

Overton v Town of Southampton

2007 NY Slip Op 34425(U)

February 28, 2007

Supreme Court, New York County

Docket Number: 11492/2006

Judge: Paul J. Baisley

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Short Form Order

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

PRESENT:**HON. PAUL J. BAISLEY, JR., J.S.C.**-----X
JAMES P. OVERTON,

Plaintiff,

-against-

TOWN OF SOUTHAMPTON, THE
DEPARTMENT OF CIVIL SERVICE/HUMAN
RESOURCES OF THE COUNTY OF SUFFOLK
and THE NEW YORK STATE DEPARTMENT OF
CIVIL SERVICE,

Defendants.
-----X**PLAINTIFF'S ATTORNEY:**HAMBURGER, MAXSON, YAFFEE, WISHOD,
KNAUER & ROTHBERG, LLPBy: Lane T. Maxson, Esq.
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INDEX NO.: 11492/2006

MOTION DATE: 10/19/2006

MOT. NO.: 011 MG - CAS DISP
012 MD**DEFENDANTS' ATTORNEYS:**

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By: Vincent Toomey, Esq.

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Upon the following papers numbered 1 to 8 read on this motion and cross-motion for summary judgment: Notice of Motion 1; Affirmation 2 and supporting papers; Memorandum of Law 3; Notice of Cross-motion 4 and supporting papers; Memorandum of Law 5; Affirmation in Support of Motion and in Opposition to Cross-motion 6 and supporting papers; Memorandum of Law 7; Reply Affirmation 8 and supporting papers; it is

ORDERED that the motion (motion sequence no. 011) of defendant TOWN OF SOUTHAMPTON for an order granting the defendant judgment as a matter of law and dismissing the verified complaint, and declaring that Town of Southampton Local Law No. 9 of 2006 is legal in all respects, was appropriately and lawfully adopted, and is not violative of any other provision

of law, is granted; and it is further

ORDERED that the cross-motion (motion sequence no. 012) of plaintiff for an order pursuant to CPLR R. 3212 granting summary judgment in favor of plaintiff on his declaratory judgment action declaring that Chapter 19 of the Town Code of Southampton, adopted February 14, 2006, is ineffective and void, is denied.

On February 14, 2006, the Town Board of the Town of Southampton adopted a local law (Local Law No. 9 of 2006) that added new Chapter 19 to the Code of the Town of Southampton. Local Law No. 9, assertedly adopted pursuant to the provisions of the Municipal Home Rule Law, purported to constitute the Town of Southampton Police Department as a department of town government and to create the position of police commissioner to act as chief administrative officer of the police department. The local law stated that it was expressly intended to supersede the provisions of Town Law §150(2) by substituting the position of police commissioner for the board of police commissioners provided for therein. Plaintiff JAMES P. OVERTON, the chief of police of the Town of Southampton Police Department, thereafter commenced this action for a declaratory judgment pursuant to CPLR §§3001 and 3017(b) declaring that Chapter 19 of the Code of the Town of Southampton is ineffective and void. After issue was joined, both plaintiff and the defendant Town of Southampton moved for summary judgment. It appearing that the parties agree that there are no material factual issues in dispute and that the sole issues to be determined are questions of law, the matter appears to be ripe for summary judgment. *Spilka v. Town of Inlet*, 8 A.D.3d 812, 778 N.Y.S.2d 222 (3d Dept. 2004).

Plaintiff has asserted three grounds for his argument that Chapter 19 should be declared null and void. First, plaintiff alleges that Chapter 19 violates Municipal Home Rule Law §22 because it lacks “definiteness and explicitness” with respect to which provisions of the Town Law it actually supersedes. Municipal Home Rule Law §22(1) provides that

“In adopting a local law changing or superseding any provision of a state statute...the legislative body shall specify the chapter or local law or ordinance, number and year of enactment, section, subsection or subdivision, which it is intended to change or supersede, but the failure to so specify shall not affect the validity of such local law.”

Pursuant to Town Law §150(2), a town board is authorized to establish a three-person board of police commissioners' or to designate the town supervisor to serve as police commissioner. The statute further provides that when a town board appoints a board of police commissioners or designates the town supervisor as police commissioner, such board or commissioner “shall have and exercise all the powers relative to police matters conferred upon the town board pursuant to this article.”

New Chapter 19 of the Town of Southampton Code, at §19-6, entitled “Supersession,” provides that “[p]ursuant to §10(1)(d)(3) of the Municipal Home Rule Law, this Local Law is expressly intended to supersede the provisions of Town Law §150(2) by substituting the position

¹ Comprising either three appointed “electors” of the town, or one appointed “elector” and two designated town board members.

of Police Commissioner for the Board of Police Commissioners as mentioned therein.” In addition, the local law provides, at §19-4(B),² that “[t]he Commissioner shall have such powers and shall execute such duties as would otherwise be exercised by a Board of Police Commissioners as specified in Town Law §150(2).” The local law specifically identifies the statutory provision that it intends to supersede, and plainly reflects the town board’s specific intent to create the position of a single police commissioner in lieu of a board of police commissioners, and to imbue that position with all of the power relating to police matters that the town board currently enjoys. Contrary to plaintiff’s assertions, the submissions establish that Chapter 19 substantially complies with Municipal Home Rule Law §22 and is not vague and indefinite as to which provisions of the Town Law it actually supersedes. *Cf.*, *Kamhi v. Yorktown*, 74 N.Y.2d 423, 548 N.Y.S.2d 144 (1989).

Plaintiff also alleges that Chapter 19 violates Town Law §150(2) because the powers granted to the police commissioner are not powers that have been expressly conferred upon the town board by Article 10 but rather are powers that are required to be exercised by the chief of police. Plaintiff’s argument is without merit. Under the provisions of Town Law Article 10, it is the town board that is responsible for the establishment, management and administration of the town’s police department, and the board is given broad authority to “make, adopt and enforce rules, orders and regulations for the government, discipline, administration and disposition of the police department and of the members thereof.” Town Law §154. The town board is also granted specific authority to, *inter alia*, determine promotions of officers and members of the police department (Town Law §152); to establish requirements for physical examinations of members of the police department (Town Law §154-a); to adopt and make rules and regulations for the examination, hearing, investigation and determination of disciplinary charges against members of the department and to punish offenders (Town Law §155); and to appoint “special policemen” (Town Law §158). With the exception of §157, which imposes certain personnel record-keeping requirements, nothing in Article 10 specifically addresses the duties and powers of a chief of police. Indeed, the duties and powers of the Town of Southampton chief of police derive in substantial part from rules and regulations promulgated by the town board (Affirmation of Vincent Toomey, Esq., Exhibit “E”) pursuant to its broad authority over police matters under Article 10. Accordingly, contrary to plaintiff’s argument, the submissions establish that the town board has not delegated to the police commissioner any authority that it does not possess, and has not given the police commissioner any powers and duties that are specifically and irrevocably arrogated by Article 10 to the chief of police alone.

Finally, plaintiff alleges that Chapter 19 impermissibly exceeds the scope of powers provided under Article 10 of the Town Law and overrides the legislative intent of Civil Service Law §58(1-c) because it usurps the duties and responsibilities of the police chief established pursuant thereto. That argument is also wholly without merit. Civil Service Law §58(1-c) provides that “any political subdivision maintaining a police department serving a population of one hundred fifty thousand or less and with positions for more than four full-time police officers, shall maintain the office of chief of police.” Section 58(1-c) does not purport to prescribe the duties of a chief of police, does not mandate that the chief of police be the highest ranking official

² The text of the local law annexed as Exhibit “C” to the Affirmation of Vincent Toomey contains two sections identified as §19-4. The first, to which the Court is referring herein, is labeled “Police Commissioner Established; powers and duties,” and the second is titled “Powers of the Supervisor.”

in a police department, and does not prohibit municipalities from reorganizing a police department to impose a higher ranking office in the chain of command. *Petri v. Milhem*, 139 A.D.2d 652, 653, 527 N.Y.S.2d 291, 292 (2d Dept. 1988) (“[n]othing in this law prohibits a local government from making its chief of police responsible to other elected or appointed officials”).

Moreover, Town Law §150 appears to expressly contemplate concomitant offices of police commissioner and police chief. Town Law §150(1) sets forth the authority of a town board to establish a police department and appoint a chief of police. Pursuant to Town Law §150(2), a town board that has established such a police department pursuant to Town Law §150(1) is authorized to establish a board of police commissioners or to appoint the town supervisor as the sole police commissioner. Chapter 19 appears to be fully consistent with statutory scheme of Town Law §150, as it expressly contemplates that the two offices will coexist, with the chief of police reporting to the police commissioner. Town Code §19-1.

Plaintiff’s reliance on Suffolk County Civil Service Specification No. 5030, which outlines the responsibilities and typical work activities of a chief of police in general terms, is misplaced. Plaintiff has cited no authority to suggest that the civil service specification, which reflects that a police chief “works under the general direction of a town or village board,” is a mandatory definition that precludes the performance of similar duties by a higher ranking officer such as a police commissioner.

In light of the foregoing, the Town of Southampton’s motion for summary judgment is granted, plaintiff’s cross-motion for summary judgment is denied, and it is declared that Town of Southampton Local Law No. 9 of 2006 is legal in all respects, was appropriately and lawfully adopted, and is not violative of any other provision of law.

Settle judgment.

Dated: February 28, 2007

HON. PAUL I. BAISLEY, JR.
J.S.C.