

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

<p>CITY OF SIOUX CITY, IOWA,</p> <p>Plaintiff,</p> <p>v.</p> <p>IOWA DEPARTMENT OF TRANSPORTATION, IOWA TRANSPORTATION COMMISSION, and STATE OF IOWA,</p> <p>Defendant.</p>	<p>NO. CVCV159244</p> <p>RULING ON DEFENDANTS’ MOTION TO DISMISS OR STRIKE THE PETITION FOR JUDICIAL REVIEW</p>
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On May 12, 2014, Defendant’s Motion to Dismiss or Strike the Petition for Judicial Review, filed March 27, 2014, came on for a hearing. Plaintiff was represented by Assistant City of Sioux City Attorney Justin Vondrak. Defendant was represented by Assistant Attorney General David Gorham. The proceeding was stenographically recorded by Certified Court Reporter Christi Bauerly. At the conclusion of the hearing, the Court took the matter under advisement.

After reviewing the pleadings contained in the court file, considering the parties’ arguments, and reviewing the applicable law, the Court enters the following ruling.

FACTUAL BACKGROUND

The City of Sioux City (hereinafter referred to as “City”) has employed automated red light cameras since 2009 and automated speed cameras since 2011. In 2013, the Iowa Department of Transportation (hereinafter referred to as “DOT”) adopted administrative rules governing Automated Traffic Enforcement Systems (ATES), found in Chapter 144 of the Iowa Administrative Code, Agency 761. Chapter 144 became effective on February 12, 2014.

On March 7, 2014, the City filed a Petition for Judicial Review seeking declaratory judgment regarding Chapter 144. The Petition seeks relief on fourteen grounds under Iowa Code section 17A.19, including “the actions are unconstitutional on their face or as applied or are based upon a provision of law that is unconstitutional on its face or as applied.” The City has not submitted a request for placement of an ATES or justification report to the DOT. The City has not filed a request for a declaratory order relating to Chapter 144. The DOT has not taken action against the

City under Chapter 144. Defendants contend the Court lacks jurisdiction due to the exhaustion and ripeness doctrines.

ANALYSIS AND CONCLUSIONS OF LAW

I. Standard for a Motion to Dismiss

In considering a motion to dismiss, the court analyzes the petition for legal sufficiency. *Schaffer v. Frank Moyer Const., Inc.*, 563 N.W.2d 605, 607 (Iowa 1997). A motion to dismiss admits well-pleaded facts and waives uncertainty or ambiguity in the petition. *Id.* (citing *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994)). The motion is properly granted only when the petition “on its face shows no right of recovery under any state of facts.” *Id.* (quoting *Tate*, 510 N.W.2d at 887). In making this determination, the court accepts all allegations in the petition as true and construes them in a light most favorable to the nonmoving party. *D.M.H. by Hefel v. Thompson*, 577 N.W.2d 643, 644 (Iowa 1998) (citing *Brumage v. Woodsmall*, 444 N.W.2d 68, 68-69 (Iowa 1989)). A pre-answer motion to dismiss alleging a lack of jurisdiction may be supported by “affidavits and other evidentiary showings. *Hayden v. Ameristar Casino Council Bluffs, Inc.*, 641 N.W.2d 723, 724 (Iowa 2002) (citing *Moyer v. City of Des Moines*, 505 N.W.2d 191, 193 n. 3 (Iowa 1993)). Assertions and conclusions contained in a brief need be properly supported by affidavits and other evidentiary showings. *Id.* at 725.

II. Iowa Code Section 17A.19(2)

The City contends the Court has jurisdiction pursuant to Iowa Code section 17A.19(2). Defendants contend section 17A.19(2) is merely a venue provision, which does not excuse compliance with other provisions of section 17A.19.

Section 17A.19(2) states:

Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or

their attorney of record at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.

IOWA CODE § 17A.19(2) (2013). The subsection delineates the proper counties in which an individual may initiate judicial review proceedings and the manner in which service of process is to be accomplished. Defendants do not move to dismiss based on improper venue or insufficient service of process. Defendants' motion is based on a lack of compliance with section 17A.19(1). Judicial review proceedings are "in all respects dependent upon the statutes which authorize its pursuit." *Anderson v. W. Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 420 n.1 (Iowa 1994). Compliance with all statutory prerequisites is required in order for the district court to obtain jurisdiction over the particular case. *Id.*, at 421 n.2. The City's compliance with section 17A.19(2) will not excuse a failure to comply with section 17A.19(1).

III. Iowa Code Section 17A.19(1)

Defendants contend the Court does not have jurisdiction over the City's Petition due to the City's failure to obtain final agency action and exhaust administrative remedies, as required by section 17A.19(1). The City contends an email exchange establishes exhaustion and the instant petition is necessary to preserve a facial challenge to Chapter 144.

Section 17A.19(1) provides: "[a] person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter." IOWA CODE § 17A.19(1) (2013). Iowa Code Chapter 17A is to be the "exclusive means" for a person or party to seek judicial review of agency action. IOWA CODE § 17A.19 (2013) (except as expressly provided otherwise by another statute). The City must establish compliance with section 17A.19(1) in order for the district court to have jurisdiction over the Petition for Judicial Review. *Richards v. Iowa State Commerce Comm'n*, 270 N.W.2d 616, 619 (Iowa 1978) (placing burden on the party seeking judicial review); *accord Lutz v. Iowa Swine Exports Corp.*, 300 N.W.2d 109, 111 (Iowa 1981) (stating "where jurisdiction is challenged, it is the obligation of the plaintiff to establish it" (citing *McArtor v. Pete's Café*, 175 N.W.2d 369, 373 (Iowa 1970))). Each provision within section 17A.19 is dispositive. *Richards*, 270 N.W.2d at 620.

First, the City must establish that all adequate administrative remedies have been exhausted. The City contends that an email exchange, between counsel for the City and State of Iowa,

establishes exhaustion of administrative remedies. Without delving into the substance of the exchange, the Court rejects the City's contention. Correspondence with one state employee does not negate a party's obligation to exhaust administrative remedies through official agency channels. *O.M.J.C. Signal, Inc. v. Iowa Dep't of Transp.*, 817 N.W.2d 31, *7 (Iowa Ct. App. 2012).

Defendants contend the City has not exhausted administrative remedies as the City has not filed a request for approval of an ATEs, pursuant to Chapter 144, nor petitioned for a declaratory order, pursuant to section 17A.9. By petitioning for a declaratory order, a party may formally request the DOT to explain "how the department will apply a statute, rule or order based on a specific set of facts" in order to "seek binding advice from the [DOT], not to challenge a decision that the [DOT] has already made." *Id.*, at *3 (citing IOWA ADMIN. CODE. r. 761-12.1). A declaratory order would allow the City to seek binding advice from the DOT regarding many of the allegations in the Petition, including, but not limited to whether "[t]he new rules effectively prohibit the use of the Automated Speed Enforcement system currently in place in Sioux City," whether the definition of an "automated traffic enforcement system" applies to integrated radar and video cameras in City of Sioux City Police Department vehicles, and how the DOT will apply the definition of a "high-risk location." The DOT "should be free, even when it errs, to work out its own problems" and interpret the statutes and rules that it administers in the first instance. *City of Des Moines v. Des Moines Police Bargaining Unit Ass'n*, 360 N.W.2d 729, 732 (quoting B. Schwartz, *Administrative Law* § 172 at 498 (1976)); *see also*, *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 646 (Iowa 2013) (stating "a declaratory ruling issued by an agency is a more desirable method of achieving clarity") (quoting Arthur Earl Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process*, 60 IOWA L. REV. 731, 805-06 (1975). Additionally, declaratory rulings are subject to judicial review. IOWA CODE § 17A.9; 17A.19 (2013). The record contains no evidence indicating an unwillingness by Defendants to consider a request for approval of an ATEs, pursuant to Chapter 144, or a petition for a declaratory order, pursuant to section 17A.9.

Second, the City contends the instant petition is necessary in order to preserve a facial challenge to Chapter 144. The Court construes this as an assertion that available administrative remedies are not adequate for the purposes of a facial challenge. The City asserts a petition must

be filed within 30 days of the rules taking effect, or a facial challenge is deemed waived. The City provides no citation to legal authority in support of this assertion. The Court assumes the deadline is drawn from section 17A.19(3). In a contested case, petitions for judicial review must be filed within 30 days from the issuance of an agency's final decision or denial of application for rehearing. IOWA CODE § 17A.19(3) (2013). All other petitions for judicial review may be filed "at any time petitioner is aggrieved or adversely affected by that action." *Id.* The 30 day deadline does not apply to the City's facial challenge of Chapter 144, as the instant petition does not arise from a contested case. *See*, IOWA CODE § 17A.2(5) (2013) (defining contested case as a "proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing"). Additionally, after exhausting administrative remedies, the City may bring an original action for declaratory and other appropriate relief regarding the facial validity of a rule. *See, Campbell v. Iowa Beer & Liquor Control Dep't*, 366 N.W.2d 574, 576-577 (Iowa 1985) (finding original action available where agency declined to issue declaratory order regarding facial and as-applied challenges to validity of rule).¹ The Court finds the available administrative remedies to be adequate. The availability of adequate administrative remedies is dispositive of the City's lack of compliance with section 17A.19(1).

Generally, there are three exceptions to the exhaustion of administrative remedies requirement.

- 1) plaintiff challenges, by way of judicial review under Iowa Code section 17A.19, an agency action as in violation of the rulemaking procedures set forth under the APA;
- 2) plaintiff claims an adequate administrative remedy does not exist for the claimed wrong, or stated otherwise, plaintiff will suffer "irreparable injury of substantial dimension" if not allowed access to district court prior to exhausting all administrative remedies; or
- 3) plaintiff claims the applicable statute does not expressly or implicitly require that all adequate administrative remedies be exhausted prior to bringing an action in district court

¹ Importantly, the Court notes the City does not challenge the constitutionality of a statute under which the Defendants claim authority, as determination of statutory validity is beyond agency authority. *Tindal v. Norman*, 427 N.W.2d 871, 872-73 (Iowa 1988) (citing *Salsbury Labs. v. Iowa Dep't of Env'tl. Quality*, 276 N.W.2d 830, 836 (Iowa 1979)).

O.M.J.C., 817 N.W.2d at *5 (citing *IES Util. Inc. v. Iowa Dep't of Revenue & Fin.*, 545 N.W.2d 536, 539 (Iowa 1996) (citations omitted)). The City does not contend that an applicable statute does not require exhaustion. The City contends immediate harm occurred when Chapter 144 took effect, as the rules have reduced the number of locations where cameras may be placed. The City only made this assertion at the hearing on the Motion to Dismiss and has not supported it with affidavits or other evidentiary support. Moreover, DOT has not taken action against the City, pursuant to Chapter 144. The Court finds the record does not support a finding of irreparable harm in order to excuse the City's failure to exhaust administrative remedies.

Chapter 17A provides the procedure which an agency must apply in order to adopt, amend, or repeal a rule. *See*, IOWA CODE § 17A.4(1) (2013) (stating "prior to the adoption, amendment, or repeal of any rule an agency shall..."). The procedure provides for the submission of written and oral comments and requires an agency to fully consider "all written and oral submissions respecting the proposed rule." IOWA CODE § 17A.4(1)(b) (2013). Additionally, proceedings alleging a lack of compliance with procedural requirements must be "commenced within two years after [a rule's] effective date." IOWA CODE § 17A.4(6) (2013) (procedural compliance conclusively presumed if proceeding not commenced within two years). A party subject to rules may file a petition for judicial review challenging the validity of such rules, by alleging noncompliance with the public participation and other procedural requirements of section 17A.4, prior to exhaustion of administrative remedies. *Lundy v. Iowa Dep't of Human Servs.*, 376 N.W.2d 893, 894-95 (Iowa 1985). A party is not limited to raising a procedural challenge to a rule through a contested case proceeding, petition for rulemaking, or petition for a declaratory order. *Id.* at 896. Adoption of rules constitutes final agency action for purposes of a procedural challenge. *Id.* at 894.

The City is subject to Chapter 144 as the City has employed automated red light cameras since 2009 and automated speed cameras since 2011. The City alleges DOT's "actions are based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedures or decision making process." More specifically, the City alleges "[d]uring the public hearings held on October 30, 2013, the Board ignored requests by individuals present at the hearing to offer any statements or testimony," "[t]he City and other municipalities were denied an opportunity to be heard and present any testimony at a hearing on December 10, 2013, held by the Iowa Transportation Commission," and the DOT "presented the

rules and a very limited, distorted, and inaccurate summation of the comments it had received in testimony and writing from Municipalities gathered in October, 2013.” The Court finds the City to be challenging, by way of judicial review under Iowa Code section 17A.19, an agency action as in violation of the rulemaking procedures set forth under the APA. Therefore, the City is not required to exhaust administrative remedies in regards to the procedural challenges to Chapter 144.² The remaining allegations are not of a procedural nature, and instead assert facial and as-applied challenges to Chapter 144. Such allegations do not fall within the parameters of an exception to the exhaustion requirement.

SUMMARY

The Court finds the City of Sioux City has failed to establish compliance with Iowa Code section 17A.19(1) in order for the Court to have jurisdiction over the Petition for Judicial Review. Additionally, the Court finds the allegations of procedural irregularities to be within an exception to the exhaustion requirement. Therefore, the City of Sioux City’s Petition for Judicial Review is dismissed to the extent the Petition asserts a facial or as-applied challenge to Chapter 144. The Motion to Dismiss is denied to the extent the Petition asserts a challenge to Chapter 144 based upon an alleged noncompliance with the procedural requirements of Iowa Code section 17A.4

ORDER

IT IS THEREFORE ORDERED AS FOLLOWS:

- 1) All of the above.
- 2) Defendants’ Motion to Dismiss or Strike the Petition for Judicial Review, filed on March 27, 2014, is GRANTED, in part.
- 3) Defendant’s Motion to Dismiss or Strike the Petition for Judicial Review, filed March 27, 2014 is DENIED, in regards to Paragraph 40, subparagraph (d) of the Petition for Judicial Review, which alleges “the actions are based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision making process.”
- 3) The Clerk of Court is requested to forward a copy of this ruling to all attorneys of record.

SO ORDERED.

² As section 17A.19(1) is dispositive of the City’s facial and as-applied challenges to Chapter 144, the Court declines to address Defendants’ contention that the claims are also not ripe. The ripeness contention was not raised in regards to the City’s allegations of procedural noncompliance.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV159244
Case Title CITY OF SIOUX CITY VS DEPARTMENT OF TRANSPORTATION ET AL

So Ordered

A handwritten signature in black ink, appearing to read "James D. Scott".

James D. Scott, District Court Judge,
Third Judicial District of Iowa