

IN THE CIRCUIT COURT OF TEXAS COUNTY
STATE OF MISSOURI

Kimberly F. Lowe

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FILED

MAR - 5 2012

MARC MOSLEY
Circuit Clerk
TEXAS COUNTY, MO

ROCKY DAILING)
)
Plaintiff,)
)
vs.)
)
WILLIAM BROWN,)
Serve at:)
8440 Hwy. AJ)
Houston, MO 65483, and)
VIRGINIA AUSTIN,)
Serve at:)
11457 Rocky Ridge Rd.)
Bucyrus, MO 65444)
Defendants.)

Case No.: 12TE-CC00

PLAINTIFF'S PETITION FOR PERMANENT INJUNCTION

COMES NOW Plaintiff, Rocky Dailing, by and through his attorney of record, Kimberly F. Lowe, and for his Petition for Permanent Injunction against Defendants, state and allege as follows:

1. Plaintiff is a resident and taxpayer of Upton Township who resides at 9783 Highway M, Plato, Missouri 65552.
2. Jurisdiction is proper in this court pursuant to the Missouri Constitution Article V, Section 14.
3. Venue is proper pursuant to RSMo§508.010 because Plaintiffs and Defendants are residents of Texas County, Missouri and the events regarding this action occurred in Texas County.
4. Defendants, William Brown and Virginia Austin are Board Members of the Upton Township.

5. Defendants have been exercising their power as Board Members outside their statutory authority and in violation in of the statute and have put the Township at increased risk of liability in some of the following manners:
 - a) Defendants attempted to contract on behalf of the Township to build a bridge on Roubidoux Road. Said project exceeded \$6,000.00. The attempted contract was made in violation of RSMo Section 50.660 in that it was not in writing, nor was there any opportunity for competitive bidding, including advertising. It may be in violation of the Statute in other respects as well.
 - b) Defendants did not obtain a DNR permit for building said bridge.
 - c) Defendants have not maintained accurate and open records of Township business as required by statute.
 - d) Defendants have utilized Township funds in an improper manner by allowing continued nepotism by Jerry Stalcup who was allowed to employ his relatives, Levi and Corey Stalcup for Township business.
 - e) Defendants have exposed the Township to liability by allowing Jerry Stalcup to operate a Commercial vehicle without a valid CDL.
 - f) Defendants have allowed and caused dumping of waste from the bridge construction on to the property of Plaintiff.
6. If a temporary restraining order is granted to Plaintiffs, the injury, if any, to Defendants will be inconsiderable.
7. A permanent injunction is necessary to protect the Plaintiff's legally protectable interest as a taxpayer and resident of Upton Township, as well as the other taxpayers and residents of Upton Township and to prevent disbursement of Township funds by

Defendants for a bridge which has not been contracted in compliance with the statute and to prevent waste of Township funds and without the granting of a permanent injunction Plaintiff will be unable to protect those interests and will suffer irreparable injury, loss and damage and Plaintiff has no adequate remedy at law.

8. If a permanent injunction is not granted, Defendants will cause irreparable injury, loss and damage to the Plaintiff and other citizens of the Townships:

- a) Defendants will cause the Township to incur expenditures in violation of the Statute;
- b) Defendants will expose the Township to extraordinary liability and exposure to claims by third parties.

9. If a permanent injunction is granted to the Plaintiff there will be no injury to the Defendants.

10. A permanent injunction is necessary to protect the Plaintiff's legitimate interests as a taxpaying citizen and without the granting of a permanent injunction the Plaintiff and other citizens of the Township will suffer irreparable harm.

11. Plaintiff has no adequate remedy at law to keep Defendants from expending funds and endangering the Township by exposing it to unnecessary liability.

WHEREFORE, based on the foregoing, the Plaintiff prays that a permanent injunction be issued against Defendants ordering them to resign, to cease all work on the bridge project until they produce all documents which indicate compliance with the statute, proof of a DNR permit, to produce all records of all meetings, that costs of this proceeding, be taxed against the Defendants, and for such other and further relief the Court deems just and proper in and under the circumstances.

Respectfully submitted,

Kimberly F. Lowe

By:



Kimberly F. Lowe #46461

Attorney at Law

122 West Walnut

Houston, MO. 65483

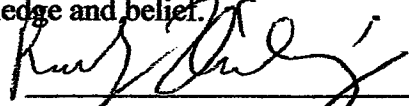
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Facsimile: (417) 967-1968

ATTORNEY FOR PETITIONER

STATE OF MISSOURI)
)ss
COUNTY OF TEXAS)


I, Rocky Dailing, of lawful age, having been first duly sworn, on oath, state that I am the Plaintiff described in the foregoing document, that I have read the same, and that the facts stated herein are true and correct to the best of my knowledge and belief.



Rocky Dailing, Plaintiff

Subscribed and sworn to before me this 5 day of March, 2012.

My commission expires:



Notary Public

Notary Public

KIMBERLY LOWE
Notary Public - Notary Seal
STATE OF MISSOURI
Pulaski County
Commission # 09520140
My Commission Expires: May 13, 2013