

Oneida Appeals Commission

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Trial Court

Oneida Gaming Commission,
Petitioner

Docket No. 03-TC-336
Date: December 22, 2003

Oneida Election Board,
Respondent

Final Decision

This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Leland Wigg-Ninham, Janice McLeister, Marjorie Stevens, presiding.

I Background

The petitioner filed an original complaint and petition for injunctive relief. At issue is the result in a special election held for open positions on the Oneida Gaming Commission. Ms. Linda Dallas was a candidate on the original ballot on June 26, 2003, though she was not elected to the Commission. The petitioner failed to include another candidate, Mr. Gary Metoxen, on the ballot. A special election for the Gaming Commission was therefore held on September 27, 2003. Ms. Dallas was a candidate for the special election and received sufficient votes in the second election to be placed upon the Gaming Commission.

The issue raised by the petitioner is the fact that Ms. Dallas is already a member of the Gaming Commission, whose term of office does not expire until next year. The petitioner argues that Oneida law does not permit a member of a board, committee, or commission (herein after

“entity”) to run for an open seat on the same entity. The petitioner argues that permitting such activity defies reason and undermines the intended continuity of a staggered system of elections for an entity. In addition, the petitioner argues that because Gaming Commissioners are employed full time, the Oneida Personnel Policies and Procedures should prohibit candidacy because it is a

violation of employment laws to hold two full time positions as an employee of the Tribe.

On October 16, 2003, Linda S. Dallas filed a motion to intervene based on her contention that she was one of the winners in the Special Election held on September 27, 2003 and therefore has an interest in the outcome. On October 29, 2003, the Oneida Appeals Commission denied the motion to intervene because Ms. Dallas did not file her motion timely and the motion failed to meet the standards in Rule 11, A of the Oneida Appeals Commission, Rules of Civil Procedure.¹

On November 3, 2003, the court ordered both parties to submit briefs on the Code of Ethics and Oath of Office and present arguments on their relevance to an elected position.

On November 20, 2003, the court ordered the Oneida Election Board to release the Conflict of Interest Disclosure Application filled out by Ms. Dallas to the court and the petitioner.

On December 1, 2003, the respondent filed a Motion for Reconsideration for the release of Ms. Dallas's Gaming Commission application. The respondent argued that the documents requested are not relevant to the issue and the application would not provide the court with any new information. After reviewing the application in chambers, the court agrees with the respondent that the application did not contain any relevant information and grants the motion not to release Ms. Dallas's Gaming Commission application.

II Issues

May an elected member of an Oneida Nation entity run for election on an open seat on the same entity?

III Analysis

¹ (A) *Intervention 2.) A person may, upon the timely motion and with the permission of the Trial Court intervene in an action when the movant's claim or defense and the main action have a question of law or fact in common.*

The respondent argues that no Oneida law prohibits candidacy for a member of an entity seeking election to an open seat on the same entity. Therefore, while Ms. Dallas was originally denied eligibility as a candidate for the open seat on the Gaming Commission, this determination was later reversed by the Election Board and her name was placed on the ballot for both the original election in July and the special election in September.

The respondent argues the Election Board is not authorized to create election criteria. According to the respondent, Ms. Dallas has met the minimum established criteria. While she is currently involved in litigation with the petitioner, contesting the petitioner's attempt to remove her from the entity for allegedly violating confidentiality rules, the respondent asserts that this does not affect her eligibility as a candidate.

After a review of the arguments of the parties, it is the decision of this court to rule in favor of the respondent. No law explicitly states that a member of an Oneida entity cannot run for election on an open seat within the same entity. Criteria for candidates is established legislatively and enforced by the Election Board. While the Election Board may interpret and apply the Election Law, and hear cases related to eligibility, it is not the creator of the rules. In addition, as an established principle, the Appeals Commission generally permits action when it is not prohibited by law.²

This finding is made notwithstanding the fact that there are good reasons to prohibit the actions of Ms. Dallas or any other elected official who chooses to imitate her actions. Elected officials do take an oath of office to uphold the laws of the Nation and to make decisions which are in the best interests of the Tribe and the entity to which the official is elected. There are good policy reasons to prohibit running for an open seat as Ms. Dallas has done. First, it undermines the staggered terms of office established to ensure continuity on an entity. Secondly, if an entity has a high

² Schoen, Beverly vs. Oneida Airport Hotel Corporation, 6 O.N.R. 3-134, 142 (98-EP-0022, 8/16/00) - The Respondent's practice of "at will" employment is permissible under Oneida law because no applicable Oneida law specifically prohibits such a practice.

turnover of elected officials, there can be difficulty completing assigned duties, fulfilling assignments, and accomplishing sufficient training. In addition, if that seat was not open for election, the entity is then left with a vacancy and must either complete its tasks short handed or hold a special election or go through other established appointment processes to fill the now vacant seat. All this causes uncertainty in the membership of the entity and potentially interferes with the fulfillment of duties. If elected in such a manner, it cannot be reasonably said that the candidate is truly acting in the best interests of the entity.

Other jurisdictions, such as states, have established laws or sections in a constitution that prohibit public officials from freely running for other public offices.³ This is understandably a new situation in Oneida. No such case has been presented. This is likely because Ms. Dallas is subject to removal from her current seat. Because her current seat is in jeopardy, she has sought to take a new seat. It would seem unreasonable that anyone on an uncontested seat for an Oneida entity would consider running for an open seat on the same entity before the expiration of their current term. However, the fact remains that it is a constitution and/or statutes that establish these prohibitions. Courts do not and should not establish them. The same holds true for the Election Commission or in Oneida's case, the Election Board. Prohibitions on candidate's criteria are determined by statute or constitution, and should be established as a matter of public policy by the legislative branch.

The Petitioner argues that the act of running for an open seat should be prohibited because the person would then hold two seats. However, while this court concurs that a person could not legitimately hold more than a single seat on the same entity, the apparent conflict of such an occurrence can be corrected by resigning one of the seats. Under the Oneida Election Law, a conflict of interest can be corrected within thirty days of taking office. Resignation from the formerly held seat would eliminate this conflict of interest.

³ Wagner vs. Milwaukee County Election Commission, 666 N.W.2d. 816, 820 (Wis. 2003) - discussion definition of term of office, constitutional prohibition against judges from seeking other public office before their term of office as judge is completed, and public office restrictions generally.

The Petitioner's argument that employment law prohibits this kind of candidacy is not persuasive, though not because this court is persuaded by the respondent's arguments. The petitioner argues that Ms. Dallas, as a current member of the Gaming Commission, is considered an employee of the Tribe. Since employees cannot hold two full time positions at the same time under Oneida Law, the petitioner argues that Ms. Dallas's candidacy should be invalidated. The logic presented by the petitioner is flawed. The petitioner's argument would have this court hold that an employee of the Tribe could not seek another place of employment within the Tribe. Such a holding would preempt any employee from seeking a transfer, reassignment, or just an application for another open position.

The respondent argued that as an elected official, Ms. Dallas is not an employee. The Respondent cites a case in which the Personnel Commission removed a Commissioner. Coincidentally, it was Ms. Linda Dallas. In that case, the Personnel Commission cited the Personnel Policies and Procedures as additional reasons justifying removal. The Appeals Commission upheld the removal, but held that Ms. Dallas was not a tribal employee. This was in part because Ms. Dallas was not employed by the Personnel Commission in her capacity as a member of that entity. The case cited by the respondent therefore is not applicable to the facts of this case currently presented.

IV Decision

Judgement is rendered in favor of the respondent. While it may be in the best interests of the Oneida Nation to legislate a prohibition against this kind of candidate eligibility, it is not currently a violation of existing law for a member of an Oneida entity to run for an open seat on the same entity. Success in that endeavor would require resignation from the original seat, but this court will not create a rule against such conduct.

Judicial Officer Marjorie Stevens respectfully dissents from the majority opinion in this case.

The background presented in the majority opinion is essentially correct. The Petitioner is involved in a litigation regarding the removal of Ms. Linda Dallas. Ms. Dallas, while this removal litigation continues, ran for an open seat on the Gaming Commission in the 2003 election. Petitioner raised the issue that Ms. Dallas is already a member of the Gaming Commission and her term does not expire until next year. The issue the majority rendered judgment on was: May an elected member of an Oneida Nation entity run for election on an open seat on the same entity?

The Respondent argues the Election Board is not authorized to create election criteria. However, the Election Board is the guardian of the election process and it is their duty to ensure that the process is not compromised. It is also the duty of the election Board to prevent what happened in this case from happening again. The majority states that, "No law explicitly states that a member of an Oneida entity cannot run for election on an open seat within the same entity." However, common sense dictates that a person cannot hold two seats simultaneously on the same Board or Commission. Doing so would create a conflict in that entity and could put a person in such a position at an advantage. Each Seat on an entity receives a vote on matters that come before that entity. It could be argued that a person who holds two seats would be eligible for two votes. This goes against the normal perception of one person – one vote.

The majority states:

This finding is made notwithstanding the fact that there are good reasons to prohibit the actions of Ms. Dallas or any other elected official who chooses to imitate her actions. Elected officials do take an oath of office to uphold the laws of the Nation and to make decisions which are in the best interests of the Tribe and the entity to which the official is elected. There are good policy reasons to prohibit running for an open seat as Ms. Dallas has done. First, it undermines the staggered terms of office established to ensure continuity on an entity. Secondly, if an entity has a high turnover of elected officials, there can be difficulty completing assigned duties, fulfilling assignments, and accomplishing sufficient training. In addition, if that seat was not open for election, the entity is then left with a vacancy and must either complete its tasks short handed or hold a special

election or go through other established appointment processes to fill the now vacant seat. All this causes uncertainty in the membership of the entity and potentially interferes with the fulfillment of duties. If elected in such a manner, it cannot be reasonably said that the candidate is truly acting in the best interests of the entity.

This is entirely true and is the precise reason why the Petitioners in this case should prevail. Ms. Dallas would only be doing more harm than good to the Oneida Gaming Commission by running for a second seat on the Gaming Commission while currently holding a seat on that Commission. Perhaps Ms. Dallas ran for a second seat because her current seat is in jeopardy. In Ms. Dallas' case, running for a second seat while in the removal process for the first seat undermines the removal law. The removal proceedings against Ms. Dallas are happening for a reason. To become elected to a position that you currently hold and are potentially being removed from should not be an available avenue of getting reinstated to your position.

The majority cited *Wagner vs. Milwaukee County Election Commission*, 666 N.W. 2d 816, 820 (Wis. 2003); a case that discusses the prohibition against judges from seeking other public office before their term of office as judge is completed and other public office restrictions. This one case is an example of how other jurisdictions have established laws or sections in a constitution that prohibit public officials from freely running for other public offices. This is the first case of this nature to happen in Oneida. More than ever do we, as a judicial body, need to set the precedent that it is not acceptable to run for and obtain multiple seats on the same Board or Commission.

The Election Board is the entity authorized to administer and regulate elections. As such, it is empowered to interpret and apply the terms of the Election Law to particular circumstances. Arguing that it cannot determine criteria is therefore somewhat disingenuous. The Election Board determines candidate eligibility. As such, it should be able to make determinations that are in the best interest of the entity with positions open for election.

The Petitioner argues that the act of running for an open seat should be prohibited because the person would then hold two seats. No one person can hold two seats on an entity. It is an

inherent conflict of interest and undermines the creation of the entity. While the Respondent accurately points out that under the Oneida Election Law, a conflict of interest can be corrected within thirty days of taking office, such a correction is undoubtedly an interference with the functioning of the entity. Resignation from the formerly held seat would eliminate this conflict of interest, but would then require a special election or appointment to fill the now vacant seat. The replacement would be on the entity for a reduced term of office, and may or may not be effective, depending on the training requirements or experience of the person now selected for the position.

Judgement in this case should have been rendered in favor of the Petitioner. It is in the best interests of the Oneida Nation to legislate a prohibition against candidate eligibility, and the Election Board, as guardian of the election process, should have eliminated this possibility when it arose.