

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL DIVISION

FILED

JAN 5 2009

Civil Administration

TANYA WESTBROOK, et al

DECEMBER TERM, 2008

v.

MAYOR MICHAEL A. NUTTER, et al : NO. 4091

BILL GREEN, JANNIE L.
BLACKWELL, AND JACK KELLY : DECEMBER TERM, 2008

v.

NO. 4395

MAYOR MICHAEL A. NUTTER, et al :

ADJUDICATION

On December 23, 2008, Plaintiffs in the case of Tanya Westbrook, et al v. Nutter, et al (Westbrook), filed a Motion for Preliminary Injunction to stop a scheduled closing of eleven branch neighborhood libraries of the Philadelphia Free Library. These

branches were scheduled to close on December 31, 2008. On December 24, 2008, Plaintiffs in the Green, et al v. Nutter, et al (Green) filed an Emergency Petition for a Peremptory Judgment, also requesting Defendants be enjoined from closing the eleven libraries. This court consolidated the matters and heard testimony on December 29th and December 30th. At the conclusion of the hearing, each party presented oral arguments. Due to the scheduled closing and time restraints a full adjudicatory order could not be entered. However, based on the evidence and testimony presented, this court issued a Special Injunction, enjoining the Defendants from closing the neighborhood branch libraries on December 31, 2008.

AND NOW, this 5th day of January 2009, after a hearing on the Petitions and the Defendants' response, the court enters the following adjudication.

FINDINGS OF FACT

- 1) At the commencement of the hearing the parties stipulated to certain facts. The court adopts the following relevant and stipulated facts:
 - a) On November 6, 2008, Mayor Michael Nutter delivered an address to the City in which he announced the need for emergency budget reductions due to the financial crisis currently affecting the entire Nation and the City. This included the closing of eleven neighborhood branches of the Philadelphia Free Library.

- b) The Financial Plan entitled "Rebalancing Plan for FY09-FY13 Five Year Plan", admitted by stipulation, also contained the closing of eleven branch libraries.
 - c) Paragraphs 18-23 of the Westbrook Motion are by stipulation deemed admitted.
- 2) In September 2008, the Board of the Free Library was informed by the Mayor's office that its operating budget needed to be reduced 20%. This was later changed to 40%.
- 3) Initially, there were discussions that this could be accomplished by reducing the hours of operation and service at all libraries. The Friends of the Free Library, an independent, non profit organization that supports the Free Library, participated in these initial discussions and in fact presented a plan to the Board.
- 4) In November 2008, the Mayor announced the permanent closing of the following branch libraries:

The Charles L. Durham Branch
The David Cohen Ogontz Branch
The Eastwick Branch
The Fishtown Community Branch
The Fumo Family Branch
The Haddington Branch
The Holmesburg Branch
The Kingsessing Branch
The Logan Branch
The Queen Memorial Branch
The Wadsworth Branch

- 5) At the time the Free Library of Philadelphia operated 54 library locations: the Central Library on the Benjamin Franklin Parkway, three regional libraries,

one library for the blind and physically handicapped and 49 neighborhood branch libraries.

- 6) By testimony or through stipulated testimony each of the individuals named in the Westbrook action testified credibly as to his/her use of the library branch and the harm each would suffer in the closing of the different branches.
- 7) Plaintiff DC47 AFSCME represents municipal workers specifically employed as librarians at the individual library branches. Although no specific librarians were named, Defendants' witnesses confirmed the relocation and/or termination of certain employees who have worked or would work at the eleven neighborhood branches at issue.
- 8) Plaintiffs in the Green matter are duly elected members of the Philadelphia City Council, Councilman Bill Green, Councilwoman Jannie L. Blackwell, and Councilman Jack Kelly.
- 9) In 1988, the City Council of Philadelphia enacted Section 16-203 of the City Code which states:

No City-owned capital facility shall be closed, abandoned, or allowed to go into disuse without specific approval therefore from City Council, by Ordinance.

- 10) The Mayor did not seek City Council approval to close the eleven branch libraries at issue.
- 11) The Haddington and Holmesberg branches are on land subject to deed restrictions which provide that should the site cease to be used as a library, the property shall revert from the City to the original grantor.

- 12) The eleven Branch libraries slated for closure are City-owned capital facilities.
- 13) The City of Philadelphia is suffering a financial crisis. The Mayor in response has issued a “Rebalancing Plan for FY09-FY13” which includes the closure of the eleven branch libraries at issue.
- 14) Upon learning of the financial crisis and the Mayor’s request of the Free Library to reduce its operating budget, the Friends of the Free Library presented a proposal to the Board of the Free Library which would have reduced the hours of operation, distributed equally among all of the Free Library facilities.
- 15) Defendants presented testimony that the Mayor was working on relocating the services provided at the eleven branches slated for closing. In addition, there are ongoing discussions with private and community groups to operate “knowledge centers” at some and maybe all of the eleven libraries at issue. These “discussions” however, did not delay or postponed the scheduled closing of any of the eleven branches.
- 16) On May 14, 2008, City Council approved the City’s Fiscal Year 2009 operating budget and in Bill No.080156 appropriated \$40,245,065 to the Free Library of Philadelphia operating expenses.

CONCLUSIONS OF LAW

- 1) Plaintiffs in the Westbrook matter have standing to pursue this action. Each has established that he/she is a regular user of one of the branch libraries scheduled to close and the harm he/she would suffer from the closing.
- 2) Plaintiffs in the Green Petition have standing to pursue this action. Each are duly elected members of the City Council of Philadelphia and have standing to request the relief requested.
- 3) The Mayor in his address of November 6, 2008, and in his “Rebalancing Plan for FY09-FY13 Five Year Plan”, specifically refers to the permanent closing of the eleven library branches.
- 4) The closing of these eleven branch libraries shall result in immediate and irreparable harm that cannot be adequately compensated.
- 5) A greater harm will result in the denial of this injunctive relief than in granting the relief.
- 6) The issuance of this injunctive relief shall maintain the status quo.
- 7) Philadelphia Code Section 16-203 is applicable in this case
- 8) Philadelphia Code Section 16-203 was lawfully enacted and does not in these cases conflict with the mandates of the Philadelphia Home Rule Charter.

DISCUSSION

The first issue this court must resolve is standing. This court finds that the individual Plaintiffs in the Westbrook action have established standing through

credible testimony that established they were regular users and would be harmed by the branch library closings. As to DC47, AFSCME, standing has been established through the testimony presented by Defendants in that librarians represented by AFSCME have worked at the eleven branches and were either relocated or laid off.

Plaintiffs in the Westbrook case requested certification as a class. The court agrees with Defendants that this request is premature. Further, the court does not find the class certification necessary to proceed with this matter.

As to the standing of the three Plaintiffs in the Green case, the court finds they have standing as duly elected members of the Philadelphia City Council. These Plaintiffs raise City Ordinance 16-203, which they believe requires Council approval to close the libraries. The likelihood of success does not determine standing and the right to pursue this action. Defendants argue that City Council as a body should have brought this action; not just three members. Defense counsel stated "... they [City Council] know how to do it; look at the Council v. Street case" He makes reference to Council of the City of Philadelphia v. Honorable John F. Street, 856 A2d 893 (2004). This court does not find Council as a body is required to request Peremptory Judgment.

Further, as the State Supreme Court found in Seeton v. Pennsylvania Game Commision, 937 A2d 1028 (2007), as to tax payer standing, "...we perceive no alternative means to invoke judicial review of the important question before us". The Court made reference to In re Beister, 409 A2d 848 (1979) "...granting taxpayer standing to challenge government action where no one is better situated to challenge that action and it will otherwise evade judicial review".

Plaintiffs contend that Section 16-203 of the Philadelphia Code requires approval of City Council to close the eleven branch libraries. Defendants first contend that these libraries are not really closing. They refer to the relocation of library services to other nearby locations. They also make reference to negotiations with community and private organizations to assume control of these branches and operate “knowledge centers.” As of December 31, 2008, no such “knowledge center” was in place. It is clear from the evidence presented that the Mayor intends to permanently close the eleven branches as neighborhood branches of the Philadelphia Free Library.

Defendants contend that the Mayor is charged with certain responsibilities under the Home Rule Charter and 16-203 is invalid because it interferes with his responsibilities, and further interferes with executive branch exercise of powers. Specifically, the Defendants argue the City Charter foundation is based on a “strong mayor” form of city government which requires the Mayor alone to be responsible for the day to day operations of the City. Further, under Section 4-101 (e) of the City Charter, the Mayor is required to “...[s]ee to it that the City does not, except in case of unforeseeable emergency, incur a deficit in any fiscal year.”

The decision to close these eleven branch libraries is more than a response to a financial crisis; it changes the very foundation of our City. Two of the libraries scheduled to close, Haddinton and Holmesburg, will result in a reversion of the property back to the original grantor because of deed restrictions. No one questions the economic crisis which has rocked both the City and the Nation. However, we are a Nation of hope. A “crisis” evokes something temporary. Defendants argued there were more than enough libraries in Philadelphia. “Philadelphia has more libraries

than any other city in the country.” Our library system is more than a century old yet in three short months an economic crisis results in permanently closing eleven branches. This court does not envy the Mayor and the tough decisions he has had to make in this financial crisis. Yet, as this court is bound to follow the law, so is the Mayor. The permanent closing of neighborhood branch libraries is changing the very structure of the Free Library of Philadelphia and not just responding to a “financial crisis.” The Friends of the Library met with the Board of the Free Library to propose operation reductions which would have been fairly distributed among all branches. If this action involved merely the reduction of services and not the permanent closing of eleven branch libraries, this court could not grant the relief requested

Since 1988, when 16-203 of the City Code was enacted, over the veto of the then Mayor, it has been evoked twice. The first time resulted in a remand from the Commonwealth Court and a settlement thereafter. Now, thirty years later it is evoked again. We are a government of “checks and balances.” Even with a “strong mayor” form of City government as set forth in the City Charter, City Council remains its legislative branch. “City Council, within the realm of its powers, is the legislative body under Philadelphia home rule form of government and is entitled to the same deference as the General Assembly.” Warren v. City of Philadelphia, 115 A2d 218 (1955); Blackwell v. City of Philadelphia, 684 A2d 1068, 1072 (1996); Council of the City of Philadelphia v. Honorable John F. Street, 856 A2d 893 (2004).

The daily operation of the Philadelphia Free Library is within the purview of the Mayor. However, the closing of the eleven branches on permanent bases evokes the “check” provided by 16-203. If this court takes Defendant’s argument to its logical

conclusion, the Mayor, without City Council participation could close every branch library in the City. This court finds 16-203 to be a valid “check” and not one which interferes with the Mayor’s executive and administration duties and responsibilities. The purpose 16-203 is not to “check” the temporary decisions; only those made permanent.

This court finds that Plaintiffs have met their burden in their request for Peremptory Judgment. The Defendants have argued that the harm to the City and others far out weighs the harm established by the Plaintiffs. The court disagrees. We are all harmed by this “financial crisis.” The operation of the Free Library will be affected by this crisis. As counsel for the Plaintiffs in the Westbrook case stated, “...ultimately the libraries may close”. This court finds that to close these capital facilities the Mayor is required to seek the approval of City Council.



ORDER

AND NOW, this day

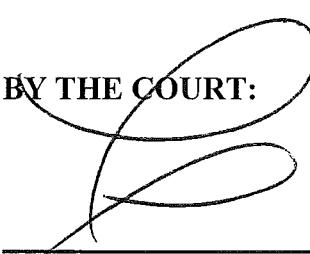
January, 2009, it is hereby ORDERED and

DECREED:

Defendants Mayor Michael A. Nutter, The City of Philadelphia, and the President and Board of Trustees of the Free Library of Philadelphia are enjoined from closing neighborhood library branches until further Order of this Court, or until the Defendants comply with Philadelphia Code Section 16-203.

Appeal of this Order shall not result in an automatic supersedes.

BY THE COURT:


IDEE C. FOX, J.

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