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22ND JUDICIAL CIRCUIT
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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

BENJAMIN CONOVER,	)	
	)	
Plaintiff,	)	
	)	Cause No. 2622-CC00327
v.	)	
	)	Division No.: 17
ROBERT HARVEY,	)	
	)	
Defendant.	)	

ORDER

Before this Court is Defendant Robert Harvey's ("Harvey") Motion to Dismiss. The motion was called, heard, and submitted on April 29, 2026. Having been fully briefed, this Court now rules as follows:

On February 17, 2026, Plaintiff Benjamin Conover ("Conover") filed his Petition for Removal of Board of Education Member from Office Pursuant to §162.631 RSMo. Conover alleges Harvey failed to meet the residential prerequisite to be appointed and serve on the Board of Education of the City of St. Louis ("Board of Education"), and should be removed from the elected position.

Harvey now moves the Court to dismiss Conover's claim for failure to state a claim pursuant to Rule 55.327(a)(1) and (6). Harvey argues the court lacks subject matter jurisdiction over §162.631, and Conover has failed to state a claim upon which relief may be granted pursuant to §162.581 RSMo. Harvey also argues that at the time of the appointment, §162.611 determined the method of filling the vacancy by the powers vested to the Board under §162.621, and therefore eligibility pursuant to §162.581 is inapplicable.

A motion to dismiss is solely a test of the adequacy of the petition. *Bromwell v. Nixon*, 361 S.W.3d 393, 398 (Mo. banc 2012). The allegations in the petition "are assumed true and construed in favor of the plaintiffs." *Underwood v. Kahala, LLC*, 554 S.W.3d 485, 493 (Mo. App. S.D. 2018). "[W]hen adjudicating a motion to dismiss, materials outside the four corners of the petition may only be considered if the trial court converts the motion to dismiss into one for summary judgment and provides notice that it is doing so to the parties." *Jeschke Ag Serv., LLC v. Bell*, 652 S.W.3d 305, 318 (Mo. App. W.D. 2022), citing *Naylor Senior Citizens Hous., LP v. Sides Constr. Co.*, 423 S.W.3d 238 (Mo. 2014).

Turning first to the issue of subject matter jurisdiction, §162.631 RSMo bestows jurisdiction to the circuit court and outlines its application as follows:

> 1. **The circuit court of the city has jurisdiction over the members of the board of education and its officers** to require them to account for their official conduct in the management and disposition of the funds, property and business committed to their charge; to order, decree and compel payment by them to the public school fund of all sums of money, and of the value of all property which may have been improperly retained by them, or transferred to others, or which may have been lost or wasted by any violation of their duties or abuse of their powers as such members or officers of the board; **to suspend any member or officer from exercising his office, whensoever it appears that he has abused his trust or become disqualified; to remove any member or officer upon proof or conviction of gross misconduct or disqualification for his office**; to restrain and prevent any alienation of property of the public schools by members or officers, in cases where it is threatened, or there is good reason to apprehend that it is intended to be made in fraud of the rights and interests of the public schools.
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> 2. **The jurisdiction conferred by this section shall be exercised as in ordinary cases upon petition, filed by** or at the instance of any member or officer of the board, **or at the instance of any ten citizens and householders of the city who join in the petition, verified by the affidavit of at least one of them. The petition shall be heard in a summary manner after ten days' notice in writing to the member or officer complained of**; and an appeal shall lie from the judgment of the circuit court as in other causes, and shall be speedily determined; but an appeal does not operate under any condition as a supersedeas of a judgment of suspension or removal from office.

§162.631 (**emphasis added**).

Section 162.581, provides the following regarding qualifications of the Board members:

> 1. **The members of the board of education shall be elected from the city, as provided in section 162.601**, on a general ticket, and shall be at least twenty-four years of age, **citizens and residents of the city, and shall have been residents and citizens for at least three years immediately preceding their election**. They shall not hold any office, except that of notary public, in the city or state, nor be interested in any contract with or claim against the board, either directly or indirectly. If at any time after the election of any member of the board he becomes interested in any contract with or claim against the board, either directly or indirectly, or as agent or employee of any individual, firm or corporation, which is so interested, he shall thereupon be disqualified to continue as a member of the board, and shall continue to be so disqualified during the remainder of the term for which he was elected.
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> 2. **Every member of the board, before assuming the duties of his office, shall take oath before a circuit or associate circuit judge of the city**, which oath shall be kept of record in the office of the board, **that he possesses all the qualifications required by this section**, and that he will not, while serving as a member of the board, become interested in any contract with or claim against the board, directly or indirectly, or as agent or employee of any individual, firm or corporation which is so interested, and that he will not be influenced, during his term of office, by any consideration except that of merit and fitness in the appointment of officers and the engagement of employees.
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> 3. No compensation shall be paid to the members of the board, but they are exempt from service as election officers during the term of office.
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> §162.581 (**emphasis added**).

The Court has reviewed Conover's Petition and Exhibits A-D attached to the Petition. Assuming the allegations as true, giving the factual allegations the broadest intendments, and construing the allegations in a favorable manner to Conover, the Court finds Conover verified his Petition is supported by the names of 10 citizens for the removal of a Board member or officer. Therefore, subject matter jurisdiction in this matter is presumed to be established through §162.631. Next, the Court finds Conover has stated a claim that Harvey was not qualified to be appointed or serve on the Board because Harvey was not a city resident in the 3 years immediately preceding their election. The factual allegations reveal, and the parties do not dispute, that Harvey

was not elected, but instead was appointed after the previously elected member failed to serve the entire elected term. Harvey contends Conover's claims fail because the residential requirement set forth in §162.581 pertains to elected members of the Board, not appointed. Instead, Harvey argues the Board has unfettered discretion to appoint any person to fill the vacancy pursuant to §162.621. At this juncture the Court only reviews the adequacy of the Petition, not the sufficiency of the claims to matters outside of the Petition. Consequently, the Court finds Harvey's motion fails.

Additionally, §162.621 does not expressly or explicitly foreclose jurisdiction upon this Court on Conover's claim as stated in the Petition for removal due to failure to comply with residential prerequisite before appointment and service. Any further inquiry to the adequacy of the Petition would require the Court to impermissibly look outside of the allegations contained in Petition itself and beyond Rule 55.27(a).

THEREFORE, it is Ordered and Decreed that Defendant Robert Harvey's Motion to Dismiss is DENIED.

SO ORDERED:

T. McCarthy 51703

Thomas A. McCarthy
Circuit Judge, Div. 17

Dated: June 24, 2026