

2012 amendment to §5(c) neither expressly struck that clause, nor did it reflect its prior existence, constituting a likely error in the bill drafting process. Thus no intent on the part of General Assembly to strike the key phrase is evident in the 2012 amendment. The Board suspects the absence of the key provision to be an inadvertent scrivener's error.

However, the challenge is based on §5(c) as it appears in the posted town charter. It requires of resident commissioners that they shall be bona fide residents and domiciles of the Town; **and** shall own real estate within the Town or be both a settlor/creator and trustee of a valid trust to which ...real property has been conveyed... or be a leaseholder of real estate in the Town under a lease of a term of five years or more. Any person applying as a leaseholder candidate ... *will* be required to include a copy of a valid lease with his or her candidate filing." Note that the phrasing of the last sentence is as a notice to potential leaseholder candidates.

The challenger asks the Board of Elections to remove Mr. Moskowitz from the ballot as he does not have the qualifying interest in real estate required of resident commissioners as defined, or, alternatively for having checked the wrong candidate classification. However, the alternative classification (non-resident commissioner) did not apply to him as he is a continuing resident of the town. Though Mr. Moskowitz no longer owns real estate in Dewey Beach, his residency has not changed. To contend that he must declare himself a non-resident commissioner in order to fill out the filing form is nonsensical. The Board is satisfied that he has resided in the town for a period that exceeds the applicable durational requirement.

To disqualify him from running for office because he no longer personally owns real estate is troubling as it would implicate his constitutional right of equal protection under the law. In 1979, the Delaware Chancery Court in *Gebelein v. Nashold Mayor, Town of Frederica*, 406 A. 2d 279 (Del.Ch. 1979) invalidated a charter provision that imposed an interest in property as a condition of holding public office. No support for excluding residents who do not own property from the right to run for office in Dewey Beach was offered.

The Board holds that the strict application of the posted charter version of §5(c) precluding resident candidates who lack a qualifying

interest in real property violates the 14th Amendment to the US Constitution. There is no reasonable basis for denying such residents a right to seek office.

This contest is largely attributable a flawed candidate filing form which does not accurately depict the various classifications for eligibility. Setting aside issues with the form, it is the Board's duty to determine whether the candidate qualifies under one or more candidate classifications upon the filing of a challenge.

The challenger's burden to establish the candidate's ineligibility has not been met here. Mere irregularities in the filing process are not sufficient to cancel an election. Their impact on an election cannot be ascertained. Nothing was offered to support the notion that the town electors would be misled by considering Mr. Moskowitz a resident candidate, rather than by another classification. He is in fact a town resident. Consistent with a recent holding of this Board, the significance of the classifications applied to candidates in Dewey Beach is secondary to the candidate's right to participate in the political process.

By a vote of three in favor and none against, a motion carried to deny the challenge to Mr. Moskowitz' candidacy. Thus, the challenger's complaint is Denied.



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