

ORIGINAL

FILED

07/09/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 19-0252

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 19-0252

IN RE THE MATTER OF:

JUSTICE OF THE PEACE KELLY
MANTOOTH,

Petitioner,

and

FERGUS COUNTY COMMISSIONERS
and CITY COMMISSION OF THE CITY
OF LEWISTOWN,

Respondents.

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ORDER

Fergus County Justice of the Peace Kelly Mantooth petitioned for a writ of supervisory control, seeking a ruling that, because there is only one justice's court in Fergus County, the Fergus County Commission and City of Lewistown lack statutory and constitutional authority to combine the city judge position with the justice of the peace position. We deemed Judge Mantooth's petition to be an original proceeding for declaratory judgment pursuant to M. R. App. P. 14(4) and granted the Fergus County Commission, the City of Lewistown, and the State of Montana time to respond to the petition. The Fergus County Commission and the City of Lewistown filed a joint response in opposition to the petition. The State of Montana also responded in opposition.

At issue is whether Fergus County lawfully combined the positions of City Judge for the City of Lewistown with Justice of the Peace for Fergus County under § 3-10-101, MCA. Judge Mantooth maintains that he was elected Justice of the Peace for the justice's court created by § 3-10-101(1), MCA, and that the only statutory authority for combining a city court and a justice court, found in § 3-10-101(4), MCA, applies only to justice's courts created under § 3-10-101(3), MCA. Alternatively, he argues that, in a county with

a single justice of the peace, requiring that justice of the peace to also assume the duties of a city court unconstitutionally encroaches upon citizens' right to a justice of the peace under Article VII, Section 5, of the Montana Constitution.

The respondents disagree substantively with Judge Mantooth's arguments. However, as a threshold matter, the State argues that this petition should be denied because it is not appropriate for declaratory judgment under M. R. App. P. 14(4). Rule 14(4) provides:

An original proceeding in the form of a declaratory judgment action may be commenced in the supreme court when urgency or emergency factors exist making litigation in the trial courts and the normal appeal process inadequate and when the case involves purely legal questions of statutory or constitutional interpretation which are of state-wide importance.

The State points out that Judge Mantooth offered no argument as to why this matter is appropriate for declaratory judgment under M. R. App. P. 14(4). The State argues that no urgent or emergency factors exist which would make the normal appeal process inadequate.

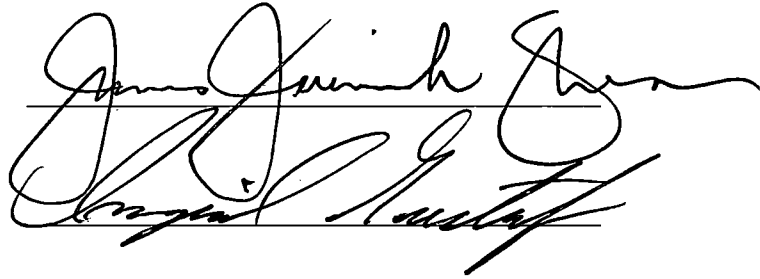
We agree that Judge Mantooth has not demonstrated that urgent or emergency factors exist which would make the normal appeal process inadequate in this case. In his petition, Judge Mantooth acknowledges that the combined position has existed in Fergus County since 1993, when the County had two Justices of the Peace. The combined position has continued with only one Justice of the Peace since 1998. Judge Mantooth first took office in 2015, and was re-elected to a second four-year term in 2018, during which time he has performed the duties of the combined position. Although Judge Mantooth alleges that, due to his recent objections to performing the City Judge duties, he has been threatened with termination, the respondents all deny such threats, noting that none of them have the authority to terminate Judge Mantooth since he is an elected official.

Since the criteria for original jurisdiction have not all been met, this Court cannot accept original jurisdiction of this matter. *See Hernandez v. Bd. of Cty. Comm'rs*, 2008 MT 251, ¶¶ 8-9, 345 Mont. 1, 189 P.3d 638.

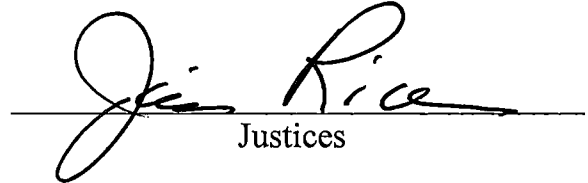
IT IS THEREFORE ORDERED that the petition for declaratory judgment is DENIED and DISMISSED.

The Clerk is directed to serve a copy of this Order on the Fergus County Attorney, the City Commission of the City of Lewistown, and the Montana Attorney General.

Dated this 9th day of July, 2019.


James Joseph Brown


Dik M. Salter


Jim Rice
Justices