



JUL 13 2012

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

K. Westray

Kevin Westray, Legal Assistant

ROBERT GROVE,
Challenger/Petitioner,

v.

BRANDON BEACH,
Candidate/Respondent.

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: Docket No.: OSAH-SECSTATE-CE-1238687-60-
: Walker
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INITIAL DECISION

I. INTRODUCTION

Pursuant to O.C.G.A. § 21-2-5(b), Challenger/Petitioner (hereinafter “Petitioner”) challenges Candidate/Respondent’s (hereinafter “Respondent”) qualifications to be a candidate for the Georgia State Senate in District 21. The undersigned held a hearing in this matter on July 3, 2012, and the record closed on July 9, 2012. For the reasons indicated below, the Administrative Law Judge rejects Petitioner’s challenge and determines that Respondent **is qualified** to be a candidate for State Senate.

II. FINDINGS OF FACT¹

1.

Respondent is a citizen of the United States of America who is at least twenty five years old. He has been a citizen of the State of Georgia for at least two years, and a resident of Senate District 21 for at least one year. (Stipulation of the Parties).

¹ The parties stipulated to certain factual findings at the hearing.

2.

Respondent has paid the qualifying fee and filled out the necessary forms to run for the Georgia State Senate. (Stipulation of the Parties).

3.

Respondent is a member of the Georgia State Transportation Board (hereinafter the "Transportation Board"). In 2011, he received approximately \$18,600 dollar in per diem expenses and reimbursements for his service. (Stipulation of the Parties; Testimony of Respondent).

III. CONCLUSIONS OF LAW

1.

Every candidate for state office who files a notice of candidacy shall meet all the constitutional and statutory requirements for holding the office sought by that candidate. O.C.G.A. § 21-2-5(a).

2.

At the time of their election, members of the Senate shall be citizens of the United States, shall be at least 25 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year. Ga. Const. Art. III, § II, Para. III(a); *see also* O.C.G.A. § 28-2-2(b). Additionally, candidates cannot be on active duty with any branch of the armed forces, or hold a civil appointment or office having an emolument² annexed thereto. Ga. Const. Art. III, § II, Para. IV.

² Black's Law Dictionary defines "emolument" as an "advantage, profit or gain received as a result of one's employment or one's holding of office."

3.

The Georgia Supreme Court has placed the burden upon the candidate to establish his qualification for office. Therefore, the candidate affirmatively must establish his eligibility for office. *Haynes v. Wells*, 273 Ga. 106, 108-109 (2000).

4.

Pursuant to Code Section 21-2-5(b), either the Secretary of State or a qualified elector residing in a state legislative district may challenge a candidate's qualifications to hold office. Petitioner brings such a challenge. He argues that Respondent's service as a member of the Transportation Board disqualifies Respondent for two reasons.

5.

First, Petitioner argues that Ga. Const. Art. II, § II, Para. V restricts Respondent from qualifying for candidacy while he is a member of the Transportation Board. Petitioner asserts that in simultaneously holding membership in the Transportation Board, while declaring his candidacy for Senate District 21, Respondent wants "to keep a government job which pays salary and expenses of \$18,000 a year while vying for another." (Petitioner's Response to Supplemental Brief at p. 2). In support of his argument, Petitioner relies on Ga. Const. Art. II, § II, Para. V which provides as follows:

The office of any state, county or municipal elected official shall be declared vacant upon such elected official qualifying, in a general primary or general election, or special primary or special election, for another state, county, or municipal elective office or qualifying for the House of Representatives or the Senate of the United States if the term of the office for which such official is qualifying begins more than 30 days prior to the expiration of such official's present term of office. The vacancy created in any such office shall be filled as provided by this Constitution or any general or local law. This provision shall not apply to any elected official seeking or holding more than one elective office when the holding of such offices simultaneously is specifically authorized by law.

6.

The parties stipulated that Respondent is a member of the Transportation Board. The Georgia Constitution provides as follows:

There shall be a State Transportation Board composed of as many members as there are congressional districts in the state. The members of the board from each congressional district shall be elected by a majority vote of the members of the House of Representatives and Senate whose respective districts are embraced or partly embraced within such congressional district meeting in caucus. The members of the board in office on June 30, 1983, shall serve out the remainder of their respective terms. The General Assembly shall provide by law the procedure for the election of members and for filling vacancies on the board. Members shall serve for terms of five years and until their successors are elected and qualified.

Ga. Const. Art. IV, § IV, Para. I(a).

7.

The plain language of Ga. Const. Art. II, § II, Para. V does not support Petitioner's argument that Respondent's service as a member of the Transportation Board prohibits him from qualifying for candidacy for another office. Ga. Const. Art. II, § II, Para. V provides only that "[t]he office of any state, county or municipal elected official **shall be declared vacant upon such elected official qualifying**, in a general primary or general election, or special primary or special election, for another state, county, or municipal elective office." (emphasis added). Whether or not Respondent's candidacy for Senate District 21 creates a vacancy on the Transportation Board is not an issue before the undersigned – the only issue before the undersigned is whether or not Respondent qualifies as a candidate for Senate District 21. Thus, Ga. Const. Art. II, § II, Para. V does not bar Respondent's candidacy.

8.

Second, Petitioner argues that Respondent's position on the Transportation Board constitutes an "office having an emolument," disqualifying him from being a candidate for Senate under Ga.

Const. Art. III, § II, Para. IV. The undersigned concludes that any reimbursement received by Respondent due to his service as a member of the Transportation Board is not a “salary” or an “emolument.” O.C.G.A. § 32-2-20(f) explicitly states that “members of the [Transportation Board] shall receive no salary but shall receive...the per diem and transportation costs prescribed in Code Section 45-7-21.” Thus, per statute, the monies received by Respondent may only be compensatory in nature.

9.

Even if Ga. Const. Art. II, § II, Para. V were applicable, the term “election,” as used in Ga. Const. Art. IV, § IV, Para. I(a), would not invoke this constitutional provision. “Public office” is defined under the election code as “every federal, state, county, and municipal office to which persons can be elected by a vote of the electors under the laws of this state or the respective municipal charters, except that the term shall not include the office of soil and water conservation district supervisor.” O.C.G.A. § 21-2-2(30). An “elector” is “any person who shall possess all of the qualifications for voting now or hereafter prescribed by the laws of this state, including applicable charter provisions, and shall have registered in accordance with this chapter.” O.C.G.A. § 21-2-2(7). In other words, “[v]oter” is synonymous with the term “elector.” O.C.G.A. § 21-2-2(39). Thus, the “election” referred to in Ga. Const. Art. IV, § IV, Para. I(a), is not the type of election contemplated in Ga. Const. Art. II, § II, Para. V, as members of the State Transportation board are not elected by the voters. *See Ingram v. State*, 253 Ga. 622, 624 (1984) (“Elective office” generally refers to “an office filled by citizens registered to vote and voting in an election” and is defined as being “filled by the direct exercise of the franchise of the voters.”) (citations omitted).

10.

While the Georgia Code bars candidates from running in two races simultaneously, in the instant case Respondent's candidacy is neither barred by the Constitution nor by statute. *See* O.C.G.A. § 21-2-136.

IV. DECISION

Based upon the above Findings of Fact and Conclusions of Law, **is qualified** to be a candidate for State Senate District 21.

SO ORDERED THIS 12th day of July, 2012.

A handwritten signature in black ink that reads "Ronit Walker". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

RONIT WALKER
Administrative Law Judge