

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1159

JEFFERY J. ARNOLD & ALEXANDER HEATON

VERSUS

BOARD OF ETHICS

Judgment Rendered: MAY 23 2008

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana**

Docket Number C552951

The Honorable Curtis Calloway, Judge Presiding

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

WHIPPLE, J.

In this appeal, Jeffery J. Arnold and Alexander Heaton challenge a judgment of the district court, granting the exception of prematurity filed by the Louisiana Board of Ethics. For the following reasons, we dismiss the appeal as moot given that the grounds for a finding of prematurity no longer exist.

PROCEDURAL HISTORY

Following a private investigation, the Louisiana Board of Ethics (“the Board”), by a majority vote at its January 9, 2007 meeting, issued certain charges against Louisiana State Representatives Jeffery J. Arnold and Alexander Heaton, alleging that Arnold and Heaton violated Section 1112(B)(1) of the Code of Governmental Ethics by participating in the discussion of House Bills 50 and 69 of the 2006 1st Extraordinary Legislative Session and the discussion and vote of House Bill 656 of the 2006 Regular Legislative Session, bills concerning consolidation of the Assessor’s Office in Orleans Parish, while Arnold’s father and Heaton’s brother served as elected assessors in Orleans Parish.¹ The Board set the matters for public hearing on August 9, 2007.

On March 6, 2007, Arnold and Heaton jointly filed a petition for declaratory judgment and injunction in the Nineteenth Judicial District Court, seeking a judgment declaring that the privileges and immunities set forth in Louisiana Constitution article III, section 8 bar the Board from investigating, prosecuting, adjudicating, and penalizing them for participation in the legislative

¹Section 1112(B)(1) of the Code of Governmental Ethics, codified as Louisiana Revised Statute 42:1112(B)(1), provides as follows:

B. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest:

- (1) Any member of his immediate family.

A “public servant” is defined as a public employee or an elected official. LSA-R.S. 42:1102(19).

process during their service in the legislature when acting within the sphere of legislative activity, and enjoining the Board from pursuing any currently pending investigations, prosecutions, adjudications, or penalties against Arnold and Heaton for their participation in the legislative process.²

The Board then filed exceptions raising the objections of lack of subject matter jurisdiction and prematurity. By judgment dated April 19, 2007, the district court denied the Board's declinatory exception of lack of subject matter jurisdiction, but granted the Board's dilatory exception of prematurity. In its oral reasons, the district court found that Arnold and Heaton had to first assert the constitutional issues to the Board prior to or during the public hearing, and that the Board had to make an initial determination as to whether the actions of Arnold and Heaton were protected or if the Board was exceeding its authority or jurisdiction in pursuing the charges against Arnold and Heaton.

Arnold and Heaton appealed that judgment, contending that the trial court erred in finding that they had to present their constitutional arguments as to the meaning and scope of LSA-Const. art. III, sec. 8 to the Board prior to seeking a declaratory judgment from the district court.

DISCUSSION

At the outset, we observe that by our action in the related application for supervisory writs filed by Arnold and Heaton, and decided this date, the issues presented in this matter have been rendered moot. A moot case is one which, when rendered, can give no practical relief. Courts will not rule on issues of law which have become moot, since their decree will serve no useful purpose and afford no practical relief. Kaiser Aluminum Exploration Company v. Thompson, 512 So. 2d 1197, 1200 (La. App. 1st Cir. 1987). This court has the authority to

²Louisiana Constitution article III, section 8 provides that no member of the legislature "shall be questioned elsewhere for any speech in either house."

consider the issue of mootness *ex proprio motu*. Chavers v. Chavers, 411 So. 2d 490, 491 (La. App. 1st Cir. 1982).

In the instant case, on August 2, 2007, while this matter was pending on appeal, Arnold and Heaton filed an exception of jurisdiction *ratione materiae*, *i.e.*, subject matter jurisdiction, before the Board, setting forth their argument that the Legislative Privileges and Immunities Clause, LSA-Const. art. III, sec. 8, removed from the Board the power and authority to investigate, prosecute, adjudicate, and potentially punish Arnold and Heaton for their participation in the legislative process. Following a hearing, the Board denied their exception.

Arnold and Heaton then filed a writ application with this court, seeking a determination that the Board erred in denying the exception and seeking a stay of all proceedings before the Board, particularly the public hearing scheduled for December 13, 2007, to explore the charges against Arnold and Heaton. On December 2, 2007, this court referred the merits of the writ application to the panel handling this appeal and granted plaintiffs request for a stay pending further orders of this court. In Re: Jeffery J. Arnold and Alexander Heaton, 2007 CW 2342 (La. App. 1st Cir. 12/6/07) (unpublished). Thereafter, by order dated January 18, 2008, this court granted certiorari in the related writ application and ordered the Board to file with this court copies of the record of the proceedings before the Board. In Re: Arnold and Heaton, 2007 CW 2342 (La. App. 1st Cir. 1/18/08) (unpublished).

By opinion handed down this date in In Re: Arnold and Heaton, 2007 CW 2342 (La. App. 1st Cir. ___/___/08), ___ So. 2d ___, we found merit to Arnold and Heaton's exception to the Board's jurisdiction *ratione materiae*, thereby dismissing the charges instituted by the Board of Ethics against Arnold and Heaton for their actions before the legislature of deliberating, debating and voting on various bills in which their immediate family members had a

financial interest. In so ruling, we found that LSA-Const. art. III, sec. 8 prohibited the Board of Ethics from exercising jurisdiction for a legislator's actions within the legitimate legislative sphere, by its mandate that a legislator may not be questioned "elsewhere," other than in the legislature, for any speech in either House.

Therefore, because this court has now ruled upon the issue of LSA-Const. art. III, sec. 8's limitation of the Board's jurisdiction when the alleged violation of the Code of Governmental Ethics involves actions by a legislator within the legitimate legislative sphere, we have effectively granted the relief sought by Arnold and Heaton in the suit for declaratory judgment and injunctive relief from which the instant appeal arises.³ In Re: Arnold and Heaton, 2007 CW 2342 (La. App. 1st Cir. __/__/08), __ So. 2d __.

Accordingly, because the relief sought by Arnold and Heaton has already been granted by this court in In Re: Arnold and Heaton, 2007 CW 2342 (La. App. 1st Cir. __/__/08), __ So. 2d __, we dismiss the appeal as moot.

CONCLUSION

For the above and foregoing reasons, the appeal in this matter is dismissed as moot. Costs of this appeal in the amount of \$986.25 are assessed against the Louisiana Board of Ethics.

APPEAL DISMISSED.

³As outlined above, the relief sought by Arnold and Heaton in this suit included: (1) a declaration that the privileges and immunities set forth in Louisiana Constitution article III, section 8 bar the Board from investigating, prosecuting, adjudicating, and penalizing them for participation in the legislative process during their service in the legislature when acting within the sphere of legislative activity; and (2) an injunction enjoining the Board from pursuing any currently pending investigations, prosecutions, adjudications, or penalties against Arnold and Heaton for their participation in the legislative process. In this court's opinion in the related grant of certiorari, also handed down this date, we determined that the Board of Ethics lacked jurisdiction to question the actions of Arnold and Heaton, which actions occurred in the legitimate legislative sphere, and dismissed the charges instituted by the Board of Ethics against Arnold and Heaton for their actions before the legislature of deliberating, debating, and voting on various bills in which their immediate family members had a financial interest. In Re: Arnold and Heaton, 2007 CW 2342 (La. App. 1st Cir. __/__/08), __ So. 2d __.