

MICHIGAN SUPREME COURT

Robert Davis v. Emergency Manager for the Detroit Public Schools

SC: 144084; COA: 306165 · No. SC: 144084; COA: 306165 · Decided April 17, 2012

SUMMARY

The Michigan Supreme Court amended its April 16, 2012 order in Robert Davis v. Roy Roberts to correct a clerical error in Justice Markman’s concurring statement. The concurrence addressed whether an emergency manager is constitutionally or statutorily required to take an oath of office, while noting that the controversy over the timeliness of the oath had become moot.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Robert P. Young, Jr.; Michael F. Cavanagh; Marilyn Kelly; Stephen J. Markman; Diane M. Hathaway; Mary Beth Kelly; Brian K. Zahra
JURISDICTION	Michigan
DECIDED	April 17, 2012
DOCKET	SC: 144084; COA: 306165
DISPOSITION	other
PROCEDURAL POSTURE	Amendment to a Michigan Supreme Court order correcting a clerical error in the court's April 16, 2012 order.
PRECEDENTIAL VALUE	Published court order; the oath analysis is contained in a concurring statement and is not identified as a majority holding.
PARTIES	Robert Davis v. Emergency Manager for the Detroit Public Schools, Roy Roberts

TOPICS

mootness appellate procedure constitutional law municipal law administrative law

PRACTICE AREAS

Michigan constitutional law administrative law municipal and public education law appellate procedure

QUESTIONS PRESENTED

1. Whether the April 16, 2012 order required amendment to correct a clerical error in Justice Markman's concurring statement.
2. Whether the controversy concerning the timeliness of the emergency manager's oath had become moot.
3. Whether an emergency manager is required to take an oath of office under the Michigan Constitution or Michigan Compiled Laws.

HOLDINGS

1. The court amended its April 16, 2012 order to correct a clerical error in the text of Justice Markman's concurring statement.
2. The concurring statement concluded that the present controversy concerning the timeliness of the emergency manager's oath had become moot.

KEY QUOTATIONS

"I concur in the order for it is clear that the present controversy concerning the timeliness of the emergency manager's oath has now been rendered moot." (2)

"First, I believe that logic suggests that the emergency manager must take an oath of office." (2)

FACTUAL BACKGROUND

The controversy concerned the timeliness and constitutional or statutory necessity of the oath taken by Roy Roberts while serving as emergency manager for the Detroit Public Schools. Justice Markman stated that the controversy had become moot because Roberts could be reappointed and had undertaken to subscribe to the oath on two occasions. The opinion also noted that an emergency manager may perform duties otherwise assigned to a municipality's mayor and city council or a public school board.

PROCEDURAL HISTORY

The matter reached the Michigan Supreme Court under Supreme Court docket number 144084 following Court of Appeals docket number 306165. The April 17, 2012 order amended the court's April 16 order to correct the text of Justice Markman's concurring statement.

DISPOSITION

other

CASES CITED

- Underwood v. McDuffee, 15 Mich. 361 (1867)

OPINION

Robert Davis v. Roy Roberts

PER CURIAM.

Order Michigan Supreme Court Lansing, Michigan April 17, 2012 Robert P. Young, Jr., Chief Justice 144084 & (18) Michael F. Cavanagh Marilyn Kelly Stephen J. Markman Diane M. Hathaway Mary Beth Kelly ROBERT DAVIS, Brian K. Zahra, Appellant, Justices v SC: 144084 COA: 306165

EMERGENCY MANAGER FOR THE
DETROIT PUBLIC SCHOOLS,

Appellee. _____/

AMENDMENT TO ORDER

On order of the Court, the order of April 16, 2012 is amended to correct a clerical error. The concurring statement by MARKMAN, J., is corrected to read as follows: MARKMAN, J. (concurring). I concur in the order for it is clear that the present controversy concerning the timeliness of the emergency manager's oath has now been rendered moot. However, our state is fortunate that this controversy has arisen in the context of an official who could easily be reappointed to public office, as occurred here, unlike, for example, a state legislator. I write separately only to respond to the Chief Justice's suggestion that the emergency manager might not even be constitutionally required to take an oath. First, I believe that logic suggests that the emergency manager must take an oath of office. Given that the responsibilities of the emergency manager are, in some circumstances, to carry out the duties of the mayor and the members of the city council of a municipality, or, as in this case, the members of a public school board, all of whom themselves are required to take oaths of office, it would seem anomalous that an official serving in their stead would not also be required to make the same commitment to the laws and constitutions of the United States and Michigan. Moreover, it is noteworthy that the emergency manager, Roy Roberts, has never asserted that he is not required to take an oath and, indeed, he has now undertaken to subscribe to exactly such an oath on two separate occasions. Second, this case seems significantly distinguishable from *Underwood v McDuffee*, 15 Mich 361 (1867), which held that "referees" are not officers within the meaning of Constitution 1850, article 18, § 1, a predecessor of Constitution 1963, article 11, § 1. Such "referees," were "appointed only when [the] parties consent[ed], or waive[d] their right to a jury," and their authority was "confined to the particular suit." *Underwood*, 15 Mich at 367. Unlike referees, emergency managers are not "depend[ent] upon the will of private persons, who may call [them] into existence for their own purposes, and at their own pleasure," and their authority is not "confined to [a] particular suit." *Id.* The "impermanence" of such a referee is far different, in my judgment, from the impermanence of such positions as emergency financial managers and cabinet officers, each of whom serve at the pleasure of the Governor and without fixed terms of office. Finally, even assuming that an emergency manager is not an "officer" within the meaning of Constitution 1963, article 11, § 1, respondent himself acknowledges that he is in the "service of the state," within the meaning of MCL 15.151, which requires all such persons "as a condition of their employment, [to] take and subscribe to the oath or affirmation required of members of the legislature and other public

officers by section 2 of article 16 of the constitution of 1908 of the state of Michigan.” Section 2 of article 16 of the constitution of 1908 of the state of Michigan, another predecessor of Constitution 1963, article 11, § 1, required officers to take the oath “before they enter[ed] on the duties of their respective offices.” I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court. April 17, 2012 _____ t0411 Clerk