

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

**KATHERINE JUHAN-ARNOLD,**  
Petitioner,

v.

**NAKITA HEMINGWAY,**  
Respondent.

**Docket No.: 2222291  
2222291-OSAH-SECSTATE-CE-67-  
Howells**

**Agency Reference No.: 2222291**

**INITIAL DECISION**



Petitioner Katherine Juhan-Arnold challenged Respondent Nakita Hemingway’s qualification to be a candidate for the Georgia Commissioner of Agriculture. Petitioner asserted that Respondent does not meet the qualification of being a “practical farmer.” The hearing was conducted on April 11, 2022. Petitioner represented herself at the hearing. Respondent represented herself at the hearing. Based on the evidence presented, the Court concludes that Respondent is qualified to be a candidate for Georgia Commissioner of Agriculture.

**Findings of Fact**

1.

Nakita Hemmingway resides in Dacula Georgia. In 2018, she and her husband purchased land in Gwinnett County Georgia for the purpose of building their residence, and creating a cut-flower farm, a farm stand, an onsite event space, and a bed and breakfast operation. Certain uses of the property required Mrs. Hemmingway and her husband to obtain a Special Use Permit from Gwinnett County.<sup>1</sup> Currently, their residence and the farm stand have been permitted. (Testimony of Respondent; Ex. P-1.)

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<sup>1</sup> It appears that they were not required to obtain a Special Use Permit to use the land as a farm.

2.

Mrs. Hemmingway and her husband have been growing flowers on the Gwinnett property since 2019. They grow Daffodils, Dahlias, Zinnias, Ranunculus, Larkspur, Anemones, Snapdragons, Sunflowers, Peonies, Lemongrass, Basil, Amaranth, Celosia, and Hyssop. This year they will add Sorghum. They sell the cut flowers and bouquets to event planners, individual consumers, and florists. They also sell seeds produced by their flowers. This year they will begin selling at the Suwanee Farmer's Market. (Testimony of Respondent; Exs. R-1, R-5, R-6, R-8.)

3.

Prior to farming at the current location, Mrs. Hemmingway planted flowers at her residential property and sold them. She and her husband plant the bulbs, seedlings, and seeds themselves. (Testimony of Respondent.)

4.

Mrs. Hemmingway and her husband applied for a Natural Resources Conservation Service ("NRCS") grant from the USDA. They were approved for the grant in May 2021. According to Mrs. Hemmingway, to be eligible for the grant, one must be actively engaged in farming. (Testimony of Respondent; Exs. R-1, R-2, R-3, R-4.)

5.

In June 2021, Mrs. Hemmingway and her siblings purchased a timber farm in South Carolina. They will harvest their first batch of timber this year. (Testimony of Respondent; Ex. R-7.)

6.

Mrs. Hemmingway holds a GATE card, which provides farmers a tax exemption for raw materials. She is a member of the Georgia Farm Bureau and Women in Agribusiness. She first

attended training regarding the cut flower farming business in 2019. (Testimony of Respondent; Exs. R-9, R-10.)

7.

Mrs. Hemmingway is a licensed realtor. However, she has not worked as a realtor in the last two and a half years. (Testimony of Respondent.)

### **Conclusions of Law**

1.

A candidate for State office must meet all constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a).

2.

Pursuant to Code Section 21-2-5(b), either the Secretary of State or an elector who is eligible to vote for a candidate may challenge the candidate's qualifications to hold office. In the present case, the Petitioner contends that Respondent does not meet the qualification of being a "practical farmer" contained in Georgia Code Section 2-2-2, which states, in pertinent part, as follows:

The department shall be under the control and management of the Commissioner of Agriculture, ***who shall be a practical farmer***, elected by qualified voters at the same time, in the same manner, and under the same rules and regulations as the Governor and statehouse officers are elected.

O.C.G.A. § 2-2-2 (emphasis added).

3.

Respondent has the burden of proving that she is qualified to be a candidate for Commissioner of Agriculture. *See Haynes v. Wells*, 273 Ga. 106, 108-09 (2000). The burden of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

4.

The term “practical farmer” is not defined in the statute or anywhere in the Georgia Code. The court could find only one place in the Georgia Code and one place in the Georgia Rules and Regulations where the term “farmer” is defined. However, in both instances the term is defined for very specific purposes.

5.

Under the Emerging Crops Fund Act, in Georgia Code Section § 2-8A-3(2), “farmer” is defined as “a resident of Georgia who engages in or wishes to engage in the commercial production of an emerging crop on land in Georgia.” O.C.G.A. § 2-8A-3(2). However, the purpose of the Emerging Crop Fund Act is to promote economic development by encouraging the production of crops in Georgia. O.C.G.A. § 2-8A-2. Furthermore, the fund is administered by the Georgia Development Authority, not the Georgia Department of Agriculture. O.C.G.A. § 2-8A-5.<sup>2</sup>

6.

In the Georgia Rules and Regulations for the Animal Health Division of the Georgia Department of Agriculture, “farmer” is defined as “a person who raises livestock, poultry, equines, or non-traditional livestock; or a person who raises animals for agricultural purposes.” Ga. Comp. R. & Regs. 40-13-6-.01. This rule falls under the subject of auction markets. Because the definition in this rule is specific to auction markets of animals, the court concludes that the definition is too narrow for the purpose of defining the practical farmer qualification for the Georgia Commissioner of Agriculture. It excludes all plant farmers.

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<sup>2</sup> Because this definition includes individuals who wish to engage in the commercial production of emerging crops, the undersigned concludes that it does not define a practical farmer. An individual who wishes to engage in the commercial production of crops is a theoretical farmer as opposed to a real or experienced farmer. *See* para. 14 *infra*.

7.

For the purposes of determining who may qualify for the Georgia Agriculture Tax Exemption, the Georgia Rules and Regulations define “agricultural operations,” in pertinent part, as follows:

raising, growing, harvesting, or storing of crops, including, but not limited to, soil preparation and crop production services such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services; feeding, breeding, or managing livestock, equine, or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, fowl, equine, or other animals; producing aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products; processing poultry; post-harvest services on crops with the intent of preparing them for market or further processing, including but not limited to crop cleaning, drying, shelling, fumigating, curing, sorting, grading, packing, ginning, canning, pickling, and cooling; slaughtering poultry and other animals; and manufacturing dairy products.

Ga. Comp. R. & Regs. 40-29-.01(2). While this is not a definition of a practical farmer, it is helpful in formulating a definition.

8.

Federal statutes have defined the term “farmer” and “qualified farmer,” for the purposes of providing certain protection during bankruptcy proceedings and to provide tax benefits. Under federal bankruptcy law, “farmer” is defined as a “person that received more than 80 percent of such person’s gross income during [preceding] taxable year . . . from a farming operation owned or operated by such person.” 11 U.S.C.S. § 101(20). In that same statute, “farming operation” is defined as “farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state. *Id.* at § 101(21).

9.

There are income tax benefits available to qualified farmers. In Section 170 of Title 26 of the U.S. Code, “qualified farmer or rancher” is defined as “a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5) [26 USCS § 2032A(e)(5)] is greater than 50 percent of the taxpayer’s gross income for the taxable year.” 26 U.S.C.S. § 170(b)(1)(E)(v).<sup>3</sup>

10.

Webster’s Encyclopedic Unabridged Dictionary of the English Language defines “farmer” as “a person who farms; person who operates a farm or cultivates land.” *Farmer*, WEBSTER’S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE (2001). Black’s Law Dictionary defines “farmer” as “[a] person whose business is farming. *Farmer*, BLACK’S LAW DICTIONARY (10<sup>th</sup> ed. 2014).

11.

Webster’s defines “practical” as “of or pertaining to practice or action; . . . engaged or experienced in actual practice or work: *a practical politician.*” *Practical*, WEBSTER’S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE (2001). Black’s defines

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<sup>3</sup> Section 2032A of Title 26, which pertains to the valuation of farm property, defines “farming operations” as follows:

(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(C)  
(i) the planting, cultivating, caring for, or cutting of trees, or  
(ii) the preparation (other than milling) of trees for market.

26 U.S.C.S. § 2032A(e)(5).

“practical” as “[r]eal as opposed to theoretical; of relating to, or involving real situations and events rather than ideas, emotions, or idealized situations.” *Practical*, BLACK’S LAW DICTIONARY (10<sup>th</sup> ed. 2014).

12.

Drawing from these varied sources, the undersigned concludes that a practical farmer is one who is engaged in the business of raising, growing, and cultivating crops, agricultural products, animals, or animal products, and selling them. Most of the definitions of farmer include some business, commercial, or income component. Furthermore, some of the powers and duties of the Georgia Commissioner of Agriculture include examining and investigating matters affecting the welfare of farmers, and gathering, formulating, and disseminating information benefitting farmers. O.C.G.A. § 2-2-7(1), (2). Thus, it would seem that the person holding that office should have some experience with the business aspect of farming.<sup>4</sup>

13.

Mrs. Hemmingway grows flowers and sells them. She and her husband have received an NRCS grant from the USDA and they have qualified for the Georgia Agriculture Tax Exemption. Additionally, Mrs. Hemmingway is part owner of a timber farm in South Carolina. For these reasons, the undersigned concludes that Mrs. Hemmingway meets the qualification of practical farmer and, therefore, is qualified to be a candidate for Georgia Commissioner of Agriculture.

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<sup>4</sup> An individual tending to his own garden would not amount to being a practical farmer, as that individual would not have experience with the business aspect of farming.

## Decision

Based upon the above Findings of Facts and Conclusions of Law, Respondent is qualified to be a candidate for Georgia Commissioner of Agriculture, and her name shall remain on the ballot.

**SO ORDERED**, this 20th day of April, 2022.



*Stephanie M. Howells*

**Stephanie M. Howells**  
**Administrative Law Judge**

