



STATE OF DELAWARE  
DEPARTMENT OF ELECTIONS  
OFFICE OF THE COMMISSIONER

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Commissioner of Elections

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March 20, 2009

Mr. Edward Olga  
18 Olga Road  
Elsmere, DE 19805

Dear Mr. Olga:

Following yesterday's appeal, please read below for the decision.

**IN THE MATTER OF:**

**Appeal of Edward Olga**

Pursuant to 15 Del. C. section 7552(b), an appeal was filed by Edward Olga to the Commissioner of Elections, seeking review of a decision by the Elsmere Board of Elections to remove Mr. Olga's name from the ballot for the Town election scheduled for April 25, 2009. A public hearing was held after proper notice by the Commissioner on Thursday, March 19, 2009. This is the decision of the Commissioner of Elections.

**SUMMARY OF THE EVIDENCE**

The Town of Elsmere has scheduled its bi-annual election for various offices for April 25, 2009. Mr. Olga intended to be a candidate for Councilman from the 6<sup>th</sup> District, notifying the Town of his declaration of candidacy on February 2.

Under the provisions of 15 Del. C., section 7555(d), a candidate for municipal office shall file a Certificate of Intention or Statement of Organization with the Commissioner of Elections no later than seven days after declaring his or her candidacy.

Under 15 Del. C. section 7555(e), the Commissioner shall notify the municipality's Board of Elections when a candidate fails to comply with this requirement. In turn, 15 Del. C. section 7555(f) states that if a candidate fails to comply with section 7555(d), the Board of Elections of the municipality shall declare him or her to be ineligible to be a candidate.

In this case, the Commissioner's Office notified the Board of Elections of the Town of Elsmere that it had not received a Certificate of Intention or a Statement of Organization from Mr. Olga within the required time. On March 11, the Board of Elections met and declared that Mr. Olga therefore could not be a candidate for office in the April 25 election. This appeal followed.

Mr. Olga testified that he had sent his Certificate of Intention to the Commissioner's Office and did not know why it had not been received. He said at first that he had sent it to a post office box, but upon being informed that the Commissioner's Office did not use a post office box; he stated that he had mailed it to the Commissioner's proper address.

Paul Baldwin of the Commissioner's office testified that the Certificate of Intention had to be filed by February 9 because Mr. Olga had filed his notification of candidacy with the Town on February 2. On or about February 4, all other candidates for office in Elsmere had filed their papers and Mr. Baldwin attempted to contact Mr. Olga to find out if he was going to file the document. He said he left a message for Mr. Olga, but his call was never returned. Another call was made to Mr. Olga on March 2 but again was never returned. Thereafter, the Commissioner's Office notified the Town pursuant to section 7555(e) and the Town's Board of Elections then met and declared that Mr. Olga was ineligible to be a candidate.

### **FINDINGS OF FACT**

It is clear from the record that the Commission did not receive Mr. Olga's Certificate of Intention or Statement of Organization within the required time. The Commission duly reported this fact to the Town's Board of Elections as required by Section 7555(e). Thereafter, the Board of Elections met on March 11 and declared Mr. Olga to be ineligible, as required by Section 7555(f).

### **CONCLUSIONS OF LAW**

The law clearly requires the filing of the Certificate of Intention or Statement of Organization within seven days of one declaring his or her candidacy for office. The law requires the Commission to notify the Town's Board of Elections if the document is not filed timely. Finally, the law requires that the Board declare the person to be ineligible to be a candidate if the document is not filed timely.

**DECISION OF THE COMMISSIONER**

It is the decision of the Commissioner that this appeal must be denied. The law is very clear and does not appear to authorize any discretion in its enforcement. The Commissioner notes that, although under no duty to do so, a member of the Commissioner's staff attempted to contact Mr. Olga about filing the document in time, but his calls were never returned. Had Mr. Olga returned the call, he would have learned that the Commissioner had not received the document and could have taken steps to make sure it was properly submitted.

If you have any questions, please contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Elaine Manlove".

Elaine Manlove  
State Election Commissioner

Cc: Town of Elsmere  
11 Popular Ave.  
Elsmere, DE 19805  
Attention: John Giles, Town Manager

Robert W. Willard, Deputy Attorney General