

LEGAL NOTICES

SALE #23
2001-219

OCWEN FEDERAL BANK, FSB
VS.
DENNIS L. AND DELORES E. KENDALL
ATTY: MARK J. UDREN, ESQ.

All the lot of ground lying and being situate in Washington Township, Franklin County, Pennsylvania, having a street address of 5761 Marsh Road, Waynesboro, PA 17268. Property ID No.: Q-10-36.

SALE #24
2001-374

CHASE MANHATTAN BANK
VS.
ERIK L. AND TINA L. PERVIANCE
ATTY: MARK J. UDREN, ESQ.

All that real estate lying and being situate in Greene Township, Franklin County, Pennsylvania, having a street address of 2865-2867 White Church Road, Chambersburg, PA 17201, and being more fully described in Franklin County Deed Book Volume 1444, Page 268. Property ID No.: 326-C-19.

SALE #25
1999-20489

NORWEST MORTGAGE INC.
VS.
EDWARD J. AND BONNIE L. BINGAMAN
ATTY: MARK J. UDREN, ESQ.

All the following described real estate lying in Waynesboro Borough, Franklin County, Pennsylvania, having a street address of 134 Cleveland Ave., Waynesboro, PA 17268, and being more fully described in Franklin County Deed Book Volume 1323, Page 217. Tax Parcel #5C-8.

SALE #26
2001-152

WELLS FARGO BANK MINNESOTA
VS.
DENNIS L. AND DELORES E. KENDALL
ATTY: MARK J. UDREN, ESQ.

All the real estate lying in Waynesboro Borough, Franklin County, Pennsylvania, having a street address of 202 W. North St., Waynesboro, PA 17268, and being more fully described in Franklin County Deed Book Volume 748, Page 796. Property ID No. 5A-64-35.

SALE #27
1999-941

MAYOR AND TOWN COUNCIL OF THE BOROUGH
OF CHAMBERSBURG
VS.
RALPH G. CROTTY
ATTY: FINUCANE LAW OFFICES

All that certain real estate lying in Chambersburg Borough, Franklin County, Pennsylvania, having a street address of 420-422 N. Second St., Chambersburg, PA 17201, and being more fully described in Franklin County Deed Book Volume 928, Page 242.

SALE #28
2000-260

CONSECO FINANCE CONSUMER DISCOUNT
COMPANY
VS.
TROY E. BIGLER
ATTY: ERIN P. DYER, ESQ.

All that certain lot or piece of ground with buildings and improvements thereon erected, located in Southampton Township, Franklin County, Pennsylvania, having a street address of 542 Jonathan St., Shippensburg, PA 17257, and being recorded in Franklin County Deed Book Volume 1280, Page 67. With a mobile home situate thereon which is subject to a separate Certificate of Title and is not included in the Sheriff's Sale. Tax Map Number: N-17-23.

SALE #29
2000-1891

KEYSTONE FINANCIAL MORTGAGE
CORPORATION
VS.
DANIEL M. AND LYNN M. PACHOWICZ
ATTY: FRANK FEDERMAN, ESQ.

All the real estate lying in Washington Township, Franklin County, Pennsylvania, having a street address of 11881 Rinehart Drive, Waynesboro, PA 17268, and being recorded in Franklin County Deed Book 1382, Page 236. Tax Parcel #23-Q12-171.

TERMS

As soon as the property is knocked down to purchaser, 10 percent of the purchase price or 10 percent of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10 percent payment is not made as requested, the Sheriff will direct the auctioneer to resell the property. The balance due shall be paid to the Sheriff by NOT LATER THAN June 18, 2001, at 4 p.m. prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on June 22, 2001, at 1 p.m. prevailing time, in the Franklin County Courthouse, Jury Assembly Room, Chambersburg, Franklin County, Pa., at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.

Robert B. Wollyung, Sheriff
Franklin County
Chambersburg, Pa.

5/18,5/25,6/1/2001

IN RE NOMINATION PETITION OF JASON BITNER, a/k/a JASON M. BITNER, and IN RE NOMINATION PETITION OF CARL W. HELMAN, C.P. Franklin County Branch, Civil Action, Nos. 804 and 805 of 2001

Election — Ethics Act — Filing Requirements — Statement of Financial Interest

1. Candidates must file two statements of financial interests, one attached to their nominating petition and one to the governing body of the political subdivision in which he is a candidate.
2. Both statements of financial interests must be filed on or before the last day for filing a petition to appear on the ballot for election.
3. If a candidate fails to file both statements of financial interests within the prescribed timeframe, it is a fatal defect and his or her name may not thereafter appear on the primary ballot.
4. Candidates for Borough Council must file a statement of financial interests with their nominating petitions and with the Borough Secretary.

Appearances:

Patrick J. Redding, Esq., Counsel for Petitioners
Carl W. Helman, Respondent
Jason M. Bitner, Respondent

OPINION

Walker, P.J., March 30, 2001

Procedural Background

On March 12, 2001, Petitioners Theresa Johnson and John A. Redding Jr. filed objections to the nominating petitions of Carl W. Helman and Jason M. Bitner. This court then presided over a subsequent evidentiary hearing on March 27, 2001.

Standard of Review

As challenges to nominating petitions must overcome their presumption of validity, the burden is upon the petitioner to demonstrate that the respondents' petitions are invalid. See *Smith v. Brown*, 139 Pa.Cmwlt. 304, 590 A.2d 816 (1991); *In re Nominating Petition of Williams*, 155 Pa.Cmwlt. 494, 625 A.2d 1279, 1280 (1993).

Findings of Fact

1. Election packets prepared by the Franklin County Board of Elections were made available to all those seeking candidacy in the May 2001 municipal primary.

A. The election packets contained a blank statement of financial interests (to be completed by the candidate), which reveals on page four (4) that candidates for borough offices must file the statement with the clerk/secretary in the municipality of candidacy on or before the last day for filing a nominating petition.

B. The packets also contained a detailed informational sheet which conveyed on page nine (9) that those seeking candidacy for local office must file a statement of financial interests with the governing authority of the political subdivisions in which they are candidates (i.e. township office, borough hall, school administration office, etc.) no later than the last day for filing a nominating petition.

2. The last day for filing a nominating petition for the May 2001 municipal primary was March 6, 2001.

3. Respondent Carl W. Helman, seeking to become a candidate for the office of Borough of Chambersburg Town Councilman in the May 2001 municipal primary, filed his nominating petition and statement of financial interests with the Franklin County Board of Elections on March 5, 2001. He thereafter filed a statement of financial interests with the Chambersburg Borough secretary on March 7, 2001.

4. Respondent Jason M. Bitner, seeking to become a candidate for the office of Borough of Chambersburg Town Councilman in the May 2001 municipal primary, filed his nominating petition and statement of financial interests with the Franklin County Board of Elections on March 1, 2001. He thereafter filed a statement of financial interests with the Chambersburg Borough secretary on March 16, 2001.

Discussion

Petitioners maintain that respondents are ineligible for candidacy in the May 2001 municipal primary because neither filed a statement of financial matters with the Chambersburg Borough secretary until after the prescribed deadline. At the March 27 hearing, both respondents conceded that their statements were not timely filed with the Borough secretary. However, they basically assert that the second filing requirement is a pure

technicality, particularly since both filed timely statements with their nominating petitions.

The appropriate legal standard is 65 Pa.C.S.A. §1104(b)(2) and (3), contained within the Ethics Act, which provide as follows:

(2) Any candidate for county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

(3) No petition to appear on the ballot for election shall be accepted by the respective State or local election officials unless the petition has appended thereto a statement of financial interests as set forth in paragraphs (1) and (2). ***Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot.***

65 Pa.C.S.A. §1104(b)(2)-(3) [emphasis and italics added].

The Act, at §1104(b)(2), discloses that there are two locations a candidate must file his or her statement of financial interests. First, it must be attached to the nominating petition and filed with the county election board. Next, it must be filed with the “governing authority of the political subdivision in which the individual is a candidate.” On its face, the statute obviously requires that candidates separately file two separate statements, and our case law has interpreted as such. “Attaching a copy of the statement to the nominating petition alone and filing it with the county election board will obviously not satisfy **both** filing requirements under the Ethics Act.” *In re Petition of Capra*, 693 A.2d 647, 648 (Pa.Cmwlt. 1997) [emphasis and italics added]. Instantly, respondents filed timely statements attached to their nominating petitions with the county election board, but neither filed any other statements prior to the March 6, 2001, deadline.

It appears there may have been some confusion by respondents as to the location of the office of the “governing authority” for the purposes of the Act, and that they ostensibly presumed that the county board of elections and the “governing authority” were one in the same. While the court agrees that the phrase “governing authority of the political subdivision” should probably be re-drafted or appropriately defined within the Act, we must

observe that §1104(b)(2) nevertheless clearly requires two distinct filings and both respondents filed only one. Further, as a matter of law, the “governing authority” for those seeking borough-wide candidacy is the borough council, by and through the offices of its borough secretary. In *Capra*, for example, three (3) Lackawanna County candidates for the Dickson City borough council timely filed their statements of financial interests with the county election board, but “filed” their subsequent statements by handing them to incumbent borough council members. *Id.* at 1169. Upon review of the Ethics Act, Election Code and Borough Code, the Commonwealth Court concluded that the statements of financial interest were not filed properly because they should have been “presented to the clerical staff on duty during regular business hours at the *borough Municipal Building.*” *Id.* at 1177 [italics added].

Thus, it is clear that both respondents have not complied with §1104(b)(2) and that (b)(3) mandates that their names be stricken from the May 2001 ballot. Prior to 1989, such a procedural/technical oversight did not have the same draconian consequence it currently carries. Indeed, in *Commonwealth v. Baldwin*, the Pennsylvania Supreme Court held that failure to timely file a statement of financial interests with the local governing body was not fatal to a candidate’s petition, but curable if the information was subsequently made available in a timely manner. *Commonwealth of Pennsylvania, State Ethics Commission v. Baldwin*, 498 Pa. 255, 445 A.2d 1208 (1982). Under *Baldwin*, respondents would therefore remain on the May 2001 ballot. In 1989, however, our General Assembly amended the Ethics Act and “foreclosed the possibility for curing by amendment the untimely filing of a financial interests statement with the local governing authorities, and by the same token foreclosed our inquiry into the individual circumstances which may have contributed to the untimely filings.” *In re Petition of Cioppa*, 533 Pa. 564, 622 A.2d 146 (1993).

Conclusion

The court must resolve an election dispute, but thankfully, has not been asked to examine thousands of ballots to determine voters’ intent by way of hanging or dimpled chads. Instead, we have been given the almost effortless task of determining whether respondents filed their statements of financial interests in a timely manner. They did not. There is no question that the instant action is the product of political hardball; petitioners, after all, are the potential opponents of respondents. Respondents may rightfully feel peeved or frustrated given their current predicaments, but after reflection

they will surely conclude that their own errors handed their opponents this opportunity. Respondents were not tricked or duped; they simply dropped the ball. The law is relatively straightforward inasmuch as the filing requirements and deadline are to be strictly observed, notwithstanding respondents’ good faith and conformity with the overall spirit of the Act.

As a final note, the court recognizes that all parties to this action have figuratively draped themselves in our flag, with respondents exhorting the importance of a “free and democratic society” and eschewing the disenfranchisement of voters in the respective voting wards. But paramount in our free and democratic society is the **rule of law**, and our General Assembly, duly elected as representatives for the citizenry of this Commonwealth, has the authority and duty to enact those laws. It is then the more limited duty of the judicial branch of government to apply the laws our legislature has drafted. In the case at bar, petitioners must prevail because our legislature has resolved that a candidate’s failure to comply with the filing requirements in the Ethics Act is unjustifiable. Despite this court’s sympathy to respondents’ dilemma and its admiration of their willingness to commit to public service, this court will not, must not and cannot change or ignore the laws our legislature has enacted, lest we unconstitutionally usurp their authority and violate one of the most fundamental of principles in this free and democratic society.

ORDER OF COURT

March 30, 2001, the court having considered Petitioner Theresa Johnson’s objection to the nominating petition of Carl W. Helman, Petitioner John A. Redding Jr.’s objection to the nominating petition of Jason M. Bitner and the applicable legal standards, it is hereby ordered that the nominating petitions of Carl W. Helman and Jason M. Bitner are set aside, as the respondents have failed to timely file a statement of financial interest pursuant to 65 Pa.C.S.A. §1104(b)(2). It is further ordered that the Franklin County Board of Elections shall not place the names of Carl W. Helman and Jason M. Bitner on the official ballot for the May 2001 municipal primary election as candidates for Borough of Chambersburg, Pennsylvania, Town Councilman.