

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

KATHERINE JUHAN-ARNOLD,
Petitioner,

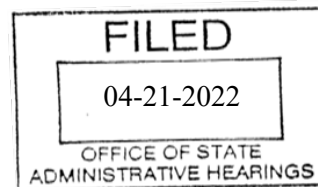
v.

WINFRED DUKES,
Respondent.

**Docket No.: 2222296
2222296-OSAH-SECSTATE-CE-47-
Howells**

Agency Reference No.: 2222296

INITIAL DECISION



Petitioner Katherine Juhan-Arnold challenged Respondent Winfred Dukes' 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 Robert T. Trammel, Jr., 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.

Winfred Dukes lives in Albany, Georgia. He is the State Representative for House District 154 and has served in that capacity for 26 years. As a result, he is required to be in Atlanta during the legislative session for approximately 40 days between the first Monday after the first Tuesday in January and sometime in April. (Testimony of Respondent; Ex. P-1.)

2.

Mr. Dukes serves as the CEO of Dukes, Edwards, Dukes, Inc., a family-owned construction and real estate firm. He owns a restaurant-nightclub. He is also a publisher of a newspaper and a

developer. (Exs. P-1, P-2; Testimony of Respondent.)

3.

Mr. Dukes' ancestors on his mother's side of the family were sharecroppers. When he was a child, he picked butter beans, pulled weeds, and cropped tobacco. He plants a yearly garden at his mother's residence. (Testimony of Respondent.)

4.

Demetri Williams' day job is firefighter. He also breeds horses. Mr. Dukes has provided financing for Mr. Williams' horse breeding business. Initially, Mr. Dukes was giving Mr. Williams business advice. However, over time, he has financed more of Mr. Williams' business. As a result, after advice from Mr. Williams, Mr. Dukes makes buying and selling decisions. Mr. Dukes has done a few things with the horses from time to time, but he does not want to be working with the horses every day. (Testimony of Demetri Williams; Testimony of Respondent.)

5.

Army Lester has been friends with Mr. Dukes, since 1974. Mr. Lester has been farming for most of his life. He owns a 13-acre farm in Peach County, Georgia. It is organized under the name "The Lester Farm, LLC." He has owned the farm since 1987 and has always grown timber. Currently, there are trees on 8 of the acres.¹ Mr. Lester is in the process of investigating other crops to plant on the other 5 acres. (Testimony of Army Lester; Ex. R-1.)

6.

On January 3, 2022, Mr. Lester transferred to Mr. Dukes 40% of the membership interests in The Lester Farm, LLC.² Mr. Dukes is primarily involved in the business management of the

¹ Because the majority of the farm is devoted to timber, there is not much day-to-day management.

² The Agreement Governing the Transfer of Membership Interests in The Lester Farm, LLC does not state what consideration was paid by Mr. Dukes.

farm. Mr. Lester is a biologist. He focuses on the crop aspect of the farm. (Testimony of Army Lester; Ex. R-1.)

7.

Currently, they are considering planting citrus on the 5 available acres. They have not purchased any citrus trees for The Lester Farm. Mr. Dukes has attended a seminar to learn about citrus farming. He has planted 15 citrus trees at his mother's residence, "to develop best practices." (Testimony of Army Lester; 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.

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-5.³

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

³ 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.

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, 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.

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).⁴

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 (10th ed. 2014).

⁴ 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).

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 "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).

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.⁵

13.

Mr. Dukes wears many hats. He is a State Representative. He is CEO of his family-owned construction and real estate firm. He publishes a newspaper, owns a restaurant-nightclub, and is a developer. He has financed Demetri Williams' horse breeding business and makes decisions regarding buying and selling, but he does not care for the horses on a day-to-day basis.

⁵ 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.

Additionally, he only recently obtained a 40 % interest in The Lester Farm, which is primarily a timber farm and does not require much day-to-day management.


14.

The statute requiring the Georgia Commissioner of Agriculture to be a practical farmer does not state how much experience, as practical farmer, the candidate must have. Other statutes do contain qualifications stated in terms of a minimum amount of experience. For example, to be a superior court judge in Georgia, at the time of his or her election, the candidate must have practiced law for seven years. *See* O.C.G.A. § 15-6-4(a). Furthermore, statutes “limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office.” *Griggers v. Moyer*, 246 Ga. 578, 580 (1980). While it appears that Mr. Dukes’ experience in farming is minimal, liberally construing the statute, the undersigned is constrained to find that he meets the qualification of a practical farmer and, therefore, is qualified to be a candidate for Georgia Commissioner of Agriculture.

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 21st day of April, 2022.


Stephanie M. Howells
Administrative Law Judge

