

Lana HAWKINS et al v. Carl STOVER et al

81-113

622 S.W. 2d 667

Supreme Court of Arkansas
Opinion delivered October 26, 1981

COUNTIES — VACANCIES IN COUNTY OFFICES — CONSTITUTIONAL AUTHORITY OF QUORUM COURT TO FILL VACANCIES — ACT PROVIDING FOR ELECTION OF COUNTY JUDGE UNCONSTITUTIONAL. — Ark. Const., Amend. 55, which provides that the Quorum Court shall have the power to fill vacancies in elective county offices, when read in conjunction with Ark. Const., Amend. 29, which provides generally for the filling of vacancies in elective county offices by appointment is complete and self executing as to the manner of filling vacancies in county offices, and, therefore, Act 392, Ark. Acts of 1981 [Ark. Stat. Ann. § 17-3812 (Supp. 1981)], which attempts to authorize quorum courts to call special elections at their discretion for the purpose of filling vacancies in the office of county judge, is constitutionally infirm.

Appeal from Ouachita Circuit Court, Second Division, Don Gillaspie, Judge; affirmed.

Ralph E. Faulkner of *Faulkner, Goza & Rollins*, for appellants.

James J. Calloway, for appellees.

RICHARD B. ADKISSON, Chief Justice. On March 3, 1981, John Marlar, Ouachita County Judge, resigned from office. The quorum court, acting pursuant to Act 392 of 1981, appointed James Harvey Rumph interim county judge and called a special election to permanently fill the vacancy. This appeal is from a circuit court judgment declaring Act 392 unconstitutional and enjoining appellant from holding a special election. We affirm.

Amendment 55 of the Arkansas Constitution provides that "... the Quorum Court shall have the power to ... fill

vacancies in elective county offices. . . .” Act 392 of 1981 [Ark. Stat. Ann. § 17-3812 (Supp. 1981)] provides:

SECTION 1. All quorum courts are hereby authorized, in their discretion, to call special elections for the purpose of filling vacancies in the office of county judge.

Arkansas Constitution Amendment 29, generally, provides for the filling of vacancies in elective county offices. Amendment 55 changes this procedure only to the extent that the quorum court is substituted for the governor as the appointive authority. We held in *McCraw v. Pate*, 254 Ark. 357, 494 S.W. 2d 94 (1973) that under Amendment 29 the alternative of holding a special election to fill a vacancy is not available.

It is clear that Amendment 55, when read in conjunction with Amendment 29, is complete and self executing as to the manner of filling vacancies in county offices and, therefore, Act 392 of 1981 is constitutionally infirm. Judge Rumph was duly and regularly appointed in accordance with Amendment 55 and will serve until his successor is duly elected and qualified under Amendment 29. *McCraw, supra*.

Affirmed.
