



STATE OF DELAWARE  
OFFICE OF THE STATE ELECTION COMMISSIONER

ELAINE MANLOVE, STATE ELECTION COMMISSIONER

February 4, 2015

Mr. Jerry Smith  
63 Reed Street  
Frankford, DE 19947  
Via e-mail

Ms. Terry Truitt  
Town of Frankford  
P O Box 550  
Frankford, DE 19947  
Via e-mail

Dear Mr. Smith and Ms. Truitt:

**Re: Decision on Smith Appeal – Frankford 2015**

Dear Mr. Smith and Ms. Truitt:

This is my decision on Mr. Smith's appeal of the January 31 decision of the Frankford Board of Elections. I begin with a Summary of the Evidence.

- Exhibit 1 – Senate Bill 171 As Amended by Senate Amendment 1
- Exhibit 2 – Agenda – Frankford Town Council Meeting – January 5, 2009
- Exhibit 3 – Portion of Audio of Frankford Town Council Meeting – January 5, 2009
- Exhibit 4 – Minutes of Frankford Town Council Meeting – December 8, 2014
- Exhibit 5 – Portion of Audio of Frankford Town Council Meeting – December 8, 2014
- Exhibit 6 – November 28, 2014 Legal Notice – Coastal Point – Solicitation of Candidates and Qualifications to Vote

- Exhibit 7 – Portion of Audio of Frankford Town Council Meeting – December 8, 2014
- Exhibit 8 – Commissioner’s 2014 Opinion

Mr. Smith’s appeal challenges the authority and action of the Frankford Board of Elections and the sufficiency of the notices for the upcoming February 7 election. Each issue is addressed below.

**I. The Scheduled Election Cannot End Before 4:30 p.m.**

The authority of the Elections Commissioner on this appeal is limited. The Commissioner is empowered to hear appeals from the decisions of municipal Board of Election. Such Boards may decide cases involving pre-election activity that is “contrary to the provisions of subchapters IV and V of this chapter [of Title 15 of the Delaware Code].” 15 *Del. C.* § 7552. In other words, the Commissioner may not decide questions involving the interpretation of a municipal charter. This limitation is dispositive of this allegation of the appeal.

Fifteen *Del. C.* § 7550(h) reads, in pertinent part, that, “The date and time of municipal elections, the offices up for election, and the terms of those offices shall be as provided in the municipality's charter and/or ordinance...”. Frankford evidently argued, and the Board of Elections agreed, that the hours of the election – 1:00 pm to 4:00 pm – were contained in the Frankford charter until 2012, and Frankford determined to continue this practice. As I wrote above, this interpretation may not condone a wise practice but it is not a violation of 15 *Del. C.* § 7551(a).

The intent of the Municipal Election Law was to remove barriers for voters. Limiting the hours of election, especially without the addition of absentee voting, is certainly not a hallmark of a good election.

I see that in its opinion, the Frankford Board of Elections recommends that the Frankford charter be amended to correct certain of the deficiencies noted herein. I exhort Frankford to use this opportunity to correct its election hours as well as offering its citizens the opportunity to vote by absentee ballot.

## **II. Appointment of the Board of Elections**

Frankford evidently argued, and the Board of Elections agreed, that the current Board members were appointed under the charter provision in effect prior to a 2012 charter amendment and had served, without interruption, since that time. The Commissioner simply has no power to review the interpretation by Frankford that its charter permits Board members appointed in 2009 to holdover until their successors are appointed. This interpretation may not condone a wise practice but it is not a violation of 15 *Del. C.* § 7551(a).

## **III. Posting of Names and Contact Information of Board Members**

While Section 7551(j) does indeed require that a municipality post the names and contact information for its Board of Elections in the city/town hall or in the building where the municipal government meets, and on the municipality's website if it has one, Frankford is correct that the statute does not contain deadlines for such postings. That the statute does contain strict deadlines for the posting of the notices of candidacies and election suggests that the General Assembly did not intend to impose like requirements for the posting of the Board information.

## **IV. Absentee Balloting**

State law provides that any person qualified under the provisions of a municipal charter to vote by absentee ballot may cast such absentee ballot for one of the enumerated reasons. Thus, the municipal charter must authorize absentee voting. I concur with Frankford that the words in its charter reading "the conduct of general elections of the Town of Frankford and absentee voting shall be governed by the laws of Delaware" do not create the right to vote by absentee ballot. I do note with approval that the Board of Elections for Frankford recommends that such right be expressly conferred through a charter change.

## **V. Notices Are Deficient**

Mr. Smith does not argue that the notices are inaccurate. Indeed, he expressly admitted that the notices were accurate. He contends that Frankford violated its own

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Ms. Terry Truitt  
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Rules of Procedure for all Boards, Commissions and Agencies and, therefore, the notices are deficient. I cannot rule that this complaint is founded.

As set forth above, Frankford evidently construes its charter to grant its clerk the power to create the required notices. That construction is an interpretation of the Frankford charter, and I have no jurisdiction to review this issue.

As discussed at the hearing, I plan to work with municipalities statewide to create a uniform amendment to municipal charters to correct recurring issues. If the uniform amendment process proves ineffective, I expect to seek amendments to Title 15, Chapter 75 to correct those issues.

For the reasons set for above, this appeal is denied.

Very truly yours,



Elaine Manlove  
State Election Commissioner

cc: Ann Woolfolk, Deputy Attorney General  
Ken McDowell, Deputy Director – Dept. of Elections for Sussex County  
Jean Turner, Deputy Director – Dept. of Elections for Sussex County  
Dennis L. Schrader, Esq.