

**COMMONWEALTH OF KENTUCKY
48TH JUDICIAL CIRCUIT
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 19-CI-00844**

**JENEAN HAMPTON, in her official capacity as
Lieutenant Governor of the Commonwealth of Kentucky**

PLAINTIFF

v.

**MATTHEW G. BEVIN, in his official capacity as
Governor of the Commonwealth of Kentucky, et al.**

DEFENDANTS

OPINION AND ORDER

This matter is before the Court on cross Motions for Summary Judgment. On review of the parties' briefs and papers, and otherwise being sufficiently advised, this Court hereby **GRANTS** Defendants' Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment for reasons stated more fully below.

BACKGROUND

Matthew Bevin, Defendant, and Jenean Hampton, Plaintiff, are Governor and Lieutenant Governor of Kentucky, respectively. Lieutenant Governor Hampton is seeking declaratory and injunctive relief against Governor Bevin and against the Personnel Cabinet. Governor Bevin and Lieutenant Governor Hampton were elected on November 3, 2015 and took office on December 8, 2015. Stephen Knipper and Adrienne Southworth are former staff members of the Lieutenant Governor, who were employed as Chief of Staff for the Lieutenant Governor and Deputy Chief of Staff for the Lieutenant Governor, respectively. To effectuate the appointments of Knipper and Southworth, Governor Bevin took two actions. First, Governor Bevin issued a pair of executive orders which appointed

Knipper and Southworth to positions in the Governor's Office; their formal positions were each designated as "chief assistant" to the Lt. Governor. Second, Troy Robinson, an official of the Finance and Administration Cabinet who Governor Bevin formally designated as "appointing authority"¹ for personnel actions in the Office of the Governor, processed the appointments through the Kentucky Human Resources Information System. Knipper began work on or about December 8, 2015, and Southworth began work on or about December 14, 2015.

On or about January 29, 2019, Knipper was officially notified by letter, signed by Robinson, that Knipper was terminated from his position in the Lieutenant Governor's Office. The letter stated that Knipper was terminated "without cause." Upon learning that Knipper was notified of his termination on January 29, 2019, Lieutenant Governor Hampton attempted to countermand the action take by Mr. Robinson, and she signed paperwork purporting to reappoint him. The Personnel Cabinet declined to process the reappointment.

Southworth was similarly notified of her termination on May 30, 2019. Again, this letter was signed by Robinson and indicated that Southworth was terminated "without cause." In response, Lieutenant Governor Hampton contacted Thomas P. Stephens, Secretary of the Personnel Cabinet, and requested that Southworth be reinstated immediately. On May 31, 2019, Secretary Stephens responded, asserting Robinson's ability and authority to terminate Southworth and declining to reinstate her.

Lieutenant Governor Hampton filed her Complaint with this Court on August 15, 2019. In her Complaint, the Lieutenant Governor requested a declaration that the

¹ See KRS 18A.005(1).

Lieutenant Governor is the proper appointing authority for members of her office and that employees of the Lieutenant Governor who are exempt from classified service serve at the will of the Lieutenant Governor. Lieutenant Governor Hampton also seeks a temporary and permanent injunction that orders the Personnel Cabinet to process officers and employees that the Lieutenant Governor appoints. In addition, she seeks to enjoin the Governor from interfering with the Lieutenant Governor's appointment of officers and employees who are designated to serve on her staff.

On October 3, 2019, Plaintiff and Defendants both filed Motions for Summary Judgment. Lieutenant Governor Hampton argues that statutory language makes clear that she is the head of her own agency. She argues that her status as an "agency head"² gives her the authority to appoint employees as necessary to fulfill the duties of her office. She further argues that, in the absence of a clear statutory grant of such authority, that she has implied authority to perform these actions by virtue of her position. Governor Bevin argues instead that the statutes, as well as the Kentucky Constitution, support his position. He argues that the applicable statute and regulations clearly provide that the Lieutenant Governor is a position that is within, and subordinate to, the Office of the Governor. He further argues that action by this Court into a personnel decision of the Executive Branch would risk encroachment upon the separation of powers doctrine. Each argument will be discussed in turn below.

STANDARD OF REVIEW

Summary judgment is appropriate when the Court concludes that no genuine issue of material fact for which the law provides relief exists. CR 56.03. Summary judgment

² See KRS 18A.005(1).

“shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.01.

The moving party bears the initial burden of showing the non-existence of a genuine issue of material fact, and the burden then shifts to the opposing party to affirmatively show the absence of a genuine issue of material fact. *Jones v. Abner*, 335 S.W.3d 471, 475 (Ky. Ct. App. 2011). The movant will only succeed by showing “with such clarity that there is no room left for controversy.” *Steevest, Inc. v. Scansteel Service Ctr.*, 807 S.W. 2d 476, 482 (Ky. 1991). “The inquiry should be whether, from the evidence on record, facts exist which would make it possible for the non-moving party to prevail. In the analysis, the focus should be on what is of record rather than what might be presented at trial.” *Welch v. Am. Publ'g Co. of Kentucky*, 3 S.W.3d 724, 730 (Ky. 1999). In reviewing Motions for Summary Judgment, the Court views all facts in the light most favorable to the non-moving party and resolves all doubts in its favor. The Court will only grant summary judgment when the facts indicate that the nonmoving party cannot produce evidence at trial that would render a favorable judgment. *Steevest*, 807 S.W. 2d at 480.

The Court recognizes that the summary judgment is a device that should be used with caution and is not a substitute for trial. “[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Jones v. Abner*, 335 S.W.3d at 480. Thus, this Court finds that summary judgment will be proper

when it is shown with clarity from the evidence on record that the adverse party cannot prevail as a matter of law under any circumstances.

ANALYSIS

At the root of this dispute is the question of whether the Lieutenant Governor is an independent officer who is the head of a statutory agency, or is a subordinate officer to the Governor. The Court finds that the Kentucky Constitution regards the Lieutenant Governor as a subordinate officer to the Governor, who is vested with “[t]he supreme executive power of the Commonwealth.” Ky. Const. §69. In reading the Kentucky Constitution, the Court finds that the Lieutenant Governor only has those duties which the Governor has assigned to her or that General Assembly has prescribed to her by statute. Ky. Const. §72. Under the applicable law, the Office of Lieutenant Governor has no employees assigned to it by statute. Accordingly, the employees assigned to assist the Lieutenant Governor are included within the personnel of the Office of the Governor. The Governor therefore has superseding authority to hire and fire the employees who are assigned to the Lieutenant Governor’s staff. §72 of the Kentucky Constitution reflects this paradigm. “The duties of the Lieutenant Governor shall be prescribed by law, and [s]he shall have such other duties as delegated by the Governor.” Ky. Const § 72. The Constitution therefore provides that the Governor, by virtue of having the ability to delegate duties to the Lieutenant Governor, is at the head of a single agency that also contains the Lieutenant Governor.

This interpretation of Ky. Const. §72 is necessary to effectuate the purpose, intent, and express language of the “Succession Amendment” adopted in 1992. *See* 1992 Ky. Acts ch. 168. Prior to the adoption of the Succession Amendment, the Governor and Lieutenant Governor were elected independently, and were frequently in political conflict

with each other. The Succession Amendment provided that the Lt. Governor would be elected as part of a unified electoral ticket with the Governor as the head of the ticket. Ky. Const. §70. The Constitution provides that “supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the ‘Governor of the Commonwealth of Kentucky’”. Ky Const. §69, and thus there can be no question that the Lieutenant Governor is subordinate to the Governor on the “slate of candidates” required by Ky. Const. §70. To allow the Lieutenant Governor to operate as an independent officer who can exceed the authority delegated by the Governor, or assigned by statute, would be inconsistent with the provisions of the Succession Amendment that make the Lieutenant Governor subordinate to the Governor.

Lieutenant Governor Hampton argues that her authority to appoint staff to positions within her office arises by virtue of being listed as the head of a department by KRS 12.020. This statute lists the Governor, the Lieutenant Governor, and others as being “[d]epartments headed by elected officers.” KRS 12.020(I). Therefore, she argues that by being a head of a department, that she has authority to appoint individuals to cabinet positions within her office. “The heads of departments shall have direction and control of their respective departments, and through their departments shall exercise the powers and perform the duties vested in the departments under their direction and control.” KRS 12.040(1).

The Court rejects the argument that KRS 12.020 grants appointing authority to the Lieutenant Governor as the head of a department. This is first apparent by the title of KRS 12.020 itself: “Enumeration of departments, program cabinets, and administrative bodies.” KRS 12.020. This title therefore reflects an intent that the statute functions as an

organizational listing, and not an affirmative grant of power. Second, if this statute were to be read that way, then it would operate to make other explicit statutory grants of authority to other agency heads superfluous. “A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Travelers Indem. Co. v. Armstrong*, 565 S.W.3d 550, 563 (Ky. 2018). Many other heads of departments are granted authority of personnel matters within their department by statute. *See, e.g.*, KRS 15.100 (granting the Attorney General the power to appoint assistants and special attorneys), *see also* KRS 14.025 (granting similar powers to the Secretary of State), *see also* KRS 41.410(3)(d) (providing that the Treasurer is obligated to provide adequate personnel so that the council has the capacity to fulfill its responsibilities), *see also* KRS 246.040 (granting the Commissioner of Agriculture the authority to hire requisite staff). If KRS 12.020 is interpreted as generating appointing authority, then it would render those other statutory provisions to be superfluous or insignificant. There is no separate statutory grant of power to the Lieutenant Governor to appoint or remove personnel.

Similarly, KRS 12.040 cannot be said to generate appointing authority. KRS 12.040(1) states that “heads of departments shall have direction and control of their respective departments, and through their departments shall exercise the powers and perform the duties vested in the departments under their direction and control.” There is nothing in the record to support the proposition that the “department” assigned to the Office of Lieutenant Governor consists of any personnel other than the Lieutenant Governor herself. No statute, administrative regulation, or budget provision assigns any personnel to the Lieutenant Governor. To the contrary, all personnel who have been

assigned as support staff for the Lieutenant Governor were appointed by Governor Bevin as part of the staff of the Office of the Governor.

KRS 12.040 can more accurately be described as a statute that creates supervisory authority. Under KRS 12.040(4), “[t]he heads of all departments shall exercise supervision over the personnel and financial records of their respective departments.” KRS 12.040 can at best be said to generate supervisory authority in department heads over employees who have been assigned to each department. Here, there are no records that support the proposition that any positions were officially assigned to the Office of Lieutenant Governor. Rather, the record demonstrates that the two positions in question were established by the Office of the Governor, and the duties assigned by the Governor’s Office were to serve as support staff for the Lieutenant Governor.

Lieutenant Governor Hampton’s position that she is the head of her own department is counterbalanced by other statutory language. KRS 11.065(1) provides a list of members of the Governor’s Executive Cabinet, and specifies the time and manner in which the Executive Cabinet is to meet. KRS 11.065(1). This statute specifically lists the Lieutenant Governor as a member of the Governor’s Executive Cabinet. *Id.* The statute states clearly that “[t]he Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state.” KRS 11.065(2). As noted above, the list provided by KRS 12.020 is an organizational listing, and any support it may provide for the Lieutenant Governor’s position is counterbalanced by KRS 11.065.

By statute, the Lieutenant Governor has been granted limited duties, which do not require staff to perform. KRS 11.400(1) effectively restricts the Lieutenant Governor’s statutory duties to membership or vice chairmanship on a limited number of commissions

and boards. Otherwise, the Lieutenant Governor may be granted additional duties by the Governor. “Nothing in this section shall prohibit the Governor and Lieutenant Governor from agreeing upon additional duties within the executive branch of the state government to be performed by the Lieutenant Governor.” KRS 11.400(2). The idea that the Governor may delegate additional duties to the Lieutenant Governor is also reflected in Section 72 of the Kentucky Constitution, as noted above. However, the record in this case demonstrates that Governor Bevin has delegated very minimal additional duties to Lieutenant Governor Hampton.

The Court is also not persuaded by the argument that the Lieutenant Governor has apparent authority by virtue of her position. Instead, Kentucky personnel statutes requires explicit designation. An “appointing authority” is defined as either “the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employment appointments...” KRS 18A.005(1). For such designation to be effective, it “shall be in writing and signed by both the agency head and his designee,” and the designation must also “be filed with the secretary” of the Personnel Cabinet. *Id.* It is apparent that this has not happened here. Rather, Troy Robinson was explicitly designated as the appointing authority for the Office of the Governor. Because it is a statutory requirement that a grant of such authority be explicit, the Lieutenant Governor has no apparent appointing authority by virtue of her title. In the absence of some statute, administrative regulation, budget provision, or delegation of power from the Governor, the Lieutenant Governor has no power over personnel.

More evidence that the Lieutenant Governor is a position subordinate to the Governor and part of the Governor’s office can be found in recent budgetary allocations to

the Office of the Governor. The current Executive Branch budget bill contains no separate budget unit for the Office of Lieutenant Governor, and instead all budgetary allocations for the Lieutenant Governor are included within the allocation for the Office of the Governor. *2018 Ky Acts, c. 169 (H.B. 200)*. Because there is no separate appropriation made by the General Assembly for the Lieutenant Governor, it is apparent that all personnel who are assigned to the Lieutenant Governor are within the budget, and control, of the Office of the Governor.

Finally, the Court is hesitant to insert itself into a personnel dispute which would violate the separation of powers between the three branches of state government. “The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments... [t]hose which are legislative, to one; those which are executive, to another; and those which are judicial, to another.” Ky. Const § 27. “No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.” Ky. Const. § 28. The separation of powers doctrine is fundamental to the structure of Kentucky government and therefore must be strictly construed. *Legislative Research Commission v. Brown*, 664 S.W.2d 907, 912 (Ky. 1984). Here, the allocation of personnel authority within the Office of the Governor, goes to the core function of the executive branch of government.

As discussed above, the decisions to fire two members of Lieutenant Governor Hampton’s staff does not run afoul of statutory requirements. In the absence of a statutory violation, the decisions effectively amount to discretionary personnel decisions, which are handled internally by the Governor’s office. “In all cases where questions arise between

agencies as to their respective functions, or where agencies issue conflicting orders or make conflicting rules, the Governor with the advice of the Governor's Executive Cabinet shall determine the questions, and action shall be taken in accordance with such determination.”

KRS 12.100. Any dispute that exists within the Governor’s office regarding the personnel assigned to the Lieutenant Governor’s office, must be resolved internally as mandated by KRS 12.100.

CONCLUSION

This Court finds that Lieutenant Governor Hampton lacks any statutory or constitutional power act as “appointing authority” for the personnel assigned to her by the Office of the Governor. There is no statute that expressly grants her such authority, and there is no inherent authority to make such personnel decisions that can be implied from the relevant statutory and constitutional provisions. In the absence of a statute, or a clear delegation of authority from the Governor, the Lieutenant Governor has no inherent authority over the hiring and firing of personnel.

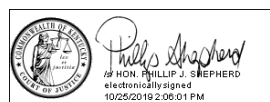
This finding should not be construed as any criticism of Lieutenant Governor Hampton, who appears to have discharged her all of her assigned duties with dignity, loyalty and honor. The record indicates that past Governors have entrusted their Lieutenant Governors with the authority to hire and fire staff members assigned to them. The record here contains no explanation as to why Governor Bevin has not accorded Lieutenant Governor Hampton such basic authority over the operation of her own office. Nevertheless, the Lieutenant Governor has only those duties and powers assigned by the General Assembly or delegated by the Governor. Ky. Const. §72. Here, there is no statute granting Lieutenant Governor Hampton such power; and clearly Governor Bevin, for

whatever reason, has chosen to deny Lieutenant Governor Hampton the power to hire and fire the staff members who are assigned to assist her.

The Kentucky Constitution and statutes make clear that the Office of Lieutenant Governor is a subsidiary part of the Office of the Governor, and not a stand alone unit of state government with independent powers and duties. Accordingly, the Governor is the ultimate appointing authority for all personnel in that office. Though the Governor may delegate appointing authority, such delegation must be done expressly and may not be done by implication. Because the Governor has not encroached upon the statutory or constitutional authority of the Lieutenant Governor, a ruling in her favor would violate the separation of powers doctrine.

WHEREFORE, Defendants' Motion for Summary Judgment is GRANTED, and Plaintiff's Motion for Summary Judgment is **DENIED**. This order is final and appealable and there is no just cause for delay.

So **ORDERED**, this 25th day of October, 2019.



PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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