

IN THE IOWA SUPREME COURT

No. 22-1619

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**EMILIO PUENTE,**

Appellant,

v.

**CIVIL SERVICE COMMISSION OF IOWA CITY,**

Appellee

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IOWA COURT OF APPEALS OPINION FILED SEPTEMBER 13, 2023

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APPELLEE'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW

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## **RESISTANCE TO APPLICATION FOR FURTHER REVIEW**

Defendant-Appellee, the Civil Service Commission of Iowa City (the Commission), resists Appellant Emilio Puente's Application for Further Review. In support of its resistance, the Commission states as follows.

The Iowa Court of Appeals correctly affirmed the district court's ruling granting the Commission's motion to dismiss for lack of jurisdiction, because Puente failed to vest the district court with jurisdiction over his civil service commission appeal when he filed a petition for judicial review under Iowa Code chapter 17A instead of a notice of appeal under section 400.27(4).

Wherefore, the Commission respectfully requests the Court deny Puente's Application for Further Review.

## **ARGUMENT**

The court of appeals correctly decided a key jurisdictional question in this case involving how to initiate a civil service appeal in district court, and further review is not warranted. Puente, a former Iowa City police officer, made a claim with the Iowa City Civil Service Commission, which he lost. Puente disagreed with the Commission's decision. Instead of filing the statutorily prescribed notice of appeal under Iowa Code Section 400.27—or following any procedures under chapter 400—Puente filed a petition for judicial review under Chapter 17A. (Attachment 1, Petition for Judicial Review).

Puente’s counsel now acknowledges that by filing a petition for judicial review under chapter 17A, instead of a notice of appeal under chapter 400, he mistakenly utilized the wrong chapter of the Iowa Code. However, Puente argues this mistake does not matter because (1) “judicial review is the same as appeal,” and alternatively, (2) “a more practical approach to pleading” should be utilized to recognize his process as sufficient to vest the district court with jurisdiction of his civil service appeal.

**(1) Judicial review under chapter 17A is different than appeal under chapter 400.**

Puente argues that his failure to follow the appeal procedures in chapter 400, which applies to civil service proceedings, should not have mattered because a notice of appeal is the same as judicial review under chapter 17A. The court of appeals rightly rejected this argument. Civil service proceedings are governed by chapter 400, not chapter 17A. Judicial review proceedings under Chapter 17A apply to state agencies, not political subdivisions of the state. *Mensen v. Cedar Rapids Civ. Serv. Comm’n*, No. 21-0410, 2022 WL 2160679, AT \*3 (Iowa Ct. App. June 15, 2022). An agency, such as a civil service commission, is not a political subdivision of the state. Iowa Code § 17A.2(1). The procedures set forth in chapter 400 are the exclusive means of challenging a civil service decision. *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996) (“[W]e think chapter 400 proceedings

must be considered the exclusive means of challenging the arbitrariness of a civil service employee's discharge.”).

The proceedings set forth in these chapters are distinct. The service provisions in chapter 400 and chapter 17A differ. *Compare* Iowa Code § 17A.19(2) *with id.* § 400.27(4). And the standards of review are different. In judicial review, the standard of review depends upon the decision that forms the basis for judicial review. Iowa Code § 17A.19(1). In a civil service appeal, the scope of review is “de novo appellate review” without a trial or additional evidence. Iowa Code § 400.27(3). In some cases, a district court can hear and consider new evidence in a judicial review action. *Id.* .19(7).

What is significant about these differences is that they reflect the legislature's policy choices regarding these different forms of judicial oversight. The Iowa Supreme Court has, in prior decisions, declined to alter the jurisdictional requirements of the civil service chapter, recognizing that such a change would wrongfully alter the terms of the statute. *See City of Des Moines v. Civil Serv. Com'n of City of Des Moines*, 540 N.W.2d 52, 56-57 (Iowa 1995). The court of appeals correctly declined to disregard the plain language of both chapter 17A and chapter 400 by equating a petition for judicial review with a notice of appeal.

**(2) Chapter 400 does not contain highly technical requirements.**

Puente's alternative argument is that because Iowa courts do not dismiss cases based on technicalities in pleading, his petition for judicial review should be construed as a notice of appeal. But the filing of a notice of appeal under chapter 400 is not merely a technicality, it is a requirement for subject matter jurisdiction to vest in the district court. Iowa Code § 400.27(4); *Bogue v. Ames Civ. Serv. Comm'n*, 368 N.W.2d 111, 113 (Iowa 1985) ("Controlling Iowa precedent requires an appellant to comply substantially with the service provisions of section 400.27 in order to vest a district court with jurisdiction to decide an appeal from a civil service commission decision."). Further, as the court of appeals noted, requiring Puente to file a notice of appeal, rather than a petition under an inapplicable chapter of the Code, is not highly technical. A notice of appeal is just a document that announces the appellant's intention to appeal. Instead, Puente filed a petition, complete with factual allegations, and indicated that he intended to consolidate his judicial review petition with another pending original action. (Petition, p. 2). He initiated an entirely different statutory process. It is not highly technical to reject this separate pleading as not complying with the applicable statutory requirements under chapter 400.

## CONCLUSION

For these reasons, the Commission requests the Court deny Puente's application for further review.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS AND TYPE-STYLE  
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 896 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 pt. Times New Roman.

*/s/ Elizabeth Craig* \_\_\_\_\_  
Elizabeth Craig

**CERTIFICATE OF FILING AND SERVICE**

The undersigned certifies that Appellee's Resistance to Application for Further Review was filed with the Clerk of the Iowa Supreme Court and served on all counsel of record by using the EDMS filing system.

*/s/ Elizabeth Craig* \_\_\_\_\_  
Elizabeth Craig

**CERTIFICATE OF COST**

The undersigned certifies that there was no cost associated with the production of this Resistance to Application for Further Review.

*/s/ Elizabeth Craig* \_\_\_\_\_  
Elizabeth Craig