

STATE OF IDAHO } ss  
 COUNTY OF KOOTENAI }  
 FILED: 2/8/12 }  
 AT 1:03 O'CLOCK P.M. }  
 CLERK, DISTRICT COURT }  
*Debra Mitchell* }  
 DEPUTY }

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

TOM HAMILTON, an individual and  
 TERRI SEYMOUR, an individual,

Plaintiffs,

vs.

BOARD OF TRUSTEES OF COEUR  
 D'ALENE SCHOOL DISTRICT NO. 271

Defendants.

CASE NO. CV 2011-5388

FINDINGS OF FACT AND  
 CONCLUSIONS OF LAW

The parties' motions for summary judgment, the defendants' motion to strike portions of an affidavit, and the plaintiffs' motion to reconsider a prior order of the court were all heard January 13, 2012. After argument the court indicated that either party may submit additional briefing within 20 days.

The motion to strike newspaper articles from the plaintiffs' affidavits in support of their motion for summary judgment is granted on the grounds that those newspaper articles are hearsay and do not fall within any exception. As such they would not be admissible at trial and should not be considered in deciding a motion for summary judgment.

The motion to reconsider is denied. No new evidence warrants a modification of the court's prior order.

LEGAL STANDARD

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c).

FINDINGS AND CONCLUSIONS-1

### FACTUAL BACKGROUND

The plaintiffs were elected to the Board of Trustees for the Coeur d'Alene, Idaho, School District #271. Their terms began July 2011.

There are five elected members on the Board of Trustees for the Coeur d'Alene School District. The former chairperson was Edie McLachlan. At a special board meeting held on May 19, 2011 Chairperson McLachlan read a letter of resignation stating that effective June 30, 2011 she would no longer be a member of the board. There were three other board members present at that meeting. After Ms. McLachlan's letter of resignation was read and she was thanked for her service to the board, another board member made a motion to declare a vacancy on the board. That motion was seconded and passed 4-0. Interviews for interested candidates were scheduled for a special board meeting to be held June 6, 2011.

At the special board meeting convened at noon on June 6, 2011 Chairperson McLachlan announced that her retirement would be effective at the end of that special board meeting.

Five potential candidates were interviewed. Ms. McLachlan chaired the meeting, participated in the interviews, and voted with the other four board members unanimously to appoint Wanda Quinn to replace Ms. McLachlan on the board.

The next regular board meeting began at 5 pm on June 6, 2011. Ms. McLachlan was not present. A motion was made to amend the agenda to administer the oath of office to Ms. Quinn. That motion was seconded and passed. Ms. Quinn was sworn in to fill the vacancy left by Ms. McLachlan's departure from the board.

### APPLICABLE STATUTES

Idaho Code § 33-504 provides that a "vacancy shall be declared by the board of trustees ... within thirty (30) days of when any trustee shall ... (b) resign as trustee". That statute goes on to state that such "declaration of vacancy shall be made at any regular or special meeting of the board of trustees, at which" one of the conditions creating a vacancy shall occur, including the resignation of a trustee.

The third paragraph of that statute provides in part that the "board of

trustees shall appoint to such vacancy a person qualified to serve as trustee of the school district provided there remains a majority of the membership thereof". (emphasis added).

DISCUSSION

The language of the statute emphasized above clearly envisions vacancies not being filled until they actually exist. If a vacancy is created by the resignation of one board member, then that person would not be available to vote on the appointment of their successor. If the person, who is going to resign, were still on the board, then there would be no vacancy that could be filled. If three of the five members of the board resigned at the same time, then the remaining two members could not appoint successor board members (the statute provides for an alternative appointment process in the case where less than a majority of the board remains).

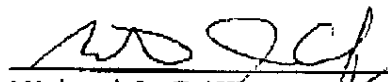
In this case Ms. McLachlan presided over the interviews of potential candidates and voted for the appointment of her successor while she was still on the board (there was no actual vacancy at the time of the appointment of Ms. Quinn).

The appointment of Ms. Quinn at the special meeting of the board of trustees on June 6, 2011 did not comply with the statute.

CONCLUSION

Because the school board did not comply with Idaho Code § 33-504 the plaintiffs' motion for summary judgment should be granted and the appointment of Ms. Quinn should be declared null and void.

Dated this 5<sup>th</sup> day of February, 2012.

  
Michael J. Griffin  
District Court Judge

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2/8/12  


FINDINGS AND CONCLUSIONS-3