

LEGAL AND REGULATORY NOTES, JUNE 2014

Vermont Supreme Court answers some questions, remands others in Irasburg treasurer case

The legal battle between the Town of Irasburg and its former treasurer, Linda Stone, has been fairly lengthy and complex. A recent Vermont Supreme Court decision in the case resolves some of the issues raised by the lawsuit, but leaves others open to further litigation.

Rather than getting mired down in the various motions and dispositions in the case, this article will focus instead on the issues that the Court did and did not decide in *Stone v. Town of Irasburg*, 2014 VT 43.

First, a little background to provide context. The plaintiff, Linda Stone, was elected treasurer of the Town of Irasburg at its 2010 annual meeting. As the Court tells it, “(t)ension between the selectboard and plaintiff developed almost immediately,” as evidenced by the selectboard’s proposal for regular audits of the treasurer’s work. The town auditors reported to the selectboard that they had difficulties performing the auditing task because of various errors in the treasurer’s reports. On advice of counsel, the selectboard passed a motion to increase the treasurer’s bond limit from the customary \$500,000 to \$1,000,000 if the treasurer could not settle the accounts to the auditors’ satisfaction. The treasurer, admitting that she made some mistakes, sought additional training to carry out her official duties. She also sought to obtain the additional bonding despite feeling that she had been “set up” by the auditors and by the town clerk, who had been her opponent in the recent election.

Tensions between the selectboard and the treasurer increased when Stone alleged that a selectboard member had opened the town safe in Stone’s absence. The selectboard responded with a heated letter questioning Stone’s character and her ability to perform the job of treasurer and accusing Stone of making false accusations and fabricating evidence. The situation culminated with a notice that if Stone failed to obtain the increased bonding within ten days, the selectboard would consider her office vacant. A copy of this letter was sent to the insurance division of the Vermont League of Cities and Towns, which was the provider of the \$500,000 bond that was in effect at the time.

The treasurer continued to seek out bond coverage from insurance companies who requested that she have her employer provide a particular form to support the bonding request. The selectboard refused to provide the form on the basis that it wasn’t Stone’s employer and that it lacked control over her office.

A letter from the town’s legal counsel informed the insurers that Stone posed an “underwriting risk.” Unable to obtain the requisite bond, the treasurer brought suit against the town raising multiple claims which the Vermont Supreme Court addressed as follows:

Stigma-plus claim. This is a procedural due process claim brought by a party alleging that the government has made stigmatizing statements that resulted in reputational damage. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides in part: “nor shall any state deprive any person of life, liberty, or property, without due process of law” According to the

Court, in order to prevail on a stigma-plus claim, a plaintiff must demonstrate “damage to public standing through governmental action without a hearing or opportunity to contest the action” and “an accompanying tangible loss such as discharge from government employment.” The trial court in this case found sufficient evidence to conclude that the selectboard communicated false statements about Stone in letters and phone calls to insurance carriers, thereby satisfying the “stigma” part of the stigma-plus test. But the trial court also found that the selectboard had given Stone “an adequate opportunity to be heard,” which meant that Stone failed to meet the second part of this legal claim. In reviewing the trial court’s decision on this second part of the test, the Supreme Court found that the trial court acted too hastily because there was still some question of whether the selectboard had adequately protected Stone’s due process rights. The Court held that Stone had to be given more than just a chance to speak; she had to be given an opportunity to clear her name at a post-deprivation hearing “before a body which is sufficiently neutral that a person has some realistic chance of success.” Accordingly, the Court remanded this claim back to the trial court for further proceedings.

Property interest in elected office. Stone claimed that the town deprived her of a property interest in her elected position when the selectboard thwarted her attempts to obtain the increased bond. The Court agreed that the trial court was correct to reject this claim and reiterated its holding from a previous case that elected public officials do not have property interest in their office that is protected by the Fourteenth Amendment outside of the stigma-plus context discussed above.

Defamation. In order to prevail on a claim of defamation (slander and/or libel), a party has to prove the following elements as recounted by the Court in this case: (1) a false and defamatory statement concerning another; (2) some negligence, or greater fault, in publishing the statement; (3) publication to at least one other person; (4) lack of privilege in the publication; (5) special damages, unless actionable per se; and (6) some actual harm so as to warrant compensatory damages. The Court found that the trial court should have addressed and resolved this claim, rather than rejecting it based on a procedural error.

Violation of the Vermont Constitution. According to Chapter I, Article 8, of the Vermont Constitution, “all voters ... have a right to ... be elected into office, agreeably to the regulations made in this constitution.” Stone pointed to these words as the basis for her argument that the selectboard’s actions undermined the rights of the town voters. The trial court disagreed, ruling that this provision of the Vermont Constitution “does not create a right to retain the office in derogation of a lawful direction to obtain an increased bond.” Because Stone failed to make any argument to support the claim that the trial court erred in its judgment, the Court ruled that she waived consideration of it on appeal. It is important to note that the question of the legality of vacating an officer’s office for failure to procure an increased bond amount on demand therefore has yet to be answered by the Court.

Tortious interference with office: Stone also claimed that the selectboard interfered with the performance of her duties as town treasurer when it declared the position of treasurer vacant due to her failure to obtain an increased bond for her office. The Court granted judgment to the town on this claim because “there is no such enumerated tort [tortious interference with performance of office] in our case law, or in the law of other jurisdictions.” The tort most closely analogous is tortious interference with an employment relationship which requires “intentionally and improperly interfere[ing] with the performance of a contract ... between another and a third person by inducing or otherwise causing the third person not to perform the contract.” This claim requires the interference from some third party between the employment relationship of the selectboard and clerk. Since no third party was involved in the Irasburg situation, the Court ruled that the plaintiff failed to state a claim and therefore ruled in favor of the town.

Legal fees under 24 V.S.A. § 901. Stone claimed that the town should be responsible for her legal fees because she was acting in furtherance of her duties as town treasurer when she brought suit against the town for unlawfully removing her from office. State law with respect to legal fees requires towns to “assume all reasonable legal fees incurred by an officer when the officer was acting in the performance of his duties and did not act with any malicious intent.” The Court disagreed with Stone’s interpretation of the law and held that the intent of the law is not to provide legal fees to municipal employees who have disputes with towns over their employment, but rather to reimburse for the cost of defending an officer who is sued in the course of his or her work. “(T)he Legislature intended § 901 to cover those actions in which the interest of the officer is coextensive with the interest of the town such that substitution of the town’s name with the officer’s name does not alter the nature of the action.” In short, a town is not required to cover the legal fees of an officer in a legal dispute with the town.

The *Stone* decision is posted online at <http://info.libraries.vermont.gov/supct/current/op2013-125.html>.

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