

STATE OF MICHIGAN
COURT OF APPEALS

DONALD PHILLIPS, individually and on behalf of the
United Retired Governmental Employees, U.R.G.E.,

UNPUBLISHED
July 1, 1997

Plaintiff-Appellees,

v

No. 190665
Genesee Circuit Court
LC No. 93-23986-CZ

CITY OF FLINT RETIREMENT SYSTEM

Defendant-Appellee,

and

CITY OF FLINT,

Defendant-Appellant,

and

MICHIGAN ASSOCIATION OF PUBLIC
EMPLOYEE RETIREMENT SYSTEMS,

Amicus Curiae.

Before: Saad, P.J., and Neff and Jansen, JJ.

PER CURIAM.

In this action to determine residency requirements under city charter, city ordinance and state law, defendant City of Flint appeals as of right from a June 26, 1995, order ruling that members of the Board of Trustees of the City of Flint Retirement System did not have to be residents of the City of Flint. We affirm.

I

Defendant first asserts that the trial court erred in finding that elected trustees of the City of Flint Retirement System Board (Board) did not have to be residents of the City of Flint because the Board is

a multiple-member body and must comply with the multiple-member body residency requirement. We disagree.

Defendant asserts that under the city charter all boards must be multiple-member bodies governed by city charter provisions which require that members of multiple-member bodies be residents of the City of Flint. The trial court ruled that either: (1) it was never intended that the Board fall within the definition of a multiple-member body, or (2) the appropriate action was never taken to bring the Board within the definition. We agree.

Section 6-103 of the Flint city charter provides that within a year of the effective date of the charter, the mayor must review the status of all multiple-member bodies and recommend action thereon to the city council. In addition, §6-103 states that all multiple-member bodies must comply with the residency requirements of §6-101(B) “except as provided in the Charter or by state law.” This is an unambiguous exception to the rule establishing residency requirements for multiple-member boards. We therefore reject defendant’s argument that the *existence* of the Board established, as a matter of law, that the Board fit within the definition of a multiple-member body and should be governed by the residency requirements.

Indeed, city ordinance §35-8 provides that members of the Board are to be selected by the city council instead of the mayor. Although it has long been held that the charter of a city is the fundamental law of the municipality, and that ordinances which are in conflict are null and void, see *Hubbard v Board of Trustees of Retirement System*, 315 Mich 18, 24; 23 NW2d 186 (1946), here the charter and ordinance can be read together so as not to conflict.¹

II

Next, defendant asserts that the trial court erred by switching the burden of proof from plaintiff to the city, and by finding that the mayor of Flint had not taken the appropriate action to continue the existence of the Board as a multiple-member body. We disagree. Once plaintiff presented evidence to suggest that the Board did not fall within the definition of a multiple-member body, the burden of going forward with the evidence properly shifted to defendant to rebut this proof. Defendant failed to do so. Therefore, the lower court did not impermissibly shift the burden of proof.

III

Finally, defendant contends that the trial court erred in denying its motion for a new trial. We find no error here. Defendant filed its motion for a new trial nineteen days after the judgment of the lower court was entered on June 26, 1995. Because the parties had previously stipulated to a method of resolution “in lieu of trial,” the trial court did not consider the motion as one for a new trial, but rather as a motion for reconsideration. In light of the stipulation, we see no error in the trial court’s determination to follow the procedure of MCR 2.119(E) for contested motions, and treating defendant’s motion for a new trial as one for reconsideration under MCR 2.119(F). Because MCR 2.119(F)(1) provides that the motion must be filed within fourteen days after the final judgment is entered, defendant’s motion (filed nineteen days after judgment) was properly denied. We reject

defendant's argument that MCR 7.204(A)(1)(b) provides an "alternate" twenty-one day method for filing for reconsideration.

Affirmed.

/s/ Henry William Saad

/s/ Janet T. Neff

/s/ Kathleen Jansen

¹ Defendant Board also presented evidence that other state law, the Public Employment Relations Act, (PERA), MCL 423.201, *et seq.*; MSA 17.445(1), *et seq.*, in conjunction with the Home Rule Cities Act, MCL 117.4i-j; MSA 5.2082-5.2083, provided that the rules and regulations governing the Board were contractual and could be promulgated independently under the city charter. Therefore, the lower court did not err by ruling that the Board did not fall within the provisions of the charter residency requirements because state law demonstrated that it was not contemplated that the Board would be a traditional multiple-member body.