

IN THE IOWA DISTRICT COURT IN AND FOR MAHASKA COUNTY

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| <p>MAHASKA COUNTY BOARD OF SUPERVISORS, Plaintiff, v. MAHASKA COUNTY EMERGENCY MANAGEMENT COMMISSION, and MAHASKA COUNTY E911 SERVICE BOARD, Defendants.</p> | <p>CASE NO. EQEQ088960</p> <p>RULING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</p> |
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This case came before the Court for hearing on January 15, 2021, regarding Plaintiff's Motion for Summary Judgment filed August 24, 2020. Mahaska County Board of Supervisors appeared by Supervisor Mark Groenendyk with attorneys Michael Reck and Christopher Jessen. The Mahaska County Emergency Management Commission appeared by its Director, Jamey Robinson, and by attorney Michael Mahaffey. The Mahaska County E911 Service Board appeared by attorney Gayla Harrison. The hearing was held by GoToMeeting by agreement of the parties and was reported. The Court has heard the arguments of the parties, reviewed the filings, and considered the applicable law, and now makes the following:

FINDINGS OF FACT

The Court finds the following facts relevant and undisputed. The Mahaska County Board of Supervisors (Supervisors) created the Mahaska County E911 Service Board (Service Board) in 1988 pursuant to Iowa Code section 34A.3, by a 28E agreement. A second 28E agreement was executed in 1991, which serves as the Service Board's operating agreement. In 2015, a new 28E agreement was executed, but was later invalidated by the Court upon finding that Service Board's voting membership did not comply with statute in Mahaska County EQEQ088637. In response, a

new 28E agreement was executed on January 2, 2020 by the Service Board and the Mahaska County Emergency Management Commission (Commission). The 2020 agreement provided that the Commission would assume responsibility for emergency response communications services from the Service Board.

CONCLUSIONS OF LAW

Summary judgment is proper only when the entire record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citing *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996)); Iowa R. Civ. P. 1.981(3). An issue of fact is material when a dispute exists that may affect the outcome of the suit, given the applicable governing law. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992) (citing *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988)). The requirement that the issue be genuine “means the evidence is such that a reasonable jury could return a verdict” for the party resisting the motion. *Id.* (citing *Hike*, 427 N.W.2d at 159). In determining whether a motion for summary judgment should be granted, the court ““must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of the case.”” *Id.* (quoting *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987)).

The party requesting summary judgment bears the burden of proof. *Clinkscales v. Nelson Sec., Inc.*, 697 N.W.2d 836, 841 (Iowa 2005) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004)). “A court entertaining a motion for summary judgment must view the evidence in the light most favorable to the nonmoving party.” *Id.* (citing *Harris*, 679 N.W.2d at 677). “Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions.” *Id.* (citing

Walker Shoe Store, Inc. v. Howard's Hobby Shop, 327 N.W.2d 725, 728 (Iowa 1982)). The nonmoving party should be afforded every legitimate inference that can be reasonably deduced from the evidence. *Id.* (citing *Cent. Nat'l. Ins. Co. v. Ins. Co. of N. Am.*, 522 N.W.2d 39, 42 (Iowa 1994)). However, “[t]he resistance must set forth specific facts constituting competent evidence to support a prima facie claim.” *Hoefler v. Wisconsin Educ. Ass’n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991) (citing *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989); *Prior v. Rathjen*, 199 N.W.2d 327, 330 (Iowa 1972)). The adverse party “may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.” Iowa R. Civ. P. 1.981(5).

Speculation is not sufficient to generate a genuine issue of fact. *Walls v. Jacob North Printing Co.*, 618 N.W.2d 282, 284 (Iowa 2000). “A fact issue is generated if reasonable minds can differ on how the issues should be resolved, but if the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper.” *Uhl v. City of Sioux City*, 490 N.W.2d 69, 74 (Iowa App. 1992).

ANALYSIS

The Court’s analysis begins with the issue of whether an entity, created by a 28E agreement, may then enter into 28E agreement. The parties agree that the matter should be heard by the Court, as there are no material facts in dispute. The Court, finding the issue is one solely of law, concurs that summary judgment is proper.

Unlike private contracts that are governed primarily by the common law, agreements made under 28E are subject to the express provisions of the statute enacted by the legislature. As such,

the Court turns to the text of Iowa Code chapter 28E. The stated purpose of chapter 28E is to “permit state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to cooperate in other ways of mutual advantage.” Iowa Code § 28E.1. Section 28E.3 allows a public agency of the state to exercise its powers, privileges, or authority jointly with any other public agency of the State of Iowa, of another state, or of the United States. To that end, a public agency may also enter into an agreement with another public or private agency for the joint action. Iowa Code § 28E.4.

In applying chapter 28E, the Court is to construe it liberally to promote its purpose of permitting efficient joint use of governmental power. Iowa Code § 28E.1. However, “if the text of a statute is plain and its meaning clear” the court “will not search for a meaning beyond the express terms of the statute or resort to rules of construction.” *Matter of Estate of Franken*, 944 N.W.2d 853, 859 (Iowa 2020) (quoting *In re Estate of Voss*, 553 N.W.2d 878, 880 (Iowa 1996) (internal quotation marks omitted)). Only public or private agencies may enter into a 28E agreement pursuant to section 28E.4. A public agency is defined as “any political subdivision of this state; any agency of the state government or of the United States; and any political subdivision of another state” or “any federally recognized Indian tribe.” Iowa Code § 28E.2. A private agency is “an individual and any form of business organization authorized under the laws of this or any other state.” *Id.*

The entity at issue here is the Service Board, which was created by a 28E agreement pursuant to Iowa Code 34A.3. Defendants have admitted, at paragraphs 61-66 of their Resistance to Plaintiff’s Statement of Undisputed Material Facts, that the Service Board is not an individual, private business organization, political subdivision of Iowa or any other state, agency of Iowa or of another state or of the United States, or a federally recognized Indian tribe. By their own admissions, the Service Board is not a public or private agency.

Defendants argue that the Service Board is a legal entity and operates in a quasi-governmental function, which grants it the authority to enter into a 28E agreement. Defendants do not argue the statute is ambiguous or that its meaning is unclear. As such, the Court need not look beyond the plain language of the statute. The authority to enter into a 28E agreement was granted by the legislature only to public and private agencies as defined in the statute. To find the Service Board possesses such authority would be to contravene the statute and the clear intent of the legislature. Therefore, the Court finds that the Service Board lacked authority to enter into a 28E agreement.

The power to contract under chapter 28E comes from the legislature, and a contract entered into in violation of the legislative's directive regarding that power is void. *Madrid Lumber Co. v. Boone Cnty.*, 121 N.W.2d 523 (Iowa 1963). With the Service Board lacking the authority to enter into the 2020 agreement, the Court determines the agreement is void. As this finding is dispositive, the Court need not reach the other arguments made by Plaintiff.

RULING

IT IS THEREFORE ORDERED, for the above stated reasons, that Plaintiff's Motion for Summary Judgment is granted.



State of Iowa Courts

Case Number
EQQ088960

Case Title
MAHASKA COUNTY BOARD V. MAHASKA COUNTY
EMERGENCY
OTHER ORDER

Type:

So Ordered

Crystal S. Cronk, District Court Judge
Eighth Judicial District of Iowa

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