

STATE OF INDIANA : WARRICK SUPERIOR COURT NO.2
COUNTY OF WARRICK : ss: 2024 TERM

CAUSE NO. 87D02-2401-MI-30

DR. JEFF MAUCK, DR. KEN PARKER, and
JOYE BROWN, INDIVIDUALLY AND AS
PRESIDENT/MEMBERS OF THE WARRICK
COUNTY BOARD OF HEALTH

Plaintiffs,

vs

TERRY PHILLIPPE, DAN SAYLOR, and
ROBERT JOHNSON, INDIVIDUALLY
AND AS COMMISSIONERS OF
WARRICK COUNTY

Defendants

FILED

APR 03 2024

PATRICIA E. PERRY
CLERK WARRICK CIRCUIT AND SUPERIOR COURTS

JUDGMENT

Come now the plaintiffs, Dr. Jeff Mauck, Dr. Ken Parker, and Joye Brown, individually and as President/Members of the Warrick County Board of Health, in person and by counsel April Edwards, Mark Phillips and Brennan Phillips, and come now the defendants, Terry Phillippe, Dan Saylor and Robert Johnson, individually and as Commissioners of Warrick County, Indiana, in person and by counsel Andrew Skinner and Todd Glass, on January 16, 23, 24, 25, 30, February 1, 2, 7, 8, 13, 22, March 4, 15 and 21, 2024, for trial upon plaintiffs' verified complaint for declaratory judgment and emergency injunctive relief.

And now, the Court, having heard the evidence, having taken this matter under advisement, and being duly and sufficiently advised in the premises, finds as follows, to wit:

1. Dr. Mauck, Dr. Parker and Ms. Joye Brown did not knowingly or intentionally fail to perform their statutory duties as members of the Warrick County Board of Health (BOH).

2. The Board of Commissioners of Warrick County is able to control the Board of Health and the Department of Health serving under the Board, by virtue of the appointment power given to it by Indiana Law.
3. I.C. 16-20-1-2 provides that a local health department is an agent of local government and is administratively responsible to the county executive, which is the Board of Commissioners.
4. I.C. 16-20-1-5 requires the BOH to submit an annual budget to the county executive. It is undisputed this was not done in Warrick County.
5. Prior to July 1, 2023, I.C. 16-20-1-7 required the BOH to publish in pamphlet form, within 90 days after January 1, for free distribution, an annual report for the previous year and including the statutorily required information. It is undisputed that this was not done in Warrick County, or that the BOH did not comply with each and every other single statutory requirement.
6. I.C. 16-20-1-11 requires the local health officer to make monthly reports of the work done to the BOH. After approval by the BOH, the health officer is to make the report a permanent record. The Warrick BOH meets on a quarterly basis and reports were made on a quarterly basis, and not monthly.
7. I.C. 16-20-2-3 provides a local BOH shall manage each local health department.
8. I.C. 16-20-2-4 provides that for a county with a population of less than 200,000 people, a BOH consists of 7 members, not more than 4 of them may be from the same political party. The court does not know the political affiliation of the current board members or that of the three removed board members who seek reinstatement to the board. The evidence shows that after he was removed from the BOH, former president, Dr. Jeff Mauck, was nominated by the Mayor of Boonville and was appointed by the Commissioners to the Board, that he is once again serving on the Board, but not as president.

9. I.C. 16-20-2-5 sets out qualifications of persons to be appointed to a BOH, five of whom are chosen by the Commissioners alone, one from three recommendations by the executive of the most populous municipality in the county, and one appointed by the county fiscal body (county council). I.C. 16-20-2-10 provides for terms of four years.
10. I.C. 16-20-2-8 provides that a BOH member may be removed by the appointing authority for failing to perform the statutory duties of the office.
11. I.C. 16-20-2-11 provides that BOH members continue to serve until their successors are appointed by the original appointing authority, and pursuant to law.
12. A BOH member must be a U.S. citizen and a county resident, I.C. 16-20-2-12.
13. During 2023, disputes arose between the Commissioners and the BOH regarding several issues, including the safety of the health department employees working in the basement of the courthouse because of radon test results, the health officer and health designee, animal control and other issues.
14. Meetings were held during the last half of 2023 to try and resolve issues in the dispute, but at their meeting on December 27, 2023, the Commissioners removed the plaintiffs from the BOH. The plaintiffs then filed their complaint seeking an order of reinstatement on January 7, 2024.
15. The court has sought to find some authority and guidance regarding this situation where Indiana law is silent and provides none.
16. In Helmick v Louisa County Board of Supervisors, 924 N.W.2d 535, 2018 Iowa App., the Court of Appeals of Iowa held that the County Board of Supervisors (BOS) has broad authority to remove a member of the BOH, and this was logical since the BOS was also endowed with the authority to appoint members to the BOH. Unlike Indiana, the person removed would be granted a public hearing by filing a request for such within thirty days. The law required a

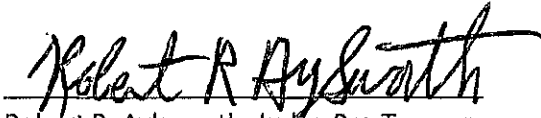
written order for removal, giving reasons for removal, but did not require a "for cause" justification to remove a member before the expiration of a member's three-year term.

17. In Board of Commissioners v Wagner, 699 N.E.2d 1196, 1998 Ind. App., the Indiana Court of Appeals held by statute, I.C. 36-7-4-906(f) allowed removal of a zoning board member for cause, and the only right conferred upon a removed member was to an appeal before the circuit or superior court. The trial court erred in holding that procedural due process required that the board member be given an opportunity to be heard before his removal from office. The court further held that it is well established that administrative entities, such as boards, agencies, and officers of such boards and agencies, are creatures of statute and therefore have only such power and authority as are conferred upon them by statutory enactment.
18. Administrative boards and officers have no common law or inherent powers, but only such authority as conferred by statutory enactment. Adkins v City of Tell City, 625 N.E.2d 1298, 1993 Ind. App.
19. In the instant case, the court simply cannot give to the plaintiffs what Indiana law does not give to them, and Indiana law gives them neither procedural due process rights nor the right to appeal their removal to a circuit or superior court for review.
20. As such, plaintiffs' complaint must be denied, and judgment must be for defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the findings of the court as set forth above shall be the order and judgment of this court.

IT IS FURTHER ORDERED that plaintiffs shall take nothing by their complaint and judgment shall be for defendants. Order accordingly.

Dated this 3rd day of April, 2024.


Robert R. Aylsworth, Judge Pro Tempore

Copies to all counsel of record.