

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Nomination Petitions of :
Paul Kosko :
 :
Appeal of: William Bretz : No. 288 C.D. 2023
 : Submitted: April 5, 2023

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge
 HONORABLE CHRISTINE FIZZANO CANNON, Judge
 HONORABLE ELLEN CEISLER, Judge

OPINION
BY JUDGE FIZZANO CANNON FILED: April 13, 2023

William Bretz (Objector) appeals from the March 17, 2023 order of the Court of Common Pleas of Westmoreland County (trial court). The trial court’s order dismissed the Petition to Set Aside the Nomination Petitions of Paul Kosko (Petitions) as a Republican candidate for the office of Westmoreland County Commissioner in the Pennsylvania Municipal Primary Election to be held on May 16, 2023 (Primary Election). Objector claims that Paul Kosko (Candidate) violated Section 1104(b)(2) of the Public Official and Employee Ethics Act¹ (Ethics Act), 65 Pa.C.S. § 1104(b)(2), by failing to file his Statement of Financial Interests (SOFI) with the governing authority of Westmoreland County (County), which Objector claims is a fatal defect requiring Candidate’s disqualification and removal from the Primary Election ballot. Objector asserts that, in addition to filing his SOFI with the Westmoreland County Board of Elections (Election Board), Candidate needed to file

¹ 65 Pa.C.S. §§ 1101-1113.

the SOFI with the County Clerk, which Objector claims is the County’s governing authority. Upon review, this Court issued a *per curiam* order on April 7, 2023, affirming the trial court’s order. This memorandum opinion is in support of our April 7, 2023 order.

Section 1104(b)(2) of the Ethics Act states:

(2) Any candidate for county-level or local office shall file a [SOFI] for the preceding calendar year with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. A copy of the [SOFI] shall also be appended to such petition.

65 Pa. C.S. §1104(b)(2). Because nomination petitions are filed with the Election Board, Objector posits that Section 1104(b)(2) requires a separate filing of the SOFI with the County Commissioners as the governing authority of the County. We discern no merit in this assertion.

Under Section 301(b) of the Pennsylvania Election Code (Election Code),² except in counties that have adopted home rule charters or optional plans, “the county board of elections shall consist of the county commissioners of such county” 25 P.S. § 2641(b). Thus, Objector’s position would essentially require Candidate to file his SOFI with the same persons twice.

This Court has previously observed that

the Ethics Act does not define the term “governing authority.” While the Ethics Commission, in its regulations, provided the following definition: “governing authority” is “[t]he body empowered to enact ordinances, appropriations and resolutions or to otherwise govern a subordinate body[,]” this definition does not designate a

² Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

specific county office or official with whom Statements must be filed.

Different political subdivisions have different and unique political structures, and different divisions of labor and responsibilities within the governing authority Thus, because not every county or political subdivision in Pennsylvania has the same governing structure, as a practical matter, the application of the term “governing authority” is different in different places. For these reasons, the directive to file the [SOFI] with the governing authority can be ambiguous.

In re Nomination in re Grimaud (Pa. Cmwlth., No. 418 C.D. 2017, filed Apr. 25, 2017),³ slip op. at 8-9 (quoting 51 Pa. Code § 11.1) (additional citation omitted).

This Court then reasoned:

[T]he three elected . . . County Commissioners constitute the County Board of Elections As such, the offices of the Commissioners and the Board of Elections are, in reality, offices of the same three people [E]stablished practice for nearly 30 years has been that county-wide . . . candidates file their [SOFIs] in the Election Office. There is a printed Checklist that is used by the Election Office, which documents this practice and directs that the Statements be filed and maintained in a specific filing cabinet in the Election Office This is the Checklist that was contained in the candidate’s packet the Election Office distributed to Candidate.

There is nothing in the Ethics Act that prohibits the County Commissioners, as the governing authority of the County, from having the [SOFIs] filed with them in their Election Office, rather than in another office that does not have filing procedures in place [The] Election Office is the entity that has been delegated the authority to accept Statements: (1) in the government building, with full-time employees; (2) where records are kept and the documents are filed; (3) where there is an orderly process for

³ This unreported single-judge election opinion is cited as persuasive authority pursuant to Section 414(a) & (b) of this Court’s Internal Operating Procedures, 210 Pa. Code § 69.414(a) & (b).

receiving and maintaining the Statements in the designated filing cabinet; and (4) where there are regular office hours and the Statements are available for public access, review, copying, and inspection. . . . [T]he County Commissioners, who are also the Election Board, have a longstanding, well-known County practice, which is memorialized on the Checklist, that [SOFIs] for county-wide . . . candidates can be filed in their Election Office. This interpretation is thus supported by precedent and common sense, and effectuates the purpose and intent of both the Ethics Act and the Election Code

Id., slip op. at 12-13 (additional citations and footnotes omitted). Accordingly, this Court concluded:

The Legislature did not limit which office of a governing authority could be used for filing and maintaining Statements, and the Ethics Commission has not done so in its regulation. Thus there is no explicit legislative direction to the contrary, as there is for state-level candidates Instead, [o]ut of respect for the political branch[,] . . . , here the County Commissioners, [the Court] find[s] their well-established and documented practice of filing [SOFIs] with them (as the governing authority) in their Election Office, instead of their Commissioners' Office, to be consistent with the statutory language of the Ethics Act.

Id., slip op. at 13-14 (additional citations and internal quotation marks omitted).

Notably, in *Grimaud*, this Court relied in part on *In re: Nomination Petition of Caruso* (Pa. Cmwlth., No. 507 C.D. 2009, filed April 9, 2009), a case that, like this case, arose in Westmoreland County. In *Caruso*, this Court affirmed the trial court's holding that filing a candidate's SOFI in the office of the Election Board "constituted the filing of that [SOFI] with the governing authority of the [C]ounty." *Grimaud*, slip op. at 10 (citing *Caruso*, slip op. at 4-5). We also note that no changes have occurred in the County's procedure for filing nomination

petitions and SOFIs since *Caruso* was decided in 2009.⁴ Notes of Testimony, Mar. 17, 2023 (N.T.) at 9.

We find the analysis in *Grimaud* persuasive here. The Election Board provided filing instructions and a filing checklist that did not mention the County Commissioners or their chief clerk's office as a filing location. N.T. at 13-16 & 51-52. Candidate complied with the instructions by handing the Petitions with attached SOFI, a separate SOFI, and the filing checklist to the filing clerk in the Election Board office. *Id.* at 30-32. The clerk accepted the separate SOFI as well as the Petitions. *Id.* at 30. The clerk initialed the checklist as complete and handed it back to Candidate, telling him that he had filed correctly. *Id.* at 31-32.

We agree with the reasoning in *Grimaud* that neither the legislature nor the Ethics Commission has imposed any limit on which office a governing authority may designate for filing and maintaining SOFIs for candidates in county-level elections. Therefore, accepting SOFIs for filing in the office of the Election Board complies with the requirements of the Ethics Act. Accordingly, we hold that Candidate here properly filed his separate SOFI along with his Petitions in the office of the Election Board.

One distinguishing point in this case requires discussion. As set forth above, Section 301(b) of the Election Code provides generally that a county's board of elections consists of the county commissioners. 25 P.S. § 2641(b). However, Section 301(c) further provides, in pertinent part, that "[w]henver a member of the board of county commissioners is a candidate for nomination or election to any

⁴ In this regard, although the County's chief clerk testified that she regularly accepts SOFIs from candidates, N.T. at 20, that practice is superfluous under the trial court's 2009 ruling in *Caruso* that filing in the Election Board's office constituted filing of the SOFI with the County's governing authority. *See Caruso*, slip op. at 4-5.

public office, the President Judge of the Court of Common Pleas shall appoint a judge or an elector of the county to serve in his stead.” 25 P.S. § 2641(c). Here, Objector has pointed out that for 2023, the County Commissioners are not serving as the Election Board and the President Judge of the trial court has appointed three judges to act in the commissioners’ stead. N.T. at 76. The trial court did not consider this fact significant, noting that “[n]o authority was offered to support the argument that this distinction necessitates a different outcome. Furthermore, adopting different filing requirements once each quadrennial would impose an added layer of confusion for prospective candidates.” *In re: Nomination Petitions of Kosko* (Westmoreland Cnty., No. 986 of 2023, filed Mar. 29, 2023), Op. Written in Compliance with Pa.R.A.P. 1925 at 2 n.3. We agree. Moreover, Section 301(b) of the Election Code further provides that “the county board of elections shall consist of the county commissioners of such county *ex officio*, ***or any officials or board who are performing or may perform the duties of the county commissioners***” 25 P.S. § 2641(b) (emphasis added). Here, the judges appointed to serve as the Election Board for 2023 are performing the duties of the County Commissioners in that regard. We discern no relevant basis for distinguishing this case from others in which we have held that candidates for county-wide offices have properly filed their SOFIs by submitting them to the county’s election board along with their nomination petitions.

Based on the foregoing discussion, we affirm the trial court’s denial of Objector’s petition to set aside the Petitions. Candidate’s name shall remain on the ballot for the Primary Election.

CHRISTINE FIZZANO CANNON, Judge