

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

DAVID ESRATI, : CASE NO. 2018-CV-00593
Plaintiff, : JUDGE RICHARD SKELTON
v. :
DAYTON CITY COMMISSION, et al., : DAYTON CITY COMMISSION AND
Defendants. : COMMISSIONER JEFFREY J. MIMS,
: JR'S BRIEF ON PARAMETERS OF
: INJUNCTIVE RELIEF
:

I. INTRODUCTION

Defendants, Dayton City Commission and Commissioner Jeffrey J. Mims, Jr., submit the following as their response to the Court's February 7, 2018 request for briefing. On that date, the Court directed the parties to brief the specific issue of whether R.C. §121.22 (I)(1)'s injunctive power provides authority to disband a task force. The Court also stated that the parties could address the issue of whether Civil Rule 65 applies to injunctions requested under R.C. §121.22. The Court was clear that the underlying issues and the merits of the lawsuit were disputed by the parties and that they would be briefed at a later time and that this brief would only address these specific issues.

As is stated in more detail below, R.C. §121.22(I)(1) does not provide the power to disband task forces. The injunctive power is only provided to enforce the requirements of R.C. §121.22 for open meetings. While the Court may issue an injunction to prohibit a public body from having a meeting in private or require a public body to issue notice, there is no provision or

authority for disbanding a task force. Moreover, Counsel could find no case law to support the relief.

Likewise, Civil Rule 65 applies to an injunction issued under R.C. §121.22. *State ex. rel Hardin Cty. Pub. Co. v. Hardin Mem'l Hosp.*, 2002-Ohio-5586, ¶2 (3rd Dist. 2002). Generally, where there is a conflict between the Civil Rules and a statute, the Civil Rules control on matters of procedure and the statute controls on substantive law. *Ferguson v. State*, 151 Ohio St.3d 265, 270, 87 N.E.3 1250, 1256 (2017). Even with special statutory proceedings, the statute will only control on a procedural matter where the civil rule is clearly inapplicable to the basic statutory purpose of the statutory enactment. *Id.* Because R.C. §121.22 only conflicts with two provisions of Civil Rule 65, at a minimum, Civil Rule 65's remaining processes and procedures apply.

II. LAW AND ARGUMENT

A. R.C. §121.22 DOES NOT GIVE AUTHORITY TO DISBAND A TASK FORCE.

R.C. §121.22 only gives a Court the injunctive power to force members of a “Public Body” to comply with its requirements, it does not provide for disbandment. Where a party relies upon statutory relief, the party is limited to the specific relief provided, “[t]here is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for.” *Vought Industries, Inc. v. Tracy*, 72 Ohio St.3d 261, 648 N.E.2d 1364, 1367 (1995)(court rejected party's attempt to obtain statutory relief in excess of the statute).

The specific section only provides injunctive relief to comply with the Open Meeting Act provisions:

Upon proof of a violation or threatened violation of this section in an action brought by a person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

R.C. §121.22(I)(1). R.C. §121.22 only require a “Public body” to hold its “Meetings” in public, provide appropriate notice, and promptly prepare, file, maintain, and allow public inspection of the minute of its “Meetings.”¹ See R.C. 121.22(C) and (F). There are no provisions in R.C. 121.22 controlling the formation or disbandment of a “Public body.”

Here, the disbandment of a task force would improperly exceed the power provided under the statute. Moreover, disbandment would not be required to comply with the Open Meeting Act’s provisions. Not only does this exceed the power provided, but Counsel has been unable to find any case law where a court took such a step.

B. OHIO CIVIL RULE 65 APPLIES TO INJUNCTIONS UNDER R.C. §121.22

Ohio Civil Rule 65 applies where it is not in conflict with R.C. §121.22. Generally, “where conflicts arise between the Civil Rules and the statutory law, the rule will control the statute on matters of procedure and the statute will control the rule on matters of substantive law.” *Ferguson v. State*, 151 Ohio St.3d 265, 270, 87 N.E.3 1250, 1256 (2017). Even with a special statutory proceeding the statutory procedure will not control unless it renders the civil rule “clearly inapplicable.” *Ferguson v. State*, 151 Ohio St.3d 265, 270-27187 N.E.3 1250, 1256-1257 (2017). “A civil rule is clearly inapplicable ‘only when its use will alter the basic statutory purpose for which the specific procedure was originally provided in the special statutory action’.” *Id.*

¹ The terms are capitalized because they are defined terms under R.C. §121.22.

Ohio Courts have applied the “clearly inapplicable” standard to find that procedural requirements, such as verification that is required in Civil Rule 65, are not such inherent parts of a special statutory remedy as to eliminate the basic statutory purpose and control over the Civil Rules. *State ex Rel. Millington v. Weir*, 60 Ohio App.2d 348, 397 N.E.2d 770, 349 (10th Dist. 1978). Likewise, the Third District Court of Appeals specifically found that Civil Rule 65 still applies to injunctions sought under R.C. 122.22(I)(1). *State, ex rel. Hardin Cty. Pub. Co. v. Hardin Mem'l Hosp.*, 2002-Ohio-5586, ¶ 2. (finding that the statute only “slightly” modifies Civil Rule 65).

Here, Civil Rule 65 applies to Plaintiff’s request for an injunction to the extent that it does not conflict with the statute. The only requirements that R.C. §121.22 provides for an injunction are that it shall be granted “upon proof of violation or threatened violation” and that “irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of violation or threatened violation of this section.” See R.C. 121.22 (I)(1) and (3). Therefore, all of the remaining provisions contained in Civil Rule 65 for the issuance of injunctions still apply.

III. CONCLUSION

The injunctive relief provided in R.C. §121.22 is limited to enforcement of the Open Meeting Act provisions, and does not include or address the formation or the disbandment of public bodies. As such, the statute cannot be used to disband a task force.

Also, Civil Rule 65 applies to injunctions sought under R.C. §121.22 to the extent that it is not in conflict with the substantive provisions. Therefore, with the exception of the presumption of irreparable harm and the requirement that an injunction be issued where a violation has been proven, all other provisions of Civil Rule 65 apply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served upon the following on this 12th day of February 2018 via regular U.S. Mail, postage prepaid to:

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