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CLERK OF DIST. COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS

BY _____

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IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

STATE EX REL. JANICE BASTON, and R.
MATTHEW JOYCE

Petitioners

vs.

CITY OF DERBY, KANSAS a city of the
second class, and KATHLEEN SEXTON, in
her capacity as Derby City Manager

Respondents

Case No.: 09 CV 3598

Pursuant to Chapter 60 of the
Kansas Statutes Annotated.

JOURNAL ENTRY

This matter comes before the Court on October 2, 2009, for hearing upon the motion of petitioners, Janice Baston and R. Matthew Joyce, for a temporary injunction preventing respondents, City of Derby, Kansas, and Kathleen Sexton, from the implementation of Ordinance No. 1980. Petitioners appear by Mark L. Roulcau of the Roulcau Law Firm, P.A. while respondents appear by David M. Rapp and Roger M. Theis of Hinkle Elkouri Law Firm, L.L.C. and by Phil Alexander, City Attorney for the City of Derby.

The Court, having reviewed the memorandums filed by the parties and having considered the presentations of the parties at the hearing, makes the following findings and orders.

1. Ordinance No. 1980 (the Ordinance), regulating the collection of solid wastes and recyclables and authorizing the granting of a contract therefor to a single contractor, was adopted

10/09/2009 FRI 11:16 [TX/RX NO 7690] 003

by the City of Derby on March 24, 2009. On July 28, 2009, the City, by further ordinance, established December 1, 2009, as the effective date of the Ordinance. Pursuant to the Ordinance, the City, following a receipt of proposals from area contractors, entered a contract with Waste Connections of Kansas, Inc., for performance of trash and recyclables collection in the City.

2. A petition protesting the Ordinance and seeking its repeal was circulated within the City by a group of citizens. The County Counselor approved the petition as to form and the Sedgwick County Election Commissioner certified that the petition had obtained sufficient signatures for placement on the ballot. Neither official examined whether the subject matter of the petition was subject to initiative and referendum under K.S.A. 12-3013.

3. Following respondents' determination that the Ordinance was administrative in nature and therefore was exempted under K.S.A. 12-3013(e) from initiative and referendum, petitioners, two of the signers of the petition, brought this action seeking to enjoin implementation of the Ordinance.

4. Petitioners then filed a motion for temporary injunction with a supporting memorandum contending: (1) that Ordinance 1980 is legislative in nature and subject to initiative and referendum; and (2) that Ordinance 1980 violates their rights under the Contract Clause (Art. I, §10) of the Constitution of the United States. Respondents then filed a memorandum in opposition contending: (1) that Ordinance 1980 is administrative in nature and is therefore not subject to initiative and referendum; and (2) that the Ordinance was adopted in legitimate exercise of the City's police powers and therefore does not violate the Contract Clause. Under Kansas law, petitioners have the burden of proof to demonstrate entitlement to injunctive relief.

5. The question whether the Ordinance is administrative or legislative is governed by the Kansas Supreme Court's decision in *McAlister v. City of Fairway*, _____, Kan. ____, 212 P.3d 184 (2009). *McAlister* sets forth a four-factor test as follows:

- “1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.
2. Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.
3. Decisions which require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of policy.
4. [I]f the subject is one of statewide concern in which the legislature has delegated decision-making power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an 'administrative' characterization, [and] hence is outside the scope of the initiative and referendum.” 212 P.3d at 194-95

6. The Court does hereby find that: factor 1 is administrative; that factor 2 is more legislative than administrative; that factor 3 is not predominately either legislative or administrative; and that factor 4 is administrative. The Court finds that factors 1 and 4 predominate and that Ordinance No. 1980 executes policy created by the Kansas Legislature rendering the Ordinance administrative in nature and not subject to initiative and referendum.

7. The Court further finds that the Ordinance constitutes a legitimate and reasonable exercise of the police powers conferred upon the City by law and that petitioners have not demonstrated a violation of the Contract Clause.

For the foregoing reasons, the Court finds that petitioners have not carried their burden of proof and that the motion for temporary injunction should be denied.

IT IS SO ORDERED this ____ day of October, 2009.

ERIC R. YOST

HON. ERIC YOST
District Court Judge

APPROVED:

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