

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH )

v. )

CASE NO. CL08-00406

REBECCA BYRD NEAL )

OPINION AND ORDER

This matter is before the Court, pursuant to § 24.2-236 of the Code of Virginia 1950, as amended, on the suspension of Rebecca Byrd Neal ("Respondent") from the Office of the Treasurer of the City of Harrisonburg, Virginia, pending a hearing for removal from office in accordance with Code §§ 24.2-233 and 24.2-235, scheduled for June 12, 2008. The Court heard oral argument on April 30, 2008 and took the matter under advisement.

Code § 24.2-236 provides as follows:

In the event of a judicial proceeding under §§ 24.2-231, 24.2-232, 24.2-233, or 24.2-234, the circuit court may enter an order suspending the officer pending the hearing. The court may, in its discretion, continue the suspension until the matter is finally disposed of in the Supreme Court or otherwise. During the suspension the court may appoint some suitable person to act in the officer's place. The officer's compensation shall be withheld and kept in a separate account and paid to him if and when the judicial

proceedings result in his favor. Otherwise, it shall be paid back to the county, city, town or State Treasurer who paid it.

Va. Code. Ann. § 24.2-236 (2008). The parties cite no authority, nor has the Court ascertained any authority, to evince a burden of proof for the suspension of an officer under Code § 24.2-236. Respondent argues that clear and convincing evidence should be the standard for suspension just as it is the standard for removal under Code § 24.2-235; see Commonwealth ex rel. Davis v. Malbon, 195 Va. 368, 379 (1953); however, as the Court stated during the April 30 hearing, to require a suspension hearing in which the Court must make an identical factual finding under an identical standard is highly illogical in that such requirement would render moot a hearing for removal and relegate the suspension statute as wholly inefficacious. Respondent further attempts to draw an analogy between Code § 24.2-236 and the equitable cause of action for injunction; however, a prayer for injunctive relief is not before the Court. Code §§ 24.2-230 et seq. set forth a special statutory framework for the removal of constitutional officers, and the Court will follow this framework in considering suspension. While Code § 24.2-235 states, "[i]f upon trial it is determined that the officer is

subject to removal under the provisions of § 24.2-233, he shall be removed from office," Va. Code Ann. § 24.2-235 (2008) (emphasis added), Code § 24.2-236 requires no such trial. Code § 24.2-236 states, "in the event of a hearing under... [§] 24.2-233... the circuit court may enter an order suspending the officer pending the hearing." Va. Code Ann. § 24.2-236 (2008) (emphasis added). The plain language of the statute indicates that the sole prerequisite for suspension is the existence of a hearing under Code § 24.2-233, which the Court notes, was predicated upon, at minimum, five hundred fifty three (553) signatures from registered voters of the City of Harrisonburg. See Va. Code Ann. § 24.2-233 (2008).

Certainly from the standpoint of public policy, suspension is distinguishable from removal in that a suspension under Code § 24.2-236 is temporary, requiring repayment of the officer's compensation during the suspension period in the event of a favorable result from the proceedings, while removal under Code § 24.2-233 is indefinite.\* In the opinion of this Court, suspension exists to safeguard the office and the public trust therein pending a trial on the merits, thus allowing a respondent

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\* Unlike Code § 24.2-231, Code § 24.2-233 does not preclude the subject officer from subsequently running in an election for or being appointed to the office from which he or she was removed.

his or her opportunity to be heard at a full trial on removal while hedging risk to the citizenry in the interim. As such, the Court finds that suspension pending said hearing is in the sole discretion of the Court.

In exercising its discretion, the Court will consider the seriousness of the allegations in conjunction with the relationship of said allegations to the ongoing conduct of the Office of the Treasurer. Respondent is under indictment for multiple felonies and misdemeanors pertaining to the opening of sealed deposits, use of said monies for her own personal benefit, attempts to hide such conduct, and "bouncing" checks written to the City incognito in attempted repayment thereof. These allegations are not only grave in the abstract; they are directly related to the duty and function of the Office of the Treasurer. While the Court finds that allegations set forth in the duly filed Petition pursuant to Code § 24.2-233, standing alone, are sufficient to permit the exercise of discretion to suspend, the Court notes that, if any evidence be required, the multiple indictments under the concurrent criminal case against Respondent in this Court, of which the Court takes judicial notice, are indicative of probable cause to suspend.

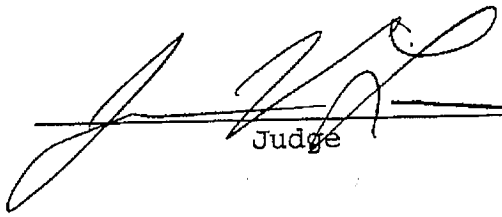
ORDER

Based upon the gravity of the allegations, coupled with the fact that the acts alleged strike directly at the heart of the duty and function of, as well as the public trust in, the Office of the Treasurer, it is ADJUDGED and ORDERED that REBECCA BYRD NEAL, effective immediately upon entry of this Order, is hereby SUSPENDED from the Office of the Treasurer of the City of Harrisonburg pending a hearing for removal, scheduled for June 12, 2008. If said hearing is continued or delayed for any reason, the suspension shall continue in accordance therewith. The Court may, in its discretion, continue the aforesaid suspension until the matter is finally disposed of in the Supreme Court or otherwise. Endorsement of this Order is waived pursuant to Rule 1:13 of the Supreme Court of Virginia. Counsel shall have ten (10) days to file any written objections to this ruling, which shall be included in the record.

The Clerk is directed to certify a copy of this Opinion and Order to Marsha L. Garst, Esquire, Commonwealth's Attorney, 53 Court Square, Suite 210, Harrisonburg, Virginia 22801; H. David O'Donnell, Esquire, 57 South Main Street, Suite 206, Harrisonburg, Virginia 22801; and Earl Q. Thumma, Jr., Esquire, Harrisonburg City Attorney, 345 South Main Street, Harrisonburg, Virginia 22801.

DATED: May 2, 2008

ENTER:

  
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Judge

A TRUE COPY

ATTESTE

  
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DEPUTY CLERK