

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

ADAM PAUL,)	
)	
Petitioner,)	Cause No. 13SL-CC01356
vs.)	
)	Division No. 9
THE ELLISVILLE CITY COUNCIL, et al.,)	Date: July 1, 2013
)	
Respondents.)	

FILED

JUL - 1 2013

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

ORDER AND JUDGMENT

This matter is submitted to the Court on petitioner Adam Paul’s petition for administrative review. The parties stipulate to the facts involving the special counsel’s amendment of resolution number 02-27-13-A, which was filed and delivered to the petitioner Adam Paul on the first day of the City Council’s removal hearing. For clarification, the stay order and judgment issued on June 10, 2013 was largely based on Paul’s allegations in his motion to stay enforcement of the council’s removal order. This Court Order, however, is based on the procedural improprieties of the amended resolution and whether the City Council’s removal hearing was made upon unlawful procedure, in violation of § 536.140.2 (5) RSMo.

As stipulated by the parties, the Court finds that at the beginning of the removal hearing on April 1, the special counsel amended resolution no. 02-27-13-A to add a new charge against Paul without prior notice to him. The added charge was “willfully failing to comply with a subpoena,” an alleged City Charter violation. The removal hearing proceeded without giving Paul any time and opportunity to review the amended resolution.

Based on these stipulated facts, the Court finds that Paul was improperly removed as Mayor by the City Council. The City Council violated Paul’s procedural due process rights when

the special counsel amended resolution no. 02-27-13-A by adding a new charge against Paul at the start of the removal hearing on April 1, 2013, effectively creating and delivering a new resolution against Paul without giving Paul any prior notice of the new charge or resolution against him.

Paul was denied a continuance or time to consider the amended resolution. Also, this procedural violation invalidated the removal hearing.

§ 3.6 of the City Charter allows a “council member affected,” such as Paul, to request a hearing within five days after a resolution is delivered to him. Also, for apparently due process considerations, this section mandates that a removal hearing be held “not earlier than fifteen days nor later than thirty days after the request is filed.” However, the City Council did not follow the procedural mandates of § 3.6 of the Charter when failing to continue the date of the removal hearing to allow Paul at least fifteen days to prepare a defense against the amended resolution.

In this matter the City Council failed to follow the procedural protections explicitly set forth in § 3.6 of the Charter, thereby denying Paul basic due process. Under Missouri law, due process demands that a city council comply with its own ordinances in removing any city employee. *Jones v. City of Jennings*, 23 S.W.3d 801 (Mo. App. E.D. 2000); *see also Collier v. Metropolitan St. Louis Sewer Dist.*, 706 S.W.2d 894 (Mo. App. E.D. 1986) (due process requirement applicable to all administrative agencies).

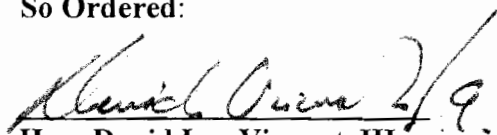
Therefore, the Court finds that the City Council’s removal hearing violated Paul’s due process rights and was made upon unlawful process. § 536.140.2 (5) RSMo. As a result of the Court’s findings on this issue, the Court will not consider the other issues raised by petitioner in his petitioner for administrative review.

Judgment

ACCORDINGLY, petitioner Adam Paul's petition for administrative review is granted and sustained. Ellisville City Council Resolution No. 04-08-13 is hereby ordered reversed and petitioner Adam Paul is ordered reinstated to the office of the Mayor of the City of Ellisville. Respondents' motion to reconsider ruling on stay order, or, in the alternative, to clarify, as filed on June 11, 2013, is denied as moot.

So Ordered:

Dated: July 1, 2013


Hon. David Lee Vincent, III
Circuit Judge
Division No. 9

cc: Attorneys of Record
Paul, et al., v. The Ellisville City Council, et al., Cause No. 13SL-CC01356