

**IN THE COURT OF APPEALS OF IOWA**

No. 2-686 / 12-0152  
Filed November 29, 2012

**WILLIAM CLARK,**  
Plaintiff-Appellant,

**vs.**

**CITY OF SIDNEY,**  
**An Iowa Municipal Corporation,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Fremont County, Kathleen A. Kilnoski, Judge.

William Clark appeals from the district court's determination that his removal from city council complied with statute and did not violate his right to due process of law. **REVERSED.**

Jon H. Johnson of Johnson Law, P.L.C., Sidney, for appellant.

Thomas J. Culhane of Erickson & Sederstrom, P.C., Omaha, for appellee.

Heard by Potterfield, P.J., and Danilson and Tabor, JJ.

**POTTERFIELD, P.J.**

William Clark appeals from the district court's decision on writ of certiorari that his removal by the city council as a member complied with statute and did not violate his right to due process of law. He contends the district court erred in three ways: finding the charges filed against him were sufficient under the removal statute, finding he was not denied due process, and failing to decide whether the city council's grounds for removal showed "willful or habitual neglect or refusal to perform" his duties as a city council member under Iowa Code section 66.1.

We reverse, finding the August letter from the city attorney was insufficient to constitute written charges and did not provide Clark with sufficient notice of the charges. Because Clark's due process claim relating to the conduct of the hearing and the sufficiency of the evidence claim may not arise at a second hearing, we do not reach those issues.

**I. Facts and Proceedings**

Clark was elected by popular vote to the city council of the City of Sidney in November of 2009 as one of its five at-large members. Regular meetings were held the second Monday of each month, and special meetings at other times. In order to vote on council business, a majority—at least three members—needed to be present. From January 2010 through September 13, 2010, Clark attended five of nine regular meetings and five of ten special meetings.

In June of 2010, counsel for the City of Sidney sent Clark a letter<sup>1</sup> asserting his failure to attend the last three regularly scheduled meetings rose to the level of “willful or habitual neglect or refusal to perform” his duties under Iowa Code section 66.1(1) (2009). This same letter noted that, should Clark continue to be absent, he may be asked to step down or the City may take action to remove him. Despite this warning, Clark failed to attend three subsequent meetings: the June 30 and July 19 special meetings and a regular meeting on July 12.

In August of 2010, Clark received another letter from counsel for the City of Sidney, informing him that a hearing would take place at the September regular meeting of the Council

on written charges filed with the Council of the City of Sidney to remove you as City Council member for the willful or habitual neglect or refusal to perform your duties as a City Council member, for willful misconduct or maladministration as a City Council member and for intoxication as a City Council member.

The letter was filed with the Council, but no written charges were prepared and filed. Clark was not given information about the dates of missed meetings or the alleged misconduct, maladministration, or intoxication.

Clark attended the September regular meeting with counsel. His counsel objected to the removal hearing, stating both he and Clark had “no idea what the complaints” against him were. The mayor, who ran the meetings but did not vote, responded that these complaints were regarding Clark’s attendance and misconduct at a local establishment. Clark posited that the charges were based

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<sup>1</sup> The City does not rely on the June letter as the written charges filed against Clark.

on his unwillingness to be a “yes man” but the mayor stated this issue was not before the council and would not be considered in the vote.

The hearing was informal and spanned a range of issues, focusing largely on Clark’s attendance problems. No witness was put under oath and the statements were made in a question and answer format. Clark presented several witnesses including his wife, father-in-law, and mother. He stated he missed one meeting due to the death of his father and another due to a no-contact order which forbade him from having contact with another council member’s son and immediate family. This arose out of an altercation between the son and Clark at a local bar.<sup>2</sup> Clark also stated that he could not attend special meetings because their timing conflicted with his work.

The other council members made statements as well; they were concerned about Clark’s failure to attend meetings, with lesser attention paid to the misconduct and intoxication allegations. They noted attendance was critical for the meetings, especially since one council member was called to active duty in 2010 and another council member had a conflict of interest with a vote regarding insurance for the City. This meant attendance by the remaining three council members was required for quorum. However, no meeting was held without quorum. The City presented no independent witnesses and no written evidence.

Following the statements by Clark’s witnesses and the comments of city council members, a vote of the five council members occurred. The vote was

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<sup>2</sup> Clark’s attorney subsequently verified that Clark’s attendance at city council meetings would not cause him to be charged with violation of the no-contact order, which eventually was canceled.

four to one to remove Clark. Clark cast the sole vote against his removal. Clark appealed his removal to the district court through a petition for writ of certiorari with three counts: first, requesting a writ of certiorari be issued and hearing held regarding whether the city acted in excess of its authority or illegally without proper procedures; second, contending his due process rights were violated by the removal and its procedures; and third, alleging the city defamed him. The district court affirmed the city council, annulling the writ and dismissing the defamation charges.<sup>3</sup> Clark now appeals.

## **II. Analysis**

### *A. Standard of review*

This action reached the district court by means of a writ of certiorari, which is proper “when authorized by statute or when the party claims an inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceeded proper jurisdiction or otherwise acted illegally.” Iowa R. App. P. 1.1401. At the trial court level, both parties agreed the city council was exercising judicial functions in its decision to remove Clark. See *Massey v. City Council*, 31 N.W.2d 875, 877–88 (Iowa 1948) (finding one standard for when certiorari should be invoked is by an “incumbent of an office to review proceedings which he apprehends may be used unlawfully to disturb him in the enjoyment of his office”).

We review the district court’s ruling in an action based on a writ of certiorari for the correction of errors at law, and we are bound by the findings of

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<sup>3</sup> Clark does not appeal the dismissal of his defamation count.

the trial court if they are established by substantial evidence. *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 64 (Iowa 2001).

*B. Sufficiency of Charges Under Removal Statute*

Clark contends the August letter filed with the city council did not comply with the statutory requirements under Iowa Code section 66.29. This section reads as follows:

Any city officer elected by the people may be removed from office, after hearing on written charges filed with the council of such city for any cause which would be ground for an equitable action for removal in the district court, but such removal can only be made by a two-thirds vote of the entire council.

Iowa Code § 66.29. Clark calls our attention to the heightened specificity required for removal of public officials in opinions by the Minnesota Supreme Court. However, proceedings for removal of a municipal public official in Iowa are within the province of the legislature, and we cannot read in more requirements than the legislature intends. See *State v. Naumann*, 239 N.W. 93, 94 (Iowa 1931) (stating a statute governing removal of a public officer “must perforce be given a strict construction, and ‘nothing can be added thereto by inference or intendment’”); see also *Eckerson v. City of Des Moines*, 115 N.W. 177, 188 (Iowa 1908).

The district court found that “[o]ther than the letters from the city attorney, there were no other written charges or specifications filed against Mr. Clark.” The city clerk testified the August 2010 letter to Clark from the city attorney was filed with her, and that she stored it with the other city council filings and gave a copy to the mayor. She told Clark before the September hearing that no charges were filed. The letter specifically noted the hearing was “on written charges filed

with the Council.” The August letter itself, therefore, was not intended by the council or their attorney to be “written charges.” While the City now posits that the August letter was substantial compliance with the statute as it did reference grounds for removal and it was on file with the clerk, the statute requires written charges to be filed and we must give a removal statute strict construction. *Naumann*, 239 N.W. at 94.

Further, section 66.29 requires some sort of notice and a hearing. Our supreme court considered a similar statute regarding the removal of an appointed public official. *Waddell v. Brooke*, 684 N.W.2d 185, 191 (Iowa 2004). *Waddell* involved removal of a member of a board of adjustment under Iowa Code section 414.8. *Id.* This section provides for removal of members “upon written charges and after public hearing.” Iowa Code § 414.8 (2001). The court noted this code provision requires “some form of notice and hearing” prior to removal. *Waddell*, 684 N.W.2d at 191.

The statute before us here similarly requires a “hearing on written charges filed with the council.” Iowa Code 66.29 (2009). We therefore find Clark was required to receive notice of the details of the charges before the council’s hearing in this case. In *Waddell*, notice was given in the form of a certified letter which described specific instances of Waddell’s alleged misconduct. 684 N.W.2d at 188. In contrast, the August certified letter received by Clark restated the language of the removal statute and failed to set forth any specific information regarding the grounds for removal. The August letter does not fulfill the City of Sidney’s statutory duty to provide Clark with notice prior to removal.

The requirements to provide notice and filed, written charges under Iowa Code section 66.29 were not satisfied. Clark's writ of certiorari was therefore incorrectly annulled, as the city council "exceeded proper jurisdiction or otherwise acted illegally." Iowa R. App. P. 1.1401. We reverse the district court's decision and remand for entry of an order sustaining the writ of certiorari. Costs on appeal are assessed to the City of Sidney.

**REVERSED.**