

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

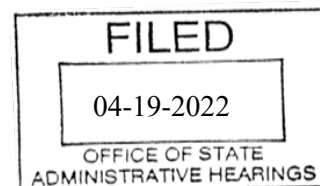
KATHERINE JUHAN-ARNOLD,
Petitioner,

v.

FRED SWANN,
Respondent.

**Docket No.: 2222295
2222295-OSAH-SECSTATE-CE-69-
Howells**

Agency Reference No.: 2222295



INITIAL DECISION

Petitioner Katherine Juhan-Arnold challenged Respondent Fred Swann’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 was represented by Jeremy Berry, Esq. 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.

Fred Swann is and has been a resident of Georgia for his entire life. Mr. Swann is 43 years old. (Testimony of Respondent).

2.

Mr. Swann owns Out of the Box Farms, LLC. His current occupation is mushroom grower. He leases space in a facility from a man named John Moon. He grows blue oyster mushrooms in bottles filled with ground peanut hulls. (Testimony of Respondent; Ex. R-1.)

3.

He purchased the bottles from Mr. Moon, who inoculates the bottles with the mushroom spores. Mr. Swann then manages the crops by adjusting the lighting and humidity in the growing facility. He also harvests and sells his crops to restaurants and sometimes at a farmer's market. (Testimony of Respondent; Ex. R-1.)

4.

Growing mushrooms is Mr. Swann's only occupation. The proceeds from selling the mushrooms are his only income. He recently lost a big customer, to whom he sold 110 pounds of blue oyster mushrooms a week. From those sales he would earn approximately \$1,000 per week. He has found a new customer who will begin buying almost the same quantity of mushrooms from him in the Spring. (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 he 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.

Prior to the hearing, Respondent's counsel moved to dismiss Petitioner's challenge on three grounds. First, he argued that Georgia Code Section 2-2-2 was unconstitutional because it adds a qualification beyond those stated in the Georgia Constitution. He asserted that the legislature did not have the authority to add qualifications. This administrative court does not have the authority to declare a statute unconstitutional. Ga. Comp. R. & Regs. 616-1-2-.22(3).

5.

Second, he argued that Petitioner's challenge is not ripe. In other words, if the qualification of being a practical farmer is constitutional, the time to make that determination is either during the general election or when the Commissioner is sworn into office. *See Poythress v. Moses*, 250 Ga. 452, 453 (1983) (holding that a person's eligibility for public office is determined at the date of the election); *see also* O.C.G.A. § 2-2-2 (stating that the Commissioner of Agriculture [] shall be a practical farmer). Because the undersigned has determined that Respondent meets the qualification of being a practical farmer, it is unnecessary to reach the ripeness argument.

6.

Finally, Respondent's counsel argued that Petitioner's challenge should be dismissed because the statute does not define "practical farmer." This argument is not persuasive. Many statutes do not define their terms. That is why courts must engage in statutory interpretation. In

interpreting statutes, courts must apply the ordinary signification “to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.” O.C.G.A. § 1-3-1(b). For these reasons, Respondent’s motion to dismiss is denied.

7.

Respondent’s counsel is correct. 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.

8.

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-5.¹

9.

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

¹ 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*.

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.

10.

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, turkeys, and ducks; 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.

11.

Federal statutes have defined the term “farmer” and “qualified farmer,” for the purposes of providing certain protection during bankruptcy proceedings and to provide certain 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).

12.

There are certain 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).²

13.

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 (10th ed. 2014).

² 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).

14.

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 "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 (10th ed. 2014).

15.

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 or animals 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. Thus, it would seem that the person holding that office should have some experience with the business aspect of farming.³

16.

Mr. Swann is in the business of growing blue oyster mushrooms and he sells his product for income. Accordingly, the undersigned concludes that Mr. Swann meets the qualification of practical farmer and therefore is qualified to be a candidate for Georgia Commissioner of Agriculture.

³ 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 his name shall remain on the ballot.

SO ORDERED, this 19th day of April, 2022.

Stephanie M. Howells

Stephanie M. Howells
Administrative Law Judge

