

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

STATE ELECTION BOARD,

Petitioner,

v.

MERRILL LANE WATTS,

Respondent.

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:
: **Docket No.:**
: **OSAH-ELE-LV-1652126-56-Walker**
:
: **Agency Reference No.: 2012-141**
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FEB 06 2017

Kevin Westray
Kevin Westray, Legal Assistant

INITIAL DECISION

I. SUMMARY OF PROCEEDINGS

The Petitioner, the State Election Board (“Election Board”) seeks sanctions against Merrill Lane Watts (“Respondent”) based on an alleged violation of O.C.G.A. § 21-5-562. The undersigned held a hearing in this matter on November 21, 2016, and the record closed on January 13, 2017. For the reasons stated below, the Respondent is **SANCTIONED** as provided herein.

II. FINDINGS OF FACT

1.

The Respondent first registered to vote on August 29, 1989, approximately six months before his eighteenth birthday. (Transcript at pp.19-20 (hereinafter “T-”); Exhibit P-1). He listed his address as 201 Patricia Lane, Fayetteville, Georgia (“201 Patricia Lane”), where he lived with his mother, Marilyn Watts. (T-26, 96; Exhibit P-1).

2.

The Respondent works as a real estate agent and appraiser, and owns several investment properties. (T-23-24, 49; Exhibit P-3). In 2003, the Respondent purchased a three-bedroom home at 109 Gelding Garth in Peachtree City, Georgia (“109 Gelding Garth”), intending to use the home as rental property. (T-23-24).

3.

From 2007 through 2010, the Respondent was the chairman of the Republican Party’s organization for Georgia’s Third Congressional District. (T-100). After multiple complaints were filed against him, he resigned.¹ (T-102-103). From 2011 to 2012, he chaired the Fayette County Republican Party. (T-101).

4.

After the 2010 census, the Georgia state legislature formulated a statewide redistricting plan. (T-31). On September 6, 2011, Governor Nathan Deal signed legislation approving the redistricting plan. (T-31-34). The legislation split the Republican base in Fayette County. (T-56).

5.

After the plan went into effect, the Respondent’s home at 201 Patricia Lane was redistricted from the Third Congressional District to the Thirteenth Congressional District. (T-32). The Thirteenth Congressional District is represented by David Scott, a Democrat. (T-32, 116). Prior to and following the redistricting, the 109 Gelding Garth home remained in the Third Congressional District. (T-32).

¹ The Respondent maintains that the allegations against him eventually proved to be unfounded. (T-102-103).

6.

On September 27, 2011, the Respondent submitted a voter registration change-of-address form to the Fayette County Board of Elections and Voter Registration, transferring his voting address from 201 Patricia Lane in Fayetteville to 109 Gelding Garth in Peachtree City. (Exhibit P-2). The change-of-address form required that the Respondent swear or affirm that he resided at 109 Gelding Garth. (T-22; Exhibit P-2).

7.

At the hearing, the Respondent explained that he had decided to move to 109 Gelding Garth because he was thirty nine years old and tired of living with his mother. (T-26, 96).

8.

In September 2011, 109 Gelding Garth was leased to a tenant, Christian Alfaro. Mr. Alfaro paid for the utilities at 109 Gelding Garth. (T-79, 81, 86). After moving to 109 Gelding Garth, the Respondent explained that he decided to retain Mr. Alfaro as a tenant and roommate because he “was a little tight on money at the time.” (T-26). Six months later, in March 2012, the Respondent moved back to his mother’s house at 201 Patricia Lane, testifying that he had had “a personality clash” with Mr. Alfaro. (T-26-27, 35). He could have terminated Mr. Alfaro’s lease but chose not to exercise this option. (T-27).

9.

Mr. Alfaro denied that the Respondent had lived at 109 Gelding Garth between September 2011 and March 2012. (Exhibit P-8 at 46).

10.

Brad Parsons moved into 109 Gelding Garth over Labor Day weekend in 2011. (T-45). He moved out in March 2012, a few days before his birthday. (T-49). During this time period,

Mr. Parsons lived with Mr. Alfaro, and a second roommate, “Yoswin” occupied the third bedroom. (T-51-52).

11.

Mr. Parsons confirmed that the Respondent did not live at 109 Gelding Garth between September 2011 and March 2012. (T-46, 48-49). He only met the Respondent when called to testify during legal proceedings² regarding the Respondent and his purported residency at 109 Gelding Garth. (T-48-49).

12.

Similarly, the Respondent was unfamiliar with Mr. Parsons prior to the hearings held regarding his residency. (T-122).

13.

Mr. Alfaro’s girlfriend, Patricia Clements Williams,³ lived at 107 Gelding Garth, the house next door to 109 Gelding Garth. (T-48). Although she frequently visited 109 Gelding Garth, she never saw the Respondent at the residence. (T-48; Exhibit P-9 at pp. 43-44).

14.

The Respondent testified that, after moving from 201 Patricia Lane to 109 Gelding Garth, he did not change his driver’s license or car registration to reflect a change of address. (T-32). His income tax filings did not list 109 Gelding Garth as his residence. (T-104). Further, the

² Prior to the instant hearing, there have been multiple proceedings regarding the Respondent’s residency. For example, in 2012, the Fayette County Board of Elections and Voter Registration held a hearing, the results of which were later appealed to the Fayette County Superior Court. (T-104-105; Exhibit R-1). A complaint also was filed before the Election Board, which voted to refer the case to the Attorney General’s Office. (Statement of Matters Asserted ¶ 15).

³ The Petitioner’s Post-Hearing Brief notes that Exhibit P-9 identifies the witness as “Patricia Clemmons”; however, the Petitioner states that her correct name is Patricia Clements Williams. (Petitioner’s Post-Hearing Brief at p. 5, ft. 4).

Respondent stated he did not need to submit a change-of-address form to the post office because “99 percent of my mail goes to a post office box.” (T-32).

15.

There are thirty six precincts in Fayette County. (T-67). On February 18, 2012, the Respondent attended a Republican Party precinct meeting for 109 Gelding Garth’s precinct, and was elected as a precinct delegate to the Fayette County Republican Party Convention. (T-37-38; Exhibit P-6).

16.

On March 6, 2012, the Republican presidential primary took place. While registered to vote at 109 Gelding Garth, the Respondent voted in the Republican presidential primary. (T-96). One day after the primary, on March 7, 2012, the Respondent submitted a change-of-address form indicating he lived at 201 Patricia Lane. (Exhibit P-4).

17.

In 2012, the Republican Party selected delegates to send to the national Republican convention. In turn, the delegates would elect the Republican nominee for president. (T-37-39).

18.

On March 10, 2012, the Respondent attended the countywide Fayette County Republican Party Convention. (T-39). Using his 201 Patricia Lane address, he sought election as a delegate. (T-40, 41).

19.

Stephen Brown is a Fayette County Commissioner who participated in the March 2012 Fayette County Republican Party Convention. (T-56). At the Convention, he voiced concern that the Respondent had been elected as a delegate from one precinct, and now was seeking

election as a county delegate from a different precinct. (T-58, 59). Mr. Brown approached the Convention's credentials committee, objecting to the Respondent's representation of "another precinct that [he was not] certified for at the precinct meeting." (T-59). Mr. Brown, along with several other individuals, later petitioned the Fayette County Republican Party for a hearing regarding this issue. (Exhibit P-5).

20.

The Respondent's mother, Marilyn Watts, testified that her son moved from 201 Patricia Lane in September 2011 to 109 Gelding Garth, and that he returned home in late February or March 2012. (T-130-131).

21.

Deborah Heard is a close friend of the Respondent's family and has known him all of her life. (T-135). When the Respondent served as chairman of the Republican Party's organization for Georgia's Third Congressional District, she was treasurer of the same organization. (T-144). She also owns Heard Realty Company and handles the listings for the Respondent's properties. (T-137).

22.

Ms. Heard testified that she had met with the Respondent at 109 Gelding Garth between September 2011 and March 2012. (T-140). She stated that she also had spent the night at 109 Gelding Garth for a few nights in December 2011, around Christmastime, and that the Respondent was living there at the time. (T-136).

Peggy Perkins also was active in the Republican Party. (Exhibit R-3 at 5, 60). In 2014, she gave a deposition stating that she recalled meeting with the Respondent, at a home located on Gelding Garth, on two occasions in November or December 2011. (Exhibit R-3 at 9, 11). Ms. Perkins believed that the Respondent lived at the Gelding Garth home because no one else was in the home. (Exhibit R-3 at 12, 73). At the time that she gave the deposition, Ms. Perkins was eighty one years old, on “heavy medication,” and had “problems with [her] memory.” (Exhibit R-3 at 81).

III. Conclusions of Law

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has “all the powers of the referring agency” O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Board is authorized to enforce the Georgia Election Code, O.C.G.A. §§ 21-2-1 to 21-2-604, by issuing orders requiring a violator:

- (1) To cease and desist from committing further violations;
- (2) To pay a civil penalty not to exceed \$5,000.00 for each violation of [the Georgia Election Code] or for each failure to comply with any provision of this [Code] or of any rule or regulation promulgated under this [Code] . . . ;
- (3) To publicly reprimand any violator found to have committed a violation;
- (4) To require that restitution be paid by any violator to a state, county, or city governing authority when it has suffered a monetary loss or damage as a result of the violation;
- (5) To require violators to attend training as specified by the [B]oard; and
- (6) To assess investigative costs incurred by the [B]oard against any violator found to have committed a violation.

O.C.G.A. § 21-2-33.1.

4.

The Georgia Election Code, O.C.G.A. § 21-2-562⁴, provides in relevant part:

- (a) Any person who willfully:

⁴ The Respondent argues that O.C.G.A. § 21-2-562 is inapplicable to his case because it only addresses violations made by elected officials. By its terms, the statute refers to a “person” who makes a fraudulent entry on a document “authorized or required to be made . . . in connection with any primary or election.” “Person” is not specifically defined in the definitions for the relevant statutes. See O.C.G.A. § 21-2-2. However, it is clear that “person” does not refer to election officials exclusively. As an example, O.C.G.A. § 21-2-561 refers to a “person” who provides a false registration as an elector. See also O.C.G.A. § 21-2-7 (stating that a “person” adjudged as a subversive person cannot be elected or nominated); O.C.G.A. § 21-2-8 (addressing the eligibility of a “person” for a party nomination). Moreover, the scope of subsection (a) of § 21-2-562 is particularly broad, covering any “person” who provides a false “record or document authorized or required to be made . . . in connection with any primary or election.” There is no indication that the record or document in question must be made by an election official. Moreover, O.C.G.A. § 21-2-562(a) refers to false entries on a registration card, which is filled out by a prospective voter. See O.C.G.A. § 21-2-219(a) (“The registration cards *for use by persons in making application* to register to vote shall be in a form as specified by the Secretary of State”) (emphasis added). Likewise, O.C.G.A. § 21-2-562(a) refers to false entries on affidavits, which could refer to affidavits submitted by registering candidates. See, e.g., O.C.G.A. §§ 21-2-132(f), 21-2-153(e), 21-2-153.1(d).

- (1) Inserts or permits to be inserted any fictitious name, false figure, false statement, or other fraudulent entry on any registration card, electors list, voter's certificate, affidavit, tally paper, general or duplicate return sheet, statement, certificate, oath, voucher, account, ballot, or other record or document authorized or required to be made, used, signed, returned or preserved for any public purpose in connection with any primary or election;

...

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both.

5.

The Board asserts that the Respondent submitted a change-of-address form to the Fayette County Board of Elections and Voter Registration, falsely affirming that he had changed his residence from 201 Patricia Lane in Fayetteville to 109 Gelding Garth in Peachtree City. Maintaining that the Respondent's conduct violated O.C.G.A. § 21-2-562, the Board asks for imposition of the following sanctions: (1) a cease and desist order; (2) a civil penalty of \$5,000.00; and (3) a public reprimand. (T-14.)⁵

6.

"The residence of any person shall be held to be in that place in which such person's habitation is fixed, without any present intention of removing therefrom[.]" O.C.G.A. § 21-2-217(a)(1). "Residence" means domicile. O.C.G.A. § 21-2-2(32). To establish domicile, parties must demonstrate a physical presence and intent to make that place home. Smiley v. Davenport, 139 Ga. App. 753, 757 (1976). There is no bright-line test to determine domicile, as "[n]o definite amount of time spent in a place is essential to make that place a home." Id. (citation omitted).

7.

After considering the evidence presented, observing the witnesses' demeanor and assessing their credibility, the undersigned finds that the Respondent did not live at 109 Gelding Garth between September 2011 and March 2012.

8.

Georgia Code Section 21-2-217 sets forth factors to consider in determining a candidate's residency that also are instructive in this matter. A court may examine, *inter alia*, a candidate's vehicle registration, income tax filings, and the receipt of personal mail as evidence of domicile. Consideration may be given to such factors and "any other evidence that indicates where the person resides." O.C.G.A. § 21-2-217(a)(15), (b).⁶

9.

The evidence presented at the hearing regarding the Respondent's vehicle registration, driver's license, income tax filings and receipt of mail all signify that he resided at 201 Patricia Lane. Even if the undersigned were to credit the Respondent's testimony that he had physically moved from 201 Patricia Lane to 109 Gelding Garth, consideration of these same factors would indicate that he never intended to make 109 Gelding Garth his home.

10.

Mr. Parsons did not have a prior relationship with the Respondent and, unlike the majority of the witnesses who testified, was not active in the Republican Party. Even the Respondent could not identify any reason that Mr. Parsons might have to testify dishonestly. Accordingly, Mr. Parsons had nothing to gain by testifying that the Respondent did not live at 109 Gelding Garth, and the undersigned finds his testimony to be both credible and persuasive.

⁵ The Statement of Matters Asserted requested additional penalties, but these were not pursued at the hearing.

11.

The Board proved, by a preponderance of the evidence, that the Respondent violated the Georgia Election Code by submitting false information to the Fayette County Board of Elections and Voter Registration.

IV. Decision

Violations of the election laws are not to be treated as mere technicalities. Rather, these laws are a vital part of preserving the sanctity of the electoral process. McCranie v. Mullis, 267 Ga. 416, 417 (1996). In accordance with the foregoing Findings of Fact and Conclusions of Law, the following sanctions shall be imposed against the Respondent pursuant to O.C.G.A. § 21-2-33.1:

- (1) The Respondent shall pay a civil penalty of \$5,000.00 to the Board;
- (2) The Respondent shall cease and desist from committing further violations; and
- (3) The Respondent shall be publicly reprimanded for his conduct.

SO ORDERED, this 6 day of February, 2017.



RONIT WALKER
Administrative Law Judge

⁶ Given the purpose of the hearing, the undersigned does not consider the Respondent's voter registration a factor of any relevance in this matter.