

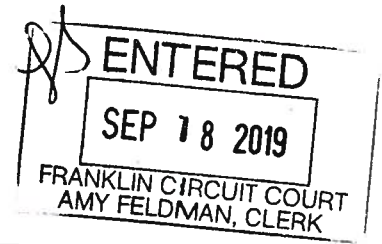
SEP 19 2019

19-CI-00860

Personnel Board

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 19-CI-00860



KENTUCKY PERSONNEL BOARD

PLAINTIFF

vs.

**RICHARD WAITE, in his official capacity as an
Elected Board Member of the Kentucky Personnel Board**

DEFENDANT

OPINION AND ORDER

This matter is before the Court upon Plaintiff's *Motion for Declaratory Judgment*.

The case was called before the Court during a special hearing on Tuesday, September 17, 2019. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby finds that Defendant may continue to serve as an elected board member of the Kentucky Personnel Board.

This is an action for a Declaration of Rights. This Court has jurisdiction pursuant to KRS. 418.040, which provides:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

KRS § 418.040. The existence of an actual controversy respecting justiciable questions is a condition precedent to an action under the [Declaratory Judgment Act]. The court will not decide speculative rights or duties which may or may not arise in the future, but only rights and duties about which there is a present actual controversy presented by adversary

parties, and in which a binding judgment concluding the controversy may be entered. *Foley v. Com.*, 306 S.W.3d 28, 31 (Ky. 2010), citing *Veith v. City of Louisville*, 355 S.W.2d 295, 297 (Ky. 1962) (quoting *Black v. Elkhorn Coal Corp.*, 233 Ky. 588, 26 S.W.2d 481, 483 (1930)) (citations omitted in original); *Nordike v. Nordike*, 231 S.W.3d 733, 739 (Ky. 2007). “An actual controversy for purposes of the declaratory judgment statute requires a controversy over present rights, duties, and liabilities; it does not involve a question which is merely hypothetical or an answer which is no more than an advisory opinion.” *Id.*, citing *Barrett v. Reynolds*, 817 S.W.2d 439 441 (Ky.1991) (citing *Dravo v. Liberty Nat'l Bank & Trust Co.*, 267 S.W.2d 95 (Ky.1954)).

There are no factual disputes in this matter. Defendant, Richard Waite, was elected to serve as a member of the Kentucky Personnel Board in June 2018. Defendant was a classified merit employee serving as a Conservation Officer II with the Tourism, Arts & Heritage Cabinet, Department of Fish & Wildlife Resources. On July 31, 2019, Defendant retired from his position and is not currently employed. The parties agree that KRS Chapter 18A governs the Kentucky Personnel Board.

What is at issue is the fact that KRS Chapter 18A is silent as to whether retirement from classified service prohibits an elected board member from continuing to serve on the Kentucky Personnel Board. Plaintiff seeks for the Court to read KRS Chapter 18A to require elected board members of the Kentucky Personnel Board to be active, classified employees and find that because Defendant retired on July 31, 2019, he is unable to continue serving in his capacity as an elected board member. KRS 18A.050(6) provides for the immediate termination of an elected board member if the member accepts an unclassified position. (“If an elected board member accepts an unclassified position with

state government, his membership on the board shall be terminated immediately and the vacancy shall be filled as provided in KRS 18A.060.”). Additionally, the rules for the Kentucky Personnel Board prescribe that any member that fails to attend three (3) consecutive regularly scheduled Board meetings shall be removed from their position.

The Kentucky Personnel Board was created by statute and is governed by KRS Chapter 18A. A plain reading of KRS Chapter 18A provides for the automatic removal of an elected board member if the member accepts an unclassified position. *See* KRS 18A.050(6). Other than acceptance of an unclassified position, KRS Chapter 18A is silent as to removal of an elected board member. The Court must interpret statutes at their face value. KRS 18A.045(1) states that “[t]he board shall consist of seven (7) members, five (5) of whom shall be appointed by the Governor as provided in KRS 18A.050. Two (2) members of the board shall be elected by classified employees as provided in KRS 18A.0551.” KRS § 18A.045(1). KRS 18A.045(1) does not state that the two (2) elected members must be classified employees at the time of election, however, KRS 18A.050(6) is what implies that the two (2) elected members must be classified employees as the only form of removal from the board of the two (2) elected members is acceptance of an unclassified position. *See* KRS § 18A.050(6).

After a plain reading of the entirety of KRS Chapter 18A, it is clear that there is only one (1) ground for termination of an elected board member, and that is acceptance of an unclassified position. *See id.* Retirement of an elected member is not mentioned anywhere in KRS Chapter 18A, and the Court cannot read into the statute what is not there. KRS Chapter 18A merely requires an elected board member to be a classified employee at the time of election, and states that automatic removal for such members only exists if the

member accepts an unclassified position. It is undisputed that Defendant was a classified employee when he was elected in June of 2018. It is also undisputed that Defendant has not accepted an unclassified position with state government, he merely retired from his classified position. KRS Chapter 18A just addresses the removal of an elected board member if the member becomes an unclassified employee, and does not address removing an elected member for retiring from a classified position. Therefore, consistent with the plain language in KRS Chapter 18A, it is the Court's finding that Defendant may continue to serve as an elected board member for the remainder of his term, unless prior to the completion of his term he accepts an unclassified position within state government. *See* KRS § 18A.050(6).

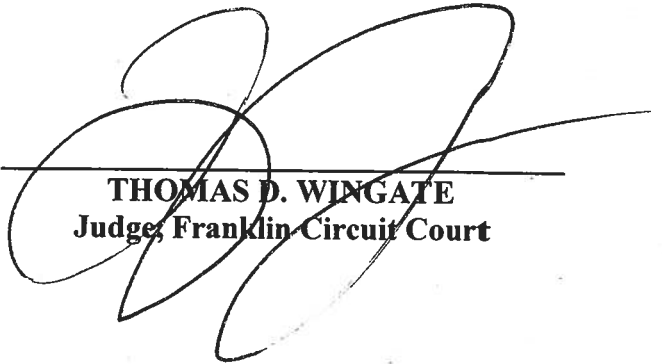
Additionally, though the rules for the Kentucky Personnel Board state that any member that fails to attend three (3) consecutive regularly scheduled Board meetings is removed from their position, Defendant has only missed two (2) consecutive meetings, the August 2019 and September 2019 meetings. Thus, the Court finds this rule to be a nonissue at this time.

Finally, the parties indicate that Defendant received a letter from the Kentucky Retirement Systems advising that accepting payment of \$100.00 per meeting *may* impact his retirement benefits. The Court finds that the \$100.00 payment to board members of the Kentucky Personnel Board is a stipend and not a salary, therefore, acceptance of this payment does not impact Defendant's retirement benefits.

WHEREFORE, Defendant, Richard Waite, may continue to serve as an elected board member of the Kentucky Personnel Board through the remainder of his term. His continued service is not prohibited by KRS Chapter 18A.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 17th day of September, 2019.



THOMAS D. WINGATE
Judge, Franklin Circuit Court

CERTIFICATE OF SERVICE

18 I hereby certify that a true and correct copy of the foregoing Order was mailed, this day of September, 2019, to the following:

Hon. Stephen D. Wolnitzek
Wolnitzek & Rowekamp, PLLC
502 Greenup Street
Covington, Kentucky 41011

Hon. Stafford Easterling
General Counsel
Kentucky Personnel Board
1025 Capital Center Drive, Suite 105
Frankfort, Kentucky 40601



Amy Feldman, Franklin County Circuit Court Clerk