

RENDERED: FEBRUARY 22, 2013; 10:00 A.M.
 NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001976-MR

JEFFREY JERRELL,
in his capacity as
McCracken County Clerk

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT
v. HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 11-CI-00653

MCCRACKEN COUNTY
FISCAL COURT

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: ACREE, CHIEF JUDGE; TAYLOR AND VANMETER, JUDGES.

VANMETER, JUDGE: Jeffrey Jerrell, in his official capacity as McCracken County Clerk (“Clerk”), appeals from the McCracken Circuit Court’s order granting the McCracken County Fiscal Court’s (“Fiscal Court”) motion for summary judgment and dismissing his claim. We affirm the order.

At issue in the underlying case is the validity of Ordinance 2011-6 (“Ordinance”), adopted by the Fiscal Court on June 13, 2011 and amended on August 22, 2011. The Ordinance requires any expenses of and expenditures of the offices of the Clerk to be pre-approved by the Fiscal Court; directs that no check, other than a check for excess fees payable by March 15th of the year, be drawn by the Clerk upon the Fee Accounts; and requires that no ordinary bills of the Clerk’s office be paid until approved by the Fiscal Court. Jerrell filed the underlying action seeking declaratory and injunctive relief from the Ordinance.¹ In his complaint, Jerrell alleged the Ordinance violated the statutory scheme set forth in KRS² Chapters 64 and 67 and was unconstitutional. The Fiscal Court filed a motion for summary judgment, which the trial court granted on the basis that this Court’s prior holding in *Sheffield v. Graves*, 337 S.W.3d 634 (Ky. App. 2010) confirmed that fiscal courts may exercise financial control over county clerk’s offices in the manner expressed under the Ordinance. The trial court summarily dismissed Jerrell’s action; this appeal followed.

On appeal, Jerrell argues the trial court erred by applying *Sheffield* to the case at hand, and maintains that the Ordinance violates KRS Chapters 64 and 67 and is unconstitutional. We disagree, finding *Sheffield* controlling.

Since this case involves the interpretation and application of a county ordinance and relevant statutes, the matter is a question of law, and is reviewed *de*

¹ The Office of the Attorney General was provided notice that Jerrell was challenging the constitutionality of the Ordinance.

² Kentucky Revised Statutes.

novo. Commonwealth v. Jameson, 215 S.W.3d 9, 15 (Ky. 2006) (citing *Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth, Transp. Cabinet*, 983 S.W.2d 488, 490 (Ky. 1998)).

In *Sheffield*, this court addressed a 2006 revision to KRS 64.530, which addresses the manner fiscal courts control the compensation of county officers and employees. The revision added one sentence to the following provision of KRS 64.530(3), which is highlighted in bold below:

In the case of officers compensated from fees, or partly from fees and partly by salary, the fiscal court shall fix the maximum compensation that any officer except the officers named in KRS 64.535 may receive from both sources. The fiscal court may also fix the maximum amount that the officer may expend each year for expenses of his office. The fiscal court shall fix annually the maximum amount, including fringe benefits, which the officer may expend for deputies and assistants, and allow the officer to determine the number to be hired and the individual compensation of each deputy and assistant. **Any revenue received by a county clerk in any calendar year shall be used exclusively for the statutory duties of the county clerk and budgeted accordingly.** At the conclusion of each calendar year, any excess fees remaining shall be paid to the fiscal court pursuant to KRS 64.152.

(emphasis added). In *Sheffield*, the elected county clerks of Monroe County and Ohio County argued the revision released the county clerks from the financial control of the fiscal courts. 337 S.W.3d at 637.

This court's analysis in *Sheffield* noted ““the traditional role of fiscal courts in setting legislative and fiscal policy[.]”” *Id.* at 639 (quoting *Fiscal Court of Taylor County v. Taylor County Metro Police*, 805 S.W.2d 113, 115 (Ky. 1991)).

Indeed, the statutory scheme set forth in KRS Chapters 64 and 67 gives the fiscal courts a measure of control over the county clerks' finances. *E.g.*, KRS 64.152(1) (requires the county clerk to provide the fiscal court a complete statement of the previous calendar year's funds received and expended); KRS 64.530 (provides that fiscal courts may fix reasonable maximum amount afforded a county clerk to expend for his office); KRS 67.080(1)(c) and (2)(a) (provides that fiscal courts may “[r]egulate and control the fiscal affairs of the county[]” and shall “[a]ppropriate county funds”). On that basis, in *Sheffield*, we determined that if the revision to KRS 64.530(3) was meant to alter the fiscal court's role, the presumption is that the General Assembly would have expressed itself to such a purpose. 337 S.W.3d at 639 (citing *Osborne v. Commonwealth*, 185 S.W.3d 645, 649 (Ky. 2006)). Therefore, we concluded that the revision did not release the county clerk from the financial control of the fiscal court; rather, the revision “simply means that revenue received by the county clerk may be used only to fulfill her statutory duties and for no other purpose.” *Id.*

In the case at hand, Jerrell claims the Ordinance exceeds the authority delegated to fiscal courts of this Commonwealth. As this court noted in *Sheffield*, the General Assembly has given the fiscal court authority to collect excess fees from county clerks, to fix the maximum amounts that a county officer may expend each year for his or her office, and to account for the financial records of the county. *Id.* *Sheffield* affirmed such control by the fiscal courts in spite of the 2006

revision to KRS 64.530(3). *Id.* No further powers of the fiscal court are implicated in the instant case.

In furtherance of his argument that *Sheffield* does not control the case at hand, Jerrell contends that the Ordinance cannot stand because it would render KRS 64.152 meaningless. We disagree. KRS 64.152 requires the county clerk to provide the fiscal court with an accounting of the prior year's expenses by March 15. In our view, the Ordinance is harmonious with KRS 64.152 since it merely gives the Fiscal Court the authority permitted under KRS 67.080(1)(d), which provides that fiscal courts may "cause correct accounts and records to be kept of all receipts and disbursements of the public funds of the county[.]" While the Ordinance allows the Fiscal Court to exercise a degree of financial control over the Clerk's office throughout the year, KRS 64.152 requires the Clerk to provide an accounting of expenses and any excess income, and thus is not rendered meaningless by the effect of the Ordinance.

Jerrell also argues that the Clerk's duties are coextensive with the Commonwealth, and thus the Clerk is not a local official subject to the control of the Fiscal Court. We disagree. As the statutes and cases cited earlier demonstrate, the Clerk's office is certainly subjected to a measure of control by the Fiscal Court. Further, we are unaware of any case or statute holding county clerks out to be state, rather than local, officials. In fact, in *Kentucky Executive Branch Ethics Comm'n v. Atkinson*, 339 S.W.3d 472 (Ky. App. 2010), we addressed whether property value administrators ("PVAs") were state officers subject to the Executive Branch

Ethics Commission. In finding PVAs to be state officers, we noted the “exclusion of PVAs’ conduct from any local code of ethics as provided for under KRS 65.003.” *Id.* at 476 (footnote omitted). Conversely, county clerks are considered officials subject to a code of ethics adopted by a local government. KRS 65.003. Therefore, we do not find county clerks to be state officials for purposes of avoiding the authority of the fiscal courts. As a result, the holding in *Sheffield* is controlling, and we do not find the trial court erred by holding the Ordinance to be valid under Kentucky statutory law.

Lastly, Jerrell argues the Ordinance is unconstitutional as an exercise of legislative authority not rationally related to further legitimate objectives. *See Akers v. Floyd County Fiscal Court*, 556 S.W.2d 146, 151 (Ky. 1977) (an act of a fiscal court must have a reasonable relationship to the stated end to be accomplished). Here, the Fiscal Court’s purpose in assuming more control over the finances of the Clerk’s office was to ensure sound fiscal policy and streamline the spending and accounting of county funds. As the Fiscal Court is tasked with regulating and controlling the fiscal affairs of McCracken County, we find this Ordinance to be rationally related to serving that purpose. Thus, we find the Ordinance to be constitutional.

The order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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