

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

SUZANNE SCHWING,

Plaintiff,

v.

HELEN MATHIEU, CLERK, ONEKAMA TOWNSHIP

Defendant,

TRUE COPY
JILL M. NOWAK
Manistee County Clerk

Case No. 12-14064-AW
Honorable James M. Batzer
Circuit Court Judge

Rudolph L. Milasich, Jr. (P70347)
Attorney for Plaintiff
8497 Mill Street
Onkama, MI 49675
(231) 889-0813

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS
(Including Request for Immediate Issuance of Show Cause Order)

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

JURISDICTIONAL ALLEGATIONS

1. Plaintiff Suzanne Schwing is a resident of the Village of Onkama located in Onkama Township, County of Manistee, State of Michigan residing at 4362 Prospect Avenue, Onkama, Michigan 49675.
2. Defendant Helen Mathieu is the elected Clerk of Onkama Township, Manistee County, State of Michigan, which Township maintains its office at 5435 Main Street, Onkama, Michigan 49675.
3. This Court has jurisdiction over this matter pursuant to MCR 3.305 and MCL 600.601 et seq.

**REQUEST FOR WRIT OF MANDAMUS
AND REQUEST FOR IMMEDIATE ISSUANCE OF SHOW CAUSE ORDER**

4. Plaintiff, as an elector of the Village of Onekama, has a clear legal right to vote on the Village of Onekama Disincorporation ballot issue separately from the votes of electors of Onekama Township on that ballot issue and to have her vote counted separately from the votes of electors of Onekama Township at the August 7, 2012 election.
5. Plaintiff is a registered and qualified elector of the Village of Onekama entitled to vote at the August 7, 2012 election.
6. The Village of Onekama Disincorporation issue, "Shall the incorporation of the Village of Onekama be vacated?", is on the ballot for the August 7, 2012 election pursuant to the provisions of MCL74.18a et seq.
7. By August 23, 2011, more than 15% of the registered Village electors signed and filed with defendant Clerk petitions which request a vote on the question of whether the Village shall disincorporate into Onekama Township.
8. At the next Village Council meeting, the Village Council voted to proceed with a Disincorporation Commission under MCL74.23.
9. The Village of Onekama Disincorporation Commission was appointed, with Plaintiff Schwing as its Chairman.
10. At its February 13, 2012 meeting, the Village of Onekama Disincorporation Commission approved a document entitled "Update on Disincorporation of the Village of Onekama", which document was sent by the Township to the taxpayers in the Township and the Village as an enclosure with the assessment notices. The Update on Disclosure of the Village of Onekama, reads, in relevant part:

"If the plan is not approved by the commission, or if it is not approved by the village or township governing bodies, the matter will still go to the village and township voters, and it requires a super majority vote in both entities to be approved (2/3 of voters in village, 2/3 majority vote of voters in the township to proceed with disincorporation."
11. On March 26, 2012, after a series of meetings open to the public, the Village of Onekama Disincorporation Commission adopted a Plan, with Plaintiff Schwing voting against the Plan.

12. The Village of Onekama Disincorporation Commission Plan set forth at page 6 a flow chart which described the August 7, 2012 Elections if there was no approval of the Plan from village and/or township, as follows:

Aug.7 2012 Elections. 2/3 approval among village and among township voters required to pass" (emphasis in the original).

13. On April 3, 2012, the Plan of the Village of Onekama Disincorporation Commission was ratified by the Onekama Township Board.

14. A motion to ratify the Plan of the Village of Onekama Disincorporation Commission failed to pass at the April 18, 2012 regular meeting of the Village Council.

15. The Plan having not been ratified by the Village Council, the ballot question "Shall incorporation of the Village of Onekama be vacated?" was placed on the ballot for the August 7, 2012 primary election pursuant to the provisions of MCL74.18a (4) & (5).

16. The Manistee County Clerk, Jill Novak, sent a copy of a June 7, 2012 letter via email to the Township Clerk and to the Village Clerk which contained the sentence: "I did want to inform you that the Bureau sees no need or no legal reason to force a split in the precinct and have two different ballots for this question."

17. Plaintiff Schwing did not learn that the Township Clerk had decided to cumulate the votes of the Township and Village on the disincorporation ballot issue until on or about July 16, 2012.

18. Plaintiff Schwing met with the Onekama Township Clerk on August 1, 2012, and the Clerk told her that there will be one voting machine, that township voters and village voters will vote in district 5, that a smaller group of township voters will vote in district 1, and that at the end of the day they will take the readings for each district and add them together.

19. Upon information and belief, if the Onekama Township Clerk adds the Village of Onekama Disincorporation Issue votes of the Village voters together with the votes of the Township voters as set forth in Paragraph 18 of the Complaint, there will be no way that a recount of the votes of the Village electors on the ballot issue could be conducted after the election and no way to know what the vote of the Village electors was on that ballot issue.

20. Defendant Onekama Township Clerk intends to violate the clear legal right of Plaintiff Schwing to vote on the Village of Onekama Disincorporation ballot issue separately from the votes of electors of Onekama Township on that ballot issue and intends to violate the clear legal right of Plaintiff to have her vote counted on that ballot issue separately from the votes cast by electors of Onekama Township on that issue at the August 7, 2012 election.

21. The Onekama Township Clerk has a clear legal duty to conduct the election on the proposed disincorporation in the Village and the portion of Onekama Township outside the Village separately pursuant to the provisions of MCL74.18a(6), which reads:

"(6) The clerk and election official of each township into which the village is proposed to be disincorporated shall conduct the election in the village and portions of the township outside the village respectively." (emphasis added).

22. The duty of the Onekama Township Clerk is ministerial.

23. Plaintiff Schwing has no other legal or equitable remedy

24. Because the votes cast by the Village electors on the Village disincorporation issue will be added together with the votes cast by the Township electors on that same issue under the Onekama Township Clerk's decision and because there will be no way to recount the ballots cast by the Village electors on that issue after the election which is to be held on August 7, 2012, there is good cause for immediate action by this Court.

WHEREFORE, Plaintiff respectfully requests that this honorable Court:

A. Issue an immediate show cause order pursuant to MCR 3.305 commanding defendant Onekama Township Clerk, Helen Mathieu, to appear before this Court to show cause why a Writ of Mandamus should not be issued;

B. Issue a Writ of Mandamus commanding the Onekama Township Clerk:

(1) to conduct the disincorporation election in the Village and the Township outside the Village separately; and,

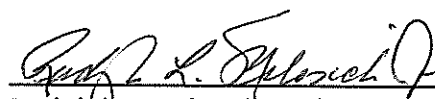
(2) to apply the 2/3 vote requirement to the Village disincorporation ballot issue vote count of the Village electors and to the vote count of the Township electors separately.

C. Award to Plaintiff her costs incurred in having to bring this action.

D. Grant such other and further relief, including temporary injunctive relief, as this Court may consider just and appropriate.

August 3, 2012

Respectfully submitted,



Rudolph L. Milasich, Jr. (P70347)
Attorney for Plaintiff

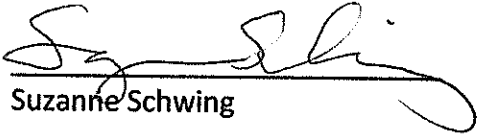
VERIFICATION OF FACTUAL STATEMENTS

STATE OF MICHIGAN)
) ss.
COUNTY OF MANISTEE)


I, Suzanne Schwing, being duly sworn, state, as follows:

1. I have read the preceding **VERIFIED COMPLAINT FOR WRIT OF MANDAMUS**, and I have personal knowledge of the facts set forth in that Complaint. The facts set forth in that **COMPLAINT** are true and accurate to the best of my knowledge.

Dated: August 3, 2012


Suzanne Schwing

On this 3rd day of August, 2012, before me, a Notary Public, in and for the County of Manistee, Michigan, personally appeared Suzanne Schwing, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be her free act and deed.


Notary Public, Manistee County, Michigan
My commission expires: CYNTHIA M. SMOGOLESKI
Notary Public - State of Michigan
County of Manistee
My Commission Expires Jan. 1, 2018
Acting in the County of Manistee