

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

KIDA NEWELL,

Appellant,

v.

Case Nos. 04-INV-11-0465
05-INV-03-0088

CITY OF JACKSON,

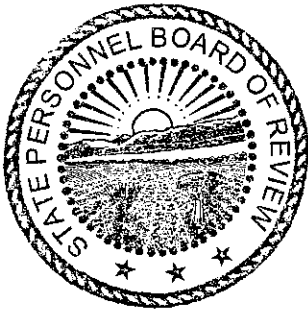
Appellee.

ORDER

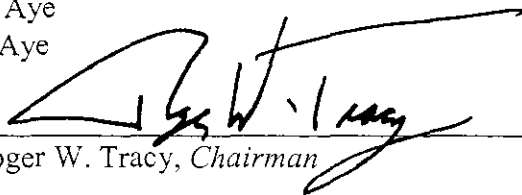
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the two instant investigations be **TERMINATED**, since the pertinent Court of Common Pleas has determined that Appellant's appropriate avenue of remedy lies in *quo warranto*.



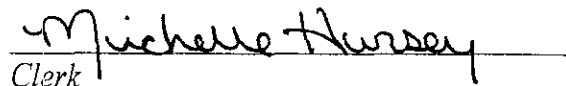
Tracy – Aye
Lumpe – Aye
Booth – Aye

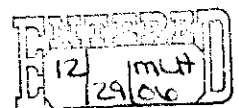

Roger W. Tracy, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, DECEMBER 29, 2006.


Michelle Hursey
Clerk



**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Kida Newell,

Appellant

v.

City of Jackson,

Appellee

Case Nos. 04-INV-11-0465
05-INV-03-0088

November 30, 2006

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's filing of two requests for investigations concerning the testing procedures for and grading of an examination for the Fire Chief position for the City of Jackson. Doug Reed currently encumbers that Fire Chief position. Appellant essentially seeks to be placed into that Fire Chief position, through one or more of the following vehicles.

Appellant seeks a retroactive declaration by the Civil Service Commission or the Court that then-applicant Doug Reed was ineligible to sit for the previously conducted Fire Chief examination, due to the asserted rationale that Mr. Reed was not a resident of the municipal confines or work district of the City of Jackson. Appellant seeks to have the Civil Service Commission administer a new examination, with Doug Reed being excluded for this same rationale. Appellant seeks a declaration from the Civil Service Commission or the Court that Doug Reed is to be removed from the Fire Chief position and that Appellant is to be placed into that same Fire Chief position.

Since the time the pertinent original Fire Chief test was scheduled, the composition of the City of Jackson Civil Service Commission has essentially changed. Few, if any, of its Members from that time remain on the Commission.

It should be noted that this Board extensively developed the respective records in the above referenced cases. Further, the respective records reflect that Appellant filed a petition with the Court of Common Pleas for Jackson County seeking equitable and/or declaratory relief concerning this situation (See *Kida Newell v. City of Jackson, Ohio*, Case No. 05 CIV 236).

On October 27, 2006, the Honorable Leonard F. Holzapfel issued a Decision & Order granting the City of Jackson's motion to dismiss Case No. 05 CIV 236 for lack of subject matter jurisdiction. What is particularly pertinent to the instant cases is that Judge Holzapfel also ascertained that the ultimate remedy Appellant sought was to have Mr. Reed removed from the Fire Chief position and to have herself retroactively placed into the Fire Chief position. Accordingly, Judge Holzapfel determined that the remedy that Appellant sought lay in *quo warranto*.


Judge Holzapfel noted that (unlike a petition for mandamus) a petition for *quo warranto* must be filed and considered not by the Court of Common Pleas but by the Court of Appeals or by the Supreme Court of Ohio. Based on that finding, Judge Holzapfel dismissed Case No. 05 CIV 236, as noted above. There is nothing in the record to indicate that either party to that action filed an appeal from Judge Holzapfel's Decision & Order. Accordingly, Appellee, City of Jackson, has renewed its request that the two instant investigation requests be dismissed.

It would appear that Appellee has correctly concluded that Judge Holzapfel determined that the appropriate avenue of remedy for the facts and circumstances of this specific situation must be sought in *quo warranto*. Because Judge Holzapfel was likely presented with the same facts and circumstances that have been presented to this Board, his pronouncement would seem to preclude further Board action regarding these two investigation requests.

However, as noted, terminating these two investigation requests would not leave Appellant without an avenue of remedy. This is because, as Judge Holzapfel has clearly opined, Appellant's avenue of remedy lies in filing an action in *quo warranto* with the Court of Appeals or the Supreme Court of Ohio.

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Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **TERMINATE** the two instant investigation requests, pursuant to R.C. 124.40, since the pertinent Court of Common Pleas has determined that Appellant's appropriate avenue of remedy lies in *quo warranto*.



James R. Sprague
Administrative Law Judge

JRS: