2015 IL App (1st) 141286-U

FIFTH DIVISION
March 13, 2015

No. 1-14-1286



IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| KEN ZUREK,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>VILLAGE OF FRANKLIN PARK; TOMMY THOMSON, in his Official Capacity as Franklin Park Village Clerk; WILLIAM RUHL, RANDY PETERSEN, KAREN SPECIAL, CHERYL McLEAN, ANDY YBARRA, and JOHN JOHNSON, in their Official Capacities as Village Trustees; and DAVID ORR, in his Official Capacity as Cook County Clerk,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of Cook County,<br><br>No. 14 COEL 000004<br><br>Honorable Robert W. Bertucci, Judge Presiding. |

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) Where the referendum question as submitted by defendants substantially complied with the mandated statutory form, the circuit court properly granted defendants' motion to dismiss plaintiff's complaint and properly denied plaintiff's motion for summary judgment; and (2) Where defendants' motion to dismiss was not frivolous and had a basis in law and fact, the circuit court did not abuse its discretion in denying plaintiff's motion for Rule 137 sanctions.

¶ 2 Plaintiff Ken Zurek appeals from the circuit court's dismissal of his complaint for declaratory and injunctive relief. On appeal, plaintiff contends that: (1) the circuit court erred by dismissing his complaint because the referendum in question as submitted to the voters did not substantially comply with the mandated statutory language rendering the election void; and (2) the circuit court exceeded its discretion in denying plaintiff's motion for Rule 137 sanctions. We affirm.

¶ 3 On December 17, 2013, the Village Board of Trustees for the Village of Franklin Park, Illinois, (Village) passed a resolution placing a referendum question on the primary election ballot for the primary general election to be held on March 18, 2014. The resolution stated, in pertinent part:

> "WHEREAS, Section 8-11-1.1 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1) authorized the corporate authorities of a non-home rule municipality, upon approval of the electors thereof, to impose a municipal retailers' occupation tax and a municipal service occupation tax; and
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> WHEREAS, the streets in the Village are in need of repair and reconstruction, and it is only just and proper that users of all vehicles share the burden of paying the costs for the repair and reconstruction of the public streets so that the costs are not exclusively paid for by property taxes; and
>
> WHEREAS, the revenue derived from the non-home rule municipal retailers' occupation tax and the non-home rule

> municipal service occupation tax may be used for the repair and reconstruction of the public streets; and
>
> WHEREAS, the Village President and the Board of Trustees of the Village find that it is in the best interest of the Village to adopt a non-home rule municipal retailers' occupation tax and a non-home rule municipal service occupation tax to be used for the repair and reconstruction of public streets."

In conclusion, the Village Trustees resolved to submit the following referendum question to the voters of the Village:

> "Shall the corporate authorities of the Village of Franklin Park, Illinois be authorized to levy a Non-Home Rule Municipal Retailers' Occupation Tax and a Non-Home Rule Municipal Service Occupation Tax (commonly referred to as a 'sales tax'), each at a rate of 1%, pursuant to 65 ILCS 5/8-11-1.3 and 65 ILCS 5/8-11-1.4, for expenditures on the repair and reconstruction of public streets?"

To the right of the referendum question as printed above were boxes to check "Yes" or "No" in response to the question.

¶ 4 On February 4, 2014, plaintiff filed his "Complaint for Declaratory and Injunctive Relief or in the Alternative for a Writ of Mandamus" against the defendants: the Village; Tommy Thomson, in his official capacity as Village Clerk; William Ruhl, Randy Petersen, Karen Special, Cheryl McLean, Andy Ybarra, and John Johnson, in their official capacities as Village Trustees; and David Orr, in his official capacity as Cook County Clerk. In it, plaintiff alleged

that he was a resident and taxpayer of the Village and that the Village is a non-home rule municipal corporation existing under the laws of Illinois. Plaintiff further alleged that on December 17, 2013, the "corporate authorities" of the Village, the Village Trustees, passed a resolution "calling for the submission of the proposition of the imposition of a levy of a Non-Home Rule Municipal Retailers' Occupation Tax and a Non-Home Rule Municipal Service Occupation Tax to the voters at the General Primary Election" being held on March 18, 2014. Plaintiff further alleged that pursuant to sections 8-11-1.3 and 8-11-1.4 of the Illinois Municipal Code (Code) (65 ILCS 5/8-11-1.3, 8-11-1.4 (West 2012)), the proceeds of these sales taxes may be used for municipal operations.

¶ 5 Plaintiff claimed that because the proceeds of the "sales tax" may be used for municipal operations, David Orr, the Cook County Clerk, was statutorily required to submit the question of whether to impose the proposed taxes in "substantially the following form," pursuant to section 8-11-1.1(b) of the Code (65 ILCS 5/8-11-1.1(b) (West 2012)):

> "Shall the corporate authorities of the municipality be authorized to levy a tax at a rate of (rate)% for expenditures on municipal operations, expenditures on public infrastructure, or property tax relief?"

According to plaintiff, defendant David Orr, "in breach of the statutory duty imposed upon him" pursuant to section 8-11-1.1(b) of the Code, instead submitted the question of whether to impose the proposed taxes in the form as presented by the December 2013 resolution. In conclusion, plaintiff argued that the referendum question as submitted was "illegal and void in that it is not in substantially the form mandated by the legislature" in section 8-11-1.1(b) of the Code and that:

> "[T]he present wording of the referendum *** involves a facial fraud so intimately connected with the face of the ballot it has the purpose and effect of deceiving voters as to the actual effect of their votes because 'Sales Taxes' may be used for purposes other than on the repair and reconstruction of public streets."

Plaintiff requested that the court enter an order either directing that the referendum question not be printed on the March 18, 2014, primary election ballot or that, if the referendum question was printed on the ballot, that the voters be notified that the referendum question had been officially disqualified, is void and without legal effect, and should be disregarded.

¶ 6 On February 13, 2014, plaintiff filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2012)), arguing that no genuine issue of material fact existed as to whether the proposed tax referendum violated section 8-11-1.1(b) of the Code.

¶ 7 On February 18, 2014, defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-619.1 of the Code of Civil Procedure, or a combined section 2-615 and section 2-619 motion (735 ILCS 5/2-619.1 (West 2012)). Specifically, defendants contended that plaintiff's complaint was untimely, that his complaint was barred by the doctrine of *laches*, and that he failed to state a claim for declaratory judgment and injunctive relief "because the referendum question is not required to be in substantially the form prescribed by statute and, alternatively, even if it were, the referendum question as presented substantially complies with the form prescribed by statute."

¶ 8 On February 20, 2014, plaintiff filed his response to defendants' motion to dismiss, arguing that: the timing limitation cited by defendants did not apply in the present case; *laches*

was not a valid affirmative defense in a voter's lawsuit; nonetheless defendants had failed to establish the elements of *laches*; Orr was mandated to submit the question to the voters of Franklin Park using the statutory language; and the question as submitted to the voters did not substantially comply with the statute.

¶ 9 On March 31, 2014, plaintiff filed a motion for clarification regarding the court's February 28 order, noting that defendants' motion had been made on two distinct grounds. Plaintiff explained that "because the lack of specificity of the court's February 28, 2014 [order] affects Plaintiff's substantial rights (appeal and amendment) in this matter," he requested the court to clarify under which section of the Code of Civil Procedure it dismissed his complaint.

¶ 10 Also on March 31, plaintiff filed a motion for Rule 137 sanctions, requesting that the court impose a monetary sanction upon one of defendants' attorneys, Burton Odelson. Specifically, plaintiff alleged that Odelson had signed defendants' motion to dismiss and that, within the motion to dismiss, Odelson's argument that plaintiff's complaint was untimely filed relied on inapposite sections of law that did not apply to the present case. Plaintiff further alleged that "had Odelson made a reasonable inquiry into the facts and the law Odelson would have know [*sic*] that his assertion that Plaintiff's complaint was untimely was not well grounded in fact and warranted by existing law." Plaintiff also argued that Odelson's *laches* argument and his argument that the referendum question was not required to substantially comply with the prescribed statutory language were "not well grounded in fact [or] warranted by existing law."

¶ 11 On April 9, 2014, the circuit court filed a written order clarifying that defendants' motion to dismiss was granted pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)), and denying plaintiff's motion for Rule 137 sanctions.

¶ 12 On appeal, plaintiff first contends that trial court erred in dismissing his complaint because the referendum question as submitted to the voters did not substantially comply with the mandated statutory language and that, as a result, the election was void. Defendants first respond that, pursuant to the plain language of the statute, the Village was not required to submit the referendum question to voters in the mandated statutory form pursuant to section 8-11-1.1(b) of the Code. In the alternative, defendants argue that the referendum question substantially complied with the form mandated by section 8-11-1.1(b).

¶ 13 The dismissal of a cause pursuant to section 2-619 is subject to *de novo* review. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 383 (2004). In addition, we review questions of statutory interpretation *de novo*. *Taylor v. Pekin Insurance Co.*, 231 Ill. 2d 390, 395 (2008). "The cardinal rule of statutory interpretation is to ascertain and give effect to the intent of the legislature." *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006). The language of the statute is the best indication of the legislature's intent and therefore must be given its plain and ordinary meaning. *Id*. at 553. If the language is unambiguous, the statute must be given effect without the use of other aids of construction. *Id*. We cannot "depart from the plain language of the statute by reading into it exceptions, limitations, or conditions not expressed by the legislature." *Id*. at 567-68. A court should not consider words and phrases in isolation, but instead should interpret each word and phrase in light of the statute as a whole. *Id*. at 553. "Each word, clause, and sentence of a statute must be given reasonable meaning, if possible, and should not be rendered superfluous." *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 26. We interpret statutes with the presumption that the legislature did not intend to create "absurd, inconvenient, or unjust results." *In re Application of the County Treasurer & ex officio County Collector*, 2013 IL App (1st) 130103, ¶ 9.

¶ 14 Section 8-11-1.1(a) of the Code provides that the "corporate authorities of a non-home rule municipality may, upon approval of the electors of the municipality pursuant to subsection (b) of the Section, impose by ordinance or resolution the tax authorized in Sections 8-11-1.3, 8-11-1.4, and 8-11-1.5 of this Act." 65 ILCS 5/8-11-1.1(a) (West 2012). Section 8-11-1.1(b) provides:

> "The corporate authorities of the municipality may by ordinance or resolution call for the submission to the electors of the municipality the question of whether the municipality should impose such tax. Such question *** shall be in a form in accordance with Section 16-7 of the Election Code." 65 ILCS 5/8-11-1.1(b) (West 2012).

¶ 15 Sections 8-11-1.3 and 8-11-1.4, which govern the non-home rule municipal retailers' occupation tax and the non-home rule municipal service occupation tax, respectively, provide that non-home rule municipalities may use the tax revenue for "expenditure[s] on public infrastructure or for property tax relief or both as defined in section 8-11-1.2 if approved by referendum as provided in section 8-11-1.1." 65 ILCS 5/8-11-1.3, 8-11-1.4 (West 2012). In 2010, Public Act 96-1057 added the following language to sections 8-11-1.3 and 8-11-1.4 of the Code:

> "If the tax is approved by referendum on or after July 14, 2010 (the effective date of Public Act 96-1057), the corporate authorities of a non-home rule municipality may, until December 31, 2015[1], use

[1] Public Act 97-837 extended the provision for these expenditures until December 31, 2020. Pub. Act. 97-837, § 5 (eff. July 20, 2012).

> the proceeds of the tax for expenditure on municipal operations, in addition to or in lieu of any expenditure on public infrastructure or for property tax relief." Pub. Act 96-1057, § 5 (eff. July 14, 2010); see also 65 ILCS 5/8-11-1.3, 8-11-1.4 (West 2010).

¶ 16 Prior to the passing of Public Act 96-1057, section 8-11-1.1(b) of the Code only required that the form of the question be in accordance with section 16-7 of the Election Code (10 ILCS 5/16-7 (West 2010)). See 65 ILCS 5/8-11-1.1(b) (West 2008). Section 16-7 of the Election Code requires only that the substance of a public measure be written "Shall (here print the substance of the public measure)" with "Yes" and "No" check boxes to be printed to the right of the referendum question. However, Public Act 96-1057 added the following language to section 8-11-1.1(b):

> "Notwithstanding any provision of law to the contrary, if the proceeds of the tax may be used for municipal operations pursuant to Section 8-11-1.3, 8-11-1.4, or 8-11-1.5, then the election authority must submit the question in substantially the following form:
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> > Shall the corporate authorities of the municipality be authorized to levy a tax at a rate of (rate)% for expenditures on municipal operations, expenditures on public infrastructure, or property tax relief?" Pub. Act 96-1057, § 5 (eff. July 14, 2010); see also 65 ILCS 5/8-11-1.1(b) (West 2010).

¶ 17 The Code defines "public infrastructure" as used in sections 8-11-1.3 and 8-11-1.4 to include, in part, "municipal roads and streets." 65 ILCS 5/8-11-1.2 (West 2012). "Property tax relief" is defined as "the action of a municipality to reduce the levy for real estate taxes or avoid an increase in the levy for real estate taxes that would otherwise have been required." *Id.* The Code does not define "municipal operations." However, the plain and ordinary meaning of the word "operation" is "performance of a practical work or of something involving the practical application of principles or processes." Merriam-Webster's Collegiate Dictionary 815 (10th ed. 1996). Therefore, the term "municipal operations" must be understood to mean the performance and work necessary to run a municipality.

¶ 18 Defendants contend that the added language to section 8-11-1.1(b) requires a municipality to follow the mandated statutory form for a referendum question only when the proceeds of the referendum tax "may be used for municipal operations pursuant to Section 8-11-1.3, 8-11-1.4, and 8-11-1.5." Defendants reason that because the proposed taxes at issue in the present case are to be used for expenditures on public infrastructure, specifically the "repair and reconstruction of public streets," and not municipal operations, they are not required to substantially follow the mandated statutory form.

¶ 19 Plaintiff responds by first arguing that defendants' contention should not be considered because appellees are not permitted to argue alleged errors unless they file a timely cross-appeal. *Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 14 (1995). In the absence of a cross-appeal, appellees may not ask the reviewing court to modify a portion of the circuit court's order. *People ex rel. Wray v. Brassard*, 226 Ill. App. 3d 1007, 1011 (1992). However, in the present case, defendants have not specifically argued that the circuit court erred and have not asked this court to modify a portion of the circuit court's order. Moreover, it is well established that an appellee may argue

for affirmance on any basis in the record. *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 48. In addition, as an appellate court, we may affirm on any basis in the record, regardless of whether the circuit court relied on that basis. *Gallaher v. Hasbrouk*, 2013 IL App (1st) 122969, ¶ 17. Therefore, we will consider defendants' argument.

¶ 20 Section 8-11-1.1(b) of the Code plainly states that "if the proceeds of the tax may be used for municipal operations, pursuant to Section 8-11-1.3, 8-11-1.4, or 8-11-1.5, then the election authority must submit the question in substantially the following form." 65 ILCS 5/8-11-1.1(b) (West 2012). Here, the referendum question clearly limited the proceeds from the tax referendum to be used for "expenditures on the repair and reconstruction of public streets," or expenditures on a specific type of public infrastructure. See 65 ILCS 5/8-11-1.2 (West 2012) (defining "public infrastructure" as including "municipal roads and streets.") The referendum makes no reference to the proceeds from the tax referendum being used for municipal operations. Furthermore, the resolution passed by the Village Trustees in December 2013 similarly makes no reference to using the proceeds from the tax referendum for municipal operations. Specifically, in the resolution, the Village Trustees declared:

> "WHEREAS, the streets in the Village are in need of repair and reconstruction, and it is only just and proper that users of all vehicles share the burden of paying the costs for the repair and reconstruction of the public streets so that the costs are not exclusively paid for by property taxes; and
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> WHEREAS, the Village President and the Board of Trustees of the Village find that it is in the best interest of the

> Village to adopt a non-home rule municipal retailers' occupation tax and a non-home rule municipal service occupation tax *to be used for the repair and reconstruction of the public streets*." (Emphasis added).

The plain language of the statute only requires the corporate authorities of the municipality to submit the referendum question in the mandated statutory form "if the proceeds of the tax may be used for municipal operations." Here, the proceeds of the tax are being used for expenditures on public infrastructure, specifically the repair and reconstruction of public streets. Accordingly, we conclude that the referendum question was not required to substantially comply with the form mandated by section 8-11-1.1(b).

¶ 21 We also note that prior to the 2010 amendment pursuant to Public Act 96-1057, section 8-11-1.1(b) only required municipalities to comply with the form provided in section 16-7 of the Election Code when submitting a referendum question. See 65 ILCS 5/8-11-1.1(b) (West 2008). Section 16-7 of the Election Code provides that the question be written as "Shall (here print the substance of the public measure)" with "Yes" and "No" check boxes to be printed to the right of the referendum question. 10 ILCS 5/16-7 (West 2012). Moreover, in its present form, section 8-11-1.1(b) of the Code provides that the referendum question pursuant to that section "shall be in a form in accordance with Section 16-7 of the Election Code" and that "if the proceeds of the tax may be used for municipal operations," the referendum must follow the statutory form mandated by section 8-11-1.1(b). Clearly, the legislature made an allowance for municipalities to follow the more general form for the referendum question pursuant to Section 16-7 of the Election Code if the proceeds from the sales tax referendum will not be used for municipal operations. In addition, if we interpreted the statute as plaintiff argues, any referendum question submitted by a

municipality pursuant to sections 8-11-1.3 and 8-11-1.4 would require that municipality to follow the mandated statutory language in section 8-11-1.1(b), simply because pursuant to the statute the municipality *may* use the proceeds from the referendum tax for municipal operations. If every referendum question submitted by a municipality under sections 8-11-1.3 and 8-11-1.4 were required to follow the form mandated by section 8-11-1.1(b), the language specifying that the referendum question "shall be in a form in accordance with Section 16-7 of the Election Code" would be superfluous, leading to an absurd result. See *Standard Mutual*, 2013 IL 114617, ¶ 26 (holding that "[e]ach word, clause, and sentence of a statute must be given reasonable meaning, if possible, and should not be rendered superfluous"). Accordingly, we hold that a municipality which offers a referendum question pursuant to section 8-11-1.1(b), but clearly indicates that the proceeds from the sales tax referendum will not be used for municipal operations, is not required to substantially comply with the form mandated by section 8-11-1.1(b).

¶ 22 Nonetheless, even if we were to conclude that the referendum question submitted by defendants was required to substantially comply with the form mandated by section 8-11-1.1(b), we find that the referendum question as submitted did substantially comply.

¶ 23 When a special statute dictates the form of the ballot, the ballot must substantially comply with the special statutory mandate or the election is void. *Samour, Inc. v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 530, 540 (2007). "Substantial compliance, rather than exact compliance" with this type of statutory ballot is sufficient. *Krauss v. Board of Election Commissioners of the City of Chicago*, 287 Ill. App. 3d 981, 984 (1997). The test used to determine whether the ballot substantially complied with the statutory mandate is "whether the voter was given as clear an alternative as if the statutory form had been

identically followed." *Samour*, 224 Ill. 2d at 540. In addition, for an election to be rendered void, the ballot's deviation from the statutory mandate must be in a matter of substance. *Samour*, 224 Ill. 2d at 540. "The substance of a public measure is, therefore, adequately stated if the ballot contains a fair portrayal of the proposition's chief features in words of plain meaning." *Id.* at 541. Ultimately, "[a] ballot is sufficient if the voter has a clear opportunity to express a choice either for or against it." *Krauss*, 287 Ill. App. 3d at 984.

¶ 24 Here, the referendum question substantially complied with the form mandated by section 8-11-1.1(b). The statute dictates that the municipality must submit the referendum question in substantially the following form:

> "Shall the corporate authorities of the municipality be authorized to levy a tax at a rate of (rate)% for expenditures on municipal operations, expenditures on public infrastructure, or property tax relief?"

The referendum question was actually submitted in the following form:

> "Shall the corporate authorities of the Village of Franklin Park, Illinois be authorized to levy a Non-Home Rule Municipal Retailers' Occupation Tax and a Non-Home Rule Municipal Service Occupation Tax (commonly referred to as a 'sales tax'), each at a rate of 1%, pursuant to 65 ILCS 5/8-11-1.3 and 65 ILCS 5/8-11-1.4, for expenditures on the repair and reconstruction of public streets?"

The referendum question as actually submitted differed only minimally from the mandated statutory language: it specifically named the non-home rule municipality presenting the

referendum, it specifically named the taxes that the Village corporate authorities were seeking to levy and cited the statutes under which they were doing so, and it specifically limited the use of the proceeds of the sales tax referendum "for expenditures on the repair and reconstruction of public streets." First, we note again that substantial compliance, not exact compliance, is sufficient for this type of statutory ballot. *Krauss*, 287 Ill. App. 3d at 984. Moreover, nothing in the Code prohibits a municipality from limiting the use of the referendum tax. In fact, sections 8-11-1.3 and 8-11-1.4 of the Code specifically state that a municipality "may impose a tax *** for expenditure on public infrastructure or for property tax relief *or both*." (Emphasis added). 65 ILCS 5/8-11-1.3, 8-11-1.4 (West 2012). The plain language of the Code clearly provides for the municipality to choose to use the proceeds from the tax referendum for either expenditure on public infrastructure or for property tax relief; the statute does not require the municipality to proclaim in the referendum question that the proceeds from the tax referendum may be used for both if the municipality is not going to use the proceeds for both. *Id*. The language added by Public Act 96-1057 then gave municipalities yet another option for how to use the proceeds from the referendum tax: in addition to using the taxes for expenditure on public infrastructure or for property tax relief, Public Act 96-1057 gave municipalities the right to impose a referendum tax to be used for municipal operations as well. Pub. Act 96-1057, § 5 (eff. July 14, 2010); 65 ILCS 5/8-11-1.3, 8-11-1.4 (West 2012). The added language did not eliminate the municipality's right to choose how to use the proceeds from the referendum tax. Here, the referendum question as presented contained a fair portrayal of the proposition's chief features in words of plain meaning, asking whether the corporate authorities of the Village shall be authorized to levy taxes for expenditures on the repair and reconstruction of public streets, and gave voters the clear opportunity to express a choice either for or against the proposition. Under these circumstances,

we find that the circuit court properly granted defendants' motion to dismiss plaintiff's complaint and property denied plaintiff's motion for summary judgment.

¶ 25 The legislative history of Public Act 96-1057 supports our conclusion. In explaining exactly how the additional language allowing a municipality to use the proceeds from the sales tax referendum for municipal operations in addition to expenditures on public infrastructure and property tax relief would affect a municipality, Senator Harmon explained:

> "I want to be clear. If [corporate authorities of the non-home rule municipality] passed a referendum last year, they can't now use it for other purposes. If they pass a referendum in the future and *tell the voters they're going to use this for municipal operations* for the limited period of time set forth in the law, till 2015, then they can do it. The intent is to help municipalities through this difficult time *by giving them a little more latitude*, if the voters say yes." (Emphasis added.) 96th Gen. Assem., Senate Proceedings, Mar. 18, 2010, at 149-50 (statements of Senator Harmon).

Senator Harmon's statements clearly show that, by passing Public Act 96-1057, the legislature intended to give municipalities an added option of how it could use the proceeds of a referendum tax. Under the amended language, if the municipality told voters that it was going to use the proceeds of the referendum tax for municipal operations, then it could use the proceeds for municipal operations. However, neither the plain language of the Code nor the legislative history suggest that the amended language requires municipalities to list every possible option for which the proceeds of the sales tax are statutorily permitted to be used.

¶ 26 Plaintiff also argues that, despite the language in the referendum question limiting the use of the proceeds from the sales tax referendum to "expenditures on the repair and reconstruction of public streets," the Village could still actually, in the future, use the proceeds for expenditures on other public infrastructure, property tax relief, and municipal operations pursuant to sections 8-11-1.3 and 8-11-1.4 of the Code. However, this argument is entirely speculative and unsupported by any citation to authority and is therefore waived. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the argument section of appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and pages of the record relied on").

¶ 27 In his reply brief, for the first time on appeal, plaintiff contends that "the record establishes that *** the Referendum Question perpetrated a fraud of [*sic*] the voters." Specifically, plaintiff refers to General Obligation Bonds that the Village issued in 2011 and argues that, based on the bond covenants, the non-home rule taxes at issue "had already been 'spent' by the Village and could not therefore first be used as the Referendum Question stated 'for expenditures on the repair and reconstruction of public streets' because to do so would breach the Village's bond covenants." However, arguments not raised in the opening brief are considered waived and may not be raised for the first time in a reply brief. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We therefore decline to consider this argument.

¶ 28 Plaintiff next contends that the circuit court erred in denying his motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). Specifically, plaintiff argues that Burton Odelson, an attorney for defendants who signed defendants' motion to dismiss, should have known that some of the contentions in defendants' motion to dismiss were not well-grounded in fact or warranted by existing law and not frivolous. We disagree.

¶ 29 Rule 137 authorizes the imposition of sanctions against a party or that party's attorney for filing a pleading, motion, or other paper that is not well grounded in fact or warranted by existing law. Ill. S. Ct. R. 137(a) (eff. July 1, 2013). The rule is intended to prevent parties from abusing the judicial process by filing frivolous, vexatious, or harassing actions without any basis in law or fact. *Reyes v. Compass Health Care Plans*, 252 Ill. App. 3d 1072, 1078-79 (1993). However, " 'the rule is not intended to penalize litigants and their attorneys merely because they were zealous, yet unsuccessful.' " *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004) (quoting *Peterson v. Randhava*, 313 Ill. App. 3d 1, 6-7 (2000)). A reviewing court applies an abuse of discretion standard of review when considering whether sanctions were appropriate. *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002). A circuit court abuses its discretion when no reasonable person could take the view it adopted in evaluating the conduct of an attorney. *Id*.

¶ 30 In this case, defendants argued multiple grounds for dismissal in their motion to dismiss, which they are entitled to do. Once the circuit court determined that the referendum question as submitted by the Village complied with the mandated statutory form, it did not need to reach any other grounds argued in that motion. That the court's order only addressed its finding that the referendum question complied with the statutory form and did not address the other grounds does not in any way support plaintiff's claim that defendants' other arguments were frivolous. Further, we have concluded that defendants' primary ground for dismissal was indeed correct. Alternatively, we have concluded that the referendum question substantially complied with the statutory form. We also conclude that the other arguments defendants made in their motion to dismiss were well-grounded in law and fact, were reasonable, and made for a proper purpose. Based on the limited record before us, the circuit court did not abuse its discretion in denying plaintiff's motion for sanctions.

¶ 31 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 32 Affirmed.