

Restraining order stops naming new chief

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middletown

A preliminary injunction like the one granted on the Middletown police chief issue simply preserves the status quo until a final decision can be rendered, legal authorities said.

A temporary restraining order preventing the Middletown supervisors from naming a new police chief is another frivolous legal action that will force the township to waste more taxpayer money, Democratic board Chairman Chuck Thompson said.

Bucks County Judge Clyde Waite issued the order Tuesday that prevented the supervisors from voting on an ordinance that would have switched the township back to a police chief system from public safety director. The Democratic board majority had also indicated they planned to appoint acting Public Safety Director Patrick McGinty as the new police chief once the ordinance had passed.

Both actions were prevented until at least Dec. 8 by Waite's order, which was obtained by Republican supervisors-elect Patrick Mallon and Drew Kreiling. A hearing on the matter is scheduled for 9:30 a.m. Dec. 7 in Bucks County Courtroom No. 7.

Thompson compared the maneuver to the legal challenge brought by several Republicans, including Supervisor George Leonhauser, in 2008 challenging the vacancy board appointment of Democratic Supervisor Kathy Heuer.

While a county judge ruled the vacancy board violated the state Open Meetings, or Sunshine Law, by taking public comment only after voting to appoint Heuer, she was simply reappointed at another meeting ordered by the judge. Middletown was forced to spend more than \$60,000 in taxpayer money defending a legal action that essentially changed nothing, Thompson said.

"This is an improper use of the legal system by Kreiling and Mallon," said Thompson of Waite's restraining order. "They are trying to use the legal system as a sledgehammer to force their own way. This is another example of citizens forcing the township to spend money on what I consider frivolous lawsuits."

Mallon said he and Kreiling are simply trying to do what is right. Choosing a police chief should be a decision made by the new board when it takes office in January, said Mallon. Most township voters indicated that is their preference by voting to elect Republicans Mallon, Kreiling and Tom Gallagher on Nov. 3, Mallon added. The current board majority's intention to select a new police chief before leaving office is an affront to those voters, he said.

Thompson responded that it's the current board majority's responsibility to do what they feel is best for the township. That duty doesn't end just because it's the last few weeks in office for two of the three majority members, he added.

A temporary restraining order, also called a preliminary injunction, is a temporary remedy granted until a time when the party's dispute can be completely resolved, legal authorities said. People typically ask for this relief when they want some action by another party to stop immediately, they added.

"Whether or not the preliminary injunction is granted or denied has no effect on whether a final, permanent injunction will be issued," said Doylestown attorney John Benson.

"A preliminary injunction does not serve as a judgment on the merits of the case. It merely preserves the status quo until some future point in time."

Since a preliminary injunction is not the final word on the issue, a hearing must be scheduled quickly, usually within a week or two, Benson said.

He recently filed a preliminary injunction for a Carbon County client who owned a historic railway station. The county wanted to tear down the station to make way for a shopping center parking lot.

"We argued that a preliminary injunction was warranted as the wrecking crews were on site and would tear down the building within a day or so," Benson said.

During his long career as a Bucks County judge, District Attorney-elect Dave Heckler decided numerous preliminary injunctions. He said the law is clear about what a judge must find before granting one.

First, Heckler said, the judge must find that the relief that is requested is necessary to prevent irreparable harm. Second, that the injunction will restore the parties to the status quo, not change the situation and potentially make things worse.

"The whole purpose is to prevent irreparable harm," Heckler said.

Third, the judge has to find that greater harm will result from not granting the preliminary injunction than granting it. And, lastly, the plaintiff's reason for asking for the relief must be clear in the eyes of the judge.

"The law has to be clear on it," Heckler said.

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