

**IN THE COURT OF APPEALS OF IOWA**

No. 1-579 / 10-1923  
Filed August 10, 2011

**IN RE THE MATTER OF JESSE M. MARZEN,**  
**Floyd County Attorney,**  
Petitioner-Appellant,

**vs.**

**FLOYD COUNTY BOARD OF  
SUPERVISORS,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Floyd County, Kurt L. Wilke, Judge.

Jesse Marzen appeals a district court decision sustaining the Floyd County Board of Supervisors' declaration that a vacancy existed in the office of the Floyd County Attorney. **APPEAL DISMISSED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Beth E. Hansen of Swisher and Cohrt, P.L.C., Waterloo, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**POTTERFIELD, J.**

In the 2006 general election, Jesse Marzen was elected to a four-year term as the Floyd County Attorney, which was scheduled to expire January 1, 2011. In a decision filed March 19, 2010, the supreme court found Marzen had violated the Iowa Rules of Professional Conduct and suspended his license to practice law “for a period of time not less than six months.” *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Marzen*, 779 N.W.2d 757, 769 (Iowa 2010).

Following this decision, the Floyd County Board of Supervisors held a public hearing to determine whether a vacancy existed for the position of Floyd County Attorney. The Board found a vacancy existed and appointed Normand Klemesrud to fill the vacancy “until the canvas of the next election.” In the November 2010 general election, Klemesrud ran unopposed and was elected to a full four-year term as the Floyd County Attorney. Marzen has not been reinstated to the practice of law.

Marzen appealed the Board’s decision to the district court. He asserted the Board improperly conducted the proceeding in which it determined a vacancy existed. The district court dismissed Marzen’s appeal, finding the Board’s conclusion that a vacancy existed was reasonable. Marzen appeals, arguing the acts of the Board were contrary to law and there were not sufficient grounds to declare a vacancy.

The Board asserts this issue is moot.

An appeal “is moot if it no longer presents a justiciable controversy because [the contested issue] has become academic or nonexistent.” “The test is whether the court’s opinion would be of force or effect in the underlying controversy.” As a general rule,

we will dismiss an appeal “when judgment, if rendered, will have no practical legal effect upon the existing controversy.”

*In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001) (internal citations omitted) (alteration in original). We generally refrain from reviewing moot issues. *Polk Cnty. Sheriff v. Iowa Dist. Ct.*, 594 N.W.2d 421, 425 (Iowa 1999); *Shannon v. Hansen*, 469 N.W.2d 412, 414 (Iowa 1991).

We conclude any decision by this court will not have a legal effect upon the existing controversy. Marzen cannot now be restored to the office of the Floyd County Attorney for two reasons: (1) following the November 2010 general election, Klemesrud ran unopposed and was elected to a four-year term as the Floyd County Attorney and (2) at the time of appeal, Marzen’s license to practice law remained suspended, and he was therefore not qualified for the office pursuant to Iowa Code section 331.751(2) (2009).

Though this court has discretion to decide moot issues on appeal in certain circumstances, we decline to exercise such discretion here. See *Polk Cnty. Sheriff*, 594 N.W.2d at 425 (listing factors a court should consider in deciding whether to consider a moot issue). Because we conclude the only issue on appeal is moot, we dismiss the appeal.

We also decline to award Marzen appellate attorney fees.

**APPEAL DISMISSED.**