



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

MISSO, KEVIN;

Plaintiff;

v.

CITY OF HOMEWOOD, *et al.*;

Defendants.

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Case No.: CV-2025-902801-MYA

**CORRECTED MOTION TO DISSOLVE TEMPORARY RESTRAINING
ORDER¹**

Defendants City of Homewood and Jennifer Andress, sued in her official capacity as a City of Homewood Council Member, move the Court to dissolve the temporary restraining order entered on July 14, 2025. The temporary restraining order was entered based on a motion made in bad faith. A municipality's sale of real property is not governed by the Competitive Bid Law, and the motion for a temporary restraining order was procedurally defective in myriad ways.

Misso sought a temporary restraining order enjoining Homewood from transferring the property formerly used as the Homewood City Jail. (Doc 7). He obtained a temporary restraining order prohibiting Homewood, and its officials, from calling for a vote on the rezoning of the Homewood City Jail property. (Doc 11). Homewood and Ms. Andress did not receive notice of the hearing on the motion for a temporary restraining order or the motion to reconsider the order denying the motion.

In fact, despite his protests in the media and the public, Misso made no effort to resolve his beef about the planned steakhouse between May 2022 and July 2022. Even

¹ This Corrected Motion to Dissolve the Temporary Restraining Order contains a certificate of service compliant with Alabama Rule of Civil Procedure 5(d).

then, his illusory statements afforded no opportunity to explain that his complaints are late and frivolous.

Misso's complaint and motion for a temporary restraining order are untenable and mendacious throughout. For example, Misso misrepresents that he sent a letter of intent to purchase the Homewood City Jail Property. (Doc 1, ¶ 9.) Black's Law Dictionary defines a letter of intent as "[a] written statement detailing a preliminary understanding of parties who plan to enter into a contract or some other agreement; a noncommittal writing preliminary to a contract." No document fitting the description of a letter of intent may be found among Misso's exhibits or anywhere else.

The document used as an exhibit by Misso is not a letter of intent, offer to purchase, or contract, but it formed the basis of the temporary restraining order. Misso's document is merely letter stating he wished to discuss redevelopment of the site with the Homewood. (Doc 1, Ex. A.) Further, the sale and rezoning of the Homewood City Jail Property was not imminent when the complaint was filed.

The temporary restraining order should be dissolved for the following reasons, any one of which is sufficient alone.

First, Misso misleads the Court by basing his complaint and motions on the Competitive Bid Law. Ala. Code §§ 41-16-50, *et seq.* (1975). By its plain terms, the Competitive Bid Law applies to "all expenditure of funds for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving thirty thousand dollars (\$30,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is or becomes legally and contractually bound under the terms of the lease to pay a total amount of thirty thousand dollars (\$30,000) or more . . ."

The unambiguity of the Competitive Bid Law shows it applies to purchases and leases of labor, services, and personal property, not to sales of real or personal property.

The holding in *Cotton Bayou Ass'n v. Department of Conservation*, 622 So. 2d 924 (Ala. 1993) is dispositive. The Department of Conservation owned real property which it leased to a lessee. Cotton Bayou sued the Department, alleging that the Competitive Bid Law required the Department to obtain bids before leasing the property, and sought a temporary restraining order, a permanent injunction, and declaratory relief. The Circuit Court ruled in favor of the Department stating the Competitive Bid Law did not apply.

The Circuit Court held that Alabama law allowed the State to lease real estate by a negotiated lease, denied the request for injunctive relief, and issued a declaratory judgment that the Department complied with all requirements of law. The Supreme Court of Alabama affirmed.

This appeal presents the single issue of whether a State of Alabama agency has the authority to negotiate for the lease of real property or must lease real property pursuant to the competitive bid law, Ala. Code 1975, § 41-16-1 et seq., The trial court held that the State may lease real estate by negotiated lease. We affirm.

Cotton Bayou Ass'n, 622 So. 2d at 924-25.

There is no material distinction between the facts in *Cotton Bayou Ass'n* and this case. The City of Homewood may negotiate a sale of its property like the Department of Conservation leased its property.

The rules of statutory construction also lead to this conclusion.

"[T]he first rule of statutory construction [is] that where the meaning of the plain language of the statute is clear, it must be construed according to [its] plain language." *Ex parte United Serv. Stations, Inc.*, 628 So. 2d 501, 504 (Ala. 1993).

Further, “the special mention of one thing in a law implies the exclusion of the things not mentioned, ‘Expressio unius est exclusio alterius.’” *Schenher v. State*, 38 Ala. App. 573, 576, 90 So. 2d 234 (Ala. Civ. App. 1956) (“[T]he statute, in providing that a violation of the narcotics statute shall be a misdemeanor, ‘except as otherwise herein provided,’ and by enumerating certain drugs the possession of which is termed a felony and making special mention of morphine and heroin, as well as the inclusory drug ‘opium,’ implies the exclusion of codeine from such provision.”)

Courts do not rewrite statutes.

‘[m]atters of policy are for the Legislature and, whether wise or unwise, legislative policies are of no concern to the courts.’ *Marsh v. Green*, 782 So. 2d 223, 231 (Ala. 2000). ‘[I]t is not the duty of this Court to question the wisdom, or the lack thereof, used by the Legislature in enacting the laws of this State.’ *Ex parte T.D.T.*, 745 So. 2d 899, 904 (Ala. 1999). ‘[T]his Court is not at liberty to rewrite [a] statute or to substitute its judgment for that of the legislature.’ *Gowens v. Tys. S.*, 948 So. 2d 513, 522 n.1 (Ala. 2006); see also *Ex parte Carlton*, 867 So. 2d 332, 338 (Ala. 2003).

Willis v. Kincaid, 983 So. 2d 1100, 1102-1103 (Ala. 2007).

Had the Legislature intended to include the sale of real property in the Competitive Bid Law, it would have done so. *See, e.g. Fausak’s Tire Center, Inc. Blanchard*, 959 So. 2d 1132, 1144 (Ala. Civ. App. 2006) (“Had the legislature intended to include a judicial-admission exception to the writing requirement for a contract to sell or purchase securities in a closely held corporation, it could have imported the wording of § 7-8-319(d), the former UCC Statute of Frauds, or equivalent language, into subsection (8) of the general Statute of Frauds. The fact that the legislature did not import such language into subsection (8) of § 8-9-2 convinces us that the legislature did not intend to establish

a judicial-admission exception (or any other exception) to the writing requirement for the sale or purchase of securities in a closely held corporation.”)

Nothing in the plain language of the Competitive Bid Law suggests it applies to a municipality’s sale of real property. Accordingly, the sale of municipal property cannot be subject to Competitive Bid Law.

Second, the statute authorizing a municipality to sell real property makes no mention of bids or the Competitive Bid Law. Ala. Code § 11-47-20 (1975) (“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality.”)

The Alabama Attorney General interpreted Section 11-47-20 to mean that the Competitive Bid Law does not cover a municipality’s sale of property.

You are also advised that there is no statute which requires said Town to sell its real property on a competitive bid basis. Therefore, the property to which you refer may be sold by the Town on a negotiated basis.

Alabama Attorney General’s Opinion, Vol. 143, pp. 21-22.

Third, Misso’s motion does not allege facts, much less admissible evidence, to show satisfaction of Rule 65(b)’s principal requirement for entry of a temporary restraining order. “A temporary restraining order may be granted without written or oral notice to the adverse party or that party’s attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition . . .” Ala. R. Civ. P. 65(b).

According to the Alabama Supreme Court, a plaintiff seeking a temporary restraining order has the burden of demonstrating: “(1) that without the [TRO] the plaintiff would suffer immediate and irreparable injury; (2) that the plaintiff has no adequate remedy at law; (3) that the plaintiff has at least a reasonable chance of success on the ultimate merits of his case; and (4) that the hardship imposed on the defendant by the [TRO] would not unreasonably outweigh the benefit accruing to the plaintiff.” *Ormco Corp. v. Johns*, 869 So. 2d 1109, 1113 (Ala. 2003).

The Competitive Bid Law does not apply, so Misso cannot prove the elements required for a temporary restraining order or other injunctive and declaratory relief. *Cotton Bayou Ass’n*, 622 So. 2d at 924-25.

Even if the Competitive Bid Law applied, Misso cannot prove a sale, transfer or rezoning of the Homewood City Jail Property was imminent. The evening of July 14, 2024 the Homewood Council did not have on its agenda for a hearing the sale or rezoning of the Homewood City Jail property. It will be several weeks or months until the Council could schedule a hearing to rezone the Homewood City Jail property.

Under Alabama Code § 11-52-77 (1975), the rezoning process is tedious and prolonged.² Homewood must comply also with Local Law § 1059(29).³

² Alabama Code § 11-52-77 (1975):

No ordinance shall be passed by any municipal corporation under the authority of this article unless and until the municipal governing body has complied with the procedures set forth in either subdivision (1) or subdivision (2) of this section.

(1) Prior to adoption, the proposed ordinance shall be published in full for one insertion and an additional insertion of a synopsis of the proposed ordinance, one week after the first insertion, which synopsis shall refer to the date and name of the newspaper in which the proposed ordinance was first published; both such insertions shall be at least 15 days in advance of its passage and in a newspaper of general circulation published within the municipality, or, if there is no such newspaper, then by posting the proposed ordinance in four conspicuous places within the municipality, together with a notice stating the time and place that the ordinance is to be considered by the municipal legislative authorities and stating further that at such time and place all persons who desire shall have an opportunity of being heard in opposition to or in favor of such ordinance.

(2) Prior to adoption, notice that an ordinance will be considered shall be published for three consecutive weeks in a newspaper of general circulation in the county. The notice shall include the following information:

- a. A provision that an ordinance proposing to zone or rezone property will be considered by the municipal governing body pursuant to this section and that a copy of the proposed ordinance is available for public inspection at the city or town hall;
- b. The location of the city or town hall;
- c. A map showing the location of the property;
- d. A general description of the property proposed to be zoned or rezoned including the common name by which the property is known; and
- e. The time and place where all persons may be heard in opposition to or in favor of the ordinance.

The notice required by this subdivision shall be published in the legal section of the publication in standard form. In addition, the same notice shall also be published one time in the regular section of the newspaper which notice shall be in the form of at least a one-quarter page advertisement.

(3) No such ordinance shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

³ Local Law § 1059(29):

Notice of change of zoning classification. – No governing body subject to the provisions of this subdivision shall enact any change in the zoning classification of any property subject to the zoning jurisdiction of such county or municipality without first giving written notice a minimum of 15 days prior to the proposed date of such enactment to all owners of property located in whole or in part within 500 feet from the boundaries of the property which is the subject of the proposed change in zoning classification, as shown by the

Misso cannot prove any element of a temporary restraining order. He cannot prove the threat of immediate or irreparable injury, or that he has a reasonable chance of success on the merits. He cannot prove that the hardship on Homewood – loss of revenue and time and expenses involved with the sale of the property to this point – “would not unreasonably outweigh the benefits accruing to” him.

Fourth, Misso’s motion for a temporary restraining order did not certify the efforts made to provide notice of the motion for a temporary restraining order or the motion for reconsideration of the denial of the motion for a restraining order. Ala. R. Civ. P. 65(b) (“A temporary restraining order may be granted without written or oral notice to the adverse party or that party’s attorney only if the applicant’s attorney . . . certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.”)

Failure to comply with Rule 65(b)’s notice requirements render a temporary restraining order void. *Person v. Person*, 236 So. 3d 90, 100 (Ala. Civ. App. 2017) (“this court held that an “injunction was invalid because neither the mother nor the trial court complied with the requirements of Rule 65”.)

records of the office of the tax assessor of such county on a date not more than one year prior to the date of such notice. Such notice shall state the street address of the property, if any, which is the subject of the proposed change in zoning classification and shall also state that a protest may be filed with respect to such proposed change in accordance with the provisions of section 1059(30). Such notice shall be deemed given when deposited in the United States mail, first class postage prepaid, addressed to such property owners at their addresses as shown on the records of the office of the tax assessor of such county on the date such owners are determined. Any error in the address of any such notice shall not invalidate the giving of notice pursuant to this section provided that no more than 5% of the total number of notices given with respect to any proposed change in zoning classification contain any such error.

For all these reasons, the temporary restraining order should be dissolved immediately.

DATE: July 16, 2025.

Respectfully,

/s/ Wayne Morse, Jr.

Michael G. Kendrick (KEN002)

Wayne Morse, Jr. (MOR047)

WALDREP, STEWART
& KENDRICK, LLP
2850 19th Street South, Ste 370
Telephone: (205) 254-3216
Facsimile: (205) 324-8302
kendrick@wskllp.com
morse@wskllp.com

CERTIFICATE OF SERVICE

Pursuant to Alabama Rule of Civil Procedure 5(d), I certify that on July 16, 2025, I electronically filed the foregoing motion on Alafile which sends notification of such filing to all attorneys of record. I further certify that I served a copy on the following plaintiff via U.S. First Class Mail and by email:

Kevin Misso
1810 Wellington Road
Homewood, Alabama 35209
kevin@riverbrook.com

Kevin Misso
River Brook Design and Construction
350 Hallman Hill East
Suite 41
Homewood, Alabama 35209

/s/ Wayne Morse, Jr.

OF COUNSEL