

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
	:ss	
COUNTY OF LINCOLN)	SECOND JUDICIAL CIRCUIT
LINCOLN COUNTY,)	41Civ. 20-275
)	
Plaintiff,)	
)	
v.)	BRIEF IN SUPPORT OF
)	MOTION FOR REQUESTED RELIEF FOR
DAVID TUNTLAND,)	PLAINTIFF PURSUANT TO
)	SDCL 15-6-12(c)
Defendants.)	
)	

Plaintiff Lincoln County, by and through the undersigned counsel, filed a Motion for declaratory relief pursuant to SDCL 15-6-12(c). Plaintiff now respectfully submits this Brief in Support.

Procedural Background

Plaintiff filed a declaratory relief complaint on April 23, 2020 and served the Defendant on the same day. More than thirty days have passed since the service of the Complaint on the Defendant. The following facts are taken from Lincoln County’s Complaint:

1. Lincoln County does not have a jail and has not operated a jail since the late 1980s.
2. Lincoln County has contracted with Minnehaha County to house its inmates.
3. The Minnehaha County jail reached its capacity for inmates when the Work Release facility was damaged in a fire, at which time Lincoln County was forced to utilize other jails to house its prisoners.
4. During the period Minnehaha County did not have the ability to house Lincoln County inmates, Lincoln County used nine different jails in three states to house its inmates. This increased the cost of travel to both the County and its court appointed attorneys and complicated the logistics. The travel also increased the security risk for transport of the inmates.
5. Lincoln County was able to again contract with Minnehaha County for five years guaranteeing forty-five beds for Lincoln County inmates. The Counties entered into this contract on October 1, 2019 and it is set to expire on October 1, 2024. *See* Complaint, Ex. 2.

6. Over the course of the last year, Lincoln County Commissioners have conducted studies and analyses to assist in the decisions on the issue of a PSC during their public meetings. *See* Complaint, Ex. 4.
7. On February 14, 2020, the Lincoln County Commission Agenda included a Motion to Bond for a PSC and was published on the courthouse door and on the Lincoln County website for the February 18, 2020 Commission meeting. At this meeting, the Commission discussed the financing options for the PCS for a second time. *See* Complaint, Ex. 6.
8. Commissioners took a vote on February 18, 2020 and the final vote was 3-2 for the motion to pass a resolution granting authority to enter into a lease purchase agreement pursuant to SDCL 7-25-19 and 20.
9. The last published date of the resolution was February 28, 2020. Twenty days from that date was March 19, 2020.
10. Lincoln County scheduled five public meetings after the February 18, 2020 vote.
 - a. March 9, 2020 at the Tea City Hall, 600 East 1st St, Tea, SD;
 - b. March 10, 2020 at the Harrisburg Liberty Elementary School Board Room, Entrance F, 200 E Willow Street, Harrisburg, SD;
 - c. March 12, 2020 at the Lincoln County Commission Meeting Room, 104 N Main, Canton, SD;
 - d. March 17, 2020 at the Lincoln County Fairgrounds 27711 Highway 17, Lennox, SD;
 - e. March 24, Hudson Community Center, 200 Harris St, Hudson, SD;The first three of these meetings were held with two being cancelled due to the COVID-19 virus. Four of the meetings were scheduled prior to March 19, 2020, and the fifth one was scheduled after the deadline. The Lincoln County Sheriff, Lincoln County Auditor, and the Lincoln County Commissioners were present to answers questions. *See* Complaint, Ex. 8.
11. Lincoln County filed a complaint on April 23, 2020 requesting a Declaratory Ruling on Mr. Tuntland's ability to challenge Lincoln County's procedures in its Public Safety Center bond offering. Mr. Tuntland has sent demand letters challenging a resolution passed on February 18, 2020 authorizing a lease purchase under SDCL 7-25-19 and 7-25-20 for up to fifty million dollars (\$50,000,000.00)

to construct a Public Safety Center (PSC). The Court has jurisdiction pursuant to SDCL 21-24.

Legal Analysis

A. Subject Matter Jurisdictions

1. The Court Has Subject Matter Jurisdiction Over Lincoln County's Action

Mr. Tuntland claims that the State does not have subject matter jurisdictions for declaratory relief, while claiming his counterclaim over the same issue does. Either the court has subject matter jurisdictions, or it does not, it cannot be both. Lincoln County is legally entitled to have the court determine if the deadlines to challenge the Resolution No. 2002-27 have expired, that no legal challenges may be raised, and the matter may not now be referred to a vote. To establish subject matter jurisdiction and standing under SDCL 21-24 our Court has stated:

[T]o establish standing in a declaratory judgment action the plaintiff must have “personally ... suffered some actual or threatened injury as the result of the putatively illegal conduct of the defendant.” Specifically, “a litigant must show: (1) an injury in fact suffered by the plaintiff, (2) a causal connection between the plaintiff's injury and the conduct of which the plaintiff complains, and (3) the likelihood that the injury will be redressed by a favorable decision.” We must determine whether the elements for establishing standing in a declaratory judgment action under *Benson* are met in this case.

Abata v. Pennington County Board of Commissioners, 931 N.W.2d 714 (S.D. 2019) (quoting *Benson v. State*, 710 N.W.2d 131, 141 (S.D. 2006) (internal citation omitted)).

Mr. Tuntland's letters claim that the Resolution passed is illegal and void and will subject Lincoln County and the Board of Commissioners to liability if the bonds are issued. The Plaintiff has suffered an injury because this has required a delay in selling of bonds. This injury will only compound as time passes and interest rates change and construction costs increase. Due to Mr. Tuntland's allegations, the County is legally impaired from selling the bonds because the county must disclose potential litigation. Also, by simply making the claim and not acting on the issue, Tuntland leaves uncertainty as to the legality of the bond issuance. Mr. Tuntland claims that the

individual board members could be liable for up to \$50,000,000.00 on the bond issuance. The time to challenge the Commissioner's decision has expired. Therefore, the County is not only likely to prevail but must prevail. Thus, the County meets the last requirement for jurisdiction for Declaratory Relief.

2. Defendant's Action is Time-Barred

The deadline to challenge Resolution No. 2002-27 has expired, denying the Court subject matter jurisdictions on the merits of any challenges. The Plaintiff is entitled to a judgment on the pleadings, therefore, in that the time to challenge the Lincoln County Commissioner's decision has expired. A judgment on the pleadings is the only appropriate remedy to resolve issues of law when there are no disputed facts. *See Loesch v. City of Huron*, 723 N.W.2d 694 (S.D. 2006).

The Commissioners passed Resolution No. 2002-27 and was published with the last date of publication being February 28, 2020. The public had the opportunity to circulate a petition within twenty days to place the resolution on the ballot for public vote. *See SDCL 7-18A-8*. This petition process was discussed in the public meeting held after the Commissioner's bond decision. The twenty days expired on March 19, 2020 at 5:00 P.M. Further, there is a twenty-day period within which to challenge County Commission decisions in Circuit Court. *See SDCL 7-8-29*. Our Supreme Court has stated there is a "requirement of strict compliance with the service provisions of SDCL 7-8-29 and its recognition that lack of strict compliance deprives the circuit court of subject matter jurisdiction." *See Schrank v. Pennington County Bd. Of Com'rs*, 584 N.W.2d 680, 681 (S.D. 1998). *See also Upell v. Dewey County Com'n*, 880 N.W.2d 69, 75 (S.D. 2016).

The County received Mr. Tuntland's letter on March 24, 2020, which was 25 days beyond the last Notice and 36 days beyond when the Commissioners voted on the resolution. As of the filing of Lincoln County's Declaratory Ruling, 66 days have passed from the

Commissioner's decision and Mr. Tuntland has not filed any actions. Even if the date was calculated from the time that Lincoln County responded to his letter informing him of the time preclusion, 23 days had passed. There are no disputed facts as to the timeframe of when the Commissioners voted or when notice was published in the papers of record for the County. The time to file any petitions to refer for a vote of the public or challenge the resolutions in Court has expired.

The Counterclaim does not alter the fact that Mr. Tuntland failed to meet the deadlines to file any actions contesting Resolution No. 2002-27. The law is clear in that Mr. Tuntland's timeframe to challenge the resolution does not expand or increase due to the County filing a complaint to clarify its legal rights and obligations. According to the South Dakota statute controlling the relevant timing,

This chapter shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of South Dakota or an officer or agency thereof.

SDCL 15-6-13(d)

Mr. Tuntland in his Answer and Counterclaim fails to address the issue of the twenty-day timeframe. Moreover, he admits the lack of jurisdiction in his Answer over this Resolution. *See* Answer, ¶¶ 4-5 and Aff. Def. 3. The County agrees. As such, the County has asked that the Court issue an order stating that missing the filing deadline deprives the Court of subject matter jurisdiction. Nothing in either the Counterclaim or Writ of Prohibition explains how this Court has jurisdiction when Mr. Tuntland failed to bring any action within the statutory deadlines.

Conclusion

Lincoln County is entitled to a ruling from this Court that more than twenty days have passed since the last published notice of its adoption of Resolution No. 2002-27, and that, therefore, the Resolution may not be referred for a vote by petition. Further, the Court should

find that the time to appeal to Circuit Court has expired and, therefore, the Court does not have jurisdiction to hear a challenge to the Resolution.

Dated this 8th day of June, 2020.



William H. Golden
Office of the Lincoln County State's Attorney
104 N. Main Street, Suite 200
Canton, SD 57013
wgolden@lincolncountysd.org
(605)764-5732