

MIDDLETOWN BOARD OF ELECTIONS

OPINION REGARDING

Special Meeting

March 3, 2017

3 p.m.

Town Hall Council Chambers, 19 W. Green St., Middletown

The Board of Elections is authorized to oversee the election of the Town of Middletown's government pursuant to 15 *Del.C.* §7551(a).

Among its responsibilities, the Board of Elections is to meet and consider whether a complaint concerning any aspect of pre-election action or activity is contrary to state or local election law. The Board is to meet as soon as is practicable and within 24 hours thereof issue a written opinion on whether the complaint has any merit. 15 *Del. C.* §7552(a).

The Board was notified on Tuesday, Feb. 28, by the State Election Commissioner, that there was a complaint made regarding the campaign filings of candidate Jason Faulkner. The Board was notified on Friday, March 3, that a complaint was made regarding the campaign filings of candidates Kenneth L. Branner, Jr. and Drew Chas, citing 15 *Del.C.* §7555(d)(e). The Commissioner's notification to the Board stated that all three candidates did not meet the 7-day filing requirement of 15 *Del. C.* §7555(d), which triggers 15 *Del. C.* §7555(f). "Excepting candidacies otherwise provided for in the town charter and which have complied with the provisions of subsection (d) of this section within 5 days after the election, the Board of Elections of a municipality shall declare a candidate who has failed to comply with the provisions of subsection (d) of this section ineligible to be a candidate and shall order that candidate's name removed from the ballot subject to the appeal provisions of § 7552 of this title. Administrative errors or oversights by municipal or state officials shall not be grounds for declaring a person ineligible to be a candidate."

The Board met in an emergency special public meeting on Friday, March 3, 2017, at 3 p.m., in Town Council Chambers, 19 W. Green Street, Middletown, Delaware, to consider testimony and render a decision. This emergency meeting was necessitated by virtue of the late notices from the State Elections Commission and the pending municipal election on Monday, March 6, 2017. Considering that this hearing was necessary to determine the eligibility of three candidates to remain on the ballot, an emergency meeting was required.

The Board was called to order and after the pledge of allegiance, it heard testimony from Councilman Jason Faulkner who was represented by Greg Morris, Esquire. The Board also heard testimony from Town of Middletown Elections Officer Kristen Krenzer, Mayor Kenneth Branner, Jr. and Councilman Drew Chas. The Board further considered several written documents that were submitted by these individuals.

A. Councilman Faulkner

Mr. Faulkner testified that his declaration of candidacy was received by the State Election Commission on February, 14, 2017. His Statement of Organization was received on February 22, 2017. He stated that he received emailed confirmations that he had filed his documents “successfully”. Mayor Branner and Mr. Chas also received emails regarding their successful filings, with no indication that the filings were untimely.

Mr. Morris, representing Mr. Faulkner, raised a concern about the proper method of calculating time under the elections statute. He noted that the General Assembly did not use the phrase “calendar days” in the statute and that there is no guidance to the candidates from the Department of Elections regarding the calculation of time under the statute. When the Campaign Finance Office originally notified Mr. Faulkner that his filing was made on the 8th day, not the 7th, it obviously used calendar days and did not account for an intervening weekend. If the weekend was excluded, Mr. Faulkner’s filing was made on the 6th day. Mr. Morris relied on Superior Court Civil Rule 6, which states that when computing time for purposes of applying a statute where the time period is less than 11 days, weekends and holidays are excluded. Hence, applying Rule 6, he argued that Mr. Faulkner’s filing was timely.

He also acknowledged that an issue also exists about when the 7-day period is triggered. Is it triggered when the candidate’s declaration is filed with the municipality or when it is filed with the Campaign Finance Office? If it is the former, Mr. Faulkner’s filing was untimely. Apparently, between the time Mr. Faulkner was first notified that his filing was one day late, the Commission revised its position and now uses the date the declaration was notarized. There is nothing in the statute to suggest that notarization is the triggering event for the 7-day period.

B. Mayor Branner and Councilman Chas

Mayor Branner’s declaration was filed with Middletown on January 10, 2017 and emailed to the Commission on January 31, 2017. His Statement of Organization was filed the next day, February 1, 2017. Councilman Chas’ declaration was filed with Middletown on January 19, 2017 and emailed on January 31, 2017. His Statement of Organization was filed two days later, February 2, 2017. Hence, the issue regarding their candidacies is when the 7-day period was triggered.

Kristen Krenzer, Elections Officer for the Town of Middletown, testified that she has been in this position for more than 7 years and this is the first year that the statute has come into play. Assuming that there were untimely filings, she feels responsible. The Mayor and the two Councilmen relied on her to handle these filings as a municipal employee. She considers it her oversight, even though she has never been trained or alerted to this requirement by the Campaign Finance Office. Campaign finance matters have traditionally been handled by the State of Delaware, not the Town of Middletown. She testified that she


was directed on January 31 to send the candidate filing forms to the Campaign Finance Office. Ms. Krenzer testified that Mayor Branner and Mr. Chas' declarations were in this batch of filings. She stated she had numerous conversations with the Campaign Finance Office and they readily acknowledged a lack of clarity on this requirement and their lack of administrative oversight on this issue. They commented that other municipalities were also experiencing similar issues for the first time.

After testimony from the three candidates, consideration of the documents presented and argument by Mr. Morris on behalf of Mr. Faulkner, the Board voted unanimously (3-0) that the three candidates in question shall remain on the ballot for the March 6, 2017 general municipal election. This unanimous decision was based on the Board's factual findings that the campaign finance filings were timely based on the proper method of calculating time and using the date of filing with the Campaign Finance Office as the triggering event for the 7-day period.

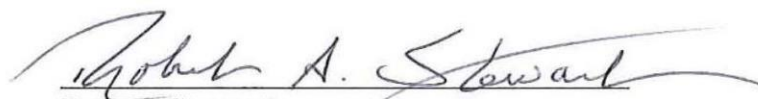
In the alternative, had the Board concluded that the filings of the three candidates were untimely, nevertheless, the Board found that this entire situation occurred due to a combination of administrative error and lack of oversight by municipal and State officials. Accordingly, based on this finding, the applicable statute requires that these candidates remain on the ballot.

Motioned by Robert Stewart, seconded by Sonya Comstock. Approved 3-0.

SO ORDERED, this THIRD day of March, A.D., 2017.


Sonya Comstock


Lorraine Reeves


Robert Stewart

Faulkner Exhibit #1

Jason Faulkner

From: Greenhow, Robin (Elect_COE) <robin.greenhow@state.de.us>
Sent: Monday, February 20, 2017 10:24 AM
To: Jason Faulkner
Subject: FW: Filing Information
Attachments: IRS Navigation.pdf; 2017 Welcome Packet-01-17-2017.pdf

Good Morning,

Just a gentle reminder that you need to register a committee with our office as soon as possible.

If you have any questions, please do not hesitate to contact our office.

Thank you,

Robin

Jason Faulkner

From: Greenhow, Robin (Elect_COE) **On Behalf Of** COE Campaign Finance <robin.greenhow@state.de.us>
Sent: Tuesday, February 14, 2017 10:57 AM
To: 'jfaulkner@middletownde.org' Jason Faulkner
Subject: Filing Information
Attachments: FW: Filing Information
IRS Navigation.pdf; 2017 Welcome Packet-01-17-2017.pdf

Good Morning,

We have received your notice of filing for the Middletown Council Seat.

You are required to register a candidate committee with our office.

Attached is some general information for you. You must contact the IRS to see if you need an EIN number. The steps for navigating the IRS website are attached.

Thank you,

Our website is <https://cfrs.elections.delaware.gov/>. On this page, there is a menu on the left hand side of the screen with a tab labeled "Register a Candidate Committee."

You must include your last name in the committee name. Once you have completed registering your committee, please print, sign and have the form notarized. We will need that form in order to activate the committee.

Greenhow, Robin (Elect_COE) **On Behalf Of** COE Campaign Finance
Sent: Tuesday, February 14, 2017 10:57 AM

Should you have any questions, please do not hesitate to contact our office.

Thank you,

Robin

We have received your notice of filing for the Middletown Council Seat.

You are required to register a candidate committee with our office.

Attached is some general information for you. You must contact the IRS to see if you need an EIN number. The steps for navigating the IRS website are attached.

Faulkner Exhibit #2



Jason Faulkner <jfaulk317@gmail.com>

Delaware Campaign Finance Reporting System - Committee Registration

1 message

coe_noreply@state.de.us <coe_noreply@state.de.us>
To: Jfaulk317@gmail.com

Mon, Feb 27, 2017 at 3:54 PM

Dear Jason Roland Faulkner,

You are receiving this email because the committee you have been identified as the Candidate/Treasurer for the "Committee to elect Jason Faulkner" committee which has been approved by Office of the State Election Commissioner for the Campaign Finance Reporting System.

Your username is Jfaulk317@gmail.com
Your temporary password is d#7T8c

In order to manage your committee's activities, you must log into the Campaign Finance Reporting System with your user name and temporary password. Once you log in, you will be prompted to create your system password. To start, click the following link and enter your user name and password.

Click the following link: <https://cfrs.elections.delaware.gov>

By using the State of Delaware's Campaign Finance Reporting System, you agree not to use the system for unlawful purposes. Unauthorized use or attempt to upload or change information stored in the system may result in civil penalty or criminal prosecution or both.

Thank you.

Sincerely,
Campaign Finance Section
Office of the State Election Commissioner
905 S. Governors Ave. Suite 170
Dover DE 19904
Phone: (302) 739-4277
Fax: (302) 739-6794
Email: coe_vote@state.de.us

(This message was sent to you by an automated email system. Please do not reply.)

Branner Exhibit #1

Begin forwarded message:

From: "Bueno, Millianie T (Elect_COE)" <Millianie.Bueno@state.de.us>
Date: February 3, 2017 at 15:12:28 EST
To: "kbranner@artesianwater.com" <kbranner@artesianwater.com>
Cc: COE_CampaignFinance <COE_CampaignFinance@state.de.us>
Subject: Welcome - Kenneth Branner, Jr.

Good afternoon:

Welcome to Delaware Campaign Finance! Please refer to our welcome packet for information about your newly activated committee which can be found [HERE](#). We highly recommend that you peruse through the material and the links below for they contain pertinent information on managing your committee.

Campaign Contributions and Expenditures (Delaware Code, Title 15, Chapter 80)

- [Subchapter I. General Provisions](#)
- [Subchapter II. Contribution Limits](#)
- [Subchapter III. Expenditures](#)
- [Subchapter IV. Public Disclosure](#)
- [Subchapter V. Enforcement](#)

Additional Information / Links

- [Campaign Finance Regulations](#)
- [Campaign Finance FAQs](#)
- [Election Calendar](#)
- [Video Tutorials](#)

More election related information may be found at the [State Election Commissioner](#) website. If you have any questions regarding Campaign Finance, please do not hesitate to contact our office. We are here to assist you!

The Campaign Finance Team:

Office of the State Election Commissioner
905 S. Governors Ave, Suite 170
Dover, DE 19904
Phone: (302) 739-4277
Fax: (302) 739-6794
Email: coe_campaignfinance@state.de.us

Best regards,

Millianie T. Bueno
Election Voter Registration Clerk

Office of the State Election Commissioner
905 South Governors Avenue, Suite 170, Dover, DE 19904

Phone #: (302) 739-4277
Fax #: (302) 739-6794

elections.delaware.gov

Chas Exhibit #1

Sent from my iPhone

Begin forwarded message:

From: coe_noreply@state.de.us
Date: February 2, 2017 at 1:23:06 PM EST
To: Chazy6499@aol.com
Subject: Delaware Campaign Finance Reporting System - Committee Registration

Dear Drew Chas,

This email has been sent because "COMMITTEE TO ELECT DREW CHAS" has been submitted to the Delaware Office of the State Election Commissioner for approval. You have been identified as the **Candidate/Treasurer** for this committee.

By using the State of Delaware Campaign Finance Reporting System, you agree not to use the system for unlawful purposes. Unauthorized use or attempt to upload or change information stored in the system may result in civil penalty or criminal prosecution or both.

Thank you.

Sincerely,
Campaign Finance Section
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Email: coe_vote@state.de.us

(This message was sent to you by an automated e-mail system. Please do not reply.)