

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

MONONGALIA-PRESTON
FRATERNAL ORDER OF POLICE
LODGE #87, on behalf of
its individual members,
Plaintiff,

v.

Civil Action No. 21-C-141
Hon. Susan B. Tucker

THE CITY OF MORGANTOWN
a municipal corporation,
Defendant.

ORDER GRANTING PLAINTIFF’S PETITION FOR INJUNCTIVE RELIEF AND
DECLARATORY JUDGMENT AND DENYING DEFENDANT’S COUNTER-
PETITION FOR DECLARATORY JUDGMENT

On December 16, 2021, came the Plaintiff, the Monongalia-Preston Fraternal Order of Police Lodge #87, on behalf of its individual members, by and through its counsel, Teresa C. Toriseva, Esq., and Joshua D. Miller, Esq., and the Defendant City of Morgantown by and through its counsel, Shannon Smith, Esq., and Matthew D. Elshiaty, Esq., for hearing regarding the Plaintiff’s Petition for Injunctive Relief and the Defendant’s Counter Petition for Declaratory Judgment.

This matter has been fully briefed and all parties have been provided opportunity for oral argument. Having fully considered arguments of counsel, the Court does hereby **FIND** and **ORDER** the following:

I. PROCEDURAL FACTS

1. On May 19, 2021, the Plaintiff, on behalf of its individual members, filed its Petition for Injunctive Relief and Declaratory Judgment regarding the City of Morgantown’s (“City” or “Morgantown” or “Defendant”) Ordinance No. 21-13 adopted May 18, 2021.
2. The Defendant filed its Notice of Bona Fide Defense on June 14, 2021.

3. On June 24, 2021, the Defendant filed its Answer and Counterclaim for Declaratory Judgment.
4. On July 1, 2021, the Court set the matter for a Scheduling Conference to be held August 12, 2021.
5. On August 11, 2021, the parties¹, filed a Joint Motion to Set a Briefing Schedule, specifically stating they “jointly recognize that this case contains no facts in dispute and can be resolved by the court through an application of the undisputed facts to the relevant law.”
6. On August 12, 2021, the Court entered the proposed order setting a briefing schedule drafted and agreed to by the parties.
7. On November 16, 2021, the parties timely filed their respective dispositive motions.
8. On November 30, 2021, the parties filed their responses to the other’s dispositive motion.
9. On December 7, 2021, the parties filed their replies to the responses.

II. FINDINGS OF FACT

10. The purpose of Plaintiff’s Petition is to enjoin the city from implementing or proceeding with the particular Sections of Ordinance No. 21-13 that violate the Police Civil Service Act, W. Va. Code §§ 8-14-6 to 8-14-24, specifically being the last definition contained within Section 181.02 (“Misconduct”); Section 181.05(e)-(f); and Section 181.06, all of which pertain to the Civilian Police Review and Advisory Board’s (“Civilian Review Board”) authority to conduct investigations and recommend discipline to the Chief of the Morgantown Police Department.

¹ By separate briefing, oral hearing, and written order, this Court dealt with motions to intervene by other potential parties.

11. The Court has not been asked to decide nor does it make any finding of fact that a civilian review board is necessary or needed in Morgantown.
12. Plaintiff is the Monongalia-Preston Fraternal Order of Police Lodge #87 and represents its individual members.
13. The City of Morgantown is a municipal corporation created pursuant to the laws of the State of West Virginia with its city building (“situs”) located in Monongalia County, West Virginia, and thus venue is proper in Monongalia County per W. Va. Code § 56-1-1.
14. As required by state law, the City of Morgantown has a Police Civil Service Commission.
15. The Morgantown City Council formed a Special Committee on Community Policing working closely with the Morgantown/Kingwood Branch of the NAACP to create and propose a Civilian Police and Advisory Board.
16. On or about May 4, 2021, the Morgantown City Council conducted the Consideration of Approval of (First Reading) of an Ordinance Establishing a Civilian Police Review and Advisory Board.
17. As drafted, this May 4, 2021, proposed ordinance contained provisions contrary to West Virginia Civil Service Law. Specifically, the Ordinance as written:
 - a. Permitted the Civilian Review Board to participate in the complaint process prior to the Morgantown Chief of Police rendering a decision; and
 - b. Authorized the Civilian Review Board to interview witnesses.
18. The Ordinance infringes upon the authority of the Police Civil Service Commission by granting the Civilian Review Board powers reserved for the Police Civil Service Commission by State Law contrary to W. Va. Code § 8-14-23.

19. The proposed Sections of the Civilian Review Board constitutes a substantial and unreasonable interference with the civil service protection guaranteed to Morgantown police officers as proposed by law.
20. Additionally, the creation of the respective Sections of the Civilian Review Board further violates the rights of police officers by creating a burdensome dual system of investigations and authorities which may govern their actions.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

21. This Court has jurisdiction over the parties and these matters and venue is proper here.
22. “An injunction may be awarded to enjoin the sale of property set apart as exempt in the case of a husband or parent, under articles eight and nine, chapter thirty-eight of this code, or to protect any plaintiff in a suit for specific property, pending either at law or in equity, against injury from the sale, removal, or concealment of such property.” W. Va. Code Ann. § 53-5-1.
23. W. Va. Code Ann. § 55-13-1 states as follows:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

24. “The policeman’s civil service commission in each Class I and Class II city shall: ... (3) Make investigations, either sitting as a body or through a single commissioner, concerning all matters touching the enforcement and effect of the civil service provisions of this article and the rules and regulations prescribed hereunder or concerning the action of any

examiner or subordinate of the commission or any individual in the public service with respect to the execution of the civil service provisions of this article; and, in the course of such investigations, each commissioner shall have the power to administer oaths and affirmations, and to take testimony.” W. Va. Code Ann. § 8-14-10.

25. “All acts, whether general, special, local, or special legislative charters, or parts thereof, in relation to any civil service measure affecting any paid police department inconsistent with the civil service provisions of this article shall be, and the same are, hereby repealed insofar as such inconsistencies shall exist.” W. Va. Code Ann. § 8-14-23.

26. “It is intended by the civil service provisions of this article to furnish a complete and exclusive system for the appointment, promotion, reinstatement, removal, discharge, suspension, and reduction of all members of all paid police departments subject to the civil service provisions of this article.” W. Va. Code Ann. § 8-14-23.

27. “An underlying purpose of the police civil service statute is to give security to members of paid police departments of municipalities having a population of five thousand or more against the vicissitudes which always attend, in the absence of protective statutes, such as the police civil service act, political municipal elections.” *Dougherty v. City of Parkersburg*, 138 W. Va. 1, 9, 76 S.E.2d 594, 598 (1952).

28. “A State civil service classified employee has a property interest arising out of the statutory entitlement to continued uninterrupted employment.” *W. Virginia Dep’t. of Env’t. Prot. v. Falquero*, 228 W. Va. 773, 778, 724 S.E.2d 744, 749 (2012).

DISCUSSION AND ORDER

This Court is authorized to declare the rights of the parties relative to the Police Civil Service Act (W. Va. Code Ann. §§ 8-14-6 to 8-14-23) and the adopted ordinance at issue here

(Ordinance 21-13). The facts show that certain Sections of Ordinance No. 21-13 created by the Defendant City, specifically being the last definition contained within Section 181.02 (“Misconduct”); Section 181.05(e)-(f); and Section 181.06, are contrary to established West Virginia Civil Service law. The Plaintiff represents, in part, members of a paid police department, who are subject to the aforementioned Police Civil Service Act.

West Virginia’s Police Civil Service Act is intended to and does provide a complete and exclusive system for the appointment, promotion, reinstatement, removal, discharge, suspension, and reduction of all members of all paid police departments. Courts are permitted to review any rule, law, or act that conflicts with the Police Civil Service Act and may declare such rule, law, or act, or any part(s) therein, invalid as a matter of law.

As addressed in the Plaintiff’s Petition for declaratory judgment and its request for injunctive relief, and as briefed or argued before this Court, the Civilian Police Review and Advisory Board created by Ordinance 21-13 infringes, in part, on the powers of the Police Civil Service Commission. Specifically, the Ordinance infringes on the Police Civil Service Act within Section 181.05(e)-(f); Section 181.06; and the last definition contained within Section 181.02 (“Misconduct”), as they relate to permitting that board to participate in the complaint process, including investigations and interviewing witnesses, prior to the Morgantown Chief of Police rendering a decision. These sections and provisions of the Ordinance are unlawful and shall be invalidated.

Further, as competing motions for summary judgment were filed by the parties, the Court specifically finds (and the parties previously agreed) that no genuine issues of material fact exist, and this is purely a matter of law to be decided by the Court. Plaintiff’s motion for summary judgment is **GRANTED**, and Defendant’s Motion for Summary Judgment is **DENIED**.

ACCORDINGLY, based on the foregoing, it is hereby **ORDERED**, that Plaintiff's Petition for Injunctive Relief Pursuant to West Virginia Code § 53-5-1, West Virginia Civil Rule 65, and for Declaratory Judgment Pursuant to West Virginia Code § 8-14-3 are **GRANTED**. Section 181.05(e)-(f); Section 181.06; and the last definition contained within Section 181.02 ("Misconduct") of the Defendant's Ordinance 21-13 is hereby **INVALIDATED** in accordance with W. Va. Code § 55-13-1. Defendant is **PERMANENTLY ENJOINED** from enforcing Ordinance 21-13 Section 181.05(e)-(f); Section 181.06; and the last definition contained within Section 181.02 ("Misconduct"), as they relate to participation in the complaint process, including investigations and interviewing witnesses, prior to the Morgantown Chief of Police rendering a decision, as they are contrary to West Virginia's Police Civil Service Act.

The Defendant's objections to these rulings are noted and preserved.

It is further **ORDERED** that the Clerk shall provide attested copies of this Order to all parties of record.

Entered: March _____, 2022.

Judge Susan B. Tucker

Prepared By:

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