



IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

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In Re: Initiative Petition filed Sept. 7, 2008,)
KAREN SHANDORF AND PATTY HAZLEWOOD,)
)
Plaintiffs,)

vs.)

No. CJ-2009-3

WANDA CALVERT, CITY CLERK/TREASURER,)
CITY OF GUTHRIE, AND CHARLES BURTCHER,)
MAYOR OF THE CITY OF GUTHRIE, OKLAHOMA,)
)
Defendants.)

This matter appears before the Court for non-jury trial pursuant to the Plaintiff's request to submit their Initiative Petition to put to a vote of the citizens of Guthrie that the changes of utility rates be placed on a ballot for decision of the citizens of Guthrie.

Plaintiffs appeared with their attorney, Chris Harper. The Defendant appeared through its attorney, Randel Shadid. The Court heard testimony of the witnesses, received evidence from the parties, had the attorneys provide proposed findings of fact and conclusions of law and took the matter under advisement.

The Court hereby finds as follows:

FINDINGS OF FACT

1. Plaintiff's submitted an Initiative Petition which requested that an amendment to the Guthrie City Charter regarding the changing of utility rates be place on the ballot for decision by the people of Guthrie.
2. Defendants alleged the Petition was insufficient because a ballot title was not filed at or before the time the Petition was filed with the City Clerk and that the issue sought to be placed on the ballot was an administrative matter, not a legislative matter, and was prohibited by Oklahoma law from being addressed by initiative petition.
3. Municipalities have the right to enact statutes or charter provisions that govern the exercise of the powers of initiative and referendum. The City of Guthrie has done that by Section 10-40 through 10-50 of the Guthrie City Code.

4. The City of Guthrie has established the Guthrie Public Works Authority, an Oklahoma Public Trust pursuant to *Oklahoma Statute 60 O.S. 2011 § 176.1 (eff July 1, 1992)* to run the operations of the cities utilities.

5. Testimony and evidence of the Defendant's witnesses was that having to put a vote to the citizens of Guthrie before there could be a utility rate increase would create an undue burden on the City so as to negate and destroy the city to engage in the business of municipal utility.

CONCLUSIONS OF LAW

1. The Court finds the Plaintiff's have complied with the Guthrie City ordinance as to a ballot title in that Guthrie City Code Sec1-42 provides that "a simple statement of the gist of the proposition shall be printed on the top margin of each signature sheet" thus complying with *Oklahoma Statute 34 O.S. § 3.1 and 11 O.S. § 15-102*.

2. The Court finds the Guthrie Public Works Authority is a public trust created to exist as a legal entity separate and distinct from the settlor and from the governmental entity that is its beneficiary. *60 O.S. § 176.1(A) (2)*.

3. *Title 60 O.S. 2011 § 176.1 (D)* further provides "Except where the provisions of the trust indenture or of Section 176 et seq. of this title, or of any other law written specifically to govern the affairs of public trust, expressly requires otherwise, the affairs of the public trust shall be separate and independent from the affairs of the beneficiaries in all matters or activities authorized by the written instrument creating such public trust including, but not limited to, the public trust's budget, expenditures, revenues and general operation and management of its facilities or functions; provided, that either the public trust or the beneficiary may make payment of money to the other unless prohibited by the written instrument creating such public trust or by existing state law".

4. The Court hereby finds that the initiative petition proposed by the Plaintiff's if passed by the citizens of Guthrie would create an undue burden on the city and public works authority so as to negate and destroy the power of the City to engage in the municipal utility. *In Re: Supreme Court Adjudication of Initiative Petitions in Norman Oklahoma, 1975 OK 36, 534 P.2d 3*.

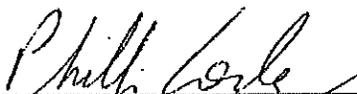
ORDER

Wherefore, the Court hereby finds based on the above findings of fact and conclusions of law that the Guthrie Public Works Authority is a separate entity to manage and control the utilities for the City of Guthrie. The Plaintiff's initiative petition, if passed, would cause such an undue hardship on the Authority and the City of Guthrie that it would destroy the cities ability to engage in the business of a utility. The Court finds by a

preponderance of the evidence in favor of the Defendant's and the Plaintiff's petition is denied.

The clerk is directed to send a copy of this order to attorneys for the parties.

Dated this 1st day of October, 2013.



Phillip Corley, District Judge