



FILED
OSAH

OCT 15 2013

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

GARRETT JAMIESON,

Petitioner,

v.

DEAN J. SHERIDAN,

Respondent.

K. Westray
Kevin Westray, Legal Assistant

Docket Number: OSAH-SECSTATE-CE-
1411748-28-MALIHI

INITIAL DECISION

Petitioner challenges Respondent's qualification to be a candidate for the State Senate District 14. Petitioner contends that Respondent is a defaulter of federal taxes and therefore does not meet the constitutional requirements for the office. A hearing was held on October 10, 2013, in Atlanta, Georgia. Based on the evidence presented, the Court concludes that Respondent is qualified to be a candidate for the State Senate District 14.

FINDINGS OF FACT

1.

On September 17, 2013, Respondent filed a sworn Notice of Candidacy and Affidavit seeking the State Senate District 14, for the special election to be held on November 5, 2013. (Ex. R-3.) In his Notice of Candidacy and Affidavit, Respondent swore as follows: "I am eligible to hold such office . . . [and] I am not a defaulter of any federal, state, county, municipal or school system taxes . . . [that] has been finally adjudicated by a court of competent jurisdiction to owe those taxes." (*Id.*)

2.

Petitioner, a registered voter and eligible elector in Senate District 14, filed a challenge to Respondent's qualifications with the Secretary of State. Petitioner asserts that Respondent does not meet the constitutional and statutory requirements for candidates for State Senate because Respondent is a defaulter of federal and state taxes. Ga. Const. art. II, § II, para. III.

3.

In support of his challenge, Petitioner presented evidence of a federal tax lien on Respondent's former business in the amount of \$1,399.09, dated June 25, 2010. (Exs. P-1.) Respondent did not know about the lien until he heard about Petitioner's challenge to his candidacy. (Testimony of Respondent.)

4.

After hearing about the tax lien, Respondent attempted to pay the tax that he "allegedly" owed. But because of the government shutdown, he was unable to satisfy the tax lien. However, on October 2, 2013, Respondent filed his Request for Appeals Review of the tax lien. (Ex. P-4.) Respondent's appeal of the tax lien is currently pending before the Department of Treasury, Internal Revenue Service.

CONCLUSIONS OF LAW

1.

The Georgia Election Code (the "Code") mandates that "[e]very candidate for federal and state office . . . who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought." O.C.G.A. § 21-2-5(a). Candidates seeking election in nonpartisan elections must file a Notice of Candidacy and Affidavit stating that "he or she is eligible to hold such office." O.C.G.A. § 21-2-132 (c), (f).

2.

Both the Secretary of State and the electors of Georgia are granted the authority under the Code to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b), which authorizes any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).

3.

Petitioner, as an elector eligible to vote for Respondent, timely filed a challenge with the Secretary of State.

4.

Petitioner asserts that Respondent does not meet the constitutional qualifications for Senate District 14. Ga. Const. art. II, § II, para. III ("No person . . . who is a defaulter for any federal, state, county, municipal, or school system taxes required of such officeholder or candidate if such person has been finally adjudicated by a court of competent jurisdiction to owe those taxes, but such ineligibility may be removed at any time by full payment thereof, or by making payments to the tax authority pursuant to a payment plan, or under such other conditions

as the General Assembly may provide by general law; or who is the holder of public funds illegally shall be eligible to hold any office or appointment of honor or trust in this state.”).

5.

The burden of proof is entirely upon Respondent to establish affirmatively his eligibility for office:

[T]he statutes place the affirmative obligation on [the challenged candidate] to establish his qualifications for office. [The challenger] is not required to disprove anything regarding [the candidate’s] eligibility to run for office, as the entire burden is placed upon [the candidate] to affirmatively establish his eligibility for office.

Haynes v. Wells, 273 Ga. 106, 108-09 (2000).

6.

Therefore, Respondent must prove that he meets the constitutional and statutory qualifications for Senate District 14—specifically that he is not a defaulter of federal and state taxes or that such ineligibility has been removed. The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

7.

Respondent argues that there has been no final adjudication by a court of competent jurisdiction that he owes the federal tax debt. He further asserts that he has appealed the tax lien and that his appeal is currently pending. Finally, Respondent argues that he is willing to satisfy the tax lien should his appeal fail. In fact, Respondent attempted to pay the tax lien while his appeal is pending but was unable to do so because of the government shutdown.

8.

Admittedly, the provision of the Georgia Constitution at issue does contain the language that defaulters of federal, state, county, municipal, or school taxes are not eligible to hold office “if such person has been finally adjudicated by a court of competent jurisdiction to owe those taxes.” Ga. Const. art. II, § II, para. III. However, the language concerning final adjudication can only serve the purpose to protect the individual who disputes the tax debt and has availed himself of the administrative and judicial appeal process. In other words, when a taxpayer disputes the amount of tax, he is entitled to appeal the deficiency or the assessment. *See* 26 U.S.C. § 6213(a) (a petition for redetermination of a deficiency may be filed within 90 days after notice of the deficiency); *see also* 26 U.S.C. § 7481(a) (providing for the appeal of a tax court decisions); O.C.G.A. § 48-2-46 (providing for the appeal of a proposed assessment). Thus, the taxpayer who disputes the tax debt by appealing it is not deemed ineligible until there is a final adjudication of his disputed tax debt.

9.

When a taxpayer does not file a petition to dispute a federal tax deficiency, the deficiency becomes an assessment and “shall be paid upon notice and demand from the Secretary.” 26 U.S.C. § 6213(c). Assessments have the same legal effect as a judgment. *Bull v. United States*, 295 U.S. 247, 260 (1935); *In re: Robert L. Vines v. Internal Rev. Svc.*, 200 B.R. 940, 947 (M.D. Fla. 1996). “The assessment supersedes the pleading, proof and judgment necessary in an action at law, and has the force of such a judgment.” *Bull*, 295 U.S. at 260. Thus, if a taxpayer does not dispute the tax liability, does not appeal the assessment, and the time to appeal such assessment has passed, the assessment has the same force and effect of a final adjudication by a court of competent jurisdiction.

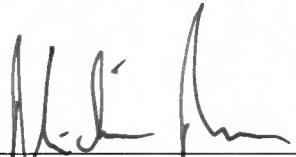
10.

Here, Respondent disputes that he owes the tax liabilities described above. At the hearing, he presented evidence that he has appealed the federal tax lien. Accordingly, the disputed federal tax assessment is not equivalent to final adjudication by a court of competent jurisdiction as long as Respondent’s appeal is pending.

DECISION

IT IS HEREBY ORDERED THAT Respondent is qualified to be a candidate for Senate District 14, and his name shall remain on the ballot.

SO ORDERED, this the 15th day of October 2013.



MICHAEL MALIHI, Judge