

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT

COLES COUNTY ILLINOIS

REX DUKEMAN and

ROBB PERRY

Petitioners,

v.

ROBERT D. BECKER and

COLES COUNTY, ILLINOIS

Respondents.

Case No.

COMPLAINT FOR WRIT OF QUO WARRANTO

Now comes Rex Dukeman and Robb Perry, citizens of Coles County, by and through their attorney Todd M. Reardon, do hereby file their complaint pursuant to 735 ILCS 5/102-03.

1. Rex Dukeman and Robb Perry (petitioners) are taxpayers in Coles County.
2. Petitioners requested the Attorney General and State's Attorney, respectively, to bring this action. They refused. Subsequently, leave to file this complaint was provided by the court.
3. The Petitioners seek a writ of quo warranto against Robert D. Becker because his activities as Coles County's privately-contracted assessor have usurped, intruded into and unlawfully executed statutory duties assigned to the Coles County Supervisor of Assessments.
4. Mr. Becker was contracted by the Coles County Board for the explicit purpose to update assessment evaluations of commercial, industrial and multi-unit properties in the County.

5. Exhibits A through G are proof of the arrangement between Coles County and Mr. Becker.

6. Exhibit A is the record of the subcommittee vote on May 4, 2015 to forward Mr. Becker's \$115,000 bid for commercial appraisals to the County Board for consideration.

7. Exhibit B is the record of the Coles County Board regular meeting on May 12, 2015 where the "Proposal Re: Commercial Appraisal" was approved.

8. Exhibit C is Coles County Board Stan Metzger correspondence dated December 20, 2016 where he confirms that "Coles County recently entered into a contract with an independent appraiser to update the assessment evaluations of commercial, industrial and multi-unit properties."

9. Exhibit D is Mr. Becker's completed Internal Revenue Service W-9 form, dated November 11, 2015, and filed with Coles County.

10. Exhibit E is Mr. Becker's 2016 Internal Revenue Service Form 1099 issued by Coles County. It indicates \$28,750.00 in compensation from Coles County.

11. Exhibit F contains invoices from Mr. Becker to Coles County dated January 29, 2017, September 15, 2016, March 31, 2016 and January 11, 2016. Each invoice is for \$7,187.50 to pay for commercial reassessment.

12. Exhibit G contains an email dated February 8, 2017 from County Board Administrative Assistant Elaine Komada to Supervisor of Assessments Karen Biddle acknowledging contract status of independent appraiser Becker.

13. The primary issue involves whether the County Board had the authority to contract with a private party (Becker) to perform the duties of the Office of Supervisor of Assessments.

14. Applying well-established case law from *Ashton v. Cook County*, 51 N.E.2d 161, 167, 384 Ill. 287, 300 (Ill. 1943), it is clear that Coles County has violated the law. The Supreme Court stated in *Ashton*:

The law is well settled that when the constitution or the laws of the State create an office, prescribe the duties of its incumbent and fix his compensation, no other person or board, except by action of the legislature, has the authority to contract with private individuals to expend public funds for the purpose of performing the duties which were imposed upon such officer. *Fergus v. Russel*, 270 Ill. 304, 110 N.E. 130, Ann.Cas.1916B, 1120; *Stevens v. Henry County*, 218 Ill. 468, 75 N.E. 1024, 4 L.R.A.,N.S., 339, 4 Ann.Cas. 136; *Hope v. City of Alton*, 214 Ill. 102, 73 N.E. 406. The contracts of employment under which appellants claim were ultra vires and void.

15. The laws of the state, specifically, 35 ILCS 200, create the office of Supervisor of Assessments, prescribe their duties to exclusively assess properties and outline the fixing of their compensation.

16. That being the case, just as the courts have said in related matters, no other person or board, except by action of the state legislature, has the authority to contract with private individuals to expend public funds for the purpose of performing the duties which were imposed upon such officer.

17. In the case of Coles County, Coles County contracted with Mr. Becker, a private person, expended public funds, all for the purpose of performing the assessment duties which, in fact, are imposed upon the Office of the Supervisor of Assessments.

18. Pursuant to 35 ILCS 200/9, division 2, "Assessment Authority" lies within the constraints of the statute. In each case under Illinois law covering Assessment Authority, Assessment Authority at the county level lies with public officials, not privately-contracted persons.

19. There is no provision in Illinois law for County Boards nor any county officer to contract the duties of the Office of the Supervisor of Assessments to a privately-contracted person.

20. The state legislature withheld the power to contract for assessments at the County level, which is the same as though the exercise of the power was prohibited by law. As the Supreme Court stated in *People ex rel. Tuohy v. Winston*, 77 N.E.2d 664, 666, 399 Ill. 311, 315 (Ill. 1948):

They come within the principle of law that where the legislature has withheld a power it is the same as though the exercise of the power was prohibited by law. *Continental Illinois Nat. Bank & Trust Co. v. Peoples Trust & Savings Bank*, 366 Ill. 366, 9 N.E.2d 53.

21. Only at the township level is there legislative authority for the contracting of a private assessor as can be found in 35 ILCS 200/2-60(b).

22. In conclusion, Mr. Becker's activities as Coles County's privately-contracted assessor have usurped, intruded into and unlawfully executed statutory duties assigned to the Coles County Supervisor of Assessments.

23. Having met the requirements for a writ of quo warranto under 735 ILCS 5/18-101, the court should issue the writ of quo warranto enjoining the Coles County contract with Mr. Becker to provide private assessor services as violative of state law, null and void.

Wherefore the Peitioners Rex Dukeman and Robb Perry, through their attorney Todd M. Reardon, hereby request the following relief. An issuance of the writ of quo warranto enjoining the Coles County contract with Mr. Becker, and to provide to private assessor services as

violative of state law, null and void, award costs of prosecution under 735 ILCS 5/18-108 and any other relief law or equity allows. Additionally, the Petitioners request a court order that prohibits Coles County, Illinois from using the assessments and/or evaluations completed by Robert D. Becker under the previous null and void contracts.

Respectfully submitted,

/s/Todd Reardon

Todd M. Reardon

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to Section 1–109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that I verily believe the same to be true.

Dated: 10/2/18

/s/Robb Perry

Robb Perry

Dated: 10/2/18

/s/ Rex Dukeman

Rex Dukeman

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