

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI**  
**21st JUDICIAL CIRCUIT**

State of Missouri,	)	
ex rel. Loretta Johnson, Mayor of	)	January 6, 2012
City of Dellwood, Missouri	)	
in her individual and official capacity,	)	
Relator,	)	11SL-CC04982
vs.	)	
	)	
City of Dellwood, Board of Alderman,	)	
et al.,	)	Div. 20
Respondents.	)	

**Order and Judgment Denying Petition for Writ of Mandamus**

On January 4, 2012, the parties appeared, represented by counsel, and submitted the issues to the Court for determination based upon stipulated facts, the briefs and exhibits filed with the court and the arguments of counsel. The matter having been fully heard and submitted, the Court denies relator's petition for writ of mandamus compelling the attendance of the Board of Aldermen at its next duly scheduled meeting, as prayed for in relator's petition.

“Mandamus will lie only when there is a clear, unequivocal, specific right to be enforced. The purpose of the writ is to execute, not adjudicate. Mandamus is only appropriate to require the performance of a ministerial act. Conversely, mandamus cannot be used to control the judgment or discretion of a public official...” State ex rel. Missouri Growth Ass’n, 998 S.W.2d 786, 788 (Mo. banc 1999).

It is not contested that four of the eight aldermen for the City of Dellwood have not attended city council meetings held on December 8, 12 and 13 in 2011. Relator asserts that attendance at the city council meeting is a ministerial duty. A "ministerial duty", as applied to a public officer, has been defined as an act or thing required to be performed by direction of legal authority upon a given state of facts, independent of what the officer may think of the propriety or impropriety of doing that act in a particular case. State ex rel. School District No. 15, Pleasant Valley, Jackson County v. Baker, 472 S.W. 2d 865, 867 (Mo. App. 1971). Counsel for the four respondents who have not attended the city council meetings argued at the hearing, and it was also stated in their brief, that they have made a deliberate, conscious and political decision to deprive the Dellwood Board of Aldermen of the quorum required by law in an attempt to either table the proposition of Relator, with which

they disagree, or force a "fair and honest public debate" on the issue. (Respondent's brief, page 5). This, they asserted at the hearing, is "special cause" which prevents their attendance at the council meetings, as provided in Section 1-109(a) of the Dellwood Municipal Code. Countering Relator's assertion that attendance at the council meetings is a "ministerial act", Respondents state they have made a "discretionary decision within their legislative prerogative..." and "there is simply no ministerial duty which has been breached by Respondents warranting an intervention of this Court into the City's legislative affairs..." (Id.)

A discretionary act has been defined as "...one requiring the exercise of reason in determining how *or whether* (emphasis added) the act should be done." Jones v. Carnahan, 965 S.W. 2d 209, 213 (Mo. App. W.D. 1998). Mandamus will not issue in doubtful cases. (Id.) The Court finds Relator has failed to show that Respondents have failed to perform a ministerial duty.

Wherefore it is Ordered and Adjudged and Decreed that Relator's Petition for Writ of Mandamus Be and is Hereby Denied.

SO ORDERED: \_\_\_\_\_  
Colleen Dolan, Judge Div. 20

cc: Donnell Smith, attorney for Relator  
John C. Maxwell, attorney for Respondents Lovings, Culberson, Bober and Haynes