

mootness doctrine.

¶ 3

I. BACKGROUND

¶ 4

In preparation for the general election for Wapella Village offices, on December 20, 2010, Buraglio filed two statements of candidacy as an independent: one for Village clerk and one for Village trustee. Pursuant to the Illinois Municipal Code, these offices are incompatible, as one person cannot serve in both capacities. See 65 ILCS 5/3.1-15-15 (West 2008). With that in mind, Buraglio filed a withdrawal of candidacy for the position of Village clerk on December 27, 2010. According to her *mandamus* petition, she filed her withdrawal "after normal business hours ***, but prior to the statutory deadline of five (5) business days from the filing of her nominating papers" as required by section 10-7 of the Illinois Election Code (Election Code) (10 ILCS 5/10-7 (West 2008)). Apparently, Wapella's mayor, Richard Karr, and Burke appeared at Buraglio's home at approximately 8 p.m. on December 27, 2010, for the purpose of accepting her notice of withdrawal of candidacy.

¶ 5

Buraglio alleged that, on January 25, 2010, Burke submitted the names of candidates for the local election to Smith in her capacity as the DeWitt County Clerk. Burke failed to include Buraglio's name as a candidate for Village trustee. At the same time, Burke forwarded a letter to Buraglio indicating her intent to refuse to certify Buraglio's candidacy. As a result, in February 2010, Buraglio sought a judgment of *mandamus* ordering (1) Burke to certify Buraglio as a candidate for the office of Village trustee for the April 5, 2011, election; (2) any other Village official to certify Buraglio as a candidate; and (3) Smith to include Buraglio's name on the ballot as a candidate for Village trustee.

¶ 6

The circuit court conducted a hearing on Buraglio's *mandamus* petition on February

14, 2011. Counsel for the Village and Burke filed a motion to dismiss count II and III, claiming neither the trustees, Karr, nor Smith (without certification from the local election official) have the authority or the duty to place candidates on the ballot. They asserted that absent a duty to act, an action for *mandamus* cannot lie. The court found counsel lacked standing to move to dismiss count III on behalf of Smith when he did not represent her, and when she, through her own counsel, had already filed an answer to Buraglio's petition. The court granted the motion as to count II, the allegations pertaining to the Village.

¶ 7 At the hearing, Buraglio testified that on December 20, 2010, she filed two statements of candidacy: one for the office of Village clerk and one for the office of Village trustee. She filed the petitions as an "independent" candidate. Both were presented to Burke. On December 27, 2010, Buraglio drove by the Village hall prior to 5 p.m. with the intent to file her withdrawal of candidacy for the office of Village clerk, but Burke was not there, as Buraglio did not see her vehicle. Without providing specifics, Buraglio said she attempted to locate Burke. She contacted Karr after 5 p.m., requesting that Burke be made available. Karr and Burke appeared at Buraglio's home and Burke received Buraglio's withdrawal of candidacy at approximately 8 p.m.

¶ 8 Buraglio further testified that on January 26, 2011, she received a letter from Burke, indicating that Burke had refused to certify her statement of candidacy for the following stated reasons: (1) she filed the statements for incompatible and different offices, (2) she had only until the close of business on December 27, 2010, to file a withdrawal for one of them, and (3) in order to be valid, the notice of withdrawal was required to be filed at Burke's office during normal business hours. Because Buraglio had failed to comply with these procedures, Burke stated that she was "required by 10 ILCS 5/10-7 to omit [Buraglio] as a certified independent candidate for both

clerk and trustee in the certification documents [she] will be filing with county clerk."

¶ 9 Buraglio said that, after visiting the Village of Wapella's website, she found Burke's time sheet for the week beginning Monday, December 20, 2010, and continuing through Friday, December 24, 2010. Burke had no office hours listed for Friday, December 24, 2010. Buraglio also visited the State Board of Elections' website and discovered, after viewing the agency's calendar, that the final day to withdraw from incompatible offices was, according to its office hours, December 28, 2010. On December 30, 2010, Buraglio sent an e-mail inquiry to Gary Nerone at the State Board of Elections asking if her December 27, 2010, withdrawal of candidacy was timely. In Nerone's opinion, according to his e-mail response, which was introduced into evidence, Buraglio's withdrawal was timely, as the fifth business day after December 20, 2010, was Tuesday, December 28, 2010, given that Friday, December 24, 2010, was a State holiday.

¶ 10 Next, Buraglio called Burke as a witness. She admitted she did not work on Friday, December 24, 2010, and worked from 11:15 a.m. to 2:15 p.m. on Monday, December 27, 2010. When she reported for work on Tuesday, December 28, 2010, she had with her Buraglio's withdrawal of candidacy that had been signed the night before. Burke said she had arranged, though she did not make the arrangement public, with the Village's administrative assistant, Kim Donovan, and a Village trustee, Sharon Williams Riddle, to receive election papers at the Village hall if Burke was unavailable. Burke did not make public the fact that she would be working for only three hours on December 27, 2010, rather than normal business hours of 9 a.m. to 5 p.m. She confirmed the Village hall was open during normal business hours that day. Buraglio rested.

¶ 11 For her case in chief, Burke testified that on April 15, 2010, the Village trustees had sent Buraglio a letter informing her that she was prohibited from entering the Village hall except

during a public trustee meeting. As far as Burke knew, this notice remained in effect as of December 27, 2010.

¶ 12 Kimberly Donovan, the administrative assistant for the Village, testified that she, along with other Village employees, worked a regular business day on December 24, 2010. She personally worked for approximately six hours at the Village hall. She said there had been no announcement by Village officials that Christmas Eve was a holiday. Instead, the Village operated as a normal business day. Burke rested.

¶ 13 In rebuttal, Buraglio testified that in April 2010, she had received the letter advising her that she was prohibited from entering the Village hall except during trustee meetings. Because of this letter, Buraglio made arrangements to enter the Village hall on December 20, 2010, to file her statements of candidacy. She had not made arrangements to enter on December 27, 2010. On cross-examination, Buraglio admitted she had not made arrangements to submit her withdrawal papers until after 5 p.m. on December 27, 2010. Buraglio rested.

¶ 14 After considering the testimony and arguments of counsel, the circuit court denied Buraglio's petition for *mandamus*, finding Buraglio failed to timely file a withdrawal of candidacy. The court held the deadline was "clearly December 27, 2010, at the close of business on that day." This appeal followed.

¶ 15 **II. ANALYSIS**

¶ 16 Buraglio appeals the circuit court's order denying her petition for a writ of *mandamus*. Relying on the definition of "business day" set forth in section 1-3(22) of the Election Code (10 ILCS 5/1-3(22) (West 2008)), Buraglio claims Burke, as the local election official, failed to conduct office hours on Friday, December 24, 2010, and Monday, December 27, 2010, sufficient to satisfy

the definition. While the appellees have argued that even though Burke was not present, the office of the Village clerk was open on December 24, suggesting that any Village employee could have received Buraglio's papers. This court is not in a position to speculate on the legal authority of persons, not the clerk, to accept election papers for filing.

¶ 17 The issue Buraglio presents in this appeal is whether Burke, the acting local election official, worked a "business day" on Friday, December 24, 2010, and Monday, December 27, 2010, within the meaning of the Election Code. Buraglio contends that, because Burke did not conduct office hours on December 24, 2010, and because the State Board of Elections was closed on that day as well, that day cannot be counted as a "business day." And, because Burke only reported three hours of office time on December 27, 2010, that day cannot be counted as a "business day" either. She therefore asks this court to determine whether her withdrawal of candidacy was timely filed within five business days of December 20, 2010.

¶ 18 We find this appeal is moot and no established exception to the mootness doctrine applies; we dismiss Buraglio's appeal. Because the date for the election has passed and Buraglio was not included on the ballot as a candidate for the office of Village trustee, we are unable to grant her any meaningful relief. Indeed, adding Buraglio's name "to the ballot would now require a useless and impossible act." *Daniels v. Cavner*, 404 Ill. 372, 374 (1949) (where the issue on appeal involves an official's refusal to certify names for an election, and the election has passed, the question is moot). An appeal is generally considered moot " 'where the issues raised below no longer exist because events subsequent to the filing of the appeal make it impossible for the reviewing court to grant the complaining party effectual relief.' " *Goodman v. Ward*, 241 Ill. 2d 398, 404 (2011) (quoting *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418, 423-24 (2010)).

The parties agree the case is moot. However, Buraglio suggests that we review this issue under the public-interest exception to the mootness doctrine. Burke claims the exception does not apply. We agree.

¶ 19 "The public[-]interest exception permits a court to reach the merits of a case which would otherwise be moot if the question presented is of a public nature, an authoritative resolution of the question is desirable for the purpose of guiding public officers, and the question is likely to recur." *Goodman*, 241 Ill. 2d at 404. As to the first factor, an issue involving an interpretation of the election law is inherently a matter of public concern. *Goodman*, 241 Ill. 2d at 404-05. As to the third factor, we agree that a dispute regarding what constitutes a "business day" or a holiday within the meaning of the Election Code is likely to arise in future cases. Two of the three factors are satisfied.

¶ 20 However, this case does not qualify for review under the second factor for two reasons. First, this court has previously addressed an issue similar to that presented in this appeal. Second, even without that prior decision, the issue here is merely one of statutory interpretation of unambiguous terms. Therefore, we find an "authoritative resolution of the question" presented here is not necessary or "desirable for the purpose of guiding public officers." See *Goodman*, 241 Ill. 2d at 404.

¶ 21 In *Bush v. City of Champaign*, 271 Ill. App. 3d 991, 993 (1995), this court considered whether an intervenor's objections to a candidate's nomination papers were timely filed. Referring to the definition of "business day" within the Election Code (10 ILCS 5/1-3(22) (West 1992)), this court determined that on December 23, 1994, and December 26, 1994, the office of the local election official was closed in recognition of the Christmas holiday. The State Board of Elections was open

on December 23, 1994, as that day was not a State of Illinois holiday. This court held that, despite the fact that the office of the State Board of Elections was open on December 23, 1994, that day could not be counted as a "business day" because the local election official's office was closed. *Bush*, 271 Ill. App. 3d at 993. Thus, for the purpose of calculating any statutory time frame, the relevant consideration was whether the office was open, not necessarily whether the election official was available. See *Bush*, 271 Ill. App. 3d at 994 (" 'Filing' means filing at the customary office and within the customary office hours of the public entity. (*Daniels v. Cavner*, [404 Ill. 372, 378 (1949)"])).

¶ 22 Relying on (1) this case law authority, (2) the definition of "business day" in the Election Code, and (3) the testimony regarding the operating days and hours of the Village hall (not necessarily the availability of the acting Village clerk), we conclude it is unnecessary to address the merits of this moot issue under the public-interest exception to the mootness doctrine. Without the application of an exception, we cannot otherwise decide a moot issue. As the specific relief sought by appellant is barred by mootness, she may yet have relief under a different theory arising under the laws governing the civil rights of all citizens, not circumscribed by the technical filing requirements of the Illinois Election Code.

¶ 23 The function of a reviewing court is to decide controverted issues between parties. When there is no actual controversy or when the issues have ceased to exist, the appeal is moot. *Richardson v. Rock Island County Officers Electoral Board*, 179 Ill. 2d 252, 256 (1997). This court can offer these parties no relief because the election has long passed. With no established exception to the mootness doctrine, review is meaningless and would result only in this court rendering an advisory opinion—an act which we are to avoid. *Edwardsville School Service Personnel Ass'n v.*

Illinois Educational Labor Relations Board, 235 Ill. App. 3d 954, 958 (1992). Therefore, we affirm the trial court's judgment and dismiss this appeal as moot.

¶ 24

III. CONCLUSION

¶ 25

For the foregoing reasons, we dismiss Buraglio's appeal as moot.

¶ 26

Appeal dismissed.

¶ 27 JUSTICE COOK, dissenting:

¶ 28 Must a request for withdrawal of candidacy be personally presented to "the local election official"? 10 ILCS 5/10-7 (West 2008). Can the local election official designate another person to accept withdrawal documents in her absence? If such a designation is possible, what requirements must be met? Notice? Any limitations on who may be designated? When a request for withdrawal of candidacy must be filed "within the 5 business days following the last day for petition filing" (10 ILCS 5/10-7 (West 2008)), is a day when the office is open only 6 hours a "business day"? 10 ILCS 5/1-3(22) (West 2008). If the local election official did not work on December 24, is December 24 a "business day"? If the local election official held office hours only from 11:15 a.m. to 2:15 p.m. on Monday, December 27, is December 27 a "business day"?

¶ 29 These questions are matters of public concern and fall within the "public interest" exception to the mootness doctrine. There is a high likelihood that similar issues will arise in future elections. *Lucas v. Lakin*, 175 Ill. 2d 166, 170, 676 N.E.2d 637, 640 (1997). We should address these issues even though the election day has already passed.