



STATE OF DELAWARE
OFFICE OF THE STATE ELECTION COMMISSIONER

ELAINE MANLOVE, STATE ELECTION COMMISSIONER

January 30, 2014

Mr. Gregory S. Welch
13 Thatcher Street
Frankford, DE 19945

Ms. Terry Truitt
5 Main Street
Frankford, DE 19945

Re: Welch Appeal of Board of Frankford Decision

Dear Mr. Welch and Ms. Truitt:

This is my decision on Mr. Welch's appeal of the January 16 (oral)/January 18 (written) decision (attached) of the Frankford Board of Elections ("Board") on the January 9, 2014 complaint filed by several incumbent Board members. Exhibit Frankford 1 (attached). That complaint challenged the candidacy of Mr. Welch and the Board decision was to remove Mr. Welch from the ballot for the February 1 Frankford election.

SUMMARY OF THE EVIDENCE

Mr. Welch testified that, in his view, the advertised voter registration and candidacy filing deadlines were not legally established. He believes he has been registered to vote in the Frankford election for over 10 years. He concedes that the only communication Frankford has given him in regards to his registration was a January 9, 2003 letter instructing him to provide an affidavit affirming the Thatcher road address as his residence. He concedes that he never filed any such affidavit and never made an attempt to register after 2003 because he believes that he is already registered to vote.

Ms. Truitt testified that the Board posted notice of the January 16 hearing both on its website and at its offices, pursuant to 29 *Del. C.* § 10004(e). Exhibit Frankford 2. The Board also personally notified

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Mr. Welch of the public meeting on his candidacy by email dated January 15, 2014. The Board ruled that Mr. Welch is not entitled to stand for election on February 1 because he is not a 'qualified registered voter' under the Frankford Charter. January 18, 2014 Board decision ("Board decision").

Ms. Truitt testified that she used the state imposed notice requirements for municipal elections and counted backward to set the deadlines implicitly created under state law to enable municipalities to meet the deadlines mandated under state law. So, for example, Frankford must post its Notice of Election of the February 1 election, which includes candidate names, no fewer than 20 days before the election. Frankford publishes its notice of election in one or more local newspapers and so, to meet press deadlines, Frankford must prepare its Notice of Election by January 7, 2014. Thus, Frankford imposed a filing deadline for candidates of January 6, 2014.

Ms. Truitt testified that Frankford interprets its charter to require that voters in the February 1 election have registered to vote at least 30 days before that election.

Ms. Truitt invited Mr. Welch to register immediately upon the close of the hearing, although that registration would not be effective in the February 1 election, and handed him registrations forms for both Mr. Welch and his wife. Mr. Welch did not fill out a registration form before leaving my office.

FINDINGS OF FACT

Based on the testimony, which is largely undisputed, I find as follows:

1. Mr. Welch has never registered to vote in the Frankford elections. When asked to provide an affidavit in 2003 based on a residency issue, Mr. Welch did not provide any affidavit and, in the intervening 11 years, he has made no attempt to register to vote in the Frankford election.
2. The Board timely noticed its January 16 hearing both on its website and at the Frankford municipal office. The Board also personally notified Mr. Welch of the public meeting on his candidacy by email dated January 15, 2014.
3. Frankford calculated its cut-off date for candidates to file to run for office by counting backwards starting with the mandatory notice period imposed under 15 *Del. C.* § 7553.

CONCLUSIONS OF LAW

Based upon my findings of fact, I conclude as follows:

1. Mr. Welch is not a qualified candidate because he never registered to vote in Frankford elections.
2. Shortly after the 2012 Frankford election, the General Assembly amended the Frankford charter to both simplify and clarify it. As amended, the Frankford charter reads:

Every person who is a citizen of the United States; is at least eighteen (18) years of age; *has resided within the corporate limits of the Town for at least thirty (30) days prior to the next Town election; and is registered as required by law*, shall be a qualified voter of the Town. Every qualified voter of the Town shall be entitled to vote in any or all Town elections. (emphasis added)

Frankford reads this language to impose the requirement that a person register at least 30 days before the election. This reading is flawed. Based on the plain language of the Frankford charter, the 30-day requirement applies to residency only. Thus, the Frankford decision to require that persons register to vote 30 days or more prior to the Frankford election is without a legal foundation.

3. Frankford's calculation of the candidate filing deadline was neither arbitrary nor capricious. The deadline flows directly from the mandatory notice requirements and Freedom of Information Act requirements laid out in 15 *Del. C.* § 7553.¹

DECISION OF THE COMMISSIONER

For reasons that are unclear, Mr. Welch appears to be unwilling to register to vote in the Frankford election. Although he admits that he never followed the instruction in 2003 to produce an affidavit on residency, or made any other attempt to register after 2003, he nonetheless thinks he is registered to vote. Moreover, this is not Mr. Welch's first appeal of the Board's refusal to place his name on the ballot. Mr. Welch's registration was an issue in that hearing as well as the hearing now under consideration. Mr. Welch's refusal to simply fill out the required registration card drives the outcome of this case.

I am troubled by Frankford's view that its charter requires persons to register 30 before the election. It is possible that persons who wished to vote or run as a candidate relied on this incorrect deadline and so were prejudiced. Moreover, this incorrect deadline may have created a barrier to voting, which is exactly the concern I expressed in my 2012 opinion. In this particular case, however, since Mr. Welch is firmly of the view that he is already registered, the incorrect deadline simply did not prejudice him.

For these reasons, I uphold the decision of the Frankford to reject the candidacy of Mr. Welch in the February 1 election. I urge Frankford to cease enforcing a 30 day registration requirement and adopt a

¹ I do note that nothing in state law *requires* that a municipal Notice of Election be published in any newspaper; the Freedom of Information Act requires posting on the entry to places of business and municipal websites only. See 15 *Del. C.* § 7553 and 29 *Del. C.* § 10004(e)(4). State law expressly *permits* such publication. *Id.*

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deadline for voter registration that maximizes the opportunity to register to vote while giving Frankford the time it needs to properly administer its election. I note that Frankford is certainly entitled to require that candidates be registered voters when they file their papers to run for office.

Very truly yours,



Elaine Manlove
State Election Commissioner

Attachments: Exhibit Frankford 1
Letter from Board of Elections dated January 18, 2012

Cc: Kenneth McDowell, Director, Dept. of Elections for Sussex County
Jean Turner, Deputy Director, Dept. of Elections for Sussex County
Ann Woolfolk, Deputy Attorney General

received
1/9/2014
@ 5:20pm

January 9, 2014

Frankford Board of Elections
P. O. Box. 550
5 Main Street
Frankford, DE. 19945

RE: Request for a formal review on the eligibility on Candidate Greg Welch in the February 1, 2014 Town of Frankford Election.

Dear Board Members,

We the three under signed individuals/ candidates are contesting the eligibility of candidate Greg Welch to run for Frankford Town Council. It is our understanding that he has filed a "Certificate of Intention" form for the purpose of running for office of Town Council. We feel as though Mr. Welch is not compliant to the eligibility requirements as set forth in the amended Town Charter. The purpose of the amendment was to clarify the definition of a qualified and registered voter to being all one in the same. Currently, Mr. Welch is not a registered voter of the Town.

We respectfully request an investigation and determination of his eligibility as soon as possible.

Thank you,

Jesse Truitt 1/8/14
Jesse Truitt
Pamela Davis 1/8/14
Pamela Davis
Charles Shelton 1/8/14
Charles Shelton

Frankford 1

Frankford Town Council

5 Main St., P.O. Box 550
Frankford, Delaware 19945
(302) 732-9424

January 18, 2014

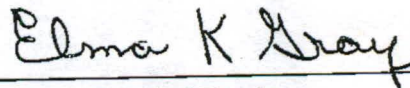
Greg Welch
13 Thatcher Street
Frankford, DE. 19945

Re: Candidacy

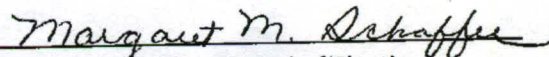
Dear Mr. Welch,

This is to inform you that your potential candidacy for the upcoming Town of Frankford election has been formally reviewed by the members of the Board of Election at a public hearing held on Thursday, January 16, 2014. As a result of the review it was determined that you are not a "qualified registered voter" of the Town of Frankford as defined by the amended Frankford Town Charter. Therefore you are ineligible to be a candidate in the upcoming Town election scheduled for Saturday, February 1, 2014. You are encouraged to register at your earliest convenience.

Sincerely,



Elma Gray, Board of Election
Town of Frankford



Margaret M. Schaffer, Board of Election
Town of Frankford



Pamela Hoban, Board of Election
Town of Frankford

Cert. Mail #70112970000036749576