

12/23/2020 5:30 p.m.
C. Ladden, Deputy

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY

KAREN FANN, et al.,

Petitioners,

v.

MARICOPA COUNTY BOARD OF
SUPERVISORS, et al.,

Respondents.

Case No. CV2020-016904

DECISION ORDER

Honorable Randall H. Warner

This is a special action in the nature of mandamus. Petitioners, in their capacity as President of the Senate and Chair of the Senate Judiciary Committee, issued legislative subpoenas to Respondents. When Respondents failed to comply within the timeframe set forth in the subpoenas, Petitioners filed this special action. The Court accelerated briefing and argument on the question of whether it has subject matter jurisdiction.

A.R.S. § 41-1151 authorizes the presiding officer or a committee chair of either house of the Arizona Legislature to issue subpoenas. A.R.S. §§ 41-1153 and -1154 prescribe how to enforce a legislative subpoena. Plaintiffs have not followed the procedures set forth in those statutes, instead choosing to file suit under Arizona's mandamus statute, A.R.S. § 12-2021, and the Arizona Rules of Procedure for Special Actions.

Mandamus is not a proper remedy for enforcement of a legislative subpoena. That remedy exists to compel a public body or official to perform "an act which the law specially imposes as a duty resulting from an office." A.R.S. § 12-2021; *accord* Ariz. R. Spec. Act. 3. Although Respondents are public officials, they are in this context the subjects of a subpoena and their duty to comply arises from the subpoena, not from their offices. There is no basis in Arizona statute for treating the subject of a subpoena differently because they are a public official, and no basis for using mandamus in lieu of the procedures for enforcing subpoenas that apply to all persons served with a subpoena.

Petitioners argue, based on federal case law, that they have an implicit power under the Arizona Constitution to seek judicial enforcement of a legislative subpoena. As a general proposition, the Arizona Constitution is much more detailed than the United States Constitution, and the Court is reluctant to find powers in it that are not expressed.

But whatever implied power the Constitution might confer on the Legislature, neither the federal cases cited, nor any provision of the Arizona Constitution cited, supports a grant of such implied power to individual legislators or legislative leadership.

Petitioners argue that they can seek judicial enforcement of a subpoena under A.R.S. § 12-2212. That statute provides that, when a “public officer” is authorized to issue a subpoena, they may apply to the Superior Court to enforce the subpoena, and “the court shall thereupon proceed as though such failure had occurred in an action pending before it.” A.R.S. § 12-2212(B). This is a plausible argument, but Petitioners made it for the first time in their memorandum on the issue or jurisdiction. The Complaint here was brought under the mandamus statute and the special action rules, not A.R.S. § 12-2212, and the latter is not even referenced in the Complaint.

Respondents have not had an opportunity to respond to this new theory. However, the Court will permit Petitioners to amend the Complaint to add a claim under A.R.S. § 12-2212, and the viability of that remedy can be addressed if a motion to dismiss is filed.

IT IS ORDERED dismissing Plaintiff’s claim for special action.

IT IS FURTHER ORDERED granting Plaintiff leave to amend to add a claim under A.R.S. § 12-2212.

IT IS FURTHER ORDERED that the remainder of this matter will be dismissed without prejudice on February 1, 2021 unless an amended complaint is filed.

As to the special action claim, the court finds no just reason for delay and enters dismissal order as a partial final judgment under Rule 54(b).

DATE: December 23, 2020.



Honorable Randall H. Warner
Superior Court Judge