia were not listed as being eligible to vote in the city election.

9. A close review of the precinct rosters reveals several clerical errors regarding identification of individual voters, as well as classification as to city or county residency.

10. The integrity of at least two of the voting machines is questionable, due to broken seals on that portion of the machines containing the actual ballots.

11. Due to the numerous errors, omissions, and apparent acts of negligence committed on Election Day, an indeterminate amount of votes in the mayoral election were unaccounted for. It was undisputed that this number could have easily exceeded one hundred votes.

CONCLUSIONS OF LAW

12. KRS 116.200(1)(a) requires the city clerk to provide a list of all properties within the city and a map of the city boundaries to the county clerk, and requires the county clerk to maintain a roster of voters who are eligible to vote in city elections.

13. KRS 116.200(3) requires each county clerk to code all registered voters of the county in such a manner that precinct election officers may determine each voter's eligibility to vote in city and school board elections prior to each primary and regular election for city officers in that county.

14. An election contest instituted pursuant to KRS 120.155 is an equity action.
KRS 120.165.

15. If it appears from an inspection of the whole record that there has been such fraud, intimidation, bribery or violence in the conduct of the election that neither contestant nor contestee can be judged to have been fairly elected, the Circuit Court may adjudge that there has been no election. KRS 120.165(4).

16. The fraud contemplated by KRS 120.165(4) is not limited to conduct of or action by the candidates. It goes much further than that and includes what might be classified as constructive fraud. Constructive fraud arises through some breach of a legal duty which, irrespective of moral guilt, the law would pronounce fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests. Wood v. Kirby, 566 S.W.2d 751, 755 (Ky. 1978).

17. Section 6 of the Constitution of Kentucky provides that all elections shall be free and equal.

18. A free and equal election is one at which every person entitled to vote may do so if he desires, and a disbarment of a substantial number of legal voters is necessary to invalidate an election, and if from any cause they are denied the right to vote, the election is not free and equal. Wallbrecht v. Ingram, 175 S.W. 1022 (Ky. 1915).

19. An election is not free and equal if a substantial number or percentage of qualified electors are deprived of their right to vote. Johnson v. May, 203 S.W.2d 37 (Ky. 1947).

20. An election is free and equal only when it is public and open to all qualified electors alike, when every voter has the same right as any other voter, and when no constitutional right of a qualified elector is subverted or denied. Queenan v. Russell, 339 S.W.2d 475 (Ky. 1960).

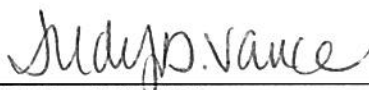
This Court is very mindful of the fact that the law supports and prefers that elections be upheld if at all possible. An election shall not be set aside for trivial causes, or in circumstances where the results of irregularities can be eliminated. Unfortunately, the irregularities in this case are voluminous and cannot be remedied.

This Court is further mindful of the unfortunate position that the aforementioned irregularities created by this election has placed upon Defendant Curtis Hardwick. This Court finds it disheartening and difficult to arrive at its conclusions when Defendant Hardwick stands completely innocent of any wrong-doing in this election.

When applying the above-cited statutes and case law to the facts of this case, this Court is not convinced that the election for the office of Mayor of the City of Columbia on November 4, 2014, was a free and equal election within the meaning of Section 6 of the Kentucky Constitution. Further, the combination of numerous, varying forms of errors committed on Election Day constitute a constructive fraud upon the voters of the City of Columbia.

For the foregoing reasons enumerated above, the November 4, 2014, election to the office of Mayor of the City of Columbia must be declared VOID. The Adair County Clerk, with the assistance of the Adair County Board of Elections, is hereby ordered to conduct a new election regarding said office.

GIVEN UNDER MY HAND AS JUDGE of the Adair Circuit Court, this the 17th day of April, 2015.



JUDY D. VANCE
Judge, Adair Circuit Court

Distribution:

- ✓Hon. Elmer George
- ✓Hon. H.K. Cooper
- ✓Hon. Jennifer Hutchison-Corbin
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