

TWENTY-SECOND JUDICIAL DISTRICT COURT FOR THE  
PARISH OF ST. TAMMANY  
STATE OF LOUISIANA

NO. 2016-11530

DIVISION "J"

WARREN MONTGOMERY, IN HIS OFFICIAL CAPACITY AS DISTRICT  
ATTORNEY FOR ST. TAMMANY PARISH

VERSUS

ST. TAMMANY PARISH GOVERNMENT, BY AND THROUGH THE ST.  
TAMMANY PARISH COUNCIL; AND PATRICIA "PAT" BRISTER, IN HER  
OFFICIAL CAPACITY AS PARISH PRESIDENT

FILED: September 20, 2016

  
DEPUTY CLERK

JUDGMENT

This matter came before the Court for hearing on September 12, 2016 on the Exception of No Cause of Action filed by the Defendants, and cross Motions for Summary Judgment filed by Plaintiff and Defendants.

Present were Warren Montgomery and his counsel, James Percy and Edward Bergin.

Also present were Richard C. Stanley, Jennifer Thornton and Ross Lagarde representing the Defendants.

After hearing the argument of counsel, considering the pleadings and memoranda in support and applicable law, the Court ruled as follows:

The Exception of No Cause of Action filed by Defendants is hereby denied.

The Motion for Summary Judgment filed by the Plaintiff, Warren Montgomery, is hereby denied.

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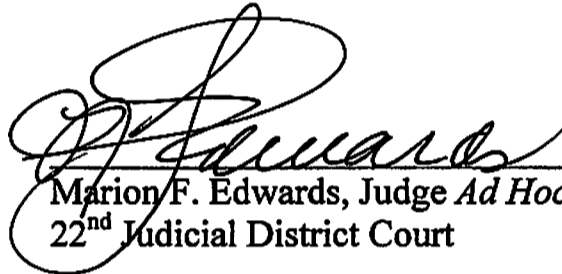
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The Joint Motion for Summary Judgment filed by Defendants is hereby granted.

Accordingly, the Court renders summary judgment in favor of the Defendants, Patricia P. Brister, in her official capacity as President of St. Tammany Parish and the St. Tammany Parish Government, through the Parish Council, and against the Plaintiff, Warren Montgomery, in his official capacity as District Attorney for St. Tammany Parish. The Petition for Declaratory Judgment and Injunctive Relief is dismissed.

Executed in Chambers, at Gretna, Louisiana on this 18<sup>t</sup> day of September, 2016.

  
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Marion F. Edwards, Judge *Ad Hoc*  
22<sup>nd</sup> Judicial District Court

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**FILED**

*September 20, 2016*



**DEPUTY CLERK**

**REASONS FOR JUDGMENT**

**PROCEDURAL HISTORY**

Warren Montgomery (Plaintiff), the duly elected District Attorney for St. Tammany Parish, filed a Petition for Declaratory Judgment and Injunctive Relief seeking a judgment recognizing his "legal rights, duties and obligations" as District Attorney to serve as general legal adviser to the St. Tammany Parish President, Patricia "Pat" Brister, the Parish Council, and "all parish boards and commissions."

Mr. Montgomery took office in January of 2015. Under Mr. Montgomery's interpretation of the law, the Charter and his duties, rights and responsibilities, it is the sole right and responsibility of his office to provide legal representation to Parish government. However, for about ten years prior to Mr. Montgomery's election, St. Tammany had operated a legal department separate from the District

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Attorney's office that it wished to continue. Talks with Parish officials did not resolve the issue, and ultimately Mr. Montgomery filed this action.

The petition also seeks injunctive relief to enjoin the Parish and the Parish President from "operating, controlling and maintaining a civil legal department which provides general legal services to the Parish", and a mandatory injunction for funding from the Parish.

The St. Tammany Parish Government, by and through the St. Tammany Parish Council and the Parish President Pat Brister (Defendants) are named as defendants in the petition that asserts Louisiana Law, as well as the St. Tammany Parish Home Rule Charter (Charter), mandates that the District Attorney act as the general legal advisor to the parish government, and that the parish is obligated to fund that representation. Mr. Montgomery asserts that the parish has maintained a separate legal department, not under the direction of the District Attorney, in violation of law and the Charter. It is Mr. Montgomery's position that this system of legal representation not only violates applicable law and the Charter, but also illegally usurps the power, responsibilities and duties of his office granted under the law, thereby subjecting him to possible accusations of malfeasance.

The Defendants jointly answered the petition raising several affirmative defenses based on Louisiana law and applicable sections of the Charter, and raising constitutional objections to the law as applied in this matter.<sup>1</sup> The Parish Council and President maintain that the legal department functioning in St. Tammany Parish has been in place for over ten years and is operating within the law and the Charter. The Defendants assert that the parish has lawfully opted out of the statutory mandate used by the District Attorney as the basis for the lawsuit. Further, the Defendants raise questions of conflicts of interest presented by the

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<sup>1</sup> The Attorney General was notified of the lawsuit and has filed a pleading defending the constitutionality of the statutory scheme. However, it is unnecessary to examine the constitutional claims for the disposition of this matter.

District Attorney's dual representation of both the Council and the President, and claim a fundamental right to choose their legal representative. The Defendants also filed Exceptions of No Cause/No Right of Action, Prematurity and Improper use of Summary Proceeding.

At a hearing on May 16, 2016, the Court denied the Exceptions of No Cause/No Right of Action, but reserved to the Defendants the right to re-urge these exceptions. The Court also granted the Exceptions of Prematurity and Improper use of Summary Proceeding challenging the claims for a preliminary injunction and denied a summary hearing, referring that claim to the trial on the merits. The Court further granted the Exception of Prematurity as to the claim for mandatory injunctive relief relating to funding, and that claim was dismissed without prejudice.

Subsequently, the St. Tammany Parish Council passed two ordinances relating to the issue of legal representation of both the Executive and Legislative branches of government. As a result of the passage of those ordinances, the Defendants filed an amended answer and re-urged the Exception of No Cause of Action. Both parties also filed Motions for Summary Judgment.

The Court conducted a hearing on September 12, 2016 and heard arguments on the Exception of No Cause of Action and the cross Motions for Summary Judgment, after which the matters were taken under advisement.

After full consideration of the pleadings and exhibits thereto, the relevant ordinances, and the extensive, well-reasoned arguments of all counsel, the Court hereby denies the Exception of No Cause of Action; denies the Motion for Summary Judgment filed by Plaintiff, Warren Montgomery; grants the Joint Motion for Summary Judgment filed by Defendants; and dismisses the Petition for Declaratory and Injunctive Relief for the reasons expressed herein.

## **DEFENDANTS' EXCEPTION OF NO CAUSE OF ACTION**

No cause of action is a peremptory exception that questions whether the law affords the plaintiff any remedy under the allegations of the petition.<sup>2</sup> The exceptor bears the burden of showing that no cause of action has been stated.<sup>3</sup> The correctness of conclusions of law is not conceded for the purposes of a ruling on an exception of no cause of action.<sup>4</sup> When trying the exception the court must look solely to the face of the petition and attached documents and presume all well-pleaded facts are true.<sup>5</sup> The court must make all reasonable inferences in favor of the nonmoving party, and must resolve any doubts in favor of the petition's sufficiency.<sup>6</sup> When a petition states a cause of action as to any ground or portion of a demand, the exception should be overruled.<sup>7</sup>

Taking the assertions on the face of the petition as true, the Court finds the Defendants have not met their burden to show that the well-pleaded facts in the petition do not state a cause of action for declaratory judgment. In the instant matter, the St. Tammany Parish District Attorney, Warren Montgomery, filed for declaratory judgment to define his responsibilities, rights and obligations to provide legal representation to the St. Tammany Parish Government. Mr. Montgomery objected to the legal representation system currently in use by the Parish and sought to exert his authority as sole legal representative of Parish government, claiming that right and responsibility as District Attorney. The petition states a cause of action for declaratory judgment and possible injunctive relief. Accordingly, the Court finds the Exception of No Cause of Action should be overruled.

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<sup>2</sup> *White v. State, Dept. of Public Safety and Corrections, Office of Motor Vehicles*, 569 So.2d 1001, 1002 (La.App. 1st Cir.1990).

<sup>3</sup> *City of New Orleans v. Bd. of Com'rs of Orleans Levee Dist.*, 93-0690 (La.7/5/94), 640 So.2d 237, 253.

<sup>4</sup> *Lambert v. Riverboat Gaming Enf't Div.*, 96-1856 (La. App. 1 Cir. 12/29/97), 706 So. 2d 172, 175, writ denied, 98-0297 (La. 3/20/98), 715 So. 2d 1221

<sup>5</sup> *City of New Orleans v. Bd. of Directors of Louisiana State Museum*, 98-1170 (La. 3/2/99), 739 So. 2d 748, 755

<sup>6</sup> *HPC Biologicals, Inc. v. UnitedHealthcare of Louisiana, Inc.*, 2016-0585 (La. App. 1 Cir. 5/26/16), 194 So. 3d 784, 792, reh'g denied (June 21, 2016)

<sup>7</sup> *Bayou Liberty Ass'n, Inc. v. St. Tammany Parish Council*, 2005-1228 (La.App. 1st Cir.6/9/06), 938 So.2d 724, 728.

## **MOTIONS FOR SUMMARY JUDGMENT**

Summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. The procedure is favored in the law and shall be construed to accomplish these ends.<sup>8</sup> After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.<sup>9</sup> The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.<sup>10</sup>

At the hearing the Court observed, and the parties agreed, that no issue of material fact remained to be decided leaving only issues of law to be considered. For reasons discussed *infra*, the Court finds that Defendants are entitled to summary judgment as a matter of law.

## **LAW AND ANALYSIS**

St. Tammany Parish is governed by a Home Rule Charter as permitted by the Louisiana Constitution Article 6, § 5 which provides in pertinent part as follows:

(A) Structure and Organization; Powers; Functions. Subject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter in accordance with this Section. The governing authority of a local governmental subdivision may appoint a

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<sup>8</sup> La. C.C.P. art. 966A (1),(2)

<sup>9</sup> La. C.C.P. art. 966A (3)

<sup>10</sup> La. C.C.P. art. 966D (1)

commission to prepare and propose a charter or an alternate charter, or it may call an election to elect such a commission.

(E) Structure and Organization; Powers; Functions. A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.

La. Const. Art. 6§ 6 provides that:

The legislature shall enact no law the effect of which changes or affects the structure and organization or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter.

Mr. Montgomery directs the Court's attention to two pertinent provisions in Louisiana law in his argument. First, La. Const. Art. 5§ 26(B) which provides:

Powers. Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law.

Second, La. R.S. 42:261 assigns additional duties to the District Attorney. That statute provides in pertinent part:

A. Except as provided by Subsection C of this Section or as otherwise provided by law, the district attorneys of the several judicial districts other than the parish of Orleans shall, ex officio and without extra compensation, general or special, be the regular attorneys and counsel for the parish governing authorities, parish school boards, and city school boards within their respective districts and of every state board or commission domiciled therein, the members of which, in whole or in part, are elected by the people or appointed by the governor or other prescribed authority, except the state boards and commissions domiciled at the city of Baton Rouge, and all boards in charge or in control of state institutions.

.....

D. (1) Except as otherwise permitted by this Section it shall be unlawful for any parish governing authority or state board or commission to retain or employ for any compensation whatever any attorney or counsel to represent it generally, or except as provided in R.S. 42:263, to retain or employ any special attorney or counsel for any compensation whatever to represent it in any special matter, or pay any compensation for any legal services whatever, provided that the board of commissioners of the port of New Orleans shall select its own attorney.



Also of relevance is La. R.S. 16:2 which directs the District Attorney to act as legal counsel for various local boards and commissions. Mr. Montgomery correctly points out that this statute imposes a strict duty upon him and states that;

The district attorneys who shall refuse or willfully fail to perform the duties required of them by the Section or willfully fail to render faithful and efficient services in this regard shall be deemed guilty of malfeasance and gross misconduct and be removed from office in the manner prescribed by law.<sup>11</sup>

However, the Defendants counter that a local government can opt out of this system of representation by the district attorney, thereby relieving the District Attorney of any duty under law to act as legal advisor. In that regard, La. R.S. 16:2 D provides:

Where a parish has adopted a charter for local self-government or other home rule charter and such charter provides for the employment of a parish attorney or a special attorney or counsel, the district attorney shall not be the regular attorney or counsel for such governing authority.

In the Joint Motion for Summary Judgment, the Defendants maintain they have opted out in accordance with the above since the inception of the current Charter in 2000. The Defendants also argue that forcing the Parish Council and the Parish President to use the same counsel will inevitably result in conflicts of interest since the executive branch and the legislative branch serve separate functions and are not always aligned on issues involving the governing of the parish. Defendants further assert their right to choose the legal representation that best serves the purpose of conducting the business, operations and functions of St. Tammany Parish. They argue unwanted legal representation cannot be thrust upon them.

The Defendants rely on two ordinances recently passed by the Council relating to the legal representation of both the executive and the legislative branches of

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<sup>11</sup> La. R.S. 16:2 C

parish government. One relates to the legal representation of the Council and the other to the legal representation of the President.

A careful review of the relevant sections of the St. Tammany Parish Charter is required in the determination of the legal issues to be resolved. The Charter provides that St. Tammany operates under a home rule charter<sup>12</sup> and establishes two branches of government, the executive (President) and the legislative (Council).<sup>13</sup> Section 2-10B authorizes the Council to hire, by ordinance, employees deemed necessary “to assist the council in carrying out its duties and responsibilities” and these employees serve at the “pleasure of the council.”

Section 3-01 gives the President “general executive and administrative authority over all departments, offices and agencies of the Parish government, except as otherwise provided by the charter.” Section 3-09 outlines the President’s duties and powers including the authority to “direct and supervise the administration of all departments, offices and agencies of Parish government.”<sup>14</sup> Additionally, section 4-01A provides that “all departments, offices and agencies shall be under the direction and supervision of the president”, and “shall be appointed by the president, subject to council approval, and shall serve at the pleasure of the president.”

Section 4-12A states that “(t)he president may propose to the council the creation, change, alteration, consolidation or abolition of parish departments, offices or agencies, and the reallocation of the functions, powers, duties and responsibilities of such departments, offices or agencies, including those provided for in this charter.” That section also authorizes the council to act on those proposals by ordinance<sup>15</sup>.

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<sup>12</sup> Charter Section 1-01

<sup>13</sup> Charter Section 1-02

<sup>14</sup> Charter Section 3-09 (3)

<sup>15</sup> Charter Section 4-12B

Finally, Section 1-05 gives the parish government the “right, power and authority to pass ordinances on all subject matters necessary, requisite or proper for the management of its affairs, and all other subject matter without exception, subject only to the limitation that the same shall not be inconsistent with the constitution or expressly denied by general law applicable to Parish government.”

When this lawsuit was filed Section 4-03 of that Charter read as follows:

**Section 4-03 Legal Department**

- A. The district attorney of the judicial district serving St. Tammany Parish shall serve as legal adviser to the council, president and all departments, offices and agencies and represent the Parish government in legal proceedings.
- B. No special legal counsel shall be retained by the Parish government except by written contract for a specific purpose approved by the favorable vote of a majority of the authorized membership of the council. Such authorization shall specify the compensation, if any, to be paid for such services.

Mr. Montgomery asserts the above section names the District Attorney as the sole and exclusive legal representative of all branches and departments of St. Tammany Parish government. The Defendants argue that a reasonable interpretation of the above section simply mandates that the District Attorney cannot refuse to represent the Parish when requested to do so by the Legal Department. That reading of the section has been in operation since the adoption of the Charter in 2000.

Since this lawsuit was filed, two ordinances were passed and became effective before the date of the hearing on the Motions for Summary Judgment. Ordinance Calendar No. 5638 establishes that the council deems it necessary “to have its own Council Attorneys to insure the nature, scope and sanctity of the attorney-client relationship which is so critical to the effective operation of Parish Government and to safeguard the public fisc...” Accordingly, the ordinance adds Section 2-035.00 Council Personnel to Chapter 2, Administration Article III, of the Charter. Part “c” of that new section states that:

The Council shall appoint one (1) or more attorneys as necessary Council staff members and who shall serve at the pleasure of the Council. The Council Attorney(s) shall (1) serve as legal advisor(s) to the Council, respective staff members, and boards and commissions established by Council, all as directed by the Council; (2) represent and/or direct representation for the Council in conjunction with Parish Government in legal proceedings; (3) represent boards and commissions established by the Council and as directed by the Council; and (4) co-administer Parish litigation with Parish President appointed attorneys and jointly represent the Parish Government with Parish President attorneys.

The second ordinance (Ordinance Calendar No. 5644) relates to legal representation of the Parish President and was submitted to the Council by the President in accordance with her authority under Section 4-12 of the Charter. That ordinance in part provides that:

8. The Legal Department. The President shall appoint an Executive Counsel who shall serve at the pleasure of the President. The Executive Counsel shall: (1) subject to the Council's approval pursuant to Home Rule charter Section 4-01(A), be the Director of the Legal Department; (2) direct the Legal Department and its respective staff members, including attorneys; (3) serve as legal adviser to the President, parish employees and all departments comprising Parish Administration, all as directed by the Parish President; (4) represent and/or direct representation for the Parish President and Parish Administration in conjunction with Parish Government in legal proceedings; and (5) co-administer with Council Attorneys all legal proceedings and litigation involving Parish Government and jointly represent the Parish Government with Council Attorneys in such proceedings. All attorneys in the Legal Department shall be Parish President appointed attorneys subject to Section 3-09 of the Home Rule Charter. The Legal Department shall include the Office of Risk Management. Said duties shall include, but not be limited to, any and all actions necessary to carry out the functions of the Department.

Pursuant to Home Rule Charter Section 4-03(A), the District Attorney of the judicial district serving St. Tammany Parish shall, upon the request of the Parish Government; (a) serve as legal adviser to any departments, offices, and agencies of the Parish Government, and (b) represent the Parish Government in legal proceedings; provided, however, that the District Attorney has no conflict of interest with respect to any such matter for which such a request is made.

Nothing herein shall alter or change the procedure for retaining special legal counsel as set forth in Home Rule Charter Section 4-03(B).

The Court finds that the above ordinances are determinative of this matter.

The Defendants wish to continue autonomously structuring, organizing and

managing the legal staff as it has for the past ten years. Parish officials do not wish to relinquish their right to choose who represents or advises them in legal matters, and rely solely and exclusively on the District Attorney's office. The ordinances make that clear. The substance and passage of the ordinances are within authority granted to Defendants under the Charter and applicable law and are binding.

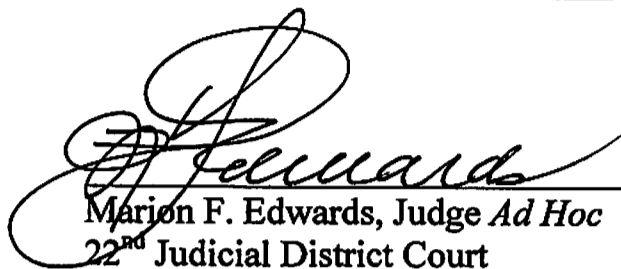
On a more practical note, there is obvious concern about the ability of the District Attorney's office and parish government officials to work together as a cohesive force for the betterment of the people of St. Tammany Parish after this lawsuit if the Parish were forced to accept the District Attorney as sole legal representative. With the filing of this action, the District Attorney has taken on an adversarial position to the Parish Council and the Parish President that presents a conflict of interest, not only in this current action but quite possibly in future actions. Disharmony and distrust would likely be the natural consequence of these proceedings putting a burden on both parties that would only make governing the Parish more difficult, and would not serve the citizens of St. Tammany Parish well.

Mr. Montgomery as the Plaintiff would bear the burden of proof at a trial on the merits. To prevail, he must show that the St. Tammany Parish government is operating a legal department that is in contravention of law and the Charter, and further that it the parish government is preventing him from performing his duties and exercising his power as the duly elected District Attorney. Given the ability of a local government to opt out of the statutory scheme set forth in La. R.S. 42:261 as provided for in R.S. 16:2, the rights and powers set forth in the Home Rule Charter, and the two pertinent ordinances passed within the power and authority of the Council, the Court finds that Mr. Montgomery will be unable to meet that burden.

Consequently, the Court finds the Plaintiff's Motion for Summary Judgment should be denied, Defendants' Motion for Summary Judgment should be granted,

and the Petition for Declaratory Judgment and Injunctive Relief should be dismissed.

Executed in Chambers, at Gretna, Louisiana on this 18<sup>th</sup> day of September, 2016.

  
Marion F. Edwards, Judge *Ad Hoc*  
22<sup>nd</sup> Judicial District Court