

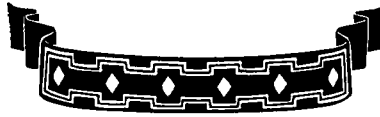
Oneida Appeals Commission

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Trial Court

Linda S. Dallas

Petitioner

Docket No. 03-TC-328

vs.

Oneida Election Board and
Oneida Business Committee
Respondent

Date: August 18, 2003

Injunction, Restraining Order and Impartial, Objective & Independent Judicial Officers

This petition has come before the Oneida Appeals Commission Trial Court.

Judicial Officers Stanley R. Webster, Pearl House and Leland Wigg-Ninham presiding.

I Background

Petitioner seeks to have this matter heard by tribal judges, outside the Oneida Appeals Commission. Petitioner also seeks the following injunction to stop: (1) the Election Board's certification of the 2003 Oneida elections, (2) the Oneida Election Board's final report of the 2003 election, (3) the Oneida Business Committee's official certification of the 2003 Oneida election results. In addition, Petitioner seeks a restraining order against the following members of the Oneida Election Board: Leyne Orosco, Henrietta Oudenhoven Cornelius, Donna White Richmond, Debbie Webster Melchert, Jeanne Schuyler, Kalene White, Tonya Boucher and Beverly Anderson. Finally, Petitioner asks the court to nullify and void the 2003 Oneida election

results and order a new election with new and properly secured ballots.

II Issue

Is the petition filed in a timely manner?

III Analysis

In order for the court to assume jurisdiction over this matter, this court will address the question of jurisdiction. The court takes judicial notice of the fact that Petitioner is a member of the Oneida Nation who qualified as a candidate for the Oneida Gaming Commission. In addition, Petitioner's name was placed on the ballot for the Oneida Gaming Commission. The election polls for the 2003 election were located on the Oneida Reservation and conducted by the Oneida Election Board under the auspices of the Oneida Election Law. Under the creation Resolution for the Oneida Appeals Commission, the Commission has original jurisdiction over cases and controversies arising under Oneida Law and within Oneida Territory where no specified hearing forum has been designated.¹

The Oneida Election Law has three provisions for appeals. The first provision appears as 2.5-0. Candidate Eligibility.² Under this section, the Election Board itself is the hearing body for eligibility challenges. No other section mentions the Election Board as a hearing body within the Election Law.

¹ Addendum to Resolution 8-19-91-A. I Appointment and Authority:

C. A subcommittee of the Oneida Appeals Commission shall have authority to hear and attempt to resolve actions that are subject to ordinance or rules that have no specified hearing forum within the Oneida Tribe.

² Section B. Eligibility Review

2.5-5. Candidates found to be ineligible shall have forty-eight hours to request an appeal. At least six Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within forty-eight hours of appeal. The candidate shall be notified by phone of time and place of the hearing. Any appeal from a decision of the Election Board shall be in compliance with the Administrative Procedures Act.

The second provision for an appeal appears as 2.9-0. Counting of Ballots.³ Under this provision, a recount request must be filed within five working days after the election.

The third provision mentioning an appeal appears as 2.10-0. General Election Outcome and Ties.⁴ Under this provision, the time line for recounts is combined with the category of appeals. The Appeals Commission has determined that this means that all challenges should be made within the five business day time line set forth in the Election Law.⁵

Other than a hearing for ineligibility challenges or a request for a recount by the Election Board, the Oneida Election Law has no specified hearing forum. It is therefore the finding of this court that the Appeals Commission has original subject matter jurisdiction over this matter.

The second question before the court is whether the petition as filed, is timely. The question of timeliness is a threshold question that must be answered in order for this matter to move forward. As has been found by the Commission, a five day time line exists for challenges to the results of an election.

IV Decision

The time to challenge the July 26, 2003 election was due on August 1, 2003. The Petitioner filed this request on August 13, 2003. The request is therefore untimely and the petition is denied.

³Section D. Recount Procedures

2.9-8. A written request of the Election Board, limited to one (1) request per candidate, per election must be filed by a candidate within five (5) working days of the election by hand delivery to the Tribal Secretary's Office, or designated agent as identified on the announcement in Article X.

⁴Section C. Declaration of Results/Challenges

2.10-4. The Election Board shall forward to the Tribal Secretary a Final Report after time has lapsed for appeal or recount requests, or after all appeals or recounts have been completed, whichever is longer . . .

⁵ Bradley W. Graham vs. Oneida Election Board and Oneida Business Committee, 03-TC-327. August 27, 2003.