

STATE OF MISSOURI)
) SS.
COUNTY OF MARION)

EFILED 6/28/2022

**IN THE CIRCUIT COURT OF MARION COUNTY, MISSOURI
AT HANNIBAL, MISSOURI**

STEPHAN FRANKE)
Plaintiff)
)
vs.) Cause No. 22MR-CV00440
)
)
CITY OF HANNIBAL)
Defendant)

JUDGMENT

Petitioner and counsel Bednar and Maune appeared, and the City appeared by counsel Volkert and Jones to present evidence and argue Petitioner’s request for an injunction and declaratory judgment related to impeachment proceedings brought against him by Respondent. The Court now rules as follows:

1. The Court finds that Respondent has the power of impeachment. The Court considered Petitioner’s argument that the Missouri Constitution limits impeachment power in Article VII, Section 2 to the Missouri House of Representatives. However, the Court reads Section 2 in light of the remainder of Article VII. Section 1 refers to impeachment of executive officials of the State, and judges of the Supreme Court, Appellate Courts, and Circuit Courts. Section 4 provides that officers not subject to impeachment pursuant to Article VII shall be subject to removal from office in a manner provided by law.

Section 77.340, RSMo allows third class cities to “pass ordinances regulating the manner of impeachment and removals.” Section 79.240, RSMo allows fourth class cities to “pass ordinances regulating the manner of impeachment and removals.” Article VI, Section 19(a) of the Missouri Constitution, provides that home rule charter cities, such as Hannibal, “shall have all power which the general assembly of the state of Missouri has authority to confer upon any city.” Since the general assembly provided in law for impeachment proceedings for third and fourth class cities, the Court finds that

Hannibal, as a home rule charter city, also has the power to pass ordinances regulating impeachment.

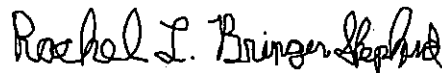
2. Petitioner has raised the issue of whether Section 18.08 of the Hannibal City Charter, relating to impeachment, violates the due process rights set forth in the United States and Missouri Constitutions. The Court notes that Section 19.16 of the Hannibal Charter, of which counsel for Petitioner and Respondent stipulated the Court could take notice, provides: “If any provision, clause or part of this Charter be held to be unconstitutional or void, the validity, force or effect of any other provision of this Charter shall not thereby be affected.”
 - a. Section 18.08(g) provides for the immediate suspension of an official upon the filing of any impeachment charge. The Court find that this clause violates the due process clause of the United States and Missouri Constitutions as the section suspends an official, and in this case, leaves a city ward without representation, merely upon the accusation of wrongdoing.
 - b. Section 18.08(f) provides: “The rules of criminal procedure shall apply throughout the [impeachment] hearing . . .” The Court finds that this provision refers to the Missouri Rules of Criminal Procedure, and this finding is consistent with a prior reference in the Charter in Section 18.08(d) to service of the notice of impeachment to the “accused” under the “rules of civil procedure in the State of Missouri.” The Missouri Rules of Criminal Procedure provide for many protections for an accused in the context of a “hearing,” including but not limited to, the right to subpoena witnesses, the order of trial, discovery pursuant to Rule 25, and the duty of the judge to provide written instructions to the jury. See Missouri Rules of Criminal Procedure 25, 26, 27.02, and 27.03. The protections provided by the Rules of Criminal Procedure sufficiently protect Petitioner’s due process rights, and the Court does not find that Section 18.08(f) violates the due process clause of the United States or Missouri Constitutions.
 - c. Due to the requirement in Section 18.08(f) that the rules of criminal procedure be followed “throughout the [impeachment] hearing,” the Court finds that the burden of proof for a hearing pursuant to this section is beyond a reasonable doubt, which is contained in MAI-CR3rd 300.02, required to be read and followed by the Missouri Rules of Criminal Procedure 27.02. (The current version of MAI-CR4th 400.02, which replaced MAI-CR300.02 in 2017, became effective January 1, 2020. The burden of proof contained in the instruction did not change). The Court notes that Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52, 57

(Mo. App. E.D. 1990) regarded the impeachment of a third class city mayor as an “administrative proceeding.” However, the opinion does not indicate that the City of Maryland Heights had a provision requiring the Rules of Criminal Procedure to apply to its impeachment proceedings. Because the City of Hannibal chose to apply the Missouri Rules of Criminal Procedure to its impeachment hearing, this Court finds that the burden of proof contained in the Missouri Rules of Criminal Procedure and accompanying written instructions applies to this impeachment hearing.

THEREFORE, the suspension of Petitioner from his office is vacated as the Court finds the Section 18.08 (g) suspension provision of the Hannibal City Charter to be unconstitutional and a violation of Petitioner’s rights of due process as guaranteed by the United States and Missouri Constitutions. The Court denies Petitioner’s request to enjoin the impeachment proceedings and finds that a home rule charter city, such as Hannibal, has the power to hold impeachment proceedings as provided by Missouri law. The Court further finds that the Missouri Rules of Criminal Procedure, which apply to such proceedings pursuant to Section 18.08(f) of the Hannibal City Charter, provide sufficient protection for the rights of the Petitioner.

SO ORDERED.

Dated: June 27, 2022



Rachel L. Bringer Shepherd
Presiding Circuit Judge