STATE OF MICHIGAN

COURT OF APPEALS

OAKLAND COUNTY PROSECUTORS OFFICE, Plaintiff-Appellee,	UNPUBLISHED June 23, 2011
v	No. 296743 Oakland Circuit Court
MARY BARR, Defendant-Appellant.	LC No. 2010-107303-AW

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiff's motion to show cause and requiring defendant to vacate one of her two incompatible offices. We affirm.

Plaintiff brought this action against defendant in an effort to make plaintiff choose between her middle school teaching position in the Pontiac School District (her public employee office) and her position as a trustee with the Pontiac Board of Education (her public officer office) that she obtained in the November 2009 election. Although defendant requested that the trial court allow her to take a leave of absence from her teaching position while she served on the board, the trial court found that, under the incompatible offices act, the only remedy was for defendant to vacate one of her two incompatible offices. Defendant argues on appeal that the trial court erred in concluding that defendant could not take a leave of absence from her teaching position pursuant to MCL 15.403(2). We disagree.

The granting or denial of a writ of mandamus is reviewed for an abuse of discretion. *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008).

The incompatible offices act, MCL 15.181 *et seq*., contains a general prohibition against a public employee[1] or a public officer[2] holding two or more incompatible offices. *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 154; 627 NW2d 247 (2001). MCL 15.182 provides, "[e]xcept as provided in section 3,[3] a public officer or public employee shall not hold 2 or more incompatible offices at the same time."[4] MCL 15.181(b) provides:

> '[i]ncompatible offices' means public offices held by a public official[5] which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:
>
> (i) The subordination of 1 public office to another.
>
> (ii) The supervision of 1 public office by another.

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[1] MCL 15.181(d) provides:

> '[p]ublic employee' means an employee of this state, an employee of a city, village, township, or county of this state, or an employee of a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or of a city, village, township, or county in this state, but does not include a person whose employment results from election or appointment.

[2] MCL 15.181(e) provides:

> '[p]ublic officer' means a person who is elected or appointed to any of the following:
>
> (i) An office established by the state constitution of 1963.
>
> (ii) A public office of a city, village, township, or county in this state.
>
> (iii) A department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or a city, village, township, or county in this state.

[3] MCL 15.183.

[4] MCL 15.183 provides the exceptions to the general prohibition against an individual holding two or more incompatible offices. Neither party argues that one of the listed exceptions applies to defendant.

[5] A public official includes both a public employee and a public officer. *Murphy*, 464 Mich at 160.

(iii) A breach of duty of public office. [Footnote added.]

The parties do not dispute that defendant holds a public employee office as a teacher for the Pontiac School District and a public officer office as a trustee for the Pontiac Board of Education. Once it is determined that an individual holds two or more incompatible offices, MCL 15.184 provides that "[t]he attorney general or a prosecuting attorney may apply to [a] circuit court … for injunctive or other appropriate judicial relief or remedy." Thus, pursuant to the plain language of MCL 15.181 *et seq*., upon the attorney general or a prosecuting attorney seeking injunctive relief, if the trial court determines that an individual is holding simultaneous incompatible offices, pursuant to MCL 15.182 the trial court must order the individual to vacate one of the two incompatible offices. *Oakland Co Prosecutor v Scott*, 237 Mich App 419, 424; 603 NW2d 111 (1999) (vacation is the only solution to an incompatible offices violation).

Defendant contends, however, that pursuant to the political activities by public employees act, MCL 15.403(2),[6] she is entitled to take a leave of absence in order to avoid holding incompatible offices under MCL 15.181 *et seq*. We disagree.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Booker v Shannon*, 285 Mich App 573, 575; 776 NW2d 411 (2009). Legislative intent that may reasonably be inferred from the words in a statute. *Allen*, 281 Mich App at 52-53, citing *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). "When the Legislature has unambiguously conveyed its intent, the statute speaks for itself and judicial construction is neither necessary nor permitted." *Id*. at 53. Courts must give effect to each word, phrase, and clause in a statute and avoid an interpretation that renders any part of a statute nugatory or surplusage. *Id*. If a word in a statute is undefined, it should be accorded its plain and ordinary meaning and dictionary definitions may be consulted in such situations. *Id*. Furthermore, "[s]tatutes that relate to the same subject matter or share a common purpose are *in pari materia* and must be read together as one law ... in order to effectuate the legislative purpose as found in harmonious statutes." *In re Project Cost & Special Assessment Roll for Chappel Dam*, 282 Mich App 142, 148; 762 NW2d 192 (2009). "If two statutes lend themselves to a construction that avoids conflict, that construction should control." *Id*.

The incompatible offices act, MCL 15.181 *et seq*., was enacted in 1978. The preamble to the incompatible offices act provides that the act is:

> [a]n act to encourage the faithful performance of official duties by certain public officers and public employees; to prescribe standards of conduct for certain public officers and public employees; to prohibit the holding of incompatible public offices; and to provide certain judicial remedies.

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[6] MCL 15.403(2) provides "a public employee of a unit of local government or school district who is elected to an office within that unit of local government or school district shall resign or may be granted a leave of absence from his employment during his elected term."

In contrast, the political activities by public employees act, MCL 15.401 *et seq*., was enacted in 1976. The preamble to the political activities by public employees act states that it is "[a]n act to regulate certain political activities by certain public employees; to prescribe the powers and duties of certain state agencies; and to provide penalties."

According to the plain language of the statutes, the incompatible offices act and the political activities by public employees act are different statutory schemes that were enacted in different years to address different scenarios involving public employees and public officers. The incompatible offices act was intended to encourage faithful performance, prescribe standards of conduct, and prohibit the holding of incompatible public offices by public officers and public employees, while the political activities by public employees act was intended to regulate political activities by public employees. Thus, contrary to defendant's assertions on appeal, nothing in MCL 15.181 *et seq*., suggests that the Legislature intended for a leave of absence pursuant MCL 15.403(2) to cure a violation of the incompatible offices act. Rather, it is clear that the language used by the Legislature in MCL 15.182 mandates that an individual must vacate incompatibility held offices because the Legislature excluded all remedies but vacation for a violation of the incompatible offices act. See *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 151; 662 NW2d 758 (2003) (the Legislature's express mention of one thing generally implies the exclusion of similar things not mentioned). As noted by this Court, "[i]t is well settled that abstaining from any official action in an attempt to avoid an incompatibility does not remedy a breach of duty and that vacating one of the offices is the only solution to the problem." *Scott*, 237 Mich App at 424. Therefore, because vacation is the only remedy provided for within the incompatible offices act, the trial court properly ordered defendant to vacate one of her two incompatible offices.

Consequently, defendant's argument that a leave of absence would cure an incompatible offices violation because defendant's decisions as a public officer would not immediately affect her and her union contract authorizes her to take a leave of absence, is without merit. As we previously discussed, under the incompatible offices act, MCL 15.181 *et seq.*, the Legislature chose not to provide the remedy of taking a leave of absence. Furthermore, defendant's reliance on *Oakland Co Prosecutor v Seay*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2007 (Docket No. 271185), is misplaced. Unpublished decisions are not binding on this Court, MCR 7.215(C)(1), and, regardless, the *Seay* Court also concluded that vacation was the only appropriate remedy for a violation of the incompatible offices act. Finally, we cannot enter an order requiring Gill Garret or Damon Dorkins to resign from their current board offices because neither Garret nor Dorkins are aggrieved parties involved in an actual case or controversy before this Court. Thus, we do not have judicial power over these parties to enter an order. *Manuel v Gill*, 481 Mich 637, 643; 753 NW2d 48 (2008) (judicial power extends only to a genuine case or controversy between the parties).

Defendant also argues that the trial court erred in concluding that she was a teacher of an institution of higher education. We agree. MCL 15.181(c) defines "institution of higher education" as "a college, university, community college, or junior college …." Thus, under a plain reading of MCL 15.181(c), defendant, as a middle school teacher, is not an employee of an institution of higher education. Nonetheless, MCL 15.183(1) is merely an exception to the general prohibition against incompatible offices, *Murphy*, 464 Mich at 161, and the parties agree that none of the exceptions to the incompatible offices act apply. Although the trial court erred

in concluding that defendant was an employee of an institution of higher education, reversal is not required because the trial court reached the correct conclusion under the incompatible offices act, MCL 15.181 *et seq.*, and properly granted plaintiff's motion to show cause. See *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003) ("A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason.").

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering