

**IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
SHELBY COUNTY, SHELBYVILLE, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff,)	
-vs-)	No. 23-CF-149
)	
TERESA BOEHM,)	
)	
Defendants.)	

MOTION TO NOLLE PROSEQUI

NOW COMES the People of the State of Illinois, by and through Aaron C. Jones, Special Prosecutor, and hereby move this Honorable Court to Nolle Posequi said case, and in support states as follows:

**Count I
(Violation of Public Officer Prohibited Activities Act)**

1. Count I of the Bill of Indictment charges the Defendant with a violation of the Public Officer Prohibited Activities Act, 50 ILCS 105/1.
2. 50 ILCS 105/1 provides, in relevant part, as follows:

“No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member, (ii) alderperson of a city or member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act, unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. Any such prohibited appointment or election is void. This Section shall not preclude a member of the county board from being appointed or selected to serve as (i) a member of a County Extension Board as provided in Section 7 of the County Cooperative Extension Law,¹ (ii) a member of an Emergency Telephone System Board as provided in Section 15.4 of the Emergency Telephone System Act,² (iii) a member of the board of review as provided in Section 6-30 of the Property Tax Code, or (iv) a public administrator or public guardian as provided in Section 13-1 of the Probate Act of 1975. Nothing in this Act shall be construed to prohibit an elected county official from holding elected office in another unit of local

government so long as there is no contractual relationship between the county and the other unit of local government. This amendatory Act of 1995 is declarative of existing law and is not a new enactment.” [emphasis added]

3. Additional exceptions to 50 ILCS 105/1 can be found in Sections 1.1 through 1.3.
4. If a county board member is in violation of 50 ILCS 105/1 by later being appointed or elected to an office that is prohibited thereunder, “[a]ny such prohibited appointment or election is void.” 50 ILCS 105/1.

Quo Warranto Action

5. When such a situation arises, the State’s Attorney of the proper county may choose to file a “quo warranto” action pursuant to 735 ILCS 5/18-101(1), which applies when “[a]ny person usurps, intrudes into, or unlawfully holds or executes any office [...] created by authority of this State.” 735 ILCS 5/18-101(1); 735 ILCS 5/18-102.
6. The purpose of quo warranto is to inquire by what right or authority a certain office is held or an act performed, or to test the legality of act or proceeding. *People ex rel. Freeport Fire Prot. Dist., Stephenson Cnty. v. City of Freeport*, 90 Ill. App. 3d 112, 412 N.E.2d 718 (2nd Dist. 1980).
7. In other words, quo warranto is the proper method of attacking the legal right of a person to hold public office. *People v. Hotz*, 327 Ill. 433, 158 N.E. 743 (1927).
8. When a complaint in quo warranto is filed against a holder of public office, he is required either to disclaim or to justify. *People ex rel. Phelps v. Kerstein*, 413 Ill. 333 (1952).
9. Where holder of public office as defendant in quo warranto proceedings elects to justify, he must plead fully and completely the facts which show his lawful authority to exercise duties and prerogatives of the office. *Id.*

10. In the instant case, the former State's Attorney filed a Quo Warranto Complaint against Defendant on July 31, 2023 in Shelby County Case No. 23-MR-13.
11. The Quo Warranto Complaint alleged that Defendant, after having been elected to the Shelby County Board, accepted the appointment as a Rose Township Cemetery Board Member, in violation of 50 ILCS 105/1.
12. Though Defendant filed no formal answer to the Quo Warranto Complaint, the case was ultimately dismissed for mootness on August 11, 2023 based upon Defendant's resignation from office as a Rose Township Cemetery Board Member on August 8, 2023, whereby she effectively disclaimed her holding of the subject offices simultaneously.
13. The filing of criminal charges followed upon the filing of an Information by the State's Attorney on December 5, 2023.

Criminal Violation of 50 ILCS 105/1

14. 50 ILCS 105/4 criminalizes violations of 50 ILCS 105/1 as a Class 4 felony.
15. By the plain language of 50 ILCS 105/1, if the allegations of Count I of the Bill of Indictment are proven true, that Defendant simultaneously held the offices of Shelby County Board Member and Rose Township Cemetery Board Member, she may have committed a crime.
16. The aforementioned statutes do not explicitly require a mental state as an element of the offense by Defendant.
17. However, mere absence of express language describing a mental state does not *per se* lead to the conclusion that none is required. *People v. Valley Steel Prod. Co.*, 71 Ill. 2d 408, 375 N.E.2d 1297 (1978).

18. In order to determine whether or not a mental state is required for the subject offense when the express language requires none, the Court must determine whether the subject offense is an absolute liability offense.
19. Section 4–9 of the Criminal Code of 1961 governs absolute liability offenses. This section provides:

“A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in Sections 4–4 through 4–7 if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding \$1,000, *or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.*” (Emphasis added.) 720 ILCS 5/4-9.
20. This section applies to all criminal penalty provisions, including those outside the Criminal Code of 1961. *People v. Valley Steel Products Co.*, 71 Ill.2d 408, 424 (1978).
21. The Illinois Supreme Court has held that the legislature intended to limit the scope of absolute liability. *People v. Gean*, 143 Ill. 2d 281, 286 (1991).
22. In other words, the first part of 720 ILCS 5/4-9 expressly permits a construction requiring absolute liability in offenses punishable by incarceration or by a fine of not more than \$1,000. *Id.*
23. On the other hand, the second part of 720 ILCS 5/4-9 expresses a clear policy that in other offenses not including a mental state in the definition, only a clearly indicated legislative intent to create absolute liability should be recognized, and in all other instances, a mental state requirement should be implied as an application of the general rule that an offense consists of an act accompanied by a culpable mental state. *Id.*; see also, i.e., *People v. Clark*, 71 Ill.App.3d 381 (2nd Dist. 1979)(neither Corrupt Practices Act nor section of County Treasurer's Act prohibiting alleged personal profit by county treasurer were intended to impose strict liability, and a mental state is required).

24. In *People v. Malone*, 71 Ill. App. 3d 231, 233 (2nd Dist. 1979), the Second District Appellate Court was required to interpret whether Section 3 of the Corrupt Practices Act was an absolute liability offense; that case is instructive here.
25. In finding the offense to require a mental state, the Second District Appellate Court held that the legislature did not intend to punish public officers who, without any knowledge on their part, placed themselves in the position where they violate the statute; only corrupt, as opposed to innocent and unknowing acts are actually forbidden by statute. *Id.*
26. Also, in looking to intent, a court may consider whether the offense is one that carries moral opprobrium or whether it is morally neutral. *Id.*
27. As a general rule, ***strict liability crimes are regulatory offenses that do not imply moral blameworthiness on the part of the offenders.*** *Id.* [emphasis added]
28. Historically, the Corrupt Practices Act was enacted “to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers.” Laws 1871-72, p. 612, approved April 9, 1872, eff. July 1, 1872.
29. The statutes commonly referred to previously as the Corrupt Practices Act were the precursor to the Public Officer Prohibited Activities Act, which became effective on September 6, 1990 by the enactment of Public Act 86-1324, § 679.
30. Although *People v. Malone* was specifically directed at Section 3 of the Corrupt Practices Act (now the Public Officer Prohibited Activities Act), much of the reasoning behind the finding would likewise apply to Section 1, which is at issue here.
31. Accordingly, the State is required to charge and prove that Defendant had the mental state of knowingly violating 50 ILCS 105/1.

32. As a result, the State does not believe that it could not meet its burden to prove beyond a reasonable doubt that Defendant had the required mental state to have criminally violated 50 ILCS 105/1, and moves to *nolle prosequi* such charge.

33. Even if knowledge were not required to prove that Defendant committed a criminal violation of 50 ILCS 105/1, the State does not believe that the ends of justice are served by a felony conviction for an unknowing violation of 50 ILCS 105/1 under the facts and circumstances presented.

**Count II
(Unlawful Participation)**

34. Count II of the Bill of Indictment charges the Defendant with unlawful participation in a public contract in violation of 720 ILCS 33E-17.

35. In particular, it is alleged that, on or about January 7, 2023, Defendant violated this criminal statute by being affiliated with both Shelby County and Rose Township, and receiving money through a contract with Rose Township with the intent to defraud the unit of local government.

36. 720 ILCS 33E-17 provides, in relevant part, as follows:

“Whoever, being an officer, director, agent, or employee of, or affiliated in any capacity with any unit of local government or school district participates, shares in, or receiving directly or indirectly any money, profit, property, or benefit through any contract with the unit of local government or school district, with the intent to defraud the unit of local government or school district is guilty of a Class 3 felony.”

37. 720 ILCS 5/33E-2 states in relevant part, as follows:

“In this Act:

(a) “Public contract” means any contract for goods, services or construction let to any person with or without bid by any unit of State or local government.

(b) “Unit of State or local government” means the State, any unit of state government or agency thereof, any county or municipal government or committee or agency thereof, or

any other entity which is funded by or expends tax dollars or the proceeds of publicly guaranteed bonds.”

38. The best indicator of legislative intent is the statutory language, given its plain and ordinary meaning. *Corbett v. Cnty. of Lake*, 2017 IL 121536, ¶ 30, 104 N.E.3d 389, 397. Words and sentences must be read in the context of the statute **as a whole and with every other section**. *Id.* In construing a statute, the primary objective is to ascertain and give effect to the legislature's intent. *Id.*
39. 720 ILCS 33E-17 was enacted through Public Act 90-800 and became effective on January 1, 1999.
40. The legislative history indicates that the original bill was proposed by the Cook County State’s Attorney’s Office, and was supported by Chicago public schools, to close certain loopholes regarding elimination of fraud regarding public contracts for a school district.
41. During the legislative process, the bill was amended to include units of local government, rather than only public contracts with school districts.
42. Once adopted, Public Act 90-800 created the following criminal offenses:
 - a. False statements on vendor applications (720 ILCS 33E-14);
 - b. False entries (720 ILCS 33E-15);
 - c. **Misapplication of funds** (720 ILCS 33E-16);
 - d. Unlawful participation (720 ILCS 33E-17);
 - e. Unlawful stringing of bids (720 ILCS 33E-18).
43. Accordingly, the clear legislative intent of 720 ILCS 33E-17 was to prohibit any person affiliated with a unit of local government or school district from participating in a public contract *with that same unit of local government* or school district, such that he or she

receives money, profit, property or benefit with the intent to defraud that unit of local government or school district.

44. In the instant case, Defendant was affiliated with two units of local government, namely Shelby County (as a County Board Member) and Rose Township (as a Rose Township Cemetery Board Member), as defined by 720 ILCS 33E-2(b).
45. The Bill of Indictment alleges that she received money through a contract with Rose Township with the intent to defraud.
46. The evidence in this case is that Defendant **received money** from Rose Township for her service as a Rose Township Cemetery Board Member, **which is the contract at issue.**
47. The basis for her “intent to defraud” was that Defendant received this money for her service when she was not allowed to hold the office.
48. Otherwise, there could be no possible “intent to defraud” under such circumstances, given that the Rose Township was well aware that it was paying Defendant, **along with all of its other Rose Township Cemetery Board Members, for their service.**
49. **Furthermore, Defendant’s service on the Rose Township Cemetery Board was done in full view of the public, and the amounts paid by the township to cemetery board members was likewise public.**
50. Due to the facts and circumstances, for the State to prove that Defendant had the “intent to defraud” Rose Township, the State would likewise be required to prove beyond a reasonable doubt that Defendant had knowledge that she wasn’t allowed to hold the office of Rose Township Cemetery Board Member.

51. As a result, the State does not believe that it could not meet its burden to prove beyond a reasonable doubt that Defendant had the intent to defraud and thereby violated 720 ILCS 33E-17, and moves to *nolle prosequi* such charge.

WHEREFORE, the People of the State of Illinois, by and through Aaron C. Jones, Special Prosecutor, grant this motion and enter an Order of Nolle Prosequi herein, and for any and other relief as the Court deems just and equitable.

Respectfully submitted,

By: 
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record, by enclosing the same in an envelope addressed to such attorney at their address as disclosed by the pleadings of record herein, with postage prepaid, and by depositing said envelope in a U.S. Post Office mail box in Effingham, Illinois, or by HAND DELIVERY or by electronic filing on the 23rd day of December, 2024.

Mona R. Daulton