

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

DELBERT G. STEWART,	:	PER CURIAM OPINION
Relator,	:	CASE NO. 2009-P-0003
- VS -	:	
BUREAU OF WORKERS' COMPENSATION, et al.,	:	
Respondents.	:	

Original Action for Writ of Quo Warranto.

Judgment: Petition dismissed.

Delbert G. Stewart, pro se, 65 Johnson Road, Kent, OH 44240-1838 (Relator).

Richard Cordray, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428; *Mark E. Mastrangelo*, Assistant Attorney General, State Office Building, 11th Floor, 615 West Superior Avenue, Cleveland, OH 44113-1899; *Elise W. Porter* and *Eric C. Harrell*, Assistant Attorneys General, 150 East Gay Street, 22nd Floor, Columbus, OH 43215-3130 (For Respondents).

PER CURIAM.

{¶1} This action in quo warranto is presently before this court for disposition of the motion to dismiss of respondents, the Bureau of Workers' Compensation and certain members of its staff. As the primary basis of their motion, respondents maintain that the factual allegations of relator, Delbert G. Stewart, are insufficient to state a viable claim because he has not requested any relief which can be awarded in a quo warranto case. For the following reasons, this court concludes that the dismissal of the instant

matter is warranted under Civ.R. 12(B)(6).

{¶2} A review of the quo warranto petition indicates that relator's sole claim for relief was based upon the following factual assertions. Relator is the owner of a roofing business in Portage County, Ohio. For the fiscal years 2005, 2006, and 2007, he filed certified payroll reports with the Bureau of Workers' Compensation. In calculating the amount of the premiums owed by the business, relator employed four different levels of payroll percentages, predicated upon different "work" classifications.

{¶3} In 2007, certain members of the Bureau's staff conducted an audit of the payroll reports relator had submitted for the three-year period. At the end of the audit process, the staff members concluded that relator should have only used one payroll percentage in determining the amount of premiums owed. In light of this, the Bureau calculated that relator and his business still owed the sum of \$42,805.50 in premiums for the three-year period. Upon issuing an invoice to relator for that sum, the Bureau referred the matter to the Attorney General's office for collection.

{¶4} After receiving monthly invoices as to the alleged delinquent premiums for eighteen months, relator brought the instant action before this court. In the first part of his quo warranto petition, relator essentially asserted a series of challenges to the basic authority of the Bureau and certain staff members to review his prior payroll reports and determine that he had not made the proper calculations. For example, paragraph three of his petition posited the following question:

{¶5} "By what authority do the 'Respondents' claim to possess, the 'legislative authority' to 'ignore' my 'certification' that the payroll percentages for those years included classifications #5551RN; #5403RN; #5645RN and #5661RN were not 'true and accurate'; but instead, insert their claim that the payroll was under only 'one

classification' of #5551RN, (which is the highest premium rate) when in fact the work performed in those payroll periods were 'certified' by me to be under 'different classifications' for different work that my company performed, and as authorized by law?"

{¶6} In the second section of his petition, relator provided a statement of the underlying facts which supported his challenges to respondents' authority. As part of this statement, relator argued that, by rejecting his certification of truthfulness on each of the payroll reports, the Bureau's audit committee had essentially found him guilty of perjury without due process of law. He further argued that the Bureau's employees were acting beyond the scope of their jurisdiction and were attempting to "extort" funds from him as part of a system-wide scam.

{¶7} In the petition's final section, relator delineated a list of "demands" for his final relief. In stating this list, relator never expressly requested the issuance of a writ of quo warranto. Instead, he demanded that he be given the names of all state employees who had played a role in the audit and the release of the invoice/order against him. In addition, he requested this court to take any necessary steps to vacate the decision of the Bureau and relieve him of any obligation to pay the new debt.

{¶8} In now moving to dismiss the entire petition for failure to state a viable claim, the Bureau and the named member of its staff, respondents, submit that this matter cannot go forward because an action in quo warranto is not intended to be used as a means of contesting the validity of their decision. In support of their contention, respondents maintain that the primary purpose of a quo warranto claim is to contest the authority of a person to hold a public office or a corporate office. Based upon this, they argue that, since relator is not challenging the rights of the staff members to "hold" their

respective positions with the Bureau, he will be unable to prove a set of facts under which he would be entitled to the writ.

{¶9} Respondents' contention as to the limited scope of a quo warranto action finds support in the previous case law of this court. In *Lorince v. Romerock Assoc., Inc.* (Dec. 7, 2001), 11th Dist. No. 2001-A-0047, 2001 Ohio App. LEXIS 5451, three private citizens instituted the quo warranto proceeding to contest the validity of an election for the position of director on the board of a nonprofit corporate entity. In ultimately holding that the citizens had failed to allege a viable claim for such a writ, we began our analysis by noting that, under the common law, the basic purpose of a quo warranto proceeding was to protect the public against the abuse of corporate power and the usurpation of the state's sovereign authority; hence, this type of proceeding could only be maintained by the state itself and its officers. *Id.* at *4. In regard to the common law, our opinion also stated that only one exception to the foregoing general rule had been recognized; i.e., a private citizen could bring a quo warranto case if he could claim title to a disputed public office. *Id.*

{¶10} In the next section of the *Lorince* opinion, we discussed the fact that the common law limitations upon the writ of quo warranto had been incorporated into the modern statutory scheme which now governs such a proceeding:

{¶11} “*** R.C. 2733.01(A) states that such an action can be filed in the name of the state against a person who illegally holds either a public office or a corporate office. R.C. 2933.04 then provides that the state attorney general or a prosecuting attorney *must* institute a quo warranto action when mandated to do so by the Governor, Supreme Court, Secretary of State, or General Assembly. In addition, R.C. 2733.05 provides that the state attorney general or a prosecuting attorney can bring a quo

warranto action either upon his own relation or, after being granted leave of court, upon the relation of a second person.

{¶12} “The only other provision in R.C. Chapter 2733 governing the institution of such an action is R.C. 2733.06, which states that a private citizen can bring the action by himself, or with the assistance of an attorney, when he claims entitlement to a public office which is unlawfully held by another. In applying R.C. 2733.06, the Supreme Court has indicated that this statute sets forth the only exception to the general rule under R.C. 2733.04 and 2733.05 that a quo warranto action must be maintained by the state attorney general or a prosecuting attorney. *State ex rel. Coyne v. Todia* (1989), 45 Ohio St.3d, 232, 237 ***. See; also, *Reisig v. Camarato* (1996) 111 Ohio App.3d 479, 482, ***. Hence, the circumstances under which a private person can seek a writ of quo warranto himself are very limited.” (Emphasis sic.) *Id.* at *4-6.

{¶13} In *Lorince*, this court’s decision to dismiss the quo warranto petition turned upon the conclusion that private citizens did not have the capacity to file such a case in their own names when the underlying dispute pertained to the right to hold a corporate office. *Id.* at *8. We explained the governing law regarding who may institute a quo warranto proceeding, and set forth the factual circumstances in which the writ can be invoked. That is, unless the action is instituted against an Ohio corporate entity, a quo warranto proceeding can only be maintained in relation to a person who either: (1) unlawfully holds a public or corporate office; or (2) has committed an act which results in the forfeiture of a public office. R.C. 2733.01(A) & (B). See, also, *State ex rel. Morris v. Soltez*, 11th Dist. No. 2002-T-0016, 2002-Ohio-3714.

{¶14} In light of the limited circumstances under which a writ of quo warranto will lie, it has been held that such an action cannot be predicated upon alleged misconduct

of a public official. See *State ex rel. Johnson v. Talikka*, (Mar. 31, 1991), 11th Dist. No. 93-T-1816, 1994 Ohio App. LEXIS 1402, at *4. Furthermore, it has been held that the writ should not be issued when there exists an alternative legal remedy which the relator could pursue to achieve the identical result. *Id.*

{¶15} In the instant matter, our review of the caption of relator's petition for relief shows that he named the following entity and persons as respondents in this action: (1) the Bureau of Workers' Compensation; (2) a regional audit supervisor; (3) a supervisor in the Bureau's Collections/Audit Department; (4) the three members of an adjudicating committee; and (5) an unknown computer operator. In referring to these various parties in his factual assertions, relator has not alleged that they are trying to unlawfully seize and hold a public or corporate office. Instead, his factual assertions only allege that, by claiming that he is liable for the sum of \$42,805.50 in delinquent premium payments, the six individual respondents are acting beyond the scope of their authority as employees of the Bureau. Therefore, even if it is assumed, for the purpose of this analysis, that the six individual respondents are the holders of a "public" office, a viable claim for a writ of quo warranto has not been stated because, at best, relator has only raised the specter of potential official misconduct in the performance of an official duty.

{¶16} In responding to the motion to dismiss, relator reiterates his assertion that respondents have engaged in a "sham" legal process; based on this, he demands that this court issue a mandate to the Ohio Attorney General to investigate his allegations as to the "falsification" of his prior payroll reports. However, given the foregoing discussion concerning the limited purpose of a writ of quo warranto, it follows that such a mandate cannot be rendered in the context of the instant proceeding. As to this point, we would emphasize that we also would not have the authority to provide this type of relief in any

of the other four actions over which we have original jurisdiction under Section 3(B), Article IV of the Ohio Constitution.

{¶17} In addition to failing to request relief which can be awarded under a quo warranto claim, relator further lacks the legal capacity to maintain such an action. In his claim, he has not alleged that he is entitled to hold a disputed public office. Thus, even if his claim was otherwise viable, only the state attorney general or a county prosecuting attorney could go forward with this type of legal proceeding. *Lorince*, 2001 Ohio App. 5451, at *5-6.

{¶18} Pursuant to Civ.R. 12(B)(6), a civil claim will be subject to dismissal when it is beyond all doubt that, even if the relator's allegations are viewed in a manner most favorable to him, he still will not be able to establish a set of facts that would entitle him to the requested relief. *Id.* at *9. Consistent with the foregoing discussion, we hold that respondents have met this standard as to relator's sole claim. That is, relator's factual assertions are legally insufficient to state a viable claim in quo warranto because such an action cannot be employed to contest the validity of a decision of a state agency.

{¶19} Respondents' motion to dismiss the instant matter under Civ.R. 12(B)(6) is granted. It is the order of this court that relator's petition in quo warranto is hereby dismissed in its entirety.

MARY JANE TRAPP, P.J., COLLEEN MARY O'TOOLE, J., TIMOTHY P. CANNON, J.,
concur.