



State of Delaware
Department of Elections

December 15, 2020

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**RE: Appeal by Daniel Cannon of 9/25/2020 Decision
of the City of Seaford Board of Elections**

Dear Mr. Cannon and Mr. Griffith:

Pursuant to 15 *Del. C.* § 7552(b) and the Administrative Procedures Act (29 *Del. C.* chapter 101), a special public hearing on the above-referenced appeal took place before me in my capacity as the State Election Commissioner (the “Commissioner”) at 2:00 PM on Friday, December 11, 2020. Due to the “*Declaration of a State of Emergency for the State of Delaware Due To A Public Health Threat*” issued by Governor John C. Carney on March 12, 2020, which remains in effect, this hearing was conducted (and was open to the public) only via telephone conference call.

On September 29, 2020, Mr. Cannon filed his appeal in a timely manner pursuant to 15 *Del. C.* § 7552(b); however, the timing of this hearing on his appeal under that same section was delayed due to scheduling conflicts per agreement between Mr. Cannon and the Commissioner.

The authority of the Commissioner to hear and decide this appeal is limited by statute. 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 scheduling and conducting this hearing, I have determined that Mr. Cannon's appeal is one which I have authority to hear and decide under § 7552.

This is my decision on Mr. Cannon's appeal of the September 25, 2020 decision of the Seaford Board of Elections. I begin with a Summary of the Evidence.

A. Exhibits

- I. Cannon Exhibits identified in his Emails of 9/29/20; 10/2/20; and 12/9/20
 - A. Memorandum Decision of City of Seaford Board of Elections dated September 25, 2020
 - B. 15 Del. Code 7551
 - C. City of Seaford Charter Section 7D
 - D. Response to Griffiths submission
- II. City of Seaford Exhibits
 - A. The Agenda and an attachment for the 11/24/20 meeting of City Council
 - B. The Minutes from the 11/24/20 City Council meeting

B. Findings of Fact and Conclusions of Law

Mr. Cannon's appeal alleges illegal pre-election actions and activity regarding the upcoming municipal election scheduled for April 17, 2021. Each issue is addressed below.

1. Whether the City of Seaford improperly configured parts of the organization and functions of two groups of volunteer election officials (the BOE and Election Officers/Standing Board) in violation of 15 *Delaware Code* Chapter 75.

The City of Seaford, at the time Mr. Cannon filed his complaint with the Seaford Board of Elections on September 16, 2020, had two separate volunteer Boards dedicated to elections issues. One, commonly referred to as the Standing Board, but referred to in the City Charter as the Board of Elections, was to consist of five (5) members and was charged with handling day to day operations and serving as Election Officers. The Delaware Code sets out the appointment and responsibilities of Election Officers in 15 *Del. C.* § 7556. The other, also known as the Board of Elections, had three (3) members, and according to City Solicitor Griffith, was charged with handling elections challenges. The Delaware Code, 15 *Del. C.* § 7551 provides as follows:

(a) A Board of Elections shall be appointed as provided in the municipality's charter or code and shall oversee the election of the municipality's government.

(f) Municipal Boards of Elections shall consist of an odd number of members as stated in the municipality's charter or code, but in no case shall there be fewer than 3 members on the Board.

The Delaware Code does not provide requirements relating to the number of Election Officers that are to serve a municipality at election time, nor does it designate a title for a committee of persons serving in that capacity.

The City of Seaford Charter, at Section 7(D) [Cannon Exhibit C] provides as follows:

The Mayor shall submit to the City Council, for its approval, the names of individuals to serve as the Board of Elections whose purpose shall be to oversee the municipal election in conformity with Chapter 75 of Title 15 of the Delaware Code. Said Board shall consist of five (5) qualified electors of the City and shall serve for such term as determined by the City Council.

The existence of the two "Boards" and the inconsistency with the Delaware Code designation of a "Municipal Board of Elections" could be deemed to have caused confusion among the Seaford electorate, including Mr. Cannon. The Seaford Board of Elections, at its September 24, 2020 meeting, considered Mr. Cannon's September 16, 2020 complaint about improper Board configurations and functions and issued the following Memorandum Decision [Cannon Exhibit A]:

MEMORANDUM DECISION OF CITY OF SEAFORD
BOARD OF ELECTIONS

On September 16, 2020, the Board received a Pre-Election Complaint pursuant to 15 Del. C. §7552 concerning the City of Seaford's compliance with Title 15, Chapter 75 of the Delaware Code (Municipal Elections) and the City of Seaford Charter Section 7D ("Complaint"). On September 24, 2020, we held a meeting to address the Complaint, during which time we heard the City's response to the Complaint and discussed both the Complaint and the City's response. Pursuant to 15 Del. C. §7552(a), this is the Board's written decision on the Complaint.

For the reasons expressed by the City during the public portion of the September 24, 2020, meeting, and for other and further good cause shown, it is, on this 25th day of September, 2020, hereby ORDERED and ADJUDGED that the Complaint be and hereby is overruled, the Board having determined that no action or activity by the City was legally incorrect.

As part of its decision on the Complaint, the Board hereby recommends that the City's Charter Section 7D be amended to change the reference from "Board of Elections" to "Election Officials." (emphasis added)

Thus, the Seaford Board of Elections recognized that the nomenclature it had used for its two Boards had caused confusion and it took steps to remedy that confusion.¹ These steps were further carried forward by the proposal presented to the City Council at its November 24, 2020 meeting. The minutes [Seaford Exhibit B] reflect as follows:

Another proposed change to the City Charter, is to amend Section 7(D) to conform the titles of the City’s election officials to the titles used in Chapter 75 of Title 15 of the Delaware Code entitled “Municipal Elections”. Ms. Torbert added that this was a recommendation that came from the Board of Elections.

The Agenda for the November 24, 2020 meeting [Seaford Exhibit A] spelled out the proposal to amend the charter with specificity via legislation in the Delaware General Assembly, as follows on page 4:

3. Amend Section 7(D) of the Charter of the City of Seaford by making the insertions as shown by underlining and deletions as shown by a strike through as follows:

(D) The Mayor shall submit to the City Council, for its approval, the names of three (3) individuals to serve as the City’s Board of Elections pursuant to 15 Del. C. §7551. The purpose of the Board of Elections shall be to oversee the municipal election in conformity with Chapter 75 of Title 15 of the Delaware Code. The Mayor shall also submit to the City Council, for its approval, the names of five (5) individuals to serve as the City’s Election Officers pursuant to 15 Del. C. §7556. The Election Officers and the members of the Board of Elections shall serve for such term as determined by the City Council.

Synopsis

This legislation amends the City Charter by conforming the titles of the City’s election officials to the titles used in Chapter 75 of Title 15 of the Delaware Code entitled “Municipal Elections.”

Amendments to Delaware municipal charters are governed by 22 *Del. C.* § 811 and allow for a municipal charter to be amended “by act of the General Assembly, passed with the concurrence of

1. I note that these definitions of the responsibilities of the Election Officials and the Board of Elections differ somewhat from those offered by City Solicitor Griffith at the September 24th Seaford Board of Elections hearing and at the December 11th hearing before the State Election Commissioner. Whereas he stated that the Board of Elections handles election challenges, the statute defines a broader authority and provides that it oversees the election of the municipality’s government. 15 *Del. C.* § 7551(a). Election Officers conduct the elections and the Inspector, who is the chief Election Officer in the polling place, determine all challenges and other issues involving the conduct of the election at the polling place. The Board of Elections may provide advice and guidance to the Election Officers. 15 *Del. C.* § 7556. The legislation proposed by the City Council incorporates the statutory language.

two thirds of all the members elected to each House thereof.” During the public hearing of the Seaford City Council on December 11, 2020, City Solicitor Daniel Griffith stated that it is the City’s intention that this proposed legislation be introduced in the January 2021 session of the General Assembly so that it would be in effect prior to the upcoming April 17, 2021 municipal election.

2. Whether the City of Seaford failed to appoint five qualified electors as members of its Board of Elections in violation of Seaford’s Charter 7, Section D. “Board of Elections.”

As explained above, the City of Seaford had appointed five (5) members to a Board, which was erroneously called the Municipal Board of Elections. In actuality, it was a five-member group to handle day-to-day operations of elections, serving as Elections Officers. This has been rectified and clarified by the steps taken by the City Council to amend the charter via legislation so that this group will be referred to as “Election Officers” as distinct from the statutorily required “Municipal Board of Elections,” which needs only have three (3) members.

3. Whether the City of Seaford failed to post the names and contact information of its Board of Elections at City Hall in violation of 15 Delaware Code Section 7551(j).

The Delaware Code, at 15 *Del. C.* § 7551(j), provides the following with respect to the posting of names and contact numbers of Board of Elections members:

(j) Municipalities shall 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.

While this section does 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, it does not expressly indicate when the postings should occur or their duration. City Solicitor Griffith indicated that in 2020 the names and contact information of Board members were posted in City Hall and on the Seaford website from January 2020 until some point after the May 16, 2020 election, when the posting was removed from City Hall due to space considerations. However, no reason was given by Mr. Griffith for the removal of the names and contact information from the City of Seaford website. Nevertheless, it is a reasonable reading of the statute that such postings should continue for the entire terms of the Board of Elections members, as requested by Mr. Cannon. Had the General Assembly intended that the public posting of the Board members’ names and contact information be temporally limited, it would have included such language in Section 7551(j) when enacting it.

The Delaware Code, at 15 *Del. C.* § 7551(k) also provides that the municipality is to notify the State Election Commissioner of the members of its Board of Elections when such members are installed. The City of Seaford has not provided me or my predecessor with such notification.

C. Conclusion

For the reasons set forth above, I find that the City of Seaford committed a technical violation of its charter, and thus 15 *Del. C.* § 7551(a), when it did not have a five member Board of Elections to oversee the municipal election in accordance with its City Charter in Section 7(D). Moreover, its use of two bodies that were both referred to as Boards of Elections was ill-advised and confusing, and the City is well-served by seeking a charter amendment through legislation to clarify the roles of those two volunteer election bodies and formally memorialize its longstanding membership requirements of its Board of Elections (i.e. three members). I further find that the City of Seaford violated 15 *Del. C.* § 7551(j) because that section requires the City to post its municipal Board of Elections members' names and contact information in its municipal building (or where its municipal government meets) and on its website for the entire duration of the members' terms of service, and that the names of these members are to be provided to the Office of the State Election Commissioner when such members are installed.

Accordingly, Mr. Cannon's appeal is (1) denied as moot with respect to the proper constitution of the Board of Elections, as the improper number of members and misnomers are to be corrected by the City through legislation enacted by the General Assembly in its coming legislative session; and (2) granted with respect to the alleged violation of § 7551(j) regarding the City's noncompliance with posting requirements.



Anthony Albence
State Election Commissioner