

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

WEST HOLT MEMORIAL HOSPITAL,
Plaintiff,

Case No. CI00-111

vs.

JUDGMENT OF DISMISSAL

**HOLT COUNTY BOARD OF
SUPERVISORS and HOSPITAL
AUTHORITY NO. 1 OF HOLT COUNTY,
NEBRASKA,**

Defendants.

DATE OF HEARING: September 21, 2000.
DATE OF RENDITION: December 5, 2000.
DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).
TYPE OF HEARING: In chambers and by telephone (per Rule 8-4, no evidence or record).
APPEARANCES:
For plaintiff: Michael C. Cox.
For defendants:
HCBS: Thomas P. Herzog, Holt County Attorney.
HA No. 1: Thurman Gay.
SUBJECT OF ORDER: Demurrer of defendant Hospital Authority No. 1 of Holt County, Nebraska.
PROCEEDINGS: See order entered September 25, 2000.
MEMORANDUM:

1. The plaintiff's petition alleges two causes of action: (1) to declare the creation of the Hospital Authority No. 1 of Holt County, Nebraska ("the authority") void as having been created in violation of the Hospital Authorities Act (NEB. REV. STAT. § 23-3579 *et seq.* (Reissue 1997)), and, (2) to declare the action of the Holt County Board of Supervisors ("the county board") creating the authority void under NEB. REV. STAT. § 84-1408 *et seq.* (Reissue 1999) (the "open meetings" law).

2. Although the county board filed an answer generally denying the allegations, the authority generally demurred to the petition. The demurrer was argued and a brief submitted by plaintiff.

3. The court concludes that the demurrer is proper and should be sustained.

4. In the first cause of action, the plaintiff seeks a declaratory judgment that the proceedings violated the Hospital Authorities Act and that the creation of the authority is void. Quo warranto is the sole method of attacking the legal existence of a public corporation. *Bard v. Cox Cable of Omaha, Inc.*, 226 Neb. 416 N.W.2d 4 (1987); *State ex rel. Summers v. Uridil*, 37 Neb. 371, 55 N.W. 1072 (1893). A proceeding against the authority itself constitutes a recognition of its existence as a corporation. *State ex rel. Larson v. Morrison*, 155 Neb. 309, 51 N.W.2d 626 (1952); *State ex rel. Summers v. Uridil, supra*. If the incorporation is void, the only proceedings must be against the persons undertaking to exercise its franchises. *Id.* Neither the purportedly void public corporation nor the officials purportedly creating the public corporation are proper or necessary parties. *State ex rel. Larson v. Morrison, supra*. There is no reasonable possibility that an amendment would cure the defect. The first cause of action must be dismissed with prejudice. *Wilkinson v. Methodist, Richard Young Hosp.*, 259 Neb. 745, 612 N.W.2d 213 (2000).

5. The second cause of action alleges an open meetings law violation. Section 84-1414(3) authorizes “[a]ny citizen of this state” to commence a district court action to declare an action of a public body void. NEB. REV. STAT. § 84-1414(3) (Reissue 1999). The Legislature did not specifically define the term “citizen.” A court does not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Lawson v. Ford Motor Co.*, 225 Neb. 725, 408 N.W.2d 256 (1987). Recognition that legislators typically vote on the language of a bill generally requires this court to assume that the legislative purpose is expressed by the ordinary meaning of the words used; thus, in the absence of anything indicating to the contrary, statutory language is to be given its plain and ordinary meaning. *Id.*

6. A citizen is ordinarily considered as “a native or naturalized member of a state or nation who owes allegiance to its government and is entitled to its protection” or “an inhabitant of a city or town.” RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 377 (2d ed. 1987).

7. The petition does not clearly state the plaintiff's organizational form. It alleges that plaintiff is a "hospital" duly organized and existing under the laws of the State of Nebraska. NEB. REV. STAT. § 71-2002(4) (Reissue 1996) defines "hospital" by function rather than its legal organizational form. It may be a corporation or an unincorporated association. A corporation may be a "citizen" within the meaning of a statute if the purpose and intent of the statute renders it applicable. 18 C.J.S. *Corporations* § 3 (1990). The United States Supreme Court has observed that the term citizen or subject may be broad enough to include corporations of the country whose citizens are in question. *Swiss Nat. Ins. Co. v. Miller*, 267 U.S. 42, 45 S. Ct. 213, 69 L. Ed. 504 (1925). Whether it is so inclusive in any particular instance depends upon the intent to be gathered from the context and the general purpose of the whole legislation in which it occurs. *Id.*

8. However, the purpose and intent of the open meetings law does not appear to contemplate a corporation as a "citizen." Clearly, a *public* corporation is not a "citizen" under the open meetings law. *County of York v. Johnson*, 230 Neb. 403, 432 N.W.2d 215 (1988). The same reasoning supports the conclusion that a private corporation is not a "citizen" within the meaning of the open meetings statute.

9. Thus, even if the plaintiff is organized as a corporation, the court concludes that it is not a "citizen" within the meaning of the open meetings law. If it is unincorporated, there is no support for the contention that it constitutes a "citizen."

10. Of course, there is a constitutional definition of a citizen of a state. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the state wherein they reside. U.S. Const. amend. XIV, § 1. A corporation is not a "citizen" in the constitutional sense. 18 C.J.S. *Corporations* § 3 (1990).

11. In this case, this court concludes that the plain and ordinary meaning of the term coincides with the constitutional definition. Because the plaintiff is not a "citizen" within the meaning of the open meetings statute, the plaintiff's petition fails to state a cause of action. Once again, the defect cannot be cured by amendment. The second cause of action must also be dismissed with prejudice.

12. Because the demurrer should be sustained as to both causes of action and the defects cannot be cured by amendment, the petition must be dismissed with prejudice. Although only the authority

demurred, the same defects apply as against the defendant county board. The petition should also be dismissed with prejudice as to that defendant.

ORDER AND JUDGMENT: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The demurrer of the defendant Hospital Authority No. 1 of Holt County, Nebraska, to the plaintiff's petition is sustained.

2. Leave to amend is denied.

3. The plaintiff's petition is dismissed with prejudice as to both defendants at plaintiff's cost.

Signed in chambers at Ainsworth, Nebraska, on December 5, 2000.

DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

• Mail a copy of this order to all counsel of record and to any pro se parties.

9 Done on _____, 20____ by ____.

Enter judgment on the judgment record.

Done on _____, 20____ by ____.

• Mail postcard/notice required by § 25-1301.01 within 3 days **stating "Petition dismissed with prejudice at plaintiff's cost."**

Done on _____, 20____ by ____.

• Note the decision on the trial docket as: [date of filing] Signed "Judgment of Dismissal" entered.

Done on _____, 20____ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge