

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

CHARTER TOWNSHIP OF WASHINGTON,

Plaintiff,

vs.

Case No. 2014-2586-CZ

ROMEIO DISTRICT LIBRARY, a Michigan
Municipality authority,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

The parties have filed cross motions for summary disposition.

I

This matter arises out of the creation, operation, and funding of the Romeo District Library (the "Library"). The Michigan Constitution provides that "[t]he legislature shall provide for the establishment and support of public libraries" Const 1963, art 8, sec. 9. In 1955, the Michigan legislature enacted Act 164, to authorize a municipality to unite with any other municipality to develop a plan for the establishment and operation of a district library. MCL 397.271 *et seq.* (Pl. Ex. A). In 1969, Plaintiff, the Township of Bruce, and the Village of Romeo (the "Participating Municipalities"), entered into an agreement for the establishment of the Library, and each of the Participating Municipalities adopted identical ordinances for its establishment, funding, and operation. The Participating Municipalities' agreement and ordinances provide for the appointment of library Board of Trustees, powers of the Board of Trustees, and appropriations for the Library, among other provisions. (See Def. Ex. 1). The

Participating Municipalities' ordinances also allow the Library Board of Trustees to "develop a budget for operation of a District Library and to submit the budget so developed to each of the participating municipalities for approval." (Def. Ex. 1, sec 5h). Plaintiff has brought suit against the Library to enforce this provision.

II

In 1989, Act 164 was repealed by Public Act 24 ("Act 24"). MCL 397.171 *et seq.* Act 24 set forth new rules for the establishment of a district library, and also set forth specific requirements for libraries established under Act 164 to continue operation. Plaintiff contends that the Library failed to provide the state librarian with an organizational plan that fully complies with Act 24. Specifically, plaintiff argues that the organizational plan submitted by the Library required by sec. 6 of Act 24 does not contain all the information required under section 4(1) of Act 24.

Plaintiff contends that the Library has a clear legal duty to submit its proposed budget for approval to the Washington Township Board of Trustees. Plaintiff requests that the Court enter a writ of mandamus to that effect. The Library contends that its board of directors has exclusive authority to establish its budget, and it is not required to submit its budget for approval. The Library argues that plaintiff's argument is against the express provisions of the governing statutes, would cause complete disruption of its operation since one of the participating municipalities would effectively have a veto power over its budget, and that Plaintiff's claim is barred by laches since the Library's operation has been controlled by its board of trustees for over 45 years.

III

Section 6 of Act 24 provides:

Within 1 year after May 22, 1989, the board of a district library established pursuant to former 1955 PA 164 shall submit to the state librarian an organizational plan including the information required to be set forth in an agreement under section 4(1) and shall revise the board structure and selection to conform to section 9 or to sections 10 and 11. If the board of a district library established pursuant to former 1955 PA 164 complies with this section and the state librarian does not disapprove the revision of board structure and selection, the district library shall be considered to be established pursuant to this act. MCL 397.176.

Section 4(1) of Act 24 provides:

(1) The agreement shall provide for all of the following:

(a) The name of the district. For a district that is created on or after the effective date of the amendatory act that added section 3a, the name shall include the word "district".

(b) The identity of the municipalities establishing the district library.

(c) The creation of a board to govern the operation of the district and the method of selection of board members, whether by election or appointment. If board members are selected by appointment, the agreement shall provide for the term of office, the total number of board members, and the number of board members to be appointed by the legislative body of each participating municipality. If board members are selected by election, the agreement shall provide for the number of provisional board members to be appointed by the legislative body of each participating municipality.

(d) Of the amount of money to be stated in the annual budget under section 13, the percentage to be supplied by each participating municipality.

(e) The procedure for amending the agreement, which shall require the consent of the legislative bodies of not less than 2/3 of the participating municipalities.

(f) A period of time after the effective date of the agreement, not less than 1 year, during which the adoption of a resolution to withdraw from the district library under section 24 shall be void.

(g) Any distribution of district library assets to take place upon the withdrawal of a participating municipality.

(h) Any other necessary provisions regarding the district library. MCL 397.174.

IV

The Library submitted its organizational plan required under section 6 of Act 24 to the state librarian on November 29, 1989. (Def. Ex. 5). On December 4, 1989, the State Librarian, James W. Fry, sent the Library a letter stating that "the Romeo District Library is recognized by the Library of Michigan as a legally established district library pursuant to Sec. 6, 1989 P.A. 24" and that "[y]our District Library Organizational Plan, dated 28 November 1989, is hereby approved. Plaintiff argues that the Library failed to set forth in the organizational plan a provision for the distribution of library assets upon the withdrawal of a participating municipality (sec. 4g), or provide for the library board members' term of office and the number of board members to be appointed by the legislative body of each participating municipality (sec. 4c).

Plaintiff argues that since these provisions have been omitted, the Library relied upon the ordinances of the Participating Municipalities for these provisions, and since they relied upon the ordinances, section 5h of the ordinances should be complied with thereby requiring the Library budget to be approved.

Requiring the Library to submit its budget to plaintiff for approval is not supported. Plaintiff references section 3b of Act 24¹ to support its argument that municipalities may jointly establish a district library and to approve a district library agreement. Plaintiff's reference to

¹ Section 3 of Act 24 provides in pertinent part:

(1) Except as otherwise provided under subsection (13), 2 or more municipalities, except 2 or more school districts that hold their regularly scheduled elections on different dates, authorized by law to establish and maintain a library or library services *may jointly establish a district library* if each of the following requirements is satisfied . . .

(5) Participating municipalities *that propose to establish a district library shall file with the state librarian* both of the following:

(a) A copy of an agreement described in section 4 that identifies the proposed library district

section 3 of Act 24 is misplaced, since it clearly applies to *new* libraries established under Act 24, and not established libraries. Section 3(1) indicates that municipalities “may jointly establish a district library” and that “[p]articipating municipalities that propose to establish a district library shall file with the state librarian . . . a copy of an agreement” Accordingly, section 3 does not apply to established libraries.

Plaintiff’s argument that section 5h of its ordinance requires submission of the library budget for approval is also not supported by its plain language. Section 5 of plaintiff’s ordinance provides in pertinent part:

The Library Board of Trustees shall have the following powers:

* * *

h. To develop a budget for operation of a District Library and to submit the budget so developed to each of the participating municipalities for approval.

If enforceable, this section gives approval power to the *voters* of the Participating Municipalities; not the governing bodies of the Participating Municipalities. Giving the governing bodies the right to approve the budget would inhibit the inherent operation of the Library as provided in Participating Municipalities’ ordinances, which state:

The Library Board of Trustees shall have the following powers: . . . [t]o have exclusive control of the expenditure of all monies collected to the credit of the library fund.” (Section 5f, Pl. Ex. B).

Submitting the proposed budget to plaintiff for approval would also be in contravention to MCL 397.182(3) and MCL 397.183(1), which provide in pertinent part:

Money for the district library shall be paid to the board and deposited in a fund known as the district library fund. The board shall exclusively control the expenditure of money deposited in the district library fund. MCL 397.182(3).

(1) *Subject to any limitation in the district library agreement on the amount of the district library annual budget or the amount or percentage of an increase in the district library annual budget, or both, that applies in the absence of a district*

wide tax approved by the electors, *the board shall annually determine the amount of money necessary for the establishment and operation of the district library and shall state that amount in an annual budget of the district library.* MCL 397.183(1) (emphasis added).

Clearly, the plain language of these statutory provisions provide that the library board shall have exclusive control over the expenditure of money, and the amount of money necessary for the operation of the library. The library board's power over its operating budget and expenses is only limited by provisions in a library agreement "on the amount of the district library annual budget or the amount or percentage of an increase in the district library annual budget." No other limitation is authorized. Consequently, plaintiff's attempt to require approval of the Library's budget is without merit.

In addition, the fact that the Participating Municipalities never required the Library to submit its budget for approval in 45 years is a strong indication that the intent of section 5h is not what plaintiff has proposed. The portion of section 5h that allows the Library board of trustees to submit a budget to each of the Participating Municipalities for approval merely provides the Library with a vehicle to set forth a budget that requires a tax increase over the amount set forth in the organizational plan. (See MCL 397.185 allowing a ballot proposal for a district wide tax).

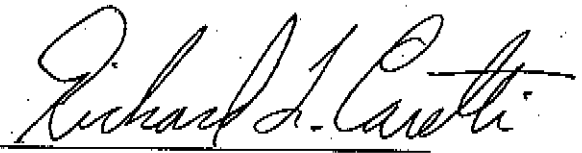
Based upon the above, defendant's motion for summary disposition should be granted and plaintiff's case dismissed. Summary disposition is appropriate in favor of the Library on its counter-claim for writ of mandamus directing plaintiff to collect and pay to the Library the money collected on the voter approved district-wide library millage.

V

Based upon the reasons set forth above, Plaintiff's motion for summary disposition is DENIED, and Defendant's motion for summary disposition is GRANTED. Plaintiff's request for mandamus relief is DENIED, and Defendant's request for mandamus relief is GRANTED.

Plaintiff is ORDERED to collect and pay the approved district-wide library millage. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

IT IS SO ORDERED.


RICHARD L. CARETTI
Circuit Court Judge

Date: February 25, 2015

cc: Robert J. Seibert, Esq.
Attorney for Plaintiff

G. Hans Rentrop, Esq.
Attorney for Defendant