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## Local Elections

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## LOCAL ELECTIONS

*N.Y. CONST., art. VI § 17 (d):*

*“[t]he justices of town courts shall be chosen by the electors of the town for terms of four years from and including the first day of January next after their election.”*

### SUPREME COURT, APPELLATE DIVISION THIRD DEPARTMENT

Munnelly v. Newkirk<sup>1</sup>  
(decided June 16, 1999)

When Town Clerk Newkirk placed his office on the ballot for the 1999 election, Kenneth Munnelly brought an action seeking declaratory and/or injunctive relief based upon his claim that he was elected to a four-year term as Justice of the Peace in the town of Bethlehem, New York in the November 1997 election.<sup>2</sup> His claim was based on article VI, §17(d) of the New York State Constitution, which provides that “[t]he justices of town courts shall be chosen by the electors of the town for terms of four years from and including the first day of January next after their election.”<sup>3</sup> The Supreme Court, Albany County agreed that Munnelly’s term was for four years and directed Town Clerk Newkirk to remove the office of Town Justice from the 1999 ballot. The Town Clerk appealed, and the Supreme Court, Appellate Division affirmed the lower court’s decision. The appellate court declared that the term of office is for four years based on the plain and unambiguous language of the state constitution, despite the fact that a petition was circulated before

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<sup>1</sup> Munnelly v. Newkirk, 692 N.Y.S.2d 195, 262 A.D.2d 781 (App. Div. 3d Dep’t 1999).

<sup>2</sup> *Id.* at 197, 262 A.D.2d at 782.

<sup>3</sup> N.Y. CONST., art. VI § 17 (d).

the election that indicated that the office on the 1997 ballot was intended to fill the remaining two years of a four-year term.<sup>4</sup>

The Town of Bethlehem, New York holds an election every two years to elect one of two Town Justices who each sit for a four-year term.<sup>5</sup> A sitting justice passed away in March 1997, during the second year of his four-year term.<sup>6</sup> Pursuant to Town Law § 64.5,<sup>7</sup> the Town Board filled the vacancy by appointment for the remainder of the calendar year, and placed the office on the ballot for the next election, which the petitioner won in November 1997.<sup>8</sup> In that election the offices of both of Bethlehem's Town Justices were contested,<sup>9</sup> effectively ending the practice of staggered elections.<sup>10</sup>

In January 1999, acting in accordance with Election Law § 4-106.2,<sup>11</sup> the Town Clerk of Bethlehem<sup>12</sup> transmitted to the Albany County Board of Elections, a certificate indicating the Town offices that would be contested in the November 1999 election.<sup>13</sup> Among those contested offices was the seat of the late Justice, now occupied by petitioner Munnelly, who had been elected in November 1997.<sup>14</sup>

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<sup>4</sup> *Munnelly*, 692 N.Y.S.2d at 198, 262 A.D.2d at 784.

<sup>5</sup> *Id.* at 196, 262 A.D.2d at 781.

<sup>6</sup> *Id.* at 196, 262 A.D.2d at 782.

<sup>7</sup> N.Y. TOWN LAW § 64.5 (McKinney 1987). The statute states in pertinent part that "whenever a vacancy shall occur or exist in any town office, the town board or a majority of the members thereof may appoint a qualified person to fill the vacancy." *Id.* When the vacancy occurs in an elective office, "the person so appointed shall hold office until the commencement of the calendar year next succeeding the first annual election at which the vacancy may be filled." *Id.*

<sup>8</sup> *Munnelly*, 692 N.Y.S.2d at 197, 262 A.D.2d at 783.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 198, 262 A.D.2d at 783.

<sup>11</sup> N.Y. ELECTION LAW § 4-106.2 (McKinney 1998). The statute states in pertinent part that "each . . . town clerk, at least eight months before each general election, shall make and transmit to the board of elections a certificate stating each . . . town office . . . to be voted for at each such election." *Id.*

<sup>12</sup> The Town Clerk of Bethlehem was Respondent, Kathleen Newkirk.

<sup>13</sup> *Munnelly*, 692 N.Y.S.2d. at 198, 262 A.D.2d at 784.

<sup>14</sup> *Id.*

After failing to get the Town Clerk to withdraw the certificate, and failing to get the County Board of Elections<sup>15</sup> to reject the certificate, petitioner commenced this proceeding in April 1999 for declaratory and/or injunctive relief, based upon his claim that he was elected to a four-year term in the November 1997 election.

The respondents, the Town Clerk and the Commissioner of the Board of Elections, unsuccessfully claimed that Munnelly was elected only to fill the unexpired term of the late Justice Wenger.<sup>16</sup> The Supreme Court held that Munnelly was elected to a four-year term and directed that the election certificate filed by the Town Clerk be amended to delete the reference to the office of Town Justice in the upcoming November 1999 election.<sup>17</sup> The respondents appealed.

The Appellate Court swiftly dealt with the respondent's contention that the petitioner's claim was untimely because it did not commence within the four-month statute of limitations period.<sup>18</sup> The court relied on *Solnick v. Whalen*,<sup>19</sup> which held that an examination of the substance of the cause of action is necessary to determine the relationship between the relief sought and the limitation imposed by law.<sup>20</sup> Turning to the instant case, the court reasoned that Munnelly's commencement of the case in April 1999 falls within the required four-month period because it was not until the Town Clerk filed the certificate in January 1999 that the

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<sup>15</sup> *Id.* Respondents George P. Scaringe and Michael Moneschalchi, the Commissioners of the Board of Elections, were unable to agree to a response to petitioner's request, resulting in no action by the Board of Elections. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Munnelly*, 692 N.Y.S.2d at 198, 262 A.D.2d at 784.

<sup>18</sup> N.Y. CIVIL PRACTICE LAW AND RULES § 217 (McKinney 1990). The statute states in pertinent part that "[A] proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding on the petitioner . . ." *Id.*

<sup>19</sup> 49 N.Y.2d 224, 401 N.E.2d 190, 425 N.Y.S.2d 68 (1980) (reversing a lower court decision to declare Medicaid reimbursement rates null and void because the plaintiff's action was time-barred when brought more than four months after the plaintiff's right to institute an article 78 proceeding had accrued). *Id.* at 233, 401 N.E. 2d at 196, 425 N.Y.S. 2d at 74.

<sup>20</sup> *Id.* at 229, 401 N.E. 2d at 193, 425 N.Y.2d at 71.

petitioner learned that the Town Clerk considered his term to be limited to two years.<sup>21</sup>

The court then turned its attention to the respondent's claim that the 1997 election was specifically defined as, "To Fill A Vacancy."<sup>22</sup> The petition circulated on Munnelly's behalf prior to the November 1997 election referred to the office for which Munnelly was a candidate as having a two-year term.<sup>23</sup> Since Munnelly chose to run for the vacant seat, the respondents contend that he is therefore estopped from asserting any claim to a four-year term.

The Appellate Division noted that although the petition indicated that the election was "To Fill A Vacancy," it did not expressly limit the term of office to the remainder of the unexpired term.<sup>24</sup> Even had it attempted to limit the term of office, the court cited long established precedent<sup>25</sup> that "[N]either a candidate nor a legislative body can unilaterally change the constitutional term of office . . . ."<sup>26</sup>

The court applied the New York State Constitution, article VI, § 17 (d), which specifically provides that "[T]he justices of town courts shall be chosen by the electors of the town for terms of four years from and including the first day of January next after their election."<sup>27</sup> In examining a constitutional provision with such plain and unambiguous language, the court opined that full effect

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<sup>21</sup> *Munnelly*, 692 N.Y.S. 2d at 197, 262 A.D.2d at 783.

<sup>22</sup> *Id.* at 198, 262 A.D.2d at 783.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See *Gertrum v. Supervisors of Kings County*, 109 N.Y. 170, 173, 16 N.E. 328, 329 (N.Y. 1888) (stating that, "[I]t is undoubtedly beyond the power of the legislature by direct legislation to abolish the office of justice of the peace in towns, or shorten their terms of office so long as the town exists"); *People ex rel Burby v. Howland*, 155 N.Y. 270, 277, 49 N.E. 775, 777 (N.Y. 1898) (reasoning that the office of justice of the peace, and the term of office are constitutionally placed beyond the reach of hostile legislation); *Town of Putnam Valley v. Slutzky*, 283 N.Y. 334, 340 (N.Y. 1940) (stating, "[A] justice of the peace in towns, therefore, may be considered a constitutional judge, elected by the people for a fixed term, protected from removal except by a judicial tribunal, on notice and for cause . . . .").

<sup>26</sup> *Munnelly*, 692 N.Y.S.2d at 195, 262 A.D.2d at 781.

<sup>27</sup> N.Y. CONST., art. IV § 17 (d).

should be given to the intention of the framers as indicated by that plain and unambiguous language.<sup>28</sup> The court also recognized that a previous constitutional provision allowed the election of a town justice to fill out the remainder of an unexpired term, but that provision was deleted as a result of constitutional amendments adopted in 1961<sup>29</sup> with the purpose of reorganizing the state court system.

While the court's reasoning would seem to indicate that this was a "cut and dried" issue, there was a strong dissent, arguing that considerable weight should be given to the applicability of the doctrine of estoppel in this case.<sup>30</sup> The dissent contended that the issue in this case was not whether the New York State Constitution provides for a four-year term of office for a candidate who is elected to fill a vacancy, but was whether a candidate who represents himself to the voters as running for a two-year term of office should be estopped from invoking a constitutional provision that he was elected to a four-year term of office.<sup>31</sup> The dissent argued that the sanctity of the votes cast is violated if the court allows the New York State Constitution, article VI, § 17 (d) to be invoked to achieve a result other than that which the voters decided.<sup>32</sup> The disagreement between the majority and the dissent lies in each party's interpretation of the nominating petitions used in the 1997 election. The dissent reasoned that the listing of the candidate "To Fill A Vacancy" leads to the "[i]nescapable conclusion that he (and the voters) believed he was running for a two-year term."<sup>33</sup> The majority held that the ballot heading "To Fill A Vacancy" is not sufficient to convert the petitioner's term from the constitutional four-year term to the unexpired term.<sup>34</sup>

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<sup>28</sup> *Munnelly*, 692 N.Y.S.2d at 197, 262 A.D.2d at 783.

<sup>29</sup> The Erwin-Lounsberry Court Reorganization Plan took effect in 1962. It attempted to establish a simplified statewide court system, and was embodied in the repeal of article six and the ratification of a new article six of the state constitution. 1961 N.Y. Laws IV, L, LX-LXII.

<sup>30</sup> *Munnelly*, 692 N.Y.S. 2d at 198, 262 A.D.2d at 784 (1999) (Carpinello, J., dissenting).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 199, 262 A.D.2d at 785 (Carpinello, J., dissenting).

<sup>33</sup> *Id.*

<sup>34</sup> *Munnelly*, 629 N.Y.S.2d at 198, 262 A.D.2d at 785.

The dissent also examined a facet of the case, the ballot format, not addressed by the majority.<sup>35</sup> N.Y. Election Law § 7-108.3 clearly states:

[I]n every instance where multiple casting of votes is permitted for two or more candidates for the same office or position, the instruction on the ballot or machine shall read, 'Vote for any.....', (the blank space to be filled with the number of persons to be nominated for the office or elected to the position).<sup>36</sup>

The voters did not receive such instructions in the November 1997 election.<sup>37</sup> Instead, the ballot used in the 1997 election conformed to the format which is only appropriate when two or more candidates seek the same office for different terms.<sup>38</sup> In that instance, the statute requires that, "[i]f two or more candidates are nominated for the same office for different terms, the term for which each is nominated shall be printed as a part of the title of the office."<sup>39</sup> The office for which the petitioner was running was denoted "To Fill A Vacancy" which clearly differentiates between the two judgeships on the ballot.<sup>40</sup> Therefore, the dissent concluded that the voters were misled if the term of office was intended to be four years, and Munnely should be estopped from asserting his claim to a four-year term.<sup>41</sup>

Despite this strong dissenting argument, the court looked to the plain and unambiguous language of the New York State Constitution and did not analyze the possibility of there having

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<sup>35</sup> *Id.* at 199, 262 A.D.2d at 785.

<sup>36</sup> N.Y. ELECTION LAW, § 7-108.3 (McKinney 1987).

<sup>37</sup> *Munnely*, 629 N.Y.S. 2d at 199, 262 A.D.2d at 785 (Carpinello, J., dissenting).

<sup>38</sup> N.Y. ELECTION LAW, § 7-108.2 (McKinney 1989).

<sup>39</sup> *Id.*

<sup>40</sup> *Munnely*, 692 N.Y.S. 2d at 199, 262 A.D.2d at 785 (Carpinello, J., dissenting).

<sup>41</sup> *Id.*

been a misreading of New York State Election Law. It affirmed the lower court's decision to order the Town Clerk to remove the office of Town Justice from the 1999 ballot, despite the petition circulated that said that the office on the 1997 ballot was intended to fill a two-year vacancy.<sup>42</sup> This order was subsequently affirmed by the Court of Appeals of New York for the reasons stated in the opinion of the Appellate Division.<sup>43</sup>

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<sup>42</sup> *Munnelly*, 692 N.Y.S.2d at 198, 262 A.D.2d at 784.

<sup>43</sup> *Munnelly v. Newkirk*, 93 N.Y.2d 960, 716 N.E.2d 182, 694 N.Y.S.2d 346 (1999).



