

548 S.W.2d 158
 (Cite as: 548 S.W.2d 158)

Court of Appeals of Kentucky.
 James B. McCLOUD and Bank of Cadiz, Appel-
 lants,
 v.
 CITY OF CADIZ, Kentucky, et al., Appellees.
 March 4, 1977.

Plaintiffs brought class action suit to contest certain actions taken by mayor and city council in alleged violation of statute designed to prevent self-dealing by city officers and statute requiring advertisement for bids. The Trigg County Circuit Court, C. R. Walden, Special Judge, entered judgment, and plaintiffs prosecuted appeal. The Court of Appeals, Hayes, J., held, inter alia, that city's parking lot lease with attorney who did legal work for city did not constitute violation of statute designed to prevent self-dealing; that plaintiffs failed to meet their burden of establishing that they were entitled to relief and what that relief should be; that injunction was inappropriate since established violations of statute consisted of activities which had ceased; that trial judge was correct in holding that plaintiffs had abandoned their claim for damages; that plaintiffs were not proper parties to bring action seeking ouster of those officials who took part in alleged violations; that deposit of money by city of fifth class with bank when certain city officers were directors thereof did not violate self-dealing statute; and that city was not required to comply with statute requiring advertisement for bids before securing banking and insurance services for city.

Affirmed.

West Headnotes

[1] Municipal Corporations 268 ↪231(1)

268 Municipal Corporations
 268VII Contracts in General
 268k231 Individual Interest of Officer
 268k231(1) k. In General. **Most Cited Cases**

Statute proscribing certain conduct on part of city officers was designed to prevent self-dealing. **KRS 61.280.**

[2] Municipal Corporations 268 ↪231(1)

268 Municipal Corporations
 268VII Contracts in General
 268k231 Individual Interest of Officer
 268k231(1) k. In General. **Most Cited Cases**

City's parking lot lease with attorney who did legal work for city did not constitute violation of statute designed to prevent self-dealing by city officers; attorney owning property could not be city officer since she was not resident of city. **KRS 61.280, 87.160, 87.170.**

[3] Municipal Corporations 268 ↪1035

268 Municipal Corporations
 268XVI Actions
 268k1035 k. Evidence. **Most Cited Cases**

Plaintiffs, who brought class action to contest certain actions taken by mayor and city council in alleged violation of statute designed to prevent self-dealing, had to prove more than existence of violations of statute before the Court of Appeals could award them relief; they were required to establish, additionally, that they were entitled to relief and what that relief should be, but they failed to meet that burden. **KRS 61.280.**

[4] Injunction 212 ↪22

212 Injunction
 212I Nature and Grounds in General
 212I(B) Grounds of Relief
 212k20 Defenses or Objections to Relief
 212k22 k. Injunction Ineffectual or Not Beneficial; Mootness. **Most Cited Cases**
 Injunction was inappropriate in class action to contest certain actions taken by mayor and city council in alleged violation of statute designed to prevent self-dealing by city officers, since established viol-

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ations of statute consisted of activities which had ceased. [KRS 61.280](#).

[5] Injunction 212 ↪126

212 Injunction

212III Actions for Injunctions

212k124 Evidence

212k126 k. Presumptions and Burden of Proof. [Most Cited Cases](#)

In order to establish right to injunction, there must be clear showing of right to relief and showing of urgent necessity.

[6] Injunction 212 ↪11

212 Injunction

212I Nature and Grounds in General

212I(B) Grounds of Relief

212k11 k. Actual or Anticipated Violation of Right. [Most Cited Cases](#)

The Court of Appeals is not empowered to enjoin possible future violations of statute.

[7] Action 13 ↪70

13 Action

13IV Commencement, Prosecution, and Termination

13k70 k. Abandonment. [Most Cited Cases](#)

Where plaintiffs were unable to establish their claim for damages in class action to contest certain actions taken by mayor and city council in alleged violation of statute designed to prevent self-dealing by city officers, trial judge was correct in holding that they had abandoned their claim for damages. [KRS 61.280](#).

[8] Municipal Corporations 268 ↪231(1)

268 Municipal Corporations

268VII Contracts in General

268k231 Individual Interest of Officer

268k231(1) k. In General. [Most Cited Cases](#)

Statute which was designed to prevent self-dealing by city officers, but which did not mention recoup-

ing money from past violations, was directed toward present violations. [KRS 61.280](#).

[9] Municipal Corporations 268 ↪159(3)

268 Municipal Corporations

268V Officers, Agents, and Employees

268V(A) Municipal Officers in General

268k153 Removal

268k159 Proceedings and Review

268k159(3) k. Persons Entitled to

Institute Proceedings. [Most Cited Cases](#)

Private individuals who brought class action to contest certain actions taken by mayor and city council in alleged violation of statute designed to prevent self-dealing and statute requiring advertisement for bids were not proper parties to bring action seeking ouster of those officials who took part in alleged violations. [KRS 61.280](#), [424.260](#).

[10] Officers and Public Employees 283 ↪80

283 Officers and Public Employees

283II Title to and Possession of Position

283k80 k. Collateral Inquiry Into Title or

Right to Office or Position. [Most Cited Cases](#)

Private individual cannot bring action for ouster of public official unless that private individual has claim to that office.

[11] Municipal Corporations 268 ↪231(3)

268 Municipal Corporations

268VII Contracts in General

268k231 Individual Interest of Officer

268k231(3) k. Contracts with Corporation or Partnership in Which Officer Is Interested. [Most Cited Cases](#)

Deposit of money by city of fifth class with bank when certain city officers were directors thereof did not violate statute designed to prevent self-dealing by city officers; any benefit that city officers might have received from lending use of such money was too speculative and remote as to suggest conflict of interest. [KRS 61.280](#).

[12] Municipal Corporations 268 ↪231(1)

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268 Municipal Corporations

268VII Contracts in General

268k231 Individual Interest of Officer

268k231(1) k. In General. **Most Cited**

Cases

Statutes such as one designed to prevent self-dealing by city officers are designed in part to protect value of goods and services received by public; however, in government regulated activity such as banking there can be no question as to value received and there is therefore no opportunity for imposition on public. [KRS 61.280](#).

[13] Municipal Corporations 268 ↪ 236

268 Municipal Corporations

268VII Contracts in General

268k234 Proposals or Bids

268k236 k. Contracts to Be Submitted to

Competition. **Most Cited Cases**

Contractual services covered by statute requiring advertising for bids are those involving personal service of manual or mechanical nature. [KRS 424.260](#).

[14] Municipal Corporations 268 ↪ 236

268 Municipal Corporations

268VII Contracts in General

268k234 Proposals or Bids

268k236 k. Contracts to Be Submitted to

Competition. **Most Cited Cases**

City was not required to comply with statute requiring advertisement for bids before securing insurance and banking services for city. [KRS 424.260](#).

*160 Chappell R. Wilson, Cadiz, for appellants.

Mary G. White, Cadiz, for appellees.

Before HAYES, LESTER and PARK, JJ.

HAYES, Judge.

This suit involves alleged irregularities under [KRS 61.280](#) and [KRS 424.260](#). Appellants filed a class action suit to contest certain actions taken by the

mayor and council of Cadiz, which they contend violate these statutes. The following fact situations form the basis of the contest:

(1) The Mayor of Cadiz, W. J. Hopson, is a stockholder and employee of an insurance company which had handled all of the city's insurance business. This business was awarded without advertising for bids.

(2) The City of Cadiz did business, in the form of service and parts with an automobile dealership whose owner was a city councilman, Wilbur Bogness. The city also sought to purchase a vehicle from this officer; however, this deal was rescinded.

(3) The city purchased service and supplies from another councilman, W. D. Burke.

(4) The city deposited all of its money in a bank, Trigg County Farmers Bank, in which city officials served as directors. This business was awarded without advertising for bids.

(5) The city leases a lot from an attorney, Mary G. White, who does certain legal work for the city.

With the exceptions of the bank deposits and parking lot lease, all of these activities have ceased. Appellants sought to enjoin all present and future contracts which violate [KRS 61.280](#), to force the city to comply with [KRS 424.260](#) in its banking and insurance, to recover all monies paid out as a result of these violations and to oust these officials who had participated.

As a result of certain family relationships with several of the defendants, the Trigg County Circuit Judge disqualified himself from the case. C. R. Walden was appointed Special Judge and proof was taken by depositions. After briefs had been submitted, Judge Walden made the following determinations:

(1) Appellants had the right to prosecute this suit as a class action.

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(2) The parking lot lease did not violate [KRS 61.280](#) since the attorney was not a city officer.

(3) Appellants were not entitled to an injunction because it was shown that the violations had ceased and there was no evidence that they would continue.

(4) The bank deposits did not violate [61.280](#).

(5) Insurance and banking does not require advertising for bids pursuant to [KRS 424.260](#).

(6) Appellants had abandoned claim for damages.

It is from these conclusions that appellant prosecutes this appeal. This court, however, can find no error in the conclusions reached by the trial judge.

Basically there are three issues presented by the facts:

I. To what relief, if any, are appellants entitled as a result of past violations of [KRS 61.280](#) injunction, damages or removal from office?

II. Do deposits in a bank where city officers are directors constitute a violation of [KRS 61.280](#)?

III. Is advertising for bids required by [KRS 424.260](#) before money can be deposited by the city or insurance purchased by the city.

[1] [KRS 661.280](#) is designed to prevent self-dealing by city officers. The conduct which it proscribes and the penalties it provides are set out as follows:

No officer of a city of the fifth or sixth class shall be interested, directly or indirectly, in any contract with the city of which he is an officer, or in doing any work or furnishing any supplies for the *161 use of the city or its officers in their official capacity. Any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and, if audited and allowed, shall not be paid by the treasurer. Any wilful violation of the provisions of this section shall be grounds for a removal from office, and

shall be a misdemeanor, and punished as such.

[2] The only violations of this statute which this court can determine from the facts presented are the parts and services purchased from the councilmen and the insurance obtained from the company where the mayor is employed. The parking lot lease does not constitute a violation of [KRS 61.280](#). Under [KRS 87.160](#) and [KRS 87.170](#), Mary White cannot be a city officer since she is not a resident of Cadiz. As to the banking activities, these do not violate [KRS 61.280](#) for the reasons which will be discussed later in this opinion.

[3] Appellants, however, must prove more than the existence of violations of [KRS 61.280](#) before this court can award them relief. They must establish, additionally, that they are entitled to relief and what that relief should be. This burden has not been met by appellants in any of the three forms of relief they have sought injunction, damages and ouster.

[4][5][6] An injunction is inappropriate in this case since the established violations of [KRS 61.280](#) consist of activities which have ceased. In order to establish their right to an injunction, there must be a clear showing of right to the relief and a showing of urgent necessity, *Kentucky Utilities v. Carlisle*, 279 Ky. 585, 131 S.W.2d 499. In the absence of an ongoing violation of this statute appellants cannot establish either of these two requirements. Furthermore, this court is not empowered to enjoin possible future violations, *Waddle, et al. v. City of Somerset*, 281 Ky. 30, 134 S.W.2d 956. In denying a request for an injunction of future unlawful expenditures of money by the City of Somerset, the Court of Appeals made the following statement in *Waddle* :

In other words, the court is asked to exercise its extraordinary restraining authority to compel the city authorities to obey the law in the future, and to not depart therefrom, notwithstanding the law itself imposes such duty, and which cannot be made more mandatory by a superinduced order from the court even if it possessed any such authority, but which it

does not.

[7][8] Appellants are also unable to establish their claim for damages. It is apparent from the record that appellants have done little to advance this claim and even omitted the claim from the brief submitted to the trial judge. In their appellate brief appellants have cited no authority which would establish their right to such relief and have not made any showing of undue profit. [KRS 61.280](#) is directed towards present violations and does not mention recouping money from past violations. The trial judge, therefore, was correct in holding that appellants had abandoned their claim for damages.

[9][10] The final form of relief sought by appellants is the ouster of those officials who took part in these violations. Appellants, however, are not the proper parties to bring such an action. The law is well settled in Kentucky that a private individual cannot bring an action for ouster of a public official unless that private individual has a claim to that office. [Wegener v. Wehrman](#), 312 Ky. 445, 227 S.W.2d 997; [Attorney General v. Howard](#), 297 Ky. 488, 180 S.W.2d 415; [Jenkins v. Congleton](#), 242 Ky. 46, 45 S.W.2d 456 and [Amberson v. Fowler](#), 180 Ky. 857, 203 S.W. 322.

[11] As stated above, it is this court's opinion that the deposit of money by a city of the fifth class with a bank where certain city officers are directors does not violate [KRS 61.280](#). In the case of [Commonwealth ex rel. Vincent, Attorney General v. Withers](#), 266 Ky. 29, 98 S.W.2d 24, the Court of Appeals was faced with determining when a conflict of interest of a public official is not unlawful. The court set forth the following guidelines:

*162 However, the interest is not sufficient to disqualify the officer if the opportunity for self-benefit is a mere possibility or is so remote or collateral, such as being only a debtor, that it cannot be reasonably calculated to affect his judgment or conduct in the making of the contract or in its performance.

Clearly, this case falls within that guideline. Any

benefit that the city officers might have received from the lending use of such money is too speculative and remote as to suggest a conflict of interest.

[12] There is, however, an additional reason supporting this court's conclusion. Statutes such as [KRS 61.280](#) are designed in part to protect the value of goods and services received by the public. In a government regulated activity such as banking there can be no question as to value received. There is, therefore, no opportunity for imposition on the public.

[13][14] The final issue presented involves the purchase of insurance and the banking activities. Appellants contend that the city council, pursuant to [KRS 424.260](#), should have advertised for bids before procuring such services. Appellants, however, cite no authority to substantiate their position. [KRS 424.260](#) provides, in effect, that no city may make a contract for materials, supplies or equipment, or for contractual services other than professional, involving an expenditure of more than \$2,500.00 without first making newspaper advertisement for bids. Appellees argue that banking and insurance are not the kinds of contractual services contemplated by [KRS 424.260](#). Citing an attorney general opinion as authority, appellees claim that the contractual services covered by [KRS 424.260](#) are those involving personal service of a manual or mechanical nature. This court is in agreement with that conclusion. In addition, the generally uniform rates involved in both banking and insurance as well as the professional nature of these activities support the conclusion that the City of Cadiz was not required to comply with [KRS 424.260](#) before securing these services.

Although this court affirms the decision of the lower court, this opinion is not to be construed as an approval of these past violations of [KRS 61.280](#). It is the hope of this court that the city officers of Cadiz will continue to be aware of this statute and will act according to its guidelines.

All concur.

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