

Filed: August 14, 2003

IN THE SUPREME COURT OF THE STATE OF OREGON

State ex rel
THE HONORABLE KRISTOPHER KAINO,

Plaintiff-Relator,

v.

OREGON COMMISSION ON JUDICIAL FITNESS AND DISABILITY,

Defendant.

(JFC 01-302; SC S49792)

Original proceeding in mandamus.*

Argued and submitted March 5, 2003.

Joseph A. Di Bartolomeo, Lavis & Di Bartolomeo, PC, Astoria, argued the cause and filed the briefs for plaintiff-relator.

Thomas M. Christ, Cosgrave, Vergeer, Kester, LLP, Portland, argued the cause and filed the brief for defendant.

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, and Balmer, Justices.

RIGGS, J.

Peremptory writ to issue.

*On petition for a writ of mandamus from a decision of the Commission on Judicial Fitness and Disability.

RIGGS, J.

This is an original proceeding in mandamus. Relator, a municipal court judge, sought to have the Oregon Commission on Judicial Fitness and Disability dismiss misconduct proceedings against him on the ground that it lacked jurisdiction over municipal court judges. The commission refused to do so. Relator then petitioned this court for an alternative writ of mandamus, which we issued. For the reasons that follow, we conclude that the commission should have dismissed the complaint against relator. Accordingly, we will issue a peremptory writ directing the commission to do so.

Relator is a municipal court judge for the City of Astoria. On March 14, 2002, the commission brought a formal complaint against relator, alleging that he violated several provisions of the Oregon Code of Judicial Conduct. The particular allegations against relator are not relevant to this matter. On March 29, 2002, relator sent the commission a letter contending that the commission should dismiss the complaint for lack of jurisdiction over municipal court judges. The commission denied that request by letter on April 25, 2002. Relator then answered the complaint on June 25, again contending that the complaint should be dismissed for lack of jurisdiction.

On August 28, 2002, the commission brought an amended complaint against relator that contained additional factual allegations. Relator answered the amended complaint on September 12, 2002, and again argued that the complaint should be dismissed for lack of jurisdiction. Relator then filed a petition for an alternative writ of mandamus with this court on September 25, 2002.

The commission argues that laches bars relator from maintaining this mandamus proceeding because it was not filed within 30 days of the date that the commission brought the original complaint. *See, e.g., State v. Peekema*, 328 Or 342, 346, 976 P2d 1128 (1999) ("[L]aches generally requires that a mandamus proceeding be filed within the statutory time limitation required for the filing of an appeal."). We assume without deciding that 30 days is the appropriate time period in this sort of case. Here, the commission amended its complaint to address certain procedural objections made by relator. Under the circumstances, we conclude that the time for filing a petition for writ of mandamus began running with the filing of the amended complaint. Relator did file his petition within 30 days of that date.

Ordinarily this court considers subconstitutional arguments before reaching constitutional ones. *E.g., Leo v. Keisling*, 327 Or 556, 562, 964 P2d 1023 (1998) ("[I]t is well established that this court ordinarily does not decide constitutional issues if there is an adequate subconstitutional basis for decision."). In this case, however, the legislature conditioned the operation of ORS 1.420(1), the statute that authorizes the commission to inquire into the conduct of "a judge," on the voters adopting Article VII (amended), section 8. Or Laws 1967, ch 294, § 1. In light of that fact, we deem it appropriate to move directly to the meaning of Article VII (amended), section 8.

Relator contends that Article VII (amended), section 8, does not authorize disciplinary proceedings against municipal court judges. As it was adopted in 1968, that section provided:

"(1) In the manner provided by law, and notwithstanding section 1 of this Article, a judge of any court may be removed from his judicial office by the Supreme Court for:

"(a) Conviction in a court of this or any other state, or of the United States, of a crime punishable as a felony or a crime involving moral turpitude; or

"(b) Wilful misconduct in a judicial office involving moral turpitude; or

"(c) Wilful or persistent failure to perform judicial duties; or

"(d) Habitual drunkenness or illegal use of narcotic drugs.

"(2) Notwithstanding section 6 of this Article, the methods provided in this section and in section 18, Article II of this Constitution, are the exclusive methods of removal of a judge from judicial office." ⁽¹⁾

Article VII (amended), section 8, was a constitutional amendment referred to the voters by the legislature. When interpreting an initiated or referred constitutional amendment, this court seeks the intent of the voters by first considering the text and context. *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 559, 871 P2d 106 (1994); *see Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 57-58 & 58 n 13, 11 P3d 228 (2000) (*Ecumenical Ministries* analysis applies to referred constitutional amendments). If the voters' intent is clear from text and context, then this court ordinarily will not inquire further. *Ecumenical Ministries*, 318 Or at 559. If the voters' intent is not clear, then this court will consider the history of the provision. *Id.* However, "[t]his court has noted that caution is required in ending the analysis before considering the history of an initiated [or referred] constitutional provision." *Id.* at 559 n 7.

