

Freedom Matters

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We are a free people in a republic, under a constitution which limits the powers of government to those necessary to secure the unalienable rights of each person to their life, liberty and property. Yet, when a legislature is in session, no one's life, liberty or property is safe. It's the curse of a democracy. That's why we have a republic instead. *Freedom Matters* dedicates itself to the fight to restore our republic. Most of the press and courts fail to do so. They've forgotten that freedom matters.

Dane County Regional Planning Commission Part 2

*What can we do when politics invades the
judicial process? ...*

by Bob Bowman

As noted in Part 1 of this two-parter, the drive to terminate the infamous one-county Dane County "Regional" Planning Commission by statutory process has been stalled in court by die-hard opponents. These opponents (the plaintiffs) seemingly have a willing ally in the judge hearing the case. Judge Flanagan went to rather extraordinary lengths to avoid making a decision in the case, even going so far as to prolong procedures so as to postpone any court action until after Governor Doyle was inaugurated.

Governor Doyle has now been inaugurated, and he has acted to allow the case to go forward in circuit court. His office hired the law firm of Brennan, Steil & Basting, to write a reply brief supporting Governor McCallum's right to dissolve the DCRPC. Governor Doyle's position in this matter may have compelling weight with the judge, since Doyle was the Attorney General for the state for the past 12 years.

By statute, the DCRPC was set to terminate on October 1, 2002. The 2002 budget bill extended that date by two years by indicating that "notwithstanding" the statutory process in §66.0109(15) for terminating an RPC, the DCRPC would terminate on October 1, 2004.

The plaintiffs interpreted this language as requiring that the DCRPC remain in existence until October 1, 2002. However, that interpretation nullifies the statutory process for terminating an RPC, thereby nullifying the right of a majority of the local communities to terminate the DCRPC in that period.

The Governor's reply brief to this argument notes however, that another interpretation exists which does not nullify the statute [i.e., does not

nullify §66.0109(15)], and to which interpretation the court had already admitted, and which, by the standards of statutory construction, the court is therefore **compelled** to accept. That interpretation of the term "notwithstanding" is that the budget bill language merely indicated that if no action were taken under §66.0109(15), Stats., so that the DCRPC was still in existence on October 1, 2004, that it would on that date thereupon terminate.

The Governor's reply brief also disposed of Plaintiff's argument that §66.0109(15) gives Dane County veto power over the dissolution of the RPC. The statute reads that an RPC shall be terminated if so recommended by resolutions "**adopted by the governing bodies of a majority of the local units in the region, including the county board of any county, part or all of which is in the region**"

If the statute intended to give county boards veto power over such dissolution, then the statute would have to read "the county board of every county" rather than "the county board of any county." That's because most RPCs are multi-county RPCs. In sum, the only sensible interpretation of this provision is that it means merely that the county boards count in determining the number of local units which constitute a majority.

Most importantly, the Governor's reply brief indicates that the statute providing for establishing RPCs was adopted in 1955, and the statutory provision for terminating an RPC was added four years later, as an incentive to communities to join an RPC. It had become clear that local governments were not about to put themselves under an RPC which they could not get out of if it were not working properly.

The die-hard actions of an RPC to keep itself alive even when it has alienated its constituency is a warning that local communities are correct not to trust RPCs. Sufficient petitions to dissolve the DCRPC were filed in 1999, and the DCRPC has used taxpayer dollars to fight its dissolution ever since, and is still alive. This is proof that these non-elected agencies are nearly out of control of the governments which created them. They need to be reined in, or legislated out of existence.

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