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## **IN RE: NOMINATION PETITION OF GARY L. HECKMAN, Franklin County Branch, Civil Action - Law Misc. CC, Page 71**

*Objection to nomination petition of prospective candidate for township supervisor; need to timely file a Statement of Financial Interests; Public Official and Employee Ethics Act, 65 P.S. sections 401-413; Pennsylvania Election Code, 25 P.S. section 2913.*

1. A prospective candidate for public office must comply with the Public Official and Employee Ethics Act which requires him to timely file a Statement of Financial Interests.
2. The purpose of the Ethics Code requirement of full financial disclosure by prospective office holders is to avoid conflicts of interest and reaffirm confidence in the integrity of public officials.
3. Failure to timely file the Statement of Financial Interests is fatal to a candidate's nomination petition; evidence of circumstances surrounding the failure to timely file cannot be used to cure even a technical error.
4. A prospective candidate's nomination petition must be set aside where he did not file his Statement of Financial Interests until one day after the filing deadline despite having received a packet of written instructions from the County Board of Elections which clearly set forth the deadline in three separate sections.
5. A prospective candidate cannot reasonably rely on any alleged oral instructions by a Board of Elections employee as to when he should file his Statement of Financial Interests where he conceded he obtained the packet of written instructions pertaining to his nomination petition the day before the deadline but did not review the section pertaining to the need to timely file the Statement of Financial Interests.

*Eileen C. Finucane, Esquire, Counsel for Petitioner  
J. McDowell Sharpe, Esquire, Counsel for Respondent  
Franklin County Board of Elections*

### **OPINION AND ORDER**

Herman, J., March 24, 1997:

The petitioner, Paul D. Ambrose, a qualified elector, residing in Greene Township, Franklin County, Pennsylvania, has timely filed an objection to the nomination petition of Gary L. Heckman, a prospective candidate for the office of Greene Township Supervisor. Mr. Ambrose properly served the petition on Mr. Heckman. There is also attached to the petition, a certificate of service signed by counsel for Mr. Ambrose indicating service as required by law on the Franklin County Board of Elections. The Court held an evidentiary hearing on the petition on March 20, 1997 and the matter is now ready for decision. Mr. Ambrose seeks to set aside the candidacy of Mr. Heckman on grounds that Mr. Heckman failed to comply with the requirements of the Public Official and Employee Ethics Act (hereinafter "Ethics Act") 65 P.S. Section 401-413. Specifically, Mr.

Ambrose claims Mr. Heckman failed to timely file a Statement of Financial Interests required by Section 404(b)(2) of the Ethics Act.

### DISCUSSION OF THE EVIDENCE

The evidence presented at the hearing shows Mr. Heckman timely filed his nomination petition with the County Board of Elections on March 11, 1997 with the required Statement of Financial Interests attached in accordance with Pa. Election Code 25 P.S. Section 2913, 65 P.S. 404(b)(3). However, Mr. Heckman does not dispute and the evidence clearly shows that he failed to comply with Section 404(b)(2) of the Ethics Act in that he did not file the required Statement of Financial Interests with the governing authority until March 12, 1997, one day after the deadline.

Mr. Heckman testified that he filed his petition with the County Board of Elections on March 3, 1997 at about 3:00 p.m. He presented the petition to a county employee and advised her this was the first time he had ever ran for public office and he needed some assistance. Mr. Heckman recalls that the employee gave him a copy of the Statement of Financial Interests and advised him that it had to be filed with the Secretary of the Greene Township at the township supervisor's office. He inquired as to when and according to his recollection he was advised to do this within the next day or two. He testified if he had been told it had to be filed no later than the close of business on March 11, 1997, he could have complied with that requirement.

At the hearing Mr. John Hart, Chief Clerk of Franklin County and Administrator of the County Board of Elections, testified generally as to how the County Board of Elections handles prospective candidates for public office. Candidates are given a packet which includes all the necessary forms such as the Nomination Petition and the Statement of Financial Interests. Included in this packet is a set of instructions generated by the County Board of Elections to assist candidates. A copy this set of instructions was admitted into evidence as petitioner's Exhibit #1.

Mr. Heckman presented evidence from Deborah K. Hummer the Franklin County employee assigned to assist candidates in filing petitions as a function of the County Board of Elections. She recalled that she accepted the petition of Mr. Heckman because she

remembered the name. She could not recall specifically assisting him or any particular conversation. She recalled generally advising prospective candidates about the necessity of filing the Statement of Financial Interests as soon as possible.

### DISCUSSION OF THE ISSUE AND THE LAW

Petitioner Paul D. Ambrose argues that Mr. Heckman's nomination petition should be set aside and his name should not appear on the ballot during the upcoming 1997 May Primary Election. Specifically, Section 404(b)(2) of the Ethics Act requires:

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.

In this case the parties agree the deadline for filing for the 1997 Primary Election is March 11, 1997. In essence, Mr. Ambrose would have the Court hold "time is out" for Mr. Heckman just the same as in the ninth inning of a baseball game, after two outs and the third strike is called on the batter. The opportunity to compete is over.

However, Mr. Heckman argues that there is a longstanding and overriding policy recognized in the Election Code which is designed to protect the citizen's right to vote. He points out that Section 2937 of the Election Code provides the Court with discretion to permit the prospective candidate to amend the nomination petition to cure material errors or defects with the petition or accompanying documents. 25 P.S. Section 2937, see also *In re: Fairview Associates, Inc.*, 61 Pa. Commw. 404, 433 A.2d 929 (1981). Furthermore, where's the harm? The information required by section 404 of the Ethics Act was available to the voters for review one day after the deadline. The purpose of this requirement is set out in Section 401. We quote in part . . . "to strengthen the faith and confidence of the people of the State in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of nominees or candidates for public office do not conflict with the public trust." [65 P.S. 401]. There is more than adequate time for voters interested in Mr.

Heckman's candidacy to review this financial information. No harm, no foul? Mr. Heckman is correct in observing that generally the Election Code and the Court's interpretation of that Code favors a prospective candidate's right to run for office and the voter's right to elect a candidate of their choice.

In applying this policy to the instant case, the Court finds guidance from the Pennsylvania Supreme Court. In 1982 the Pennsylvania Supreme Court decided a case that is factually similar to the circumstances of the present case. *Commonwealth of Pennsylvania, State Ethics Commission vs. Baldwin*, 498 Pa. 255, 445 A.2d 1208 (1982). Therein, the Supreme Court determined in the absence of evidence of deliberate fraud or intention to deceive, failure to file the required Statement of Financial Interests was not fatally defective. The Supreme Court confirmed the purpose of the Ethics Code requirement that full financial disclosure by prospective office holders helps the citizenry avoid conflicts of Interests and reaffirms confidence in the integrity of public officials. But, if the failure to disclose is brought about by carelessness or lack of due diligence, the purposes of the Ethics Act are nonetheless satisfied if the information is made available in a timely manner. In the *Baldwin* case the prospective candidates were permitted to go on the ballot even though their Statements of Financial Interests had not been timely filed.

More recently the Supreme Court had another opportunity to visit this issue. *In re: Petition of Cioppa*, 533 Pa. 564, 622 A.2d 146 (1993). Chief Justice Nix observed that since the time of the *Baldwin* decision in 1982 the General Assembly re-enacted the Ethics Act in 1989. Specifically, the following language was included: "Failure to file the [Financial Interests] statement in accordance with the provisions of this act shall . . . be a fatal defect to a petition to appear on the ballot." 65 P.S. Section 404(b)(3). The language of the General Assembly is undeniably clear and in contrast to the previous Act in effect at the time of the *Baldwin* decision. The Pennsylvania Supreme Court had an opportunity to discuss whether or not under the mandate of the new Act such a defect could be cured as in the past. The Supreme Court concluded that . . . "the General Assembly 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*, supra.

No matter how much this Court may be offended by the idea of removing the choice from the voters of Franklin County we must nonetheless follow the law. Mr. Heckman argues that the Supreme Court's decision in *Cioppa* does not limit this Court's discretion to allow amendment and cure under circumstances where it is proven the prospective candidate relied on misstatements or misdirection of election officials. Specifically, Mr. Heckman argues that he was diverted by the advice of Election Board Officials from filing the required Statement of Financial Interests on time. The evidence is contradictory in this regard. The official of the County Election Board does not recall giving specific advice to Mr. Heckman. Assuming arguendo that incorrect information was given to Mr. Heckman under the authorities cited by Mr. Heckman in *In re: Fairview Associates, Inc.*, supra, the Court must still find prospective candidate reasonably relied on these misrepresentations or incorrect information. Under the circumstances of this case, the evidence shows specific directions concerning the requirement to file the statement appeared in no less than three different written instructions given to the candidate in the packet obtained prior to the filing date. The general instructions provided by the County Board of Elections contained two very clearly written paragraphs giving precise and easily understood instructions on the filing of the statement and the consequences of failure to file in accordance with the Ethics Act. These instructions again appear on the reverse side of the Statement of Financial Interests itself and in the affidavit on the reverse side of the nomination petition printed in contrasting red type. Mr. Heckman testified that he obtained the packet the day before the filing deadline and went over everything in the packet briefly. He acknowledged receipt of the instructions and reviewed them briefly. He testified he did not read the instruction part of the Statement of Financial Interests. He signed one or more of the affidavits or documents in the presence of the County Board of Elections official before whom he appeared. He clearly had an adequate opportunity to inform himself of the requirements for running for public office. While we sympathize with the plight of the citizen who is faced with these seemingly insurmountable bureaucratic obstacles when running for office for the first time, the importance of these requirements and rules cannot be overlooked. In light of the *Cioppa* case, we doubt the

validity of the holding in *In Re: Fairview Associates, Inc.*. However, in the event the Court is wrong, we believe Mr. Heckman is solely responsible for his failure to comply with the Ethics Act and did not reasonably rely on any representations made by an employee of the Franklin County Board of Elections.

Finally, Mr. Heckman's counsel raises a claim that Mr. Ambrose's own petition to set aside Mr. Heckman's nomination petition did not comply with the mandate of the Election Code. This issue was not raised or argued at the hearing held on March 20, 1997. However, we will address it at this time. Mr. Heckman claims that Mr. Ambrose did not prove at the hearing held in this matter that Mr. Ambrose complied with the requirement that the petition to set aside the nomination was served on the Franklin County Board of Elections as a required by Section 2937 of the Pennsylvania Election Code.

It is true there was no evidence presented as to service at the hearing. However, attached to Mr. Ambrose's petition is a certificate of counsel indicating service was made on the Franklin County Elections Board. In addition we note officials from the Franklin County Elections Board appeared at the hearing on March 20, 1997 and testified in the matter. The purpose of the requirement for service on the County Elections Board is to alert the Board that the right of a prospective candidate to appear on the ballot is being contested and it will be necessary for them to take into account the Court's decision before the official ballots are published. The notice provided by Mr. Ambrose in this matter satisfied the purpose of the Election Code requirement and we will deny Mr. Heckman's request to dismiss the petition to set aside his nomination.

For the reasons stated herein an appropriate Order of Court will be entered as part of this Opinion.

#### **ORDER OF COURT**

**NOW** this 24th day of March, 1997, upon consideration of the Petition to Set Aside Nomination Petition of Gary L. Heckman and upon consideration of all the evidence and law presented at a hearing held March 20, 1997,

**IT IS HEREBY ORDERED** that the Nomination Petition of Gary L. Heckman shall be and is hereby set aside, and

**IT IS FURTHER ORDERED** that Gary L. Heckman's name shall not be placed by the Franklin County Board of Elections on the official ballot for the May 1997 Primary Election as a candidate for Greene Township Supervisor.

In accordance with Section 2937 of the Election Code, the Court deems it just and proper that all court costs be paid by the petitioner.