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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-247**

Alliance of Taxpayers Against Corruption, Inc., et al.,  
Appellants,

vs.

Lyon County, Minnesota, et al.,  
Respondents.

**Filed August 22, 2011  
Affirmed  
Larkin, Judge**

Lyon County District Court  
File No. 42-CV-10-408

James P. Peters, Law Offices of James P. Peters, PLLC, Glenwood, Minnesota (for appellants)

Scott T. Anderson, Trevor S. Helmers, Ratwik, Roszak & Maloney, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Shumaker, Judge; and Wright, Judge.

**UNPUBLISHED OPINION**

**LARKIN**, Judge

Appellants challenge the district court's dismissal of their lawsuit for lack of standing. We affirm.

## FACTS

Appellants, Alliance of Taxpayers Against Corruption, Inc., et. al.,<sup>1</sup> sued respondent Lyon County asserting several claims<sup>2</sup> related to the county's operation of the Lyon County Landfill. Appellants alleged that the county, through its failure to act, allowed private individuals, who are not named as parties in this lawsuit, to engage in unauthorized, unrecorded dumping.<sup>3</sup> Specifically, appellants alleged that the county had received information that several individuals possessed keys to the landfill, that these individuals used the keys to access the landfill and engage in unrecorded dumping, and that the county did not attempt to recover the keys or change the locks to the gates at the landfill. Appellants also alleged that a gate or other means of access to the landfill occasionally was left unsecured, allowing access to the landfill and unrecorded dumping. Finally, appellants alleged that the county failed to conduct an audit of the landfill's operations to determine the scope and extent of the unrecorded dumping. Appellants

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<sup>1</sup> Alliance of Taxpayers Against Corruption is "a Minnesota non-profit corporation, duly incorporated under Chapter 317A of the Minnesota Statutes, whose members are taxpayers residing in the State of Minnesota, many of whom reside in and pay taxes in Lyon County." Elaine Snyder and Donald DeLange are also named appellants who allege that they have owned, or currently own, property in Lyon County.

<sup>2</sup> Appellants' complaint included claims under the Minnesota Environmental Policy Act (MEPA) and the Minnesota Environmental Rights Act (MERA). Appellants abandoned their MERA claim in the district court, and the district court dismissed their MEPA claim as untimely. Appellants do not challenge the district court's dismissal of their MEPA claim.

<sup>3</sup> Appellants also alleged that the county failed to collect sales tax on waste that was disposed of in the landfill and that this failure resulted in lost tax revenue. At oral argument, appellants notified this court that they are "dropping" the failure-to-collect-sales-tax claim and only are challenging respondents' failure to collect dumping fees.

argued that, as a result of these omissions, taxpayers were harmed by the lost revenue and by the lack of accurate information regarding the operation of the landfill.

The county moved to dismiss the complaint arguing, in part, that appellants lack standing. The district court agreed and dismissed appellants' complaint in its entirety. This appeal follows.

## D E C I S I O N

“Whether a party has standing to sue is a question of law, which we review *de novo*.” *Schiff v. Griffin*, 639 N.W.2d 56, 59 (Minn. App. 2002). “Standing focuses on whether the plaintiff is the proper party to bring a particular lawsuit.” *Citizens for Rule of Law v. Senate Committee on Rules & Admin.*, 770 N.W.2d 169, 174 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Oct. 20, 2009). “To establish standing, a party must have a sufficient personal stake in a justiciable controversy.” *Id.* (quotation omitted). “A sufficient stake may exist if the party has suffered an ‘injury-in-fact’ or if the legislature has conferred standing by statute.” *Id.* (quotations omitted). Under certain circumstances, a plaintiff may have standing to sue as a taxpayer. *See Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004) (“[I]t is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys; to recover for the use of the public subdivision entitled thereto, money that has been illegally disbursed, as well as to restrain illegal action on the part of public officials.” (quotation omitted)), *review denied* (Minn. Oct. 19, 2004).

“Taxpayers generally lack standing to challenge government action absent damage or injury which is special or peculiar and different from damage or injury sustained by

the general public.” *Citizens for Rule of Law*, 770 N.W.2d at 174 (quotation omitted). “Taxpayers without a personal or direct injury may still have standing but only to maintain an action that restrains the unlawful disbursements of public money . . . [or] illegal action on the part of public officials.” *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007) (quotation omitted). “[W]hile the activities of governmental agencies engaged in public service ought not to be hindered merely because a citizen does not agree with the policy or discretion of those charged with the responsibility of executing the law, the right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied.” *Id.*

Appellants contend that they have standing based on their status as taxpayers, arguing that revenue has been lost because the county allowed third-parties to dump waste in the landfill without collecting the applicable fees. Arguably, this lost revenue results in an increased financial burden on appellants. But under *Olson*, lost revenue, and any attendant financial burden, does not constitute a disbursement of public funds.

In *Olson*, plaintiffs challenged the constitutionality of certain statutory programs that created tax exemptions. *Id.* at 683. The plaintiffs argued that they had standing to sue as taxpayers because “actual injury is suffered through higher taxes as a result of exemptions being applied to others.” *Id.* at 684. This court disagreed, reasoning that

[a]lthough [plaintiffs] argue that they have standing to challenge legislative actions that create an increase in overall tax burden, there must still be a link between that challenge and an illegal expenditure of tax monies. While taxpayers have a real and definite interest in challenging such illegal expenditures, there are no such expenditures here.

*Id.* at 685 (citation omitted).

The complained-of conduct in this case is similar to that in *Olson*: a governmental entity's failure to collect revenue, which results in an increased financial burden on taxpayers. Appellants allege that they have suffered an increased financial burden because respondents failed to collect dumping fees at the landfill. The *Olson* plaintiffs alleged that they were injured by the state's failure to collect taxes pursuant to tax exemptions. Both cases involve a claim of increased financial burden resulting from the government's failure to maximize revenues. And, as in *Olson*, appellants' alleged increased financial burden is not connected to an unlawful expenditure.

Lacking legal support for their contention that the unlawful-distribution-of-public-money taxpayer-standing rule applies here, appellants argue that this court should extend the reach of the rule stating:

[Caselaw] allows for the conclusion that standing exists to challenge the illegal mismanagement and actions that resulted in the failure to collect the hundreds of thousands of dollars in revenue herein. As a matter of public policy, it is necessary and appropriate for taxpayers to be able to challenge illegal actions, mismanagement and misuse of public funds and services.

But “[t]he Minnesota courts have limited [the unlawful-disbursement-of-public-money taxpayer-standing rule] closely to its facts.” *Citizens for Rule of Law*, 770 N.W.2d at 175. “[T]he line is drawn where a taxpayer seeks to challenge what the taxpayer perceives to be an illegal expenditure or waste of tax monies.” *Olson*, 742 N.W.2d at 684-85. And because this court is not authorized to expand the taxpayer-standing rule based on policy grounds, appellants' policy arguments are unavailing. *See*

*LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000) (stating that “[b]ecause this court is limited in its function to correcting errors it cannot create public policy”), *review denied* (Minn. May 16, 2000).

Moreover, the record is devoid of evidence indicating that the county engaged in illegal activity. Appellants allege that the county “allowed keys to the [l]andfill to remain in the vehicles of private haulers, failed to recover the keys and/or change the locks despite notice, left gates/access to the [l]andfill unsecured, had notice of illegal after-hours dumping, and failed to collect hundreds of thousands of dollars for unbilled dumping.” But the district court reasoned:

In liberally construing the complaint, this Court cannot find an allegation of illegal acts by [the county]. First, there are allegations that third-parties had unaccounted and unrecorded access to the Lyon County Landfill. These are, clearly, not allegations of illegal acts by [the county]. Second, there are allegations that [the county] took no action when requested to do so by Plaintiffs. [The county’s] actions (or failure to take actions) are clearly the result of the exercise of discretion by [the county]. . . . These (non-)acts are not illegal acts.

The district court’s reasoning is sound. The allegedly illegal acts, i.e. accessing the landfill and engaging in unauthorized dumping, were performed by named and unnamed individuals who have not been sued—not by the county. Thus, appellants fail to establish standing based on the theory that there is a need to restrain “illegal action on the part of public officials.” *Olson*, 742 N.W.2d at 684 (quotation omitted).

We further observe that appellants’ citation to caselaw is unavailing. None of the cited cases supports a conclusion that appellants have standing. *See Scinocca v. St. Louis Cnty. Bd. of Comm’rs*, 281 N.W.2d 659, 660-61 (Minn. 1979) (standing conferred under

statute); *Twin Ports Convalescent, Inc. v. Minn. State Bd. of Health*, 257 N.W.2d 343, 343 (Minn. 1977) (concerning an injury-in-fact to a business and not taxpayer standing); *Channel 10, Inc. v. Indep. Sch. Dist. No. 709*, 298 Minn. 306, 306, 215 N.W.2d 814, 817 (1974) (standing conferred under statute); *Rukavina*, 684 N.W.2d at 534-35 (holding that there was no taxpayer standing because an unallotment is not an expenditure); *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 623-24 (Minn. App. 2002) (concerning application of a zoning ordinance and not taxpayer standing), *review denied* (Minn. July 16, 2002).

In sum, appellants' complaint alleges nothing more than disagreement with the policies and discretionary decisions of county officials. This mere disagreement, without evidence of an unlawful disbursement or illegal act, does not provide appellants with standing to sue as taxpayers. *See Olson*, 742 N.W.2d at 685 ("Simple disagreement with policy or the exercise of discretion by those responsible for executing the law does not supply the 'unlawful disbursements' or 'illegal action' of public funds required for standing to support a taxpayer challenge.") (quotations omitted)); *Rukavina*, 684 N.W.2d at 531 ("We agree that the individual challenges in this case are based primarily on appellants' disagreement with policy or the exercise of discretion by those responsible for executing the law and do not fall within the ambit of the cases giving standing to taxpayers to challenge illegal expenditures.").

Because appellants do not have standing under statute, because appellants lack an injury-in-fact, and because appellants fail to allege an illegal expenditure or illegal action by the county, the district court did not err by dismissing their complaint for lack of

standing. And because we conclude that dismissal was appropriate based on lack of standing, we do not address appellants' arguments that the district court erred by concluding that their complaint failed to state a claim on which relief could be granted, by refusing to allow additional discovery, or by refusing to convert respondents' motion to dismiss into a motion for summary judgment.

**Affirmed.**

Dated:

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Judge Michelle A. Larkin