
Appellate Court

Oneida Gaming Commission,
Appellant

Docket No. 03-AC-036

vs.

Oneida Election Board,
Respondent

Date: May 11, 2004

Decision

This case has come before the Oneida Appeals Commission, Judicial Officers Stanley Webster, Mark Butterfield, Richard Ackley, Sandra Skenadore, and Winnifred Thomas presiding.

I. Background

This case is an appeal of the original Hearing Body's *Final Decision in Oneida Gaming Commission v. Oneida Election Board*, Docket No. 03-TC-336. In the case below, the Appellant here sought injunctive and declaratory relief essentially arguing that the Oneida Election Board [hereinafter OEB] improperly permitted Ms. Linda Dallas to be a candidate for Gaming Commissioner in the Special Election held September 27, 2003 when she was already a sitting Gaming Commissioner in a different seat with a different term of office. It is the contention of the Oneida Gaming Commission [hereinafter OGC] that a sitting member of a board, committee or commission should not be permitted to run for another open seat on the same entity during their term of office. In a decision rendered December 22, 2004, the Trial Court held to the contrary by a 2-1 decision, Hon. Marjorie Stevens dissenting. The Appellant argues here that the decision below is arbitrary and capricious and should be reversed and a declaratory judgement be rendered in their favor that a candidate who holds a position on an entity may not simultaneously run for an open seat on that same entity.

After having reviewed the decision below, the briefs for and against the decision, Oneida law and past decisions of this body, this Court rejects the contentions of the Appellant and upholds the decision of the Trial Court in docket # 03-TC-336. While the decision was accepted on appeal because it met the minimum criteria of Oneida Appeal Commission Rules of Appellate Procedure 9(D), this is a cursory review whereby the Initial Review Body examines an appeal to see if it minimally meets the standard of properly alleging an error or irregularity at the trial level. The Appellants here alleged that the decision was arbitrary and capricious and this is the minimum necessary to trigger full review of the decision.

Standard of Review

A close examination of the Appellant's argument is not that the decision was arbitrary and capricious but rather that the Trial Court misinterpreted the law. In fact the Appellant seemingly ignores any attempt to show that the Trial Court was arbitrary or capricious in its interpretation of

the law.²⁹

II. Issue

Was the Trial Court correct in its interpretation that a member of an elected Board, Commission or Committee may, consistent with Oneida law, run for election to an open seat on the same Board, Commission or Committee?

III. Analysis

The consideration of this case was complicated by the way it was presented to this Appellate Court. After having obtained review of the decision below, the Appellant abandoned all pretense of attempting to show that the decision below was arbitrary and capricious. Were that the only thing this Court examines the Appellant would lose without further discussion as it made no argument at all upon these lines.

However, as this Court examines whether the Trial Court made the proper and correct interpretation of the Oneida Election law, it examined the actual claims of the Appellant that the decision appealed from is inconsistent with the proper interpretation of Oneida Election law, as well as prior Oneida case law. As with many appeals the party often addresses issues that this body deems irrelevant or unpersuasive and so the Court shall not address each and every argument made by the Appellant. To the extent we uphold the decision below we reject those arguments as unpersuasive.

Part A: The Decision is Consistent with the Oneida Election Law

Instead this Court will focus in its analysis on the fact that the Trial Court looked to the positive law of the Oneida Nation as expressed in the Oneida Election Law. This law does not explicitly address the situation as presented here, *i.e.*, the eligibility of a candidate for office who already holds a similar (though not identical) position on the same body. Here the principle differences are the terms of office. The candidate, Linda Dallas, held a seat whose term, at the time of the election would have expired in a year and a half, but instead ran for a seat that would not expire for another three years after having been sworn in. In other words she did not run for the exact same seat she already held. However, based on the arguments advanced by the Appellant, she could not have even run for reelection because this is a seat in a body that she already held. In the context of Oneida elections where a person has the ability to run for a higher office of Treasurer or Vice Chairman or Chairperson when still holding an at large seat, to create a rule as urged by the Appellant would undermine the present electoral practices of the Oneida Nation.

²⁹. In attempting to develop a consistent body of law the Court focuses on the proper standard of review regardless of the Appellant's characterization of the proper standard. Although the use of the arbitrary and capricious standard of review is generally used in reviewing questions of fact and is highly deferential to the Trial Court, this Court focuses on the true standard of review *de novo* that the Trial Court made a proper interpretation of the law. Appellate Counsel should be aware to properly focus their arguments to the proper standard of review in aiding this Court in its duty to develop a consistent body of Oneida law.

Indeed, it is common place for incumbents to run for reelection but a strict interpretation as urged by the Appellant would bar this. Furthermore, it is not uncommon to see a person run for two different offices simultaneously. *See e.g., Gary Metoxen v. Oneida Election Board*,³⁰ Docket No. 03-TC-326. (August 7, 2003). While we agree that it seems unusual and perhaps even absurd to run for a seat on a body when one already holds a position on that body, it is not positively prohibited by Oneida Election Law. Indeed, Oneida Election Law has several clauses which allow a candidate who wins an election to resign a job or other position which may, if they retained it, create a conflict of interest. Pursuant to O.E.L. Section 2.5-2(c) a candidate may resign from a salaried position within 30 days of being elected to the Business Committee. Furthermore, pursuant to O.E.L. Section 2.5-2(e) they have 30 days to resign or resolve any potential conflict of interest after being elected and it is explicitly held not to be a bar to candidacy or nomination to elected office.

Part B: The Decision is Consistent with Prior Oneida Case Law.

The position adopted by the Oneida Appeals Commission in past cases is not inconsistent with today's holding. Despite the allegations that the *Gary G. Metoxen v. Oneida Election Board*, 03-TC-326 (August 7, 2003) case is a liberal interpretation at variance with the alleged "stricter interpretation" of Oneida Election law in the *Amelia Cornelius and Shirley Hill v. Oneida Election Board*, 03-TC-337 (November 24, 2003)³¹ and *Debra Powless v. Oneida Election Board* 2 O.N.R. 3-56 (95-CVL-0017, 6/7/96)³², we find that is not the case. Appellant makes much of this supposed inconsistency between a strict and more liberal interpretation of Oneida Election Law without really explaining what it means by strict vs. liberal interpretation of law. First, this Court must point out that only the *Debra Powless* case is from the Appellate Court and therefore is binding to the extent it even applies. In the *Debra Powless v. Oneida Election Board*, which is an Appellate Court decision, this court did not make a strict vs. liberal construction of the Oneida Election law. Instead, the Court found that there was no deprivation of a fundamental right to run for office because even though Ms. Powless name was not on the publication of the sample ballot, nor in the newspaper, her name, unlike that of Mr. Gary G. Metoxen, did actually appear on the official ballot before Oneida voters. It is the latest case and would overrule prior case law if they were inconsistent with it. However, that is not the case. Without explicitly saying so, the *Gary G. Metoxen* case is not really about an interpretation of the O.E.L., as it is about reconciling the fundamental rights of Mr. Metoxen to run for office in a

³⁰ In the Metoxen case Mr. Gary Metoxen ran for office both as an Oneida Appeals Commission member and a member of the Oneida Gaming Commission.

³¹ Petitioners challenged the special election results of September 27, 2003 on other grounds, arguing that the Trial Court in 03-TC-326 did not have authority to order a special election, and that candidates for the special election should have been limited to Petitioners, who won in the original election of July 2003, and Gary Metoxen, whose name was omitted from the ballot in the July election.

³² Appellant in *Powless vs. OED* challenged election results because her name was not on sample ballots or in Kalihwisaks prior to election, but was on the final ballot on the day of the election. The Court held that there was no obligation in the Election Law to prepare a complete or accurate ballot as a sample or for publication in the newspaper.

meaningful manner consistent with the due process guarantees of the ONEIDA CONSTITUTION.

The Gary G. Metoxen case is unusually terse, being only two or so pages in length and basically appears to accept an agreement between Mr. Metoxen and the Oneida Election Board which, through inadvertence, had left his name off the ballot. To allow the election results to go forward or be otherwise ratified, without Mr. Metoxen being considered a candidate, would have completely undermined his right to run for office. For, despite properly filing the proper papers and doing all that was required of him, without his name on the ballot, he would have virtually no chance of being elected. The compromise settlement accepted by the Court in that case rectified that error and allowed his name on the ballot and authorized a Special Election even though the Oneida Election Law does not explicitly grant the OAC the power to order Special Elections. To hold otherwise would be to allow, through no animus or fault by either Mr. Metoxen or the OEB, the disenfranchisement of both an office seeker and those who supported him.

This Court finds that the decision in *Gary G. Metoxen* is not the “liberal” interpretation of the Oneida Election law as argued by the Appellant and therefore is not inconsistent with today’s decision. Neither of the two cases cited by the Appellant stand for a liberal vs strict interpretation as alleged. Indeed, since in the case appealed from the Oneida Election Board allowed Ms. Dallas name to appear, it would also appear to be using a “liberal interpretation” of the O.E.L. in that it liberally allows the electorate to decide who should fill offices instead of reading the O.E.L. in a cramped manner, as suggested by the Appellant, to disqualify candidates who meet all the other qualifications pursuant to Oneida Election Law Section 2.5-2(a)-(e). The Appellant cannot just slap labels onto prior decisions and manufacture inconsistency. What the Trial Court held was that it found that there was no explicit prohibition in the Oneida Election Law forbidding someone in Ms. Dallas’ position from running for office as she did.

What the Election Law does, is not make the Oneida Election Board an interpreter of the Oneida Election Ordinance, but instead gives it the authority to “promulgate any rules and regulations regarding election procedures or procedures of the Election Board.” See O.E.L. Section 2.4-4(a). It also has the authority to “create rules or regulations as deemed necessary to carry out the efficient administration of elections,” pursuant to O.E.L. Section 2.4-4(b). In other words, the Oneida Election Board has the authority necessary to govern its own procedures and election procedures, but not to substantively declare an otherwise eligible candidate ineligible due to the fact they already hold a seat on the body they seek election to. One would hope that the electorate would see through this rather unusual position and vote accordingly. A liberal interpretation of the Oneida Election Rules would be to generally allow as much participation in the democratic process for candidates and voters alike, not less as urged by the Appellant. Therefore, we do not find the decision either be arbitrary, capricious or more properly put a misinterpretation of the law.

IV. Decision

This court upholds the decision of the Trial Court upholding the Oneida Election Board’s

decision to allow Linda Dallas to run for an open seat on the Oneida Gaming Commission even though she already held an elective seat on that body. It is the decision of this Appellate Court to remand this case to Oneida Election Board for actions consistent with the decision above. The appeal in this case is dismissed and judgement rendered in favor of the OEB.