

Oneida Tribal Judicial System

Onλyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

Jennifer Webster
Petitioner

Docket # 11-TC-092

v.

Date: July 28, 2011

Oneida Election Board
Respondent

August 2, 2011-Amended

Declaratory Judgment Re: Violation of Oneida Election Law during 2011 General Election

This case has come before the Oneida Tribal Judicial System, Trial Court. James Van Stippen, Gerald Cornelius, Linda Cornelius, Judicial Officers presiding.

Background

Jennifer Webster filed a Petition for Declaratory Judgment on July 26, 2011. Ms. Webster participated in the July 16, 2011 General Election running for Business Committee Council Member. Ms. Webster is alleging violation of the Election Law, Section 2.4-3 *Recusal* and Oneida Code of Ethics, 3.3-1 through 3.3-8.

Issues

1. Was the Oneida Election Law violated when the previously recused board member chose to work the election?
2. Was the Oneida Code of Ethics violated when the previously recused board member chose to work the election?

3. Are the election results tainted due to an Oneida Election Law Violation?
4. Are the elections results tainted due to an Oneida Code of Ethics violation?
5. Is public trust and confidence breached because the 2011 General Election was conducted out of compliance with the Oneida Election Law?
6. Was the Milwaukee polling site short one (1) Election Board member?

Analysis

Oneida Election Law

2.4-3. Recusal. An Election Board Member shall recuse himself/herself from participating as an Election Board member in a pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

2.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a Tribal elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Tribe to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Tribe, or as defined in any law or policy of the Tribe.

2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

2.4-7. The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board as recommended by the Election Board, to assist with election day and pre-election activities.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

Code of Ethics

3.3-5. A government official should disqualify themselves when their action or inaction might reasonably be questioned. Including, but not limited to family, or anyone residing in their household has a financial interest in the subject matter of a proceeding or action, or has any other interest that could be substantially affected provided however, that an official disqualified by the above may, instead of withdrawing, disclose on the record the basis of their disqualification. Provided further that the government agency, based on such disclosure, agree unanimously that the government official's participation is not prejudicial or that the financial interest is unsubstantial, the official is no longer disqualified and may participate in the proceeding or action. The agreement or disagreement shall be incorporated in the record of the proceeding or action.

3.3-2. Government. The Code of Ethics shall be as set out below, recognizing that the concept of ethical conduct encompasses action as well as inaction, and represents an area of self regulation. Provided further, that it is the policy of government officials to demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all public activities in order to inspire public confidence and trust in the government officials of the Oneida Tribe of Indians of Wisconsin.

The petitioner did not present enough evidence to support her argument concerning tainted election results based on the Election Law and the Code of Ethics for this body to formulate a decision on those issues.

The Milwaukee Polling site was short one (1) Election Board member and the only alternative was to cancel the election or allow the only available Election Board member to preside at the Milwaukee Polling site who was Ms. Kitty Melchert.

Oneida Election Law 2.4-7. "The Business Committee may appoint or reappoint sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities." The evidence cited concerning impropriety of assigning a recused delegate of the Election Board to monitor election procedures and processes does raise questions. What allowed the one available Election Board member to preside? What about the other recused Election Board member? Why wasn't the Business Committee contacted to appoint or reappoint former Election Board members prior to the Election? When did the Election Board first become aware that there wasn't a sufficient number of Election Board members or alternates? Why didn't the Election Board contact the Business Committee requesting more alternates? The Oneida Business Committee shall fully investigate and take appropriate measures.

There was not sufficient evidence presented to indicate if that person had not been present; would have influenced a different outcome to the election.

The petitioner raised several questions both dealt with the Tribal Code of Ethics as follows; the first question is listed as; issue #2. Was the Oneida Election Law violated when the previously recused member chose to work the election? This issue was addressed by the Oneida Code of Ethics 3.3-5 as quoted above herein. Yes, because the Oneida Election Law does not have a process for a recused election board member to work at an election that was previously approved to be recused in a duly called meeting. The Oneida Election Law does allow for the Oneida Election Committee to contact the Oneida Business Committee to appoint or reappoint alternates, 2.4-7.

The second question raised by the petitioner was listed as issue #5. Is public trust and confidence breached because the 2011 General Election was conducted out of compliance with the Oneida Election Law? This issue was addressed by the Oneida Code of Ethics 3.3-2 as quoted above herein. Further it is our opinion that yes the Election Board has acted inappropriately by assigning a recused member to work the election.

Decision

The Oneida Business Committee is directed to investigate the actions of the Oneida Election Board in its application of the Oneida Election Law regarding this matter.

The petitioner has proven by clear and convincing evidence that the Election Law was violated by conflicts cited by the petitioner that may or may not have changed the outcome of the election. The petitioner has not substantiated the claim of personal harm as a result of the Oneida Election Boards' activities in question.