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**IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA**

DAVID A. TAYLOR,

Plaintiff/Appellant,

**CASE NO.: 16-2018-CA-004596-XXXX-MA
DIVISION: CV-F**

v.

**MIKE HOGAN, in his official capacity as
SUPERVISOR OF ELECTIONS,
DUVAL
COUNTY, FLORIDA,**

Defendant/Appellee.

_____ /

NOTICE OF APPEAL

NOTICE IS GIVEN that David A. Taylor, by and through counsel, appeals to the First District Court of Appeal of the State of Florida the final Order Denying Petition for Writ of Mandamus and Complaint for Declaratory Relief in the above-captioned matter dated August 21, 2018, of the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. The nature of the order is a final order denying relief by Plaintiff against Defendant for a writ of mandamus and for declaratory relief related to the failure of Defendant to provide notice of qualifying in an election for public office.

Respectfully submitted,

/s/ Neil L. Henrichsen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system, which will automatically send email notification of such filing to the attorneys of record on this 4th day of September, 2018.

s/ Neil L. Henrichsen
Neil L. Henrichsen

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2018-CA-004596

DIVISION: CV-F

DAVID A. TAYLOR,
Petitioner / Plaintiff,

v.

MIKE HOGAN, in his official capacity
as SUPERVISOR OF ELECTIONS,
DUVAL COUNTY, FLORIDA
Respondent / Defendant.

**ORDER DENYING PETITION FOR WRIT OF MANDAMUS
AND COMPLAINT FOR DECLARATORY RELIEF**

This matter comes before this Court on Petitioner's "Petition for Writ of Mandamus and Complaint for Declaratory Relief," filed on July 12, 2018.

PETITION FOR WRIT OF MANDAMUS

Petitioner seeks a writ of mandamus compelling the Supervisor of Elections of Duval County, Florida ("Supervisor") to reopen the qualifying period for the vacancy in the City Council seat for the City of Jacksonville, District 12. Petitioner alleges the Supervisor violated section 100.141, Florida Statutes (2018), by failing to provide proper notice of a special election for the District 12 vacancy. Pursuant to subsection (2) of that statute, the Department of State "shall prepare a notice stating what offices are to be filled in the special election," while subsection (3) delineates how the supervisor of elections will publish notice of the election:

The supervisor shall have the notice published two times in a newspaper of general circulation in the county at least 10 days prior to the first day set for qualifying for office. If such a newspaper is not published within the period set

forth, the supervisor shall post at least five copies of the notice in conspicuous places in the count not less than 10 days prior to the first date set for qualifying.

§ 100.141(3), Fla. Stat. (2018).

“In order for a court to issue a writ of mandamus, a petitioner ‘must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him.’ ” Holcomb v. Dep’t of Corrections, 609 So. 2d 751, 753 (Fla. 1st DCA 1992). “[T]he extraordinary writ of mandamus is not used to establish the existence of an enforceable right, ‘but rather only to enforce a right clearly and certainly established in law.’ ” Walters v. State, 905 So. 2d 974, 976 (Fla. 1st DCA 2005) (quoting Fla. Caucus of Black State Legislators v. Crosby, 877 So. 2d 861, 863 (Fla. 1st DCA 2004)). Mandamus relief is not warranted when a statute may reasonably be interpreted as neither creating a right nor imposing a duty. Sancho v. Janos, 715 So. 2d 382, 385 (Fla. 1st DCA 1998).

The Court finds that Petitioner is not entitled to mandamus relief because section 100.141, Florida Statutes (2018), does not apply to all special elections held in Florida, but only to those special elections called by the Governor. This interpretation of the statute is supported by the text of the statute itself:

Whenever a special election is required to fill any vacancy in office, the Governor, after consultation with the Secretary of State, shall issue an order declaring on what day the election shall be held and deliver the order to the Department of State.

§ 100.141(1), Fla. Stat. (2018). Further, in one of the few opinions referencing section 100.141, the Florida Supreme Court noted that not all “special elections” refer to special elections “held under a proclamation of the governor.” See Bailey v. Van Pelt, 82 So. 789, 793 (Fla. 1919).

Most importantly though, the election code itself rejects Petitioner’s argument because it clearly defines what types of special elections are “special elections” while also providing

procedures for special elections which fall outside of the statutory definition. The election code defines a special election as a “special election called for the purpose of voting on a party nominee to fill a vacancy in the national, state, county, or district office,” § 97.021(34), Fla. Stat. (2018), and only mandates a “special election” under four distinct circumstances:

A special election or special primary election shall be held in the following cases:

- (1) If no person has been elected at a general election to fill an office which was required to be filled by election at such general election.
- (2) If a vacancy occurs in the office of state senator or member of the state house of representatives.
- (3) If it is necessary to elect presidential electors, by reason of the offices of President and Vice President both having become vacant.
- (4) If a vacancy occurs in the office of member from Florida of the House of Representatives of Congress.

§ 100.101, Fla. Stat. (2018). A local election to fill a municipal vacancy does not fall within the ambit of either sections 97.021(34) or 100.101.

Additional provisions of the election code, however, do specifically refer to other types of special elections, and this Court is required to interpret the election code in a way that harmonizes the statutes. Fla. Dept. of State, Div. of Elections v. Martin, 916 So. 2d 763, 768 (Fla. 2005) (“The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature’s intent.” (citing Forsythe v. Longboat Key Beach Erosion Control Dist., 605 So. 2d 452, 455 (Fla. 1992)). Section 100.342, Florida Statutes (2018), addresses what notice must be provided in “any special election or referendum not otherwise provided for,” while section 100.151, Florida Statutes (2018), specifically addresses notice in special elections called by local governing bodies. Both of these statutes clearly contemplate

special elections other than those called by the Governor, and, when both a general statutory provision and a specific statutory provision could both apply, this Court must apply the more specific provision. See generally Parker v. Baker, 499 So. 2d 843, 845 (Fla. 2d DCA 1986) (“[I]n . . . circumstances in which each of two different legislative enactments generally apply but only one specifically applies, the specific governs over the general.”) Because the election code contains provisions for special elections not called by the Governor while also delineating notice requirements for such elections, this Court finds that section 100.141 does not apply to the upcoming special election.

Even if this Court were to find that the Supervisor failed to provide Petitioner with the requisite notice, Petitioner would still not be entitled to relief. Mandamus relief is only appropriate when the duty to be performed is purely ministerial. Miami-Dade Cty. Bd. Of Cty. Com’rs v. An Accountable Miami Dade, 208 So. 3d 724, 730-31 (Fla. 3d DCA 2016). “A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” Town of Manalpan v. Rechler, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) (citing Solomon v. Sanitarians’ Registration Bd., 155 So. 2d 353 (Fla. 1963)). Assuming *arguendo* that the Supervisor had a purely ministerial duty to provide notice of the qualifying period, Petitioner has failed to demonstrate a legal authority which would allow for the Supervisor to re-open the qualifying period and set a new special election. See generally Republican State Executive Comm. v. Graham, 388 So. 2d 556, 559 (Fla. 1980) (“Because the dictates of the statutes and cases are unambiguous, *the Governor* has a clear legal duty to call a special primary election.” (emphasis added)).

As Petitioner correctly notes, the Jacksonville Code of Ordinances delineates how the City Council of Jacksonville shall resolve vacancies in the Council. Jacksonville, Fl., CODE OF

ORDINANCES § 350.103 (2018).¹ The Supervisor neither calls for elections nor establishes the qualifying period; the City Council does. Id. Thus, this Court cannot order the Supervisor to perform a duty he has no legal authority to perform. Dance v. City of Dania, 114 So. 2d 697, 700 (Fla. 2d DCA 1959) (“It is axiomatic that mandamus will not be granted to compel performance of an act that the respondent is under no legal duty to perform, and that the law has not authorized him to do so.” (citing State ex rel. Burr v. Jacksonville Terminal Co., 89 So. 641 (Fla. 1921)).

Finally, the Court cannot grant Petitioner the relief he seeks because there would simply be no time for the Supervisor to comply with any order or writ issued by this Court:

But it is not necessary, nor perhaps appropriate, for us to here determine the question above referred to, because the answer filed by the town clerk, as well as the facts stated in the petition, show that it is now too late for the town clerk to effectively and legally carry out the commands of the alternative writ, as the election has been called for November 5, 1935, which at this writing (October 21, two days after writ granted and return filed) is only fifteen days off, whereas section 11 of said chapter 6940 provides that the clerk of the council ‘shall have said proposed charter amendments, together with a notice of the election, published in a newspaper published in such city or town once each week for four successive weeks next preceding said election, the first publication thereof to be not less than twenty-five days prior thereto,’ etc. To obtain legally effective action under chapter 6940, its procedural requirements must be complied with.

It is well settled that the courts will not, by mandamus, command an officer to perform a futile and nugatory act; nor one which he has not the legal power to perform at the time the petition is filed or the writ granted.

It appearing that there is not, under the statute, sufficient time remaining for the publication and posting required to be done by the town clerk by section 11 of chapter 6940, peremptory writ will be denied and the alternative writ quashed.

State ex rel. Walker v. Best, 163 So. 696 (Fla. 1935). As of the date of this Order, early voting has already begun in Duval County for the primary election in question, and only a matter of

¹ Jacksonville’s Code of Ordinances may be found available online at: https://library.municode.com/fl/jacksonville/codes/code_of_ordinances

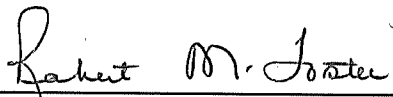
days exists until the primary election itself. Petitioner has not requested an injunction halting the election, and it would be impossible for candidates to qualify for an election which is currently underway. Accordingly, Petitioner is not entitled to relief.

COMPLAINT FOR DECLARATORY RELIEF

Petitioner also seeks a declaration that the Supervisor of Elections failed to provide proper notice of the election. "The purpose of the declaratory judgment statute is to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations, and it should be liberally construed." Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991) (citing § 86.101, Fla. Stat. (1989)). For the reasons stated above in ruling on his Petition for Writ of Mandamus, this Court finds that Petitioner is not entitled to declaratory relief.

ORDERED that Petitioner's "Petition for Writ of Mandamus and Complaint for Declaratory Relief," filed on July 12, 2018, is hereby **DENIED**.

DONE in Jacksonville, Duval County, Florida on August 21, 2018.



ROBERT M. FOSTER
CIRCUIT COURT JUDGE

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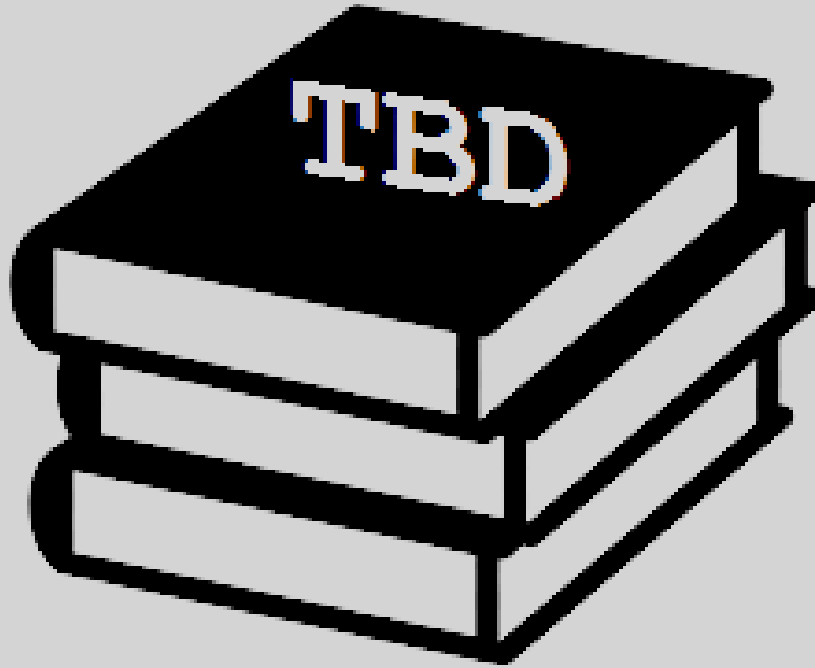
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