

Supreme Court

No. 09-23-M.P.

William Felkner :
v. :
Chariho School Committee :

ORDER

This case came before the Court in conference on a petition in equity in the nature of quo warranto.¹ In November 2006, petitioner William Felkner was elected by voters in the Town of Hopkinton to a 4-year term as one of the town's representatives on the Chariho Regional High School District Committee (the School Committee), and in November 2008, he was elected as a member of the Hopkinton Town Council. At its meeting following Felkner's swearing-in as a councilman, the School Committee took up the issue of the propriety of his dual office holding here, and decided that upon his election to the Town Council, Felkner had in effect resigned or vacated his School Committee seat. The School Committee, consequently, voted to disqualify him from further sitting with that tribunal until he obtained a judicial declaration of his right to do so. Felkner initially sought such a declaration through the filing of a 2-Count complaint

¹ The petitioner, the individual claiming entitlement to the office at issue in this proceeding, mislabeled his petition a "Petition for Statutory Writ of Quo Warranto." We have held that absent the involvement of the Attorney-General, an individual seeking to establish his or her entitlement to an office must do so through the filing with this Court of a statutory *petition in equity in the nature of quo warranto*. *McKenna v. Williams*, 874 A.2d 217, 229 (R. I. 2005). We observe, however, that notwithstanding petitioner's use of the incorrect caption, his petition properly invokes this Court's jurisdiction in accordance with Chapter 14 of Title 10 of the General Laws. Accordingly, so as to avoid elevating procedure over substance, we treat the petition as if correctly captioned.

for declaratory and injunctive relief in the Superior Court, broadly challenging in Count I thereof the legality of the School Committee's disqualifying him from his seat and asserting in Count II the School Committee's violation of the Open Meetings law. A Superior Court Justice, while granting relief pursuant to Count II, dismissed Felkner's Count I for lack of subject-matter jurisdiction, ruling that absent the Attorney-General's involvement in the case, the relief sought in Count I could only be obtained through Felkner's filing a petition in equity in the nature of quo warranto in this Court. The hearing justice further issued a Rule 54(b) certificate, entitling Felkner to immediately appeal the dismissal ruling.

Felkner filed a notice of appeal, and in due course, he as noted filed the instant petition in equity in the nature of quo warranto. He has moved to consolidate the appeal and petition for further proceedings before this Court. The School Committee moves to dismiss the *quo warranto* petition, contending *inter alia* that Felkner's attempt at dual office holding is clearly proscribed by the terms of the Hopkinton Town Charter and by the common law rule prohibiting the holding of incompatible offices. We have carefully reviewed the petition, the School Committee's dismissal motion, the parties' memoranda, and the various accompanying materials, and upon consideration thereof, we hereby direct that the following Order shall enter:

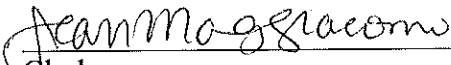
1. In light of the need for an expeditious determination of the issues involved in this proceeding, we hereby waive prebriefing and assign the petition in equity in the nature of quo warranto to the regular calendar for oral argument on **March 9, 2009**. The petitioner's brief will be due within 10 days of the date of this Order. Respondents' briefs will be due within 10 days of the filing of petitioner's brief. The Attorney-General and all other interested parties are invited to file briefs as *amici curiae* within the time frames prescribed in Article 1, Rule 16(h) of the Rules of Appellate Procedure.

2. The petitioner's motion to consolidate this petition with petitioner's appeal is denied. The School Committee's motion to dismiss this petition is also denied.

Justice Suttell did not participate.

Entered as an Order of this Court this 6th day of *February 2009*.

By Order,


Clerk