



STATE OF DELAWARE
OFFICE OF THE STATE ELECTION COMMISSIONER

ELAINE MANLOVE, STATE ELECTION COMMISSIONER

February 4, 2015

Mr. Gregory S. Welch
13 Thatcher 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. Welch and Ms. Truitt:

Re: Decision on Welch Appeal – Frankford 2015

Dear Mr. Welch and Ms. Truitt:

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

- Exhibit 1 – Frankford Town Council Agenda – January 7, 2008
- Exhibit 2 - Frankford Town Council Meeting Minutes – January 7, 2008
- Exhibit 3 - Frankford Town Council Agenda – January 5, 2009
- Exhibit 4 - Frankford Town Council Meeting Minutes – January 5, 2009
- Exhibit 5 - Frankford Town Council Meeting Minutes – December 8, 2014
- Exhibit 6 – Screen Shot of Frankford Website
- Exhibit 6 – Screen Shot of Frankford Website

Mr. Welch'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.

1. The authority of the Board of Elections to act because the Frankford charter contains no provision for a Board of Elections, as provided by 15 *Del. C.* § 7551(a) and (c).

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.

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).

2. The legal sufficiency of the postings of 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, as provided by 15 *Del. C.* § 7551(j).

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.

3. The requirement that Frankford permit absentee voting.

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.

4. The town and state are misrepresenting the voter registration process.

After questioning Mr. Welch, I determined that this issue referred exclusively to his status as a registered voter. I decided this issue last year and Mr. Welch concedes that he did not attempt to register to vote since that decision. Therefore, I concur with Frankford that this issue has been decided and cannot be opened again under principles of *Res Judicata*.

5. The authority and procedure by which the municipality decided cut-off dates for voter and candidate registration.

Fifteen *Del. C.* § 7553 requires that, no fewer than 20 days prior to the date of the election, municipalities post notices of election that contain the date, time, and location of the election, the candidates for each office, and the qualifications to vote. This law also requires that, no fewer than 20 days prior to the candidacy filing deadline, municipalities post notices that contain the offices up for election, the deadline for filing notices of candidacy, and the qualifications to hold office. The evidence shows that all but one notice was timely filed, however, even this tardy notice was evidently accepted by the Dept of Elections for Sussex County, which is the State agency with the power to reject election notices. *See 15 Del. C.* § 7553(f). Therefore, Frankford sufficiently complied with Section 7553. Mr. Welch, however, disputes the content of the notices, claiming that the Frankford clerk had no authority to set the identified deadlines and that the deadlines are wrong. These are separate issues.

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. More troubling, however, is Mr. Welch's allegation that the deadlines are wrong. He asserts, and Frankford does not disagree, that Frankford imposed a December 31 cutoff for voter registration, which is longer than the 30 day deadline set forth in the charter. This, too, is a charter compliance issue that I have no jurisdiction to hear. Nonetheless, this conduct by Frankford is egregious, and I am compelled to comment upon it.

Pursuant to 15 *Del. C.* § 7552, I am empowered to hear exclusively appeals from the decisions of municipal Boards of Election, which themselves are charged to hear complaints "regarding any aspect of pre-election activity that is contrary to the provisions of this subchapter." Thus, under the express terms of the controlling state statute, I have no power to decide issues relating to the constitutionality of election conduct. Under applicable principles of administrative law, therefore, I cannot address the constitutionality of voter qualifications. *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 214 (1994). That said, I take this opportunity -- again -- to state that durational residency requirements for voters may well be unconstitutional under longstanding and settled United States Supreme Court precedent. *Dunn v. Blumstein*, 405 U.S. 330 (1972).

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Frankford's charter, both before and after the 2012 amendment expressly requires that voters have resided in Frankford for 30 days prior to the election. Even if Frankford labels this 30 day durational residency requirement an administrative need to prepare voter rolls, it is hard to imagine that a town with fewer than a total of 200 voters requires 30 days, much less 37 days, to prepare the voter rolls. As I wrote in 2014, such a deadline "may have created a barrier to voting, which is exactly the concern I expressed in my 2012 opinion." 2014 Frankford/Welch Opinion at page 2.

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 urge Frankford to use this opportunity to correct its voter registration deadline to both comport with the law and to encourage barrier-free voting by residents of Frankford who seek to register to vote.

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.