

December 4, 2014

Hon. Lisa Madigan
Attention: Public Access Counselor
500 S. Second St.
Springfield, IL 62706

Hon. Michael Nerheim
Attention: Civil Division
18 N. County St., Third Floor
Waukegan, IL 60085

Re: Application for Writ of *Quo Warranto* – Robert Breuder

Dear Attorney General Madigan and State’s Attorney Nerheim:

I am writing to request that your offices bring an action in *quo warranto* pursuant to 735 ILCS 5/18-101 *et seq.* to determine whether Robert L. Breuder, who currently purports to hold the office of President of the College of DuPage (“COD”), validly holds such office. Breuder is a resident of Lake County, Illinois.

An action in *quo warranto* is proper where, *inter alia*, “Any person usurps, intrudes into, or unlawfully holds or executes any office, or franchise, or any office in any corporation created by authority of this State; Any person claims to hold or exercise any privilege, exemption or license which has been improperly or without warrant of law issued or granted by any officer, board, commissioner, court, or other person or persons authorized or empowered by law to grant or issue such privilege, exemption or license; Any public officer has done, or allowed any act which by the provisions of law, works a forfeiture of his or her office;” *see* 735 ILCS 5/18-101(1), (2) and (3).

COD is a community college existing under the Public Community College Act, 110 ILCS 805/1-1 *et seq.*, is governed by a Board of Trustees, and as such is subject to State laws including the Open Meetings Act and the Freedom of Information Act. 110 ILCS 805/1-3. As a community college, its Board of Trustees (“Board”) is empowered, *inter alia*, “To make appointments and fix the salaries of a chief administrative officer, who shall be the executive officer of the board...” 110 ILCS 805/3-26(a).

Breuder purports to hold the office of President of COD pursuant to an Employment Agreement dated November 18, 2008, extended by First Addendum to President’s Employment Contract dated April 16, 2009, 2010 Amendment to Employment Agreement dated June 22, 2010, Second Addendum to President’s Employment Agreement dated January 24, 2011, and Third Addendum to President’s Employment Contract dated July 12, 2011 (the foregoing collectively, the “Contract Documents”, copies of which are attached as **Exhibit A**). Each of the Contract Documents is signed by officers of the Board purporting to act on behalf of and bind COD.

However, there is no evidence that the Board ever validly approved the Contract Documents in their current iteration and as presently purporting to be in effect. Upon information and belief, the current iteration of the Contract Documents was allegedly “approved” by the Board at a closed executive session, and no final action thereon was validly approved at a regular or special meeting as required by law. In fact, COD admitted that the current iteration of

the Contract Documents was not approved at a meeting when it responded to a November 17, 2014 Freedom of Information Act request (**Exhibit B**, attached) for “copy of minutes where most recent amendment or addendum to his contract was voted on” by stating that “The College has no documents responsive to your request #2.”

The Illinois Open Meetings Act, 5 ILCS 120/2(e), provides that no final action may be taken at a closed meeting; thus, it is not possible under applicable Illinois law for COD to have approved the current iteration of the Contract Documents and they are not valid or binding upon COD. With no validly approved contract, the tenure of Breuder as President of COD is in doubt.

The office of President of COD is a proper subject for an action in *quo warranto*. “A *quo warranto* proceeding is a challenge to a defendant’s right to exercise jurisdiction over territory or to hold public office. *People ex rel. City of Leland Grove v. City of Springfield* (1988), 166 Ill.App.3d 943, 945, 177 Ill.Dec. 854, 520 N.E.2d 1205. It is generally regarded as an appropriate and adequate remedy to determine the right or title to public office and to oust an incumbent who has unlawfully usurped or intruded into such office or is unlawfully holding the same. 65 Am.Jur.2d *Quo Warranto* §18 (1972). It has also been held to be the proper remedy for determining the question of whether a person elected to office possesses the requisite qualifications for eligibility. See *Bloome v. Juergensmeyer* (1951), 344 Ill.App. 625, 629, 101 N.E.2d 851; see also *People ex rel. Adamowski v. Wilson* (1960), 20 Ill.2d 568, 578, 170 N.E.2d 605 (implicitly recognizes that *quo warranto* is the proper procedure to challenge qualifications of police board commissioners),” cases collected in *City of Highwood v. Obenberger*, 238 Ill.App.3d 1066, 1079 (2nd Dist. 1992).

Please advise at your earliest convenience to confirm that you will be instituting an action in *quo warranto* or, if not, please provide me with written confirmation thereof. Please feel free to contact me with any questions.

Yours truly,

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Attachments