



STATE OF DELAWARE
DEPARTMENT OF ELECTIONS
OFFICE OF THE COMMISSIONER

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Mr. Douglas Williamson
602 Dovenest Court
Middletown, DE 19709

Dear Mr. Williamson:

As I am sure you are aware, an appeal hearing was held on Friday, April 3 in my office. Please read below for the decision.

Pursuant to 15 Del. C. section 7552, an appeal was filed by Douglas Williamson and Jeff Bruette to the Commissioner of Elections seeking a review of a decision by the Board of Elections of Middletown, Delaware, following a hearing at which it considered a complaint concerning pre-election procedures in Middletown's election held on March 26, 2009. This is the decision of the Commissioner of Elections following that hearing.

SUMMARY OF THE EVIDENCE

A complaint was filed by residents of the Town of Middletown concerning decisions made by the town in regard to its annual election. The Middletown Town Charter states that an annual election is to be held on the first Monday of March. Pursuant thereto, the Town scheduled its election for Monday, March 2, 2009. However, a snow storm occurred that day resulting in the closure of State offices and the Town decided to postpone the election until March 3, the following day. An election was conducted on March 3, resulting in the election of the incumbent Mayor and two incumbent council members, as well as Charles Dixon, who won a third council seat. A complaint was filed regarding the holding of this election without sufficient notice and the Board of Elections agreed and rescheduled the election for March 26. At that election, the same persons were elected.

The complaint was then filed challenging the election of March 26. The complaint stated that the Town Charter mandates that the annual election be held on the first Monday of March and the Board had no authority to schedule it on a different day. It noted that the Charter stated

that if an election were not held on the appointed day, those in office would continue to hold office "until the next general municipal election." The complainants believed that this required the incumbents to remain in office until the following first Monday in March when another election could be properly held.

The Board met and considered the complaint and ruled that the election of March 26 was valid. It held that the Charter provides for an election every year and upholding the complaint would deny residents their right to choose their officials for an entire year. It also ruled that canceling the 2009 election would result in all council seats being up for election in 2010, which would violate the Charter's provisions calling for staggered terms for council. It felt the Charter had to be interpreted in a way that best preserves the rights of its citizens and concluded that holding the election on March 26 was the best way to do that.. It believed the safety of citizens could have been compromised by holding an election during the snow storm and believed that it lacked the authority to cancel an election for an entire year. This appeal to the Commissioner followed.

At the hearing, Mr. Jeff Bruette appeared for the complainants. Mr. Bruette is not a resident of the Town on Middletown; however, he presented a letter from complainant Douglas Williamson, who is a resident and who could not attend the hearing, asking permission for Mr. Bruette to represent him. The Commissioner granted that request.

Mr. Bruette argued that the Charter's requirement that the annual election be held on the first Monday in March is mandatory and there can be no exception to it. He noted that officers are to be elected to two year terms and if the election of March 26 were upheld, the terms of those elected would not expire until several weeks after the next election would be held. He noted that the holder of one council seat had resigned, and said the Town could therefore appoint Mr. Dixon, the apparent winner of that seat in the election, to that seat and end up with the very same office holders without violating the Charter's requirement that the election be held on the first Monday. He noted that the Town was unable to notify all voters that the March 2 election was being cancelled and various voters appeared at polling places ready to vote but the polls were closed. He noted that 15 Del. C section 7550 said that the election should be held on the date called for in the charter which again is the first Monday in March. He stated that under the law, the Board of Elections may oversee an election, but has no authority to change the date called for in the Charter. He argued that there is no discretion granted in the state statute or in the Town Charter to change the date and it therefore must be followed.

Erin Fitzgerald, Esquire, appeared on behalf of the town. She agreed that the Charter calls for an annual election on the first Monday in March, but noted that the Town Charter also requires that terms of council members be staggered so that three are elected to two year terms each year. To cancel the 2009 election because it is no longer possible to hold it on the first Monday would mean that the Charter's requirement of holding an annual election could not be satisfied. In addition, having all members stand for election next year would violate the section calling for staggered terms. She also stated that those who won election on March 26 would actually serve terms of slightly less than the two years called for in the Charter so that they would be eligible for election once again on the first Monday of March, 2011.

In short, once the election was cancelled, there was no way to have every section of the Charter remain literally effective. She argued that under case law, when the literal wording of a law would result in an absurd result, it was permissible to not follow the literal reading. In addition, the law requires that the overall intent of the Charter be given effect and that the actions taken by the Town here accomplished that.

Ms. Kristen Krenzer testified that she worked on amending the Town's Charter recently to update it. She believed that the section calling for council members to retain authority if an election was not held had long been part of the Charter and was due to the fact that often in Middletown, no one had filed to run for an office and so incumbents would remain in office until the next election. She did not foresee circumstances such as a snowstorm causing a cancellation, or provisions to cover that contingency might have been adopted.

Mr. Bruette argued that the only valid way to have an election is to schedule it for the first Monday in March, 2010. It was noted that this would mean all six members of council would then be elected --- the three who would normally be elected then and the three who should have been elected in 2009. Presumably, all six would then be elected to two year terms (2010-2012) and there would be no annual election held in 2011. Yet as mentioned above the Charter also requires an election every year. At the hearing Mr. Bruette recognized that not all charter requirements can be met in this way, but he believed the rule regarding the election being held the first Monday in March cannot be altered, and, therefore, anything following from that cannot be helped. He noted note that the Charter could be amended in the near future to deal with these issues.

FINDINGS OF FACT

The Middletown election was scheduled for March 2, 2009. It was cancelled due to a snow storm occurring that day. The Town held an election on March 26. There is no way to reconcile every provision of the Town's Charter under these circumstances. For example, it requires holding an election every year, but it also requires holding an election on the first Monday in March, which was not done. If the election were rescheduled, as it was, the requirement that it be held on the first Monday cannot be honored. If the election were canceled, the requirement of an annual election cannot be honored. The Charter also requires staggered terms for council members which cannot be accomplished if all members are elected in 2010.

CONCLUSIONS OF LAW

The Middletown Charter calls for the Mayor and three council members to be elected in odd numbered years and three council members to be elected in even numbered years. The Charter states that the annual election is to be held the first Monday in March. Section two of the Charter states that a failure to hold an election on the day appointed shall not dissolve the corporation, but the authority of each officer shall continue until the next general municipal election. Section 3 of the Charter authorizes the Mayor and Council to exercise all powers necessary to the proper administration of the government, whether said powers are expressly enumerated or not.

Under Coastal Barge Corporation v. Coastal Zone Industrial Control Board, Del. Supr., 492 A.2d 1242 (1985), the fundamental rule of applying the law is to ascertain and give effect to the intent of the legislature. If a statute is ambiguous, the Court must rely on methods of statutory construction to arrive at what the legislature intended. Ambiguity can arise when giving a literal interpretation to a statute's words leads to an unreasonable or absurd consequence, so as to compel a conviction that they could not have been intended by the legislature. Under Bartley v. Davis, Del. Supr., 519 A.2d 662 (1986), a decision must sometimes be made as to whether the terms of a statute are mandatory or merely directory. Even if a statute states that something "shall" be done, that does not control the issue of legislative intent if the context and purpose suggest otherwise. See also, Law v. Developmental Child Care, Inc., Del. Super., 523 A.2d 557 (1987).

DECISION OF THE COMMISSIONER

The Commissioner recognizes that there is no way to reconcile every provision of the Charter under current circumstances. It is more important to have an annual election than it is to have an election on a certain day. In the Commissioner's view, the drafters of the Charter wanted an election to be held every year and for members to have staggered terms. Placing the election on the first Monday in March is directory. It should normally be held on that date, but, when circumstances prevent that, the Town has the authority to hold the election on another day. It is far more important to have regular elections than to adopt a literal reading of a certain section which would result in other, more important, sections being ignored.

The Commissioner also agrees with the Town's intent to have the persons who will be sworn into office as a result of the March 26 election stand for re-election on the first Monday in March, 2011. They will not serve an exact two year term, but this makes far more sense than having them serve full two year terms which would cause them to remain in office for several weeks after the 2011 election.

Under the powers granted by section 3 of the Charter, the Town had the power to cancel the election because of the snow storm and also had the power to reschedule the election, as this was necessary to the proper administration of the government.

If you have any questions, please contact me.

Very truly yours,



Elaine Manlove
State Election Commissioner

Cc: Robert Willard – Deputy Attorney General
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