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To: Rob Perry

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Re: 18-mr-208

Date: 11-20-18

Number of pages to follow ( including cover sheet): 13

Comments: Attention ROB PERRY

### Hard Copy:

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IN THE CIRCUIT COURT  
OF THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS  
COLES COUNTY, CHARLESTON, ILLINOIS

**FILED**  
NOV 20 2018  
Melissa Hurst  
Circuit Clerk COLES COUNTY, ILLINOIS

REX DUKEMAN and ROBB PERRY, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 ROBERT D. BECKER and COLES COUNTY, )  
 ILLINOIS, )  
 Respondents. )

No. 18-MR-208

MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619 –LACK OF STANDING TO SUE  
AND 735 ILCS 5/2-615 – FAILURE TO STATE A CAUSE OF ACTION

NOW COMES, Respondent, Coles County Illinois, by BRIAN L. BOWER, State’s Attorney for the County of Coles, State of Illinois, and for Motion to Dismiss pursuant to section 2-619 and section 2-615, represents unto this Honorable Court as follows:

**INTRODUCTION**

1. That Petitioners made request of the Coles County State’s Attorney to file a Quo Warranto action against Robert Becker and Coles County, Illinois. The Coles County State’s Attorney declined to do so. Leave of Court was granted to Petitioners.

**BACKGROUND**

2. That on the 2<sup>nd</sup> day of October, 2018, Petitioner’s filed their Complaint for Writ of *Quo Warranto*, as citizens and taxpayers in Coles County, alleging that Robert D. Becker usurped, intruded into and unlawfully executed statutory duties assigned to the Coles County Supervisor of Assessments, Karen Biddle, and that he was hired by the County Board of Coles County to perform such duties. The Petitioners assert these actions are prohibited by law.

3. That as remedy Petitioners complaint requests the Court to:

- (a) "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"; and
- (b) Award costs of prosecution; and
- (c) Enjoin Coles County, Illinois, from using the assessments and/or evaluations completed by Robert D. Becker based upon null and void contract.

4. That Respondents, Coles County, Illinois, and Robert D. Becker, deny that Robert D. Becker was privately-contracted as assessor as alleged in Petitioners' Complaint for Writ of Quo Warranto and affirmatively assert he was hired in accordance with statute.

#### FACTS

5. That upon advice and consent of the Coles County Board, Robert D. Becker was approved for appointment as a deputy assessor with compensation approved and fixed by the Coles County Board to be paid by the county.

6. That no contractual documents were signed.

7. That Coles County Supervisor of Assessments, Karen Biddle, appointed Robert D. Becker as deputy assessor. Attached hereto marked as Exhibit A and incorporated herein by reference is the Affidavit of Karen Biddle.

8. That Robert D. Becker signed Official Oath on the 1<sup>st</sup> day of June, 2016. Attached hereto marked as Exhibit B and incorporated herein is a copy of the Official Oath signed by Robert D. Becker.

#### QUO WARRANTO Action

9. The purpose of a quo warranto action is to question whether a person lawfully holds title to office. *In re Appointment of a Special State's Attorney*, 305 Ill.App.3d 749, 758-59,

238 Ill.Dec. 922, 713 N.E.2d 168, 175 (1999). A quo warranto action is not a proper proceeding to challenge official conduct or the legality of that conduct. *In re Appointment*, 305 Ill.App.3d at 759, 238 Ill.Dec. 922, 713 N.E.2d at 175; *People ex. rel. Ryan v. Village of Hanover Park*, 311 Ill.App.3d 515, 522, 243 Ill.Dec. 823, 724 N.E.2d 132, 136–37 (1999). The proper scope of a quo warranto proceeding is to challenge the authority to act, not the manner of exercising authority. *People ex. rel. Ryan*, 311 Ill.App.3d at 522, 243 Ill.Dec. 823, 724 N.E.2d at 137. *McCready v. Illinois Sec'y of State, White*, 382 Ill. App. 3d 789, 801, 888 N.E.2d 702, 712 (2008).

10. To succeed against a claim under quo warranto, the defendant must allege and prove it had the authority to act as it did. *People ex. rel. Rahn v. Vohra*, 2017 IL App (2d) 160953, ¶ 35, 85 N.E.3d 579, 587, reh'g denied (Oct. 18, 2017)

#### Quo Warranto Grounds

11. That grounds to bring a quo warranto action is found at 735 ILCS 5/18-101 which states in relevant part:

**“Grounds. A proceeding in quo warranto may be brought in case:**

**(1) 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;**

(2) Any person holds or 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;

(3) Any public officer has done, or allowed any act which by the provisions of law, works a forfeiture of his or her office; \*\*\*” (735 ILCS 5/18-101).

#### Quo Warranto Parties

11. That the parties to a quo warranto action is found at 735 ILCS 5/18-102 which states:

Parties. The proceeding shall be brought in the name of the People of the State of Illinois by the Attorney General or State's Attorney of the proper county, either of his or her own accord or at the instance of any individual relator; or by any citizen having an interest in the question on his or her own relation, when he or she has requested the Attorney General and State's Attorney to bring the same, and the Attorney General and State's Attorney have refused or failed to do so, and when, after notice to the Attorney General and State's Attorney, and to the adverse party, of the intended application, leave has been granted by the circuit court. (735 ILCS 5/18-102)

12. That to have standing to file a quo warranto action, a private party must allege that he has an interest in the matter distinct from the interests of the general public. This private interest must be directly, substantially, and adversely affected by the challenged action, and the damage to the private interest must be then occurring or certain to occur. *People ex rel. Rahn v. Vohra*, 2017 IL App (2d) 160953, ¶ 44, 85 N.E.3d 579, 589, reh'g denied (Oct. 18, 2017).

#### Quo Warranto Judgment

13. That quo warranto actions provide for the following judgment in any case any person or corporation is adjudged guilty as charged in the complaint:

- (a) The court may enter a judgment of ouster against such person or corporation from the office or franchise;
- (b) The court may fine such person or corporation;
- (c) The court may enter judgment in favor of the relator for the cost of prosecution; or
- (d) The court, instead of entering judgment of ouster from a franchise for an abuse thereof, may fine the person or corporation found guilty in any sum not exceeding \$25,000.00 for each offense.
- (e) When judgment is entered in favor of any defendant, such defendant shall recover costs against the relator. (735 ILCS 5/18-108).

#### **DISMISS PURSUANT TO 735 ILCS 5/2-615** **FAILURE TO STATE A CAUSE OF ACTION**

14. A section 2-615 motion to dismiss should be granted if, after viewing the allegations in the light most favorable to the plaintiff, the complaint fails to state a cause of

action on which relief can be granted. (735 ILCS 5/2-615) *McCready v. Illinois Sec'y of State, White*, 382 Ill. App. 3d 789, 794, 888 N.E.2d 702, 707 (2008).

15. The instant case is a tax objection proceeding not a quo warranto action. The Petitioners are attempting to use quo warranto action to ultimately seek refund of taxes paid at the newly assessed values. Petitioners' complaint seeks to have the hiring of Robert Becker declared unlawful and the valuations performed by Robert Becker declared void causing the valuations of property in Coles County to return to the previous values which had been unchanged for over sixteen years.

16. Petitioners are provided a statutory remedy for relief from alleged excessive, discriminatory or improper assessments by proceedings before the Board of Review. *People v. Illinois Women's Athletic Club*, 360 Ill. 577, 196 N.E. 881. Taxpayers can be heard on the question of the excessive or fraudulent character of their assessments by tax objection procedure in the county court. *People ex rel. Isbell v. Albert*, 403 Ill. 469, 86 N.E.2d 237.

17. That Respondents, Coles County and Robert D. Becker had the authority to act in the fashion in which they acted. The Coles County Board had the statutory authority to approve and authorize compensation for a deputy assessor. As a deputy assessor, Robert D. Becker had the authority to assess property. Supervisor of Assessments, Karen Biddle, had the authority to appoint Robert Becker as a deputy assessor all as provided in the Property Tax Code. "Each supervisor of assessments may, with the advice and consent of the county board, appoint necessary deputies and clerks, their compensation to be fixed by the county board and paid by the county" (35 ILCS 200/3-40(c)).

18. The Respondents acknowledge that Robert Becker was hired, implied powers bestowed, and deputy assessor duties began prior to his signing of the Official Oath but

affirmatively assert that fact has no bearing on the legitimacy of his employment or performed duties. In the case of *Sullivan v. State* where the assessor of taxes was improperly sworn into office, the Illinois Supreme Court held:

“The principle is well settled that the acts of officers de facto are as valid and effectual, when they concern the public or the rights of third persons, as though they were officers de jure. Their title to the office cannot be inquired into collaterally. *Pritchett v. People*, 1 Gilm. 525; *Coles County v. Allison*, 23 Ill. 437; *The People v. Collins*, 7 Johns. 549; \*77 *Wilcox v. Smith*, 5 Wend. 231; *Bucknam v. Ruggles*, 15 Mass. 180.”

“The court should not refuse judgment, even if Taylor was not sworn by the proper officer. On application for such a judgment, we will only look to see that there was an officer de facto who assessed.” *Sullivan v. State*, 66 Ill. 75, 76–77 (1872)

Likewise, in *Sharp v. Thompson*, 100 Ill. 447 (1881), a deputy clerk had only been verbally appointed but had not been legally appointed. The deputy clerk nevertheless performed the duties of a deputy clerk. The *Thompson* court found that the deputy clerk was at least an officer de facto, and that the acts of officers de facto are as valid and effectual as acts of officers de jure when they concern the public or the rights of third persons. *Thompson*, 10 Ill. at 449. *Shelby v. Mun. Officers Electoral Bd. ex rel. Vill. of Broadview*, 2013 IL App (1st) 130789U ¶41.

19. That Petitioners’ interest is not a direct interest in the subject matter of the litigation—the Office of Assessor—but only a general complaint in the official acts performed by the office of the supervisor of assessments, to wit: hiring Robert Becker to assist in updating assessment evaluations of commercial, industrial and multi-unit properties. To proceed with an action in quo warranto the Petitioners’ interest must be in the office itself specific and peculiar. (See *People ex rel. Rahn v. Vohra*, 2017 IL App (2d) 160953). Petitioners’ failure to demonstrate a specific and peculiar interest in the office of Supervisor of Assessments requires dismissal of this cause.

20. That even if the Court found Respondents, Robert D. Becker and Coles County, Illinois, to be guilty as alleged in the Complaint, the assessments and/or evaluations completed by Robert D. Becker from the exercise of de facto authority cannot be declared void. In *People ex rel. Rahn v. Vohra* the reviewing court held that contracts entered into by Respondent in quo warranto action remained valid even if Respondent acted without legal authority. The Court stated:

“Although no Illinois case appears to be directly on point, foreign jurisdictions have applied that doctrine in quo warranto proceedings, holding that, even if an officer or entity acted without legal authority, the acts that resulted from the exercise of de facto authority must stand. See, e.g., *Long v. Stemm*, 212 Ind. 204, 7 N.E.2d 188, 192 (1937); *State ex rel. Attorney General v. Mayor, Etc., of Town of Dover*, 62 N.J.L. 138, 41 A. 98, 99 (1898); \*585 \*\*718 *Joyce v. Town of Tainter*, 232 Wis.2d 349, 606 N.W.2d 284, 286-88 (Wis. Ct. App. 1999); see also *Lueck v. Teuton*, 125 Nev. 674, 219 P.3d 895, 902 n.3 (2009).” *People ex rel. Rahn v. Vohra*, 2017 IL App (2d) 160953, ¶ 24, 85 N.E.3d 579, 584–85, reh'g denied (Oct. 18, 2017).

21. That Petitioners' complaint does not allege a private interest and there are no set of facts that can be proved that would entitle the Petitioners to recovery. The Petitioners' complaint alleges illegal acts of Robert Becker and the County Board. Quo warranto is not a proper proceeding to test the legality of the official acts of public officers. *People ex rel. Chillicothe Tp. v. Board of Review of Peoria County*, 1960, 19 Ill.2d 424, 167 N.E.2d 553,

22. That it is just and appropriate this matter be dismissed pursuant to section 2–615 for failure to state a cause of action.

**DISMISS PURSUANT TO 735 ILCS 5/2-619  
LACK OF STANDING**

23. That a section 2–619(a)(9) motion to dismiss is proper where “the claim asserted against defendant is barred by other affirmative matter avoiding the effect of or defeating the claim.” 735 ILCS 5/2–619(a)(9) (West 2004). Lack of standing is an “affirmative matter”



properly challenged in a section 2-619(a)(9) motion to dismiss. *McCready v. Illinois Sec'y of State, White*, 382 Ill. App. 3d 789, 794, 888 N.E.2d 702, 707 (2008)

24. That to have standing to file a quo warranto action, a private party must allege that he has an interest in the matter distinct from the interests of the general public. This private interest must be directly, substantially, and adversely affected by the challenged action, and the damage to the private interest must be then occurring or certain to occur. *People ex rel. Rahn v. Vohra*, 2017 IL App (2d) 160953, ¶ 44, 85 N.E.3d 579, 589, reh'g denied (Oct. 18, 2017). (Also see *People ex rel. Turner v. Lewis*, 104 Ill. App. 3d 75, 78, 432 N.E.2d 665, 668 (1982))

25. That Petitioners fail to allege an interest distinct from the interest of the general public and fail to allege this private interest is directly, substantially and adversely affected by the acts alleged.

26. That Petitioners' status as taxpayers in the county do not give them standing to file the complaint in quo warranto. Petitioners must demonstrate that they have a personal interest which has been invaded which is sufficiently distinct from the interest of the general public even though other members of the general public may be affected in the same manner as Petitioners. *People ex rel. Turner v. Lewis*, 104 Ill. App. 3d 75, 78, 432 N.E.2d 665, 668 (1982).

27. That it is just and appropriate this matter be dismissed pursuant to section 2-619 for lack of standing.

#### Dismiss – Contrary to Public Interest

28. That dismissal of this cause is appropriate where issuing a writ of quo warranto is not in the public interest and would not serve any good end or purpose. *People ex rel. Northfield Park Dist. v. Glenview Park Dist.*, 222 Ill. App. 3d 35, 164 Ill. Dec. 328, 582 N.E.2d 1272 (1st Dist. 1991), dismissed, 143 Ill. 2d 647, 167 Ill. Dec. 409, 587 N.E.2d 1024 (1992).

29. Petitioners' Complaint serves as a collateral attack on the County of Coles updating assessment evaluations of real estate that had not been updated in over sixteen years.

The Petitioners lack standing, fail to show cause of action, and no public interest would be served by permitting the quo warranto action to continue. In *People ex rel. City of Burbank v. City of Chicago* the reviewing court held that where quo warranto proceeding was a collateral attack on annexations by the city, and no public interest would be served by permitting the quo warranto action to continue, the motion to strike complaint and dismiss quo warranto proceeding was properly sustained. *People ex rel. City of Burbank v. City of Chicago*, 16 Ill. App. 3d 184, 305 N.E.2d 656 (1973).

30. That it is just and appropriate this Court decline to permit Petitioners to maintain their complaint for quo warranto relief and dismiss this matter as issuing writ of quo warranto is not in the public interest and would not serve any good end or purpose.

WHEREFORE Respondents pray this Honorable Court enter its order dismissing this cause finding Petitioners lack standing, finding *quo warranto* action to be an improper vehicle to question or determine the acts alleged, finding this action contrary to public interest, and finding Complaint fails to state a cause of action upon which relief may be granted. Respondents prays for judgment against Petitioners and in favor of Respondents and for award of costs of suit, and for such other, further, and different relief as this Court deems just and proper.

Dated this 20 day of November 2018.

THE PEOPLE OF THE STATE OF ILLINOIS,

BY:

  
BRIAN L. BOWER, State's Attorney

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing has been placed on file herein and a true and correct copy has been served upon attorney of record by placing the same in his pickup box in the Office of the Circuit Clerk to:

Todd Reardon, Attorney at Law  
518 6th Street  
Charleston, IL 61920

 11-20-18

Brian L. Bower, State's Attorney  
Coles County Courthouse  
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bbower@co.coles.il.us

\\ColesCounty\Quo Warranto\Motions\MotiontoDismiss\tpj11-19-18



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COLES )

AFFIDAVIT

KAREN BIDDLE, being first duly sworn upon oath, deposes and states as follows:

1. That she is of adult years, under no legal disability and if called as a witness, could competently testify to the contents of this Affidavit.
2. That this affiant, in her capacity as Supervisor of Assessments, received approval from the Coles County Board for funds to compensate Robert D. Becker.
3. That this affiant appointed Robert D. Becker as deputy assessor.
4. That no contractual documents were signed.
5. That Robert D. Becker signed his Official Oath in my presence on the 1<sup>st</sup> day of June, 2016.
6. That Robert D. Becker performed duties as deputy assessor under my direction and control.

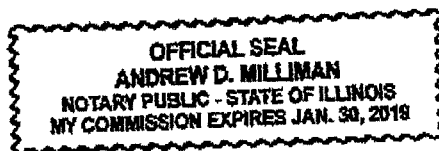
Further this Affiant saith not.

DATED this 19<sup>th</sup> day of November, 2018.

Karen R. Biddle

Subscribed and sworn to before me  
this 19<sup>th</sup> day of November, 2018.


Andrew D. Milliman  
Notary Public



State of Illinois)  
County of Coles)


## OFFICIAL OATH

I, Robert Becker, do solemnly swear, that I will support the Constitution of the United States and the Constitution of the State of Illinois; and that I will faithfully discharge all the duties of the position of Deputy Assessor of Coles County, Illinois to the best of my ability.

  
\_\_\_\_\_  
Robert Becker

Signed and sworn to before me this 1<sup>st</sup> day of June, 2016.

**KAREN L. BIDDLE**  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES JULY 29, 2019

  
\_\_\_\_\_  
Notary Public