

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>The State of Arizona, by and through Yavapai County Attorney, Sheila Polk,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>Kirk Leopold, individually, and in his official capacity, if any, as a member of the board of directors of the Inscription Canyon Ranch Sanitary District; Robert Hilb in his official capacity as a member of the board of directors of the Inscription Canyon Ranch Sanitary District; and the Inscription Canyon Ranch Sanitary District, a political subdivision of the state of Arizona; et al.</p> <p style="text-align: center;">Defendants.</p> <hr/> <p>Bob Summers, in his official capacity as a member of the board of directors of the Inscription Canyon Ranch Sanitary District,</p> <p style="text-align: center;">Real Party In Interest.</p>	<p>Case No. P1300CV201900816</p> <p>ORDER</p>	
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<p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p>	<p>BY: Jennifer Jaramillo Judicial Assistant</p> <p>DATE: April 23, 2020</p>
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This case involves a request for *quo warranto* relief brought by the Yavapai County Attorney (“Plaintiff”) against Kirk Leopold (“Leopold”) in his position as a member of the Board of Directors (“Board”) of the Inscription Canyon Ranch Sanitary District (“District”). Both sides have filed motions for summary judgment seeking a ruling as a matter of law on stipulated facts. The Plaintiff’s Motion For Summary Judgment seeks the removal of Leopold from the Board and an order recognizing Bob Summers (“Summers”) as a valid member of the Board as of December 21, 2018. The Defendants’ Cross-Motion For Summary Judgment seeks to have the Court deny the *quo warranto* relief requested and to dismiss Plaintiff’s Complaint.

After full briefing, the Court set oral argument. However, the parties stipulated to vacate oral argument and to permit the Court to rule based upon the documentation in the file including the Joint Factual Stipulations And Stipulated Exhibits Of The Parties and the Second Joint Factual Stipulations And Stipulated Exhibits Of The Parties. The Court has now fully considered the motions for summary judgment, the stipulated facts and exhibits as well as the balance of the file.

The Court finds that it is appropriate to grant the Plaintiff's Motion For Summary Judgment and to deny the Defendants' Cross-Motion For Summary Judgment for the reasons that will follow.

The Board seat at issue was held by Alan Poskanzer ("Poskanzer") as of August 2018. However, Poskanzer did four things that are dispositive of this action. First, he sold his residence within the District on or about August 30, 2018. Second, he moved to a location outside of the District. Third, on September 18, 2018, Poskanzer registered to vote outside the District. Fourth, on November 2, 2018 Poskanzer voted outside of the District based upon his new voter registration. There is nothing Poskanzer or the Defendants can do to reverse or rehabilitate those four actions.

Another dispositive fact is the Board action on November 27, 2018. It is undisputed that two lawful Board members declared that Poskanzer's Board seat was vacant at the lawfully noticed and called Board meeting on November 27, 2018. The Court finds that Board action to be valid and dispositive. That action can only be undone by valid Board action and that has not occurred.

The Court finds unpersuasive the other facts the Defendants claim to put a different light on Poskanzer's actions. Poskanzer's claim that he purchased property within the District with the intent of returning once a home was built is of no consequence in light of his registration and exercise of his right to vote outside the District. His claim that he only registered to vote at his rental home's residence because he could not complete his attempt to electronically register at the address where he intended to build a home is of no consequence once he voted using his rental home's address. Poskanzer's exercise of his right to vote outside the District is the clearest and most persuasive indication of his decision to no longer be a resident or qualified elector of the District. Thereafter, when the remaining two valid Board members voted on November 27, 2018 that Poskanzer's seat was vacant, the action was binding and valid. That Board action remains binding and valid to this day.

The Court finds that on December 21, 2018 a valid quorum of the Board voted to appoint Summers. That action also was binding and valid. Furthermore, that action remains binding and valid to this day.

The Court finds that any purported Board action to reverse those valid actions was not valid as the action did not involve a quorum of valid Board members. The appointment of Leopold by less than a quorum of valid Board members on July 2, 2019 was and remains invalid.

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Finally, the Court agrees with the well-articulated legal arguments of the Plaintiff on all issues and does not find the Defendants' arguments to be persuasive or well-founded in the law.

IT IS ORDERED the Plaintiff's Motion For Summary Judgment is **GRANTED** as follows:

1. Kirk Leopold is found to have usurped, intruded into or unlawfully held or exercised the office of the Inscription Canyon Ranch Sanitary District Board of Directors, Kirk Leopold's purported appointment on July 2, 2019 is **VACATED** and Kirk Leopold is **ORDERED** removed from the Inscription Canyon Ranch Sanitary District Board of Directors effective July 2, 2019.
2. Bob Summers is **DECLARED** to be a lawful member of the Inscription Canyon Ranch Sanitary District Board of Directors as of December 21, 2018.

IT IS FURTHER ORDERED the Defendants' Cross-Motion For Summary Judgment is **DENIED**.

cc: Kory Langhofer, STATECRAT LAW (e)
Joy L. Biedermann, DEPUTY COUNTY ATTORNEY (e)
Andrew J. Becke, MURPHY, SCHMITT, HATHAWAY & WILSON (e)