

**RESERVATION ELECTION BOARD
SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION
ADMINISTRATIVE REVIEW**

Patricia Roth,

Petitioner,

vs.

**Final Decision on Living Within the
Original Boundaries**

Reservation Election Board,

Respondents.

INTRODUCTION

The Reservation Election Board ("Board") issues this final decision regarding whether Patricia Roth has been living within the original boundaries of the Reservation for twelve consecutive months, as required by section 03-05-01(B) of the Election Ordinance. For the reasons that follow, the Board determines that Mrs. Roth has not established that she has met the requirements of section 03-05-01(B) and cannot be certified as a qualified candidate.

Pursuant to 03-05-01(B), the Election Ordinance describes residency, pertaining to Mrs. Roth as follows:

That in order to ensure that candidates for positions on the Council have a thorough knowledge of Tribal Affairs, an understanding of the issues confronting Tribal members in the conduct of their daily affairs, and first-hand knowledge of Reservation life, every candidate must have been living within the original boundaries of the reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota, for the twelve consecutive months immediately preceding the dealing for filing a Notice of Intent to run for the position of Council member.

The Election Ordinance provides unambiguous qualifications as to what constitutes living within the original boundaries.

The Election Ordinance specifically defines the phrase living within the original

boundaries as follows:

[H]aving a continuous physical presence for twelve consecutive months preceding the deadline for filing a Notice of Intent to run for office as a . . . Tribal Executive Committee member on the Lake Traverse Reservation or the two adjoining towns of Browns Valley, Minnesota, and Waubay, South Dakota. Evidence documenting residence on the Reservations shall include, but not be limited to, proof of a mailing address within the Reservation boundaries, a driver's license bearing an address within the Reservation boundaries, and tax returns filed for the preceding year bearing an address within the Reservation boundaries. Evidence documenting a continuous physical presence shall include, but not be limited to, affidavits sworn under oath by person with direct personal knowledge that the person has had a continuous physical presence on the Reservation for the past twelve months, or an affidavit of the person seeking office attesting under oath and on penalty of perjury that the person seeking office has had a continuous physical presence on the Reservation for the past twelve months. Section 03-02-06.

The Election Ordinance requires the Board to review all notices of intent to file and determine whether each candidate meets the candidate qualifications. Under the Election Ordinance, the Board has an independent responsibility to make the qualification determination, which is subject to a limited appeal to Tribal Court.

BURDEN OF PROOF

The Election Ordinance places the burden of proof to meet the qualifications of office squarely on the shoulders of the candidate. § 03-05-01. The applicant's burden of proof specifically entails resolving the residency requirement and doing so within the bounds established in the Ordinance. See 03-02-06 ("Evidence documenting residence on the Reservations shall include, but not be limited to, proof of a mailing address . . . drivers license . . . tax returns . . . [e]vidence documenting a continuous physical presence . . ." by "affidavits sworn under oath by persons with direct personal knowledge . . . or an affidavit of the person seeking office . . .").

PROCEDURE

Mrs. Roth timely filed her notice of intent to be a candidate for the Enemy Swim District Council Representative. Mrs. Roth was not issued a notice of debt from the Tribal Executives, so Mrs. Roth's disqualification was based solely upon not living within the boundaries of the Reservation as required by the Election Ordinance.

Mrs. Roth did provide additional information during her hearing pertaining to living within the original boundaries. Mrs. Roth provided the board a map of the area surrounding Lake Kampeska. Mrs. Roth states that since the tip of the triangle which shows the original boundaries of the Lake Traverse Reservation touches Lake Kampeska, as a resident of Watertown, South Dakota she would satisfy the residency requirements found in the Election Ordinance. The Board notes that the city of Watertown, South Dakota is outside the original boundaries and does not satisfy the statutory requirements.

Mrs. Roth also provided the Board with an outline of her testimony and a summary of her presentation. Mrs. Roth did not provide the Board with documentation showing that she was a resident within the original boundaries for the purposes of meeting the requirements of the Election Ordinance. Mrs. Roth's testimony at the time of her hearing consisted of her dissatisfaction of the Election Ordinance and that she should not be barred from running for office.

FINDINGS OF FACT

Mrs. Roth's application for candidacy states her address to be 305 3rd Ave NE, Watertown, South Dakota, 57201. Mrs. Roth claimed that since the tip of the original boundaries of the Lake Traverse Reservation touches Lake Kampeska, that the entire town of Watertown, South Dakota, which is outside of the original boundaries, would constitutes living

within the original boundaries. The Board finds Mrs. Roth's contention unpersuasive. Under the Election Ordinance, candidates must live within the original boundaries, which Mrs. Roth does not.

In 2000, the SWO Tribal Court decided Norman Johnson v. Reservation Election Board, et al, SWO Tribal Court, September 25, 2010, where the court was asked to consider an issue of a candidate's residency. In Johnson, the issue before the court surrounded a candidate who had been attending college in Utah prior to filing his Notice of Intent to run in the Tribal Election. The Court stated that it "considers educational pursuits, military service, medical absences and others of a similar ilk to be "involuntary" absences from the reservation occasioned by the desire of tribal members to improve the lives of themselves and their families."¹ The candidate in Johnson was allowed to run for office.

Following Johnson, the Tribal Council did not change the Election Ordinance by relaxing the living within the boundaries requirement. Had the Tribal Council found the twelve month requirement to be outdated, it could have amended the Ordinance at any time. Instead, the Tribal Council improved upon the language and understanding of the living within the boundaries requirement after the Tribal Court issued its decision in Johnson. Today, the choice for an individual who desires to be a candidate is clear – live within the same geographical area of those that you seek to represent. Further, neither the Tribal Court nor Tribal Council found the living within the boundaries requirement to be unconstitutional.

The Board heard and considered Mrs. Roth's testimony stating her strong opposition to the Election Ordinance; however the Board is not vested with the authority to change the law. Instead, the Board must follow the law and apply it equally to all individuals seeking to become

¹ Page. 2, Norman Johnson v. Reservation Election Board, SWO Tribal Court, September 25, 2010.

a candidate, including Mrs. Roth. As it is the duty of the Election Board to follow and apply the Election Code, the hearing for Mrs. Roth would have been the proper place and time for Mrs. Roth to provide documentation showing she was qualified to run as a candidate for Tribal Council as the Enemy Swim District Council Representative. Mrs. Roth did not provide such documentation. The documentation provided Mrs. Roth at the time of her hearing was unpersuasive to the Board to determine that Mrs. Roth proved to have been living within the original boundaries. The remainder of Mrs. Roth's testimony, which consisted of a policy discussion and how her rights were allegedly being violated by what she deems to be the wrong policy decision by the Tribal Council.

Mrs. Roth's Constitutional right to equal political rights, as established in the Bill of Rights, has not been affected by the living in the boundaries requirements. Mrs. Roth, like all Tribal members, have an equal right to live on the Reservation and run for political office if they are otherwise qualified. Mrs. Roth's choice to live in Watertown, South Dakota, does not deprive her of any Constitutional right. Rather, her choice, and her choice alone, disqualifies her as a qualified candidate. Moreover,

When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." Village of Belle Terre v. Boraas, 416 U.S. 1, 8 n.5 (1974).

All policy consideration belong before the Tribal Council.

CONCLUSION

For the reasons provided herein, the Board unanimously determines that Mrs. Roth has

not maintained a continuous physical presence within the original boundaries of the Lake Traverse Reservation for the past twelve months. Mrs. Roth entirely failed to meet her burden of proof and provide any evidence to show that she meets the statutory requirements of the Election Ordinance to be a qualified candidate. The Board, therefore, does not certify Mrs. Roth as a candidate and this decision is final for the Board.

Dated: August 12, 2010

On behalf of the Reservation Election Board,

A handwritten signature in black ink that reads "Beverly Thompson". The signature is written in a cursive, flowing style.

Beverly Thompson, Chairwoman