

**NOTICE:** This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS, <i>ex rel.</i> MICHAEL ABTS,	)	of Kane County.
in His Official capacity as HIGHWAY	)	
COMMISSIONER OF THE GENEVA	)	
TOWNSHIP ROAD DISTRICT, an Illinois	)	
Body Corporate and Politic, and THE GENEVA	)	
TOWNSHIP ROAD DISTRICT,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 24-CH-49
	)	
THE CITY OF BATAVIA,	)	
an Illinois Municipality,	)	Honorable
	)	John G. Dalton
Defendant-Appellee.	)	Judge, Presiding.

---

JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices McLaren and Jorgenson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in denying plaintiff-appellant's petition for leave to commence a *quo warranto* action where plaintiff-appellant lacked standing as they failed to allege a sufficient private interest.

¶ 2 At issue here is whether the trial court properly granted defendant-appellee’s motion to dismiss, thus denying plaintiff-appellant’s petition for leave to commence a *quo warranto* action, on the basis that plaintiff-appellants lacked standing. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff-Appellants, the People of the State of Illinois *ex rel.* Michael Abts, in his official capacity as highway commissioner of the Geneva Township Road District, and the Geneva Township Road District (hereinafter, collectively, “Geneva Road District”), filed a petition for leave to commence a *quo warranto* action on April 23, 2024. In it, they alleged that Batavia City Ordinance No. 23-12 (adopted May 1, 2023)<sup>1</sup> was an improper annexation of “a section of road right-of-way measuring 66 feet in width which extends approximately 217 feet in length \*\*\* perpendicular from the City’s boundary into unincorporated Geneva Township” because the territory is not contiguous as required by 65 ILCS 5/7-1-10 (West 2024). Accordingly, they sought leave to commence a *quo warranto* action, for the purposes of determining under what law, warrant, or authority Batavia claimed to have undertaken the annexation. As required by 735 ILCS 5/18-103 (West 2024), Geneva Road District first requested the Attorney General and the State’s Attorney to bring the action. They both declined to do so. This was noted in Geneva Road District’s petition.

¶ 5 On April 24, 2024, defendant-appellee, the City of Batavia (hereinafter, “Batavia”), filed a motion to dismiss pursuant to 735 ILCS 5/2-619(a)(9) (West 2024), arguing that Geneva Road

---

<sup>1</sup> The ordinance also including a zoning provision, wherein the annexed area would be zoned “R0 Single Family,” pursuant to the City of Batavia Municipal Code. Batavia planned to connect the annexed area to the rest of Skyline Drive, so what was previously a dead-end right of way would instead connect to the main road.

District's petition did not articulate a personal interest which is sufficiently distinct from the interest of the general public. Accordingly, Geneva Road District lacked standing to bring a *quo warranto* action.

¶ 6 The matter proceeded to hearing on the motion to dismiss on April 29, 2024. After hearing arguments from both parties, the trial court made its oral ruling granting Batavia's motion to dismiss and denying the Geneva Road District's petition for leave to commence a *quo warranto* action:

“Under 735 ILCS 5/18-102, the plaintiff must obtain this Court's leave to file its proposed complaint and it must file same before the Statute of Limitations expires on or about May 1, which explains why we're here three days after the case came to me. The writ in question is an extraordinary remedy. Originally it was directed to the King. \*\*\* Much of the common law went away when the statute was passed. Not all of it, but much of it was superceded [*sic*] by the enactment of the statute.

In this case, the property that was annexed is unincorporated. It's not part of any municipality. So arguably the cases that find that under certain circumstances municipalities have standing because of their interest and responsibility, those cases are distinguishable because it's not a municipality and the property's not incorporated.

I've already addressed the township's suggestion that I should extend the municipality cases because the townships provide a small subset of the same services as municipalities. But, as I said, the Court's not persuaded such an expansion may be appropriate. Street maintenance, including street plowing -- snowplowing, are governmental services, and I'm just not persuaded there's enough in common between municipalities and townships to extend the rule.

Other than the above argument, the township's asserted interests here are all public and governmental. And, as to such interests, the Attorney General and the State's Attorney are the only parties with standing to assert said interests. I find the authority cited in the City's briefs to be on point and persuasive. Leave to file the complaint in *Quo Warranto* [sic] is, accordingly, denied."

¶ 7 On April 30, 2024, the trial court entered a written order granting Batavia's motion to dismiss and denying the Geneva Road District's petition for leave to commence a *quo warranto* action. The Geneva Road District filed their timely notice of appeal on May 6, 2024.

¶ 8 II. ANALYSIS

¶ 9 At issue in this appeal is whether the dismissal of Plaintiff-Appellant's petition for leave to commence a *quo warranto* action was proper. Geneva Road District argues that the trial court's dismissal was improper because Geneva Road District has standing, and because the trial court abused its discretion in the following ways: (1) it found that townships were not substantially similar to municipalities, such that they could be considered citizens under *Quo Warranto* Act; (2) it found that Geneva Road District did not establish an invasion of a private interest distinct from that of the general public; and (3) it improperly focused on the Attorney General and State's Attorney's decisions not to file a *quo warranto* action. Batavia argues that the trial court was correct in finding that Geneva Road District lacked standing.

¶ 10 Historically, *quo warranto* proceedings were a "writ of right for the crown against one who claimed or usurped any office, franchise or liberty, to challenge by what authority he asserted a right thereto." *People ex rel. Hansen v. Phelan*, 158 Ill. 2d 445, 448. Much of the common law has been done away with, replaced by the statutory provisions in the *Quo Warranto* Act (hereinafter, "the Act"). See 735 ILCS 5/18-101 *et seq.* Under the Act, the general purpose of a *quo warranto*

proceeding is to challenge a defendant's right to exercise jurisdiction over territory or to hold public office, and to call on him or her to show by what authority he or she is exercising a certain office, power, or franchise. 735 ILCS 5/18-103 (West 2024).

¶ 11 A *quo warranto* proceeding is the proper method of challenging a completed annexation. *People ex rel. Ryan v. West Chicago*, 216 Ill. App. 3d 683, 690. Under 735 ILCS 5/18-101(5), a *quo warranto* proceeding may be brought against a municipal corporation to call on the municipality to show by what authority it has completed an annexation. 735 ILCS 5/18-101(5) (West 2022); *People ex rel. Ryan v. West Chicago*, 216 Ill. App. 3d at 690. The proceeding may be brought in the name of the People of the State of Illinois by either the Attorney General or the State's Attorney. 735 ILCS 5-18-102 (West 2022). "Where matters of purely public import touching no private interests are involved, only [the Attorney General and the State's Attorney] can qualify as proper party plaintiffs." *People ex rel. Brooks for and on Behalf of City of Wheaton v. Village of Lisle*, 24 Ill. App. 3d 432, 434. If they refuse or fail to do so, "any citizen having an interest in the question on his or her own relation" may bring the proceeding, so long as they: (1) requested the Attorney General and the State's Attorney to bring the proceeding; (2) gave notice of the intended application to the Attorney General, the State's Attorney, and the adverse party; (3) show the invasion of a private interest which is sufficiently distinct from the interest of the general public; and (4) have been granted leave by the trial court. *Id.*; *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 162 Ill. App. 3d 340, 345. The private interest alleged must be directly, substantially, and adversely affected by actions sought to be challenged in the *quo warranto* proceeding. *Id.* The decision to grant or deny a petition for leave to file a *quo warranto* action lies solely within the trial court's discretion. *People ex rel. Graf v. Village of Lake Bluff*, 206 Ill. 2d at 547.

¶ 12 Under Illinois law, municipalities whose territory is alleged to have been annexed by another municipality are “citizens” under the Act who may constitute a *quo warranto* proceeding. *People ex rel. Village of Long Grove*, 162 Ill. App. 3d at 345; *People ex rel. City of North Chicago v. City of Waukegan*, 116 Ill. App. 3d 88, 92-93. Ultimately, the rationale behind recognizing municipalities as citizens was because “the relevant statutes bar annexation of territory by a municipality which is within the corporate limits of another municipality [citation] and, as we have noted, *quo warranto* is the established remedy to test the validity of an annexation.” *People ex rel. City of North Chicago*, 116 Ill. App. 3d at 93. In other words, the relevant statute did not allow territory within a municipality to be annexed by another municipality – municipalities must be able to challenge an annexation if an improper annexation occurs. Accordingly, municipalities can be citizens for purposes of bringing a *quo warranto* action.

¶ 13 In the instant case, the relevant statute reads as follows:

“Any municipality by ordinance may annex territory contiguous to it even though the annexed territory is dedicated or used for street or highway purposes under the jurisdiction of the Department of Transportation of the State of Illinois, or a part of county or township highway department if no part of the annexed territory is within any other municipality.” 65 ILCS 5/7-1-10 (West 2024).

Applying the rationale from *People ex rel. City of North Chicago*, it follows that counties, townships, and their respective highway departments or road districts, should also be able to challenge an annexation if an improper annexation occurs. However, that does not do away with the requirement that they must allege a private interest.<sup>2</sup>

---

<sup>2</sup> We note that at oral argument, the Geneva Road District suggested that the line of cases finding

¶ 14 Turning now to the question of whether the Geneva Road District has alleged a sufficient private interest to confer standing. As noted above, matters that are purely public may *only* be brought by the Attorney General or the State’s Attorney. See *supra* ¶ 11. However, “[p]ublic and private interests are often not mutually exclusive [citation], and if a sufficient private interest is alleged, the fact that the wrong sought to be remedied may also have a public aspect would not be sufficient to require denial of a citizen’s request to bring a *quo warranto* action. [citation]” *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 162 Ill. App. 3d 340, 345-346. In *People ex rel. City of North Chicago*, the court held that municipalities can establish a sufficient private interest because “[t]he interest, and responsibility, imposed upon a city for police, fire, street maintenance, and other services over territory within its corporate limits is sufficient to permit it to challenge in *quo warranto* the purported annexation of a portion of its territory.” *People ex rel. City of North Chicago v. City of Waukegan*, 116 Ill. App. 3d 88, 93. The use of the word “and” indicates that it is the mixed interests and responsibilities of a municipality that gives rise to a private interest.

¶ 15 To determine if Geneva Road District has the requisite mixed interests and responsibilities like a municipality, we find it necessary to look to the statutory functions of a township road district and the highway commissioner of a township road district. A township road district has jurisdiction over the roads within its boundaries, subject to supervision by the county and the Department of

---

that municipalities can be citizens waives the requirement that a private interest be pled. Rather, municipalities have a private interest simply because they are a municipality. We disagree with that framing. Further, the Geneva Road District did not raise this in their opening brief. Arguments not raised in an opening brief are “forfeited and shall not be raised \*\*\* in oral argument \*\*\*.” Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020).

Transportation. 605 ILCS 5/6-101 (West 2024). It has the general responsibility to maintain the roads within its boundaries.

¶ 16 The functions of the highway commissioner include: the levying of taxes for road purposes; the laying out, altering, widening, or vacation of township or district roads; directing the expenditure of all moneys collected in the district for road purposes; constructing, maintaining, and repairing of roads within the district; acquiring land for township or district roads; and other statutorily designated functions. See 605 ILCS 5/6-201.1-201.22 (West 2024). It is important to note that although a township highway commissioner has sole statutory authority to repair and improve the roads, the township is nonetheless the owner of the roads within the township's road system. *The Village of Montgomery v. Aurora Township, et al.*, 387 Ill. App. 3d 353, 355. The highway commissioner also has limited power; the township must approve the budget presented by the commissioner and must audit the commissioner's accounts *Id.* at 355-356; 60 ILCS 1/80-15, 80-60 (West 2024). The powers, interests, and responsibilities held by the highway commissioner are limited and are *solely* related to street maintenance. In other words, Geneva Road District lacks the requisite mixed interests and responsibilities of a municipality and accordingly is unable to plead a private interest. But we note that our holding does not limit a township's ability to petition for leave to commence a *quo warranto* action challenging an annexation. A township has the requisite mixed interests and responsibilities of a municipality. See 60 ILCS 1/1-1 *et seq.* (West 2024).

¶ 17 On this point, we find *People ex rel. Freeport Fire Protection District, Stephenson County v. City of Freeport* to be helpful. *People ex rel. Freeport Fire Protection District, Stephenson County v. City of Freeport*, 90 Ill. App. 3d 112 (2nd Dist. 1980). In *Freeport*, the Freeport Fire Protection District attempted to challenge an annexation of territory within its district, arguing that



it had a private interest sufficient to confer standing because the annexation would result in reduced tax revenue, which in turn would inhibit it from operating effectively. *People ex rel. Freeport Fire Protection District, Stephenson County v. City of Freeport*, 90 Ill. App. 3d 112, 114. The appellate court found that to be an insufficient interest as “the possible noncontiguity or loss of adequate revenue to operate effectively is clearly a public consideration, involving the public functions of the district, that is its fire fighting ability.” *Id.* In rendering its decision, the appellate court also noted that there is “a vast difference between two municipalities contending for dominion over the same territory and the objection of a fire protection district to certain territory being disconnected from it by a separate municipality.” *Id.* at 115.

¶ 18 Here, we do not have two municipalities, or even a municipality and a township, contending for dominion over the same territory. Rather, similarly to *Freeport*, we have a township road district objecting to certain territory being disconnected from it. Further, the alleged private interests put forth by the Geneva Road District involve their public functions. As such, they have failed to allege a sufficient private interest.

¶ 19 Geneva Road District attempts to distinguish *Freeport* by stating that “in *Freeport*, the City annexed property *located within* the Freeport Fire Protection District – it is not alleged that the City annexed property owned by the Fire Protection District.” We take issue with Geneva Road District’s use of the word “owned.” As discussed above, Geneva Road District does not *own* the territory at issue. See *supra* ¶ 16. Both the Fire Protection District in *Freeport* and the Geneva Road District in the instant case are prescribed statutory functions which serve a public consideration. The Fire Protection District’s function is its firefighting ability. *Id.* at 114-115. The Geneva Road District’s function is to maintain roads.

¶ 20 Geneva Road District also attempts to distinguish *People ex rel. Van Cleave v. Village of Seneca* by pointing out that the territory at issue in *Van Cleave* was private property that resulted in the annexation of roads located in the township, rather than just the annexation of a portion of road, as in the instant case. *People ex rel. Van Cleave v. Village of Seneca*, 519 N.E. 2d 63, 64 (3rd Dist. 1988). We do not find this to be compelling, as the relevant appellant in *Van Cleave* was a township. Here, relevant parties are the highway commissioner of the Geneva Township Road District and the Geneva Township Road District itself. The township is *not* a party. As discussed above, the Geneva Road District serves a solely public function. It does not have the same mixed interests and responsibilities of a municipality, or even a township.

¶ 21 In their opening brief and at oral argument, Geneva Road District relied on “the library district” case to support their argument (*People ex rel. Geneva Public Library Dist. V. Batavia Public Library Dist.*, 2015 IL App (2d) 100674-U). The crux of the argument was, if a library district had standing to bring a *quo warranto* action, surely a road district would as well. However: (1) this case is unpublished and is accordingly not binding authority; and (2) standing wasn’t the issue in the library district case. We have no idea what private interest may or may not have been alleged in the library district’s petition. The library district case is not dispositive here.

¶ 22 Even if we were to look specifically at the interests alleged by the Geneva Township Road District, it does not appear they have alleged a sufficient private interest. Here, the interests alleged in the proposed complaint are: (1) the annexation will increase traffic and create safety hazards; (2) the annexation will impact the health, safety, and welfare of Geneva Township residents; (3) the annexation could also impact the integrity of a nearby bridge; (4) the Geneva Township Road District does not have funds in its budget to address any road right-of-way issues which may arise as a result of the annexation; (5) the annexation will impact the Geneva Township Road District’s

property interests in the annexed territory; and (6) the annexation will impact Geneva Township's ability to provide proper snowplow maintenance.<sup>3</sup> There may have been additional interests included the complaint, but page 13 of the complaint is not included in the record on appeal (it also originally was not presented to the trial court but was later provided).

¶ 23 Regarding issues 1 and 2, these alleged interests are not sufficiently distinct from the interests of the general public to constitute a private interest. Traffic, safety hazards, and concerns regarding the health, safety, and welfare of Geneva Township residents are not interests unique to the Geneva Township Road District. Rather, they are shared by all residents in the area. Further, interests 1 and 2 are not supported by the record. Nothing in the record shows that increased traffic or a negative impact to the health, safety, and welfare of Geneva Township citizens are “then occurring or certain to occur.” *People ex rel. Durst v. Village of Germantown Hills*, 51 Ill. App. 3d 969, 971 (“Damage to private interest by action sought to be challenged in quo warranto proceeding must be then occurring or certain to occur; petitioner cannot rely on an expected damage to his private interests.”).

¶ 24 Interests 3 and 4 are purely speculative. See *People ex rel. Turner v. Lewis*, 104 Ill. App. 3d 75, 77 (“The petitioner cannot rely on an expected damage to his private interests.”). There is nothing in the record that shows those damages are certain to occur. Accordingly, these are insufficient interests to confer standing.

¶ 25 We do not find issue 5 to be a sufficient private interest either. As noted above, the Geneva Road District does not *own* the territory at issue. See *supra* ¶ 16. It has the statutory authority to

---

<sup>3</sup> The interests listed here are formatted slightly differently than how the Geneva Road District presented them in their brief. We relied on the interests as they were presented to the trial court in the proposed complaint. However, the interests are substantially the same.

repair and improve the roads, but the township owns the roads within the township's road system. *The Village of Montgomery v. Aurora Township, et al.*, 387 Ill. App. 3d at 355. Even the alleged private interest that the annexation removes territory from the Geneva Road District's jurisdiction is insufficient. The plaintiff in *People ex rel. Durst v. Village of Germantown Hills* made a similar argument. In *Durst*, one of the interests alleged was that the annexation had taken roads from under the township's jurisdiction, which would result in a loss of motor fuel tax revenue. *People ex rel. Durst v. Village of Germantown Hills*, 51 Ill. App. 3d 969, 971 (4th Dist. 1977). The court stated that "[i]f the township will lose jurisdiction over roads by the annexation, it will also lose the responsibility for maintaining those roads." *Id.* The Geneva Road District, in their reply brief, point out that the framing of the interest in *Durst* was slightly different than in the instant case. The focus was on the monetary loss that would result from losing jurisdiction over the road, rather than focusing solely on the loss of jurisdiction. While this may be true, we are inclined to apply the same rationale here. Losing jurisdiction over the territory alleviates any responsibility the Geneva Road District had over the territory. This is not the same as losing an ownership interest in the territory. It is not a sufficient interest. As Batavia points out in its brief, if we were to accept this as a sufficient private interest, "any annexation of property of which a governmental entity may execute control would be sufficient to provide a private interest." Accordingly, interest 5 is insufficient to confer standing.

¶ 26 Lastly, interest 6 is a purely public interest. It has solely to do with street maintenance, which is a service performed for the public good. See *People ex rel. Brooks v. Village of Lisle*, 24 Ill. App. 3d 432, 435 (citing *Merrill v. City of Wheaton*, 379 Ill. 504, 509 for the distinction between governmental and private functions ("When a power conferred bears relation to a public purpose and is for the public good, it is to be classified as governmental in its nature \*\*\*.")).

¶ 27 We next address Geneva Road District’s contention that the trial court improperly focused on the Attorney General and State’s Attorney’s decisions not to file a *quo warranto* action in granting Batavia’s motion to dismiss. We disagree. It is clear from the record that the trial court did not rely significantly on the Attorney General and State’s Attorney’s decisions not to file in rendering its decision. Rather, it focused more on the public nature of the interests alleged. We do caution the trial court against making similar statements in the future. The Attorney General and the State’s Attorney “have complete, arbitrary, and unfettered discretion as to whether they shall institute the action.” *Henderson v. Miller*, 228 Ill. App. 3d 260, 266-267. They are under no obligation to give their reasoning for declining to institute a *quo warranto* action.

¶ 28 Finally, Geneva Road District also argues in their brief that the lack of contiguity in the annexation is a serious defect subject to challenge. As Batavia points out, this matter was not addressed by the trial court. Therefore, it would be improper for us to consider it. See *People ex rel. The City of North Chicago v. The City of Waukegan*, 116 Ill. App. 3d at 94 (declining to address issues raised in parties’ briefs that were not considered by the trial court in entering judgment).

¶ 29 Given all of the above, and in light of the fact that a *quo warranto* proceeding provides an *extraordinary* remedy (*People ex rel. Wofford v. Brown*, 2017 IL App (1st) 161118, ¶ 12), the trial court’s finding that the Geneva Township Road District lacked standing was not an abuse of discretion.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 32 Affirmed.