

qualifications to hold the office of sheriff.” However, a protest of candidate Dwayne Wenninger’s (hereinafter Wenninger) candidacy in the 2004 election *had* been filed with the Brown County Board of Elections (BCBOE) on January 12, 2004, by Sandra L. Martin (hereinafter Martin) [Exhibit #1]. Martin’s protest was countered by Wenninger’s attorneys in a Memorandum [Exhibit #2]. Martin then withdrew her protest on January 21, 2004 [Exhibit #3]

Although on notice of the issue, the BCBOE never voluntarily investigated whether candidate Wenninger possessed the necessary qualifications to be a valid candidate for the office of sheriff in 2000, even after the Memorandum [Exhibit #2] submitted by Wenninger’s attorneys contained prima facie evidence that Wenninger’s educational credentials failed to meet the Board of Regents diploma requirements necessary under R.C. 311.01(B)(9)(b) in 2000. Therefore, it had essentially been proven that the BCBOE would not institute a sua sponte investigation of Wenninger’s candidacy.

Respondent further argues that “if Wenninger is elected to sheriff on November 4, 2008, Relator Varnau would have an action in quo warranto as to whether Wenninger is qualified to be sheriff based on whether he has, within the three-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission.”

Respondent cites *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, to support the premise that Relator’s proper legal remedy is a quo warranto action. However, the Ohio Supreme Court stated in *Whitman, supra*, at 217, that “Whitman's mandamus claim is an ill-disguised request for prohibitory injunctive relief: to prevent Nelson's candidacy at the November 5, 2002 general election.” Thus, *Whitman* does not apply to the instant action.

Any remedy should be aimed at making the Relator constitutionally whole without further delay. In *State ex rel. Smart v. McKinley* (1980), 64 Ohio St.2d 5, citing *State ex rel. Tulley v. Brown* (1972), 29 Ohio St.2d 235, 237, the Ohio Supreme Court stated that “the relator need not follow a suicidal course under the ‘ordinary course of the law’ doctrine,” which in that case meant that the Court allowed Relator Smart to file her mandamus petition as an original action, circumventing the normal appellate process, since the election was less than one week hence.

Here, the November 4th general election is approximately two months away. The Court cannot now gaze into a “crystal ball” to determine the outcome of a future election as a prophetic solution to the validity of an underlying protest not before this Court, thereby completely avoiding and ignoring the constitutional questions at issue.

Relator, whether certified by the BCBOE as a valid candidate or not, had absolutely no statutory right under the current election laws, including R.C. 3501.39, to challenge Wenninger’s candidacy at any time prior to the primary election, nor after, whereas Wenninger had the statutory right to challenge Relator’s candidacy up to May 30, 2008. This dichotomy depicts a clear disparity in the statutory rights of two individuals certified as candidates for the same elected office of sheriff, in violation of Relator’s equal protection rights under both the Ohio and U.S. Constitutions.

On April 11, 2008, fourteen days after Relator was certified by the BCBOE as a valid candidate for the office of sheriff, Relator submitted a written protest against Wenninger’s candidacy. On May 9, 2008, the BCBOE denied Relator’s protest, thereby violating Relator’s constitutional rights.

The issue before this Court is not whether the substantive material contained within Relator's underlying protest to the BCBOE has merit or not, but rather that Relator's constitutional rights were violated on May 9, 2008.

CONCLUSION

The protest provisions in R.C. 3513.05; 3513.262 are unconstitutional insofar as they denied Relator, an independent, the right to protest a partisan candidate's candidacy for elected office, while allowing any qualified elector the right to protest an independent or nonpartisan candidate's candidacy. Those statutes, as applied, violated Relator's equal protection rights as guaranteed in Section 2, Article I of the Ohio Constitution and 14th Amendment to the U.S. Constitution. Therefore, Relator is entitled to a writ of mandamus directing the BCBOE to accept his April 11, 2008 protest of Dwayne Wenninger's candidacy.

Respectfully submitted,

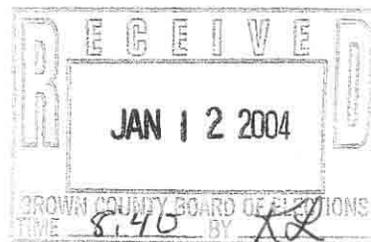
JULIE D. STEDDOM (0072047)
Attorney for Relator
7 Main Street, Suite 2
Ripley, OH 45167
Tel.: 937-392-3057
Fax: 937-392-4208

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Relator's Response to Respondent's Motion To Set Aside was hand-delivered to Thomas F. Grennan, Attorney for Respondent, at 200 E. Cherry Street, Georgetown, OH 45121 on the 28th day of August, 2008.

JULIE D. STEDDOM

Sandra L. Martin
5891 Tracy Road
Sardinia, Oh 45171
(937) 446-4062



January 12, 2004

Brown County Board of Elections
800 Mt. Orab Pike
Georgetown, OH 45121

To Whom It May Concern:

Please accept this letter as a formal protest of Dwayne Wenninger to file a petition for the office of Sheriff of Brown County, Ohio.

Ohio Revised Code Section 311.01 states the qualifications for the Office of Sheriff. Subsection B(9) states that the person must meet at least one of the following conditions; (a) have at least two (2) years of supervisory experience as a peace officer at the rank of corporal or above, or (b) has completed satisfactorily at least two (2) years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio Board of Regents.

In 2000, Mr. Wenninger was a candidate for the office of Sheriff and was subsequently elected to that position in November of that year. He had, at that time, failed to meet the above mentioned qualifications. In 2002, some citizens of Brown County filed a complaint over his qualifications with the Brown County Prosecutor's Office. He was subsequently indicted by a Grand Jury and was tried by a jury of his peers for intentionally falsifying his application for the office of Sheriff. The jury found him not guilty. During the course of the trial, the prosecution proved, as stated by the Judge, that he did not meet the qualifications as set out in ORC 311.01(B)(9)(a) or (b). The jury only found him not guilty of intentionally falsifying his application.

It is my contention that Mr. Wenninger did not meet those qualifications then and does not meet them now. By illegally obtaining the job as Sheriff through false qualifications, any experience Mr. Wenninger has gained since has been gained illegally. Therefore, his experience as a supervisor at the rank of corporal or above still does not exist. The experience he gained illegally must be determined to be "fruits of the poisonous tree" as defined in many court cases whereby evidence or knowledge has been obtained illegally.

EXHIBIT #1

I request you do not certify Mr. Wenninger as a legal candidate for the office of Sheriff. I am a registered Republican voter in the Washington Township West precinct.

Respectfully,


Sandra L. Martin

BROWN COUNTY BOARD OF ELECTIONS
GEORGETOWN, OHIO

In Re: Protest as to the Candidacy of Sheriff Dwayne Wenninger

MEMORANDA ON BEHALF OF SHERIFF DWAYNE WENNINGER

Sandra Martin has filed a "...formal protest of Dwayne Wenninger to file a petition for the office of Sheriff of Brown County, Ohio." As the Board of Elections (hereinafter Board) should be aware, one may not protest the filing of a petition. Sheriff Wenninger assumes that Ms. Martin mistakenly protests the mere filing of a petition and that Ms. Martin's true point of contention is that Sheriff Wenninger does not meet the statutory qualifications to become sheriff.

Between materials filed for the previous quadrennial sheriff election and those materials filed with his petition for the upcoming election, Sheriff Wenninger has supplied the Board with sufficient materials to show that he meets the criteria to qualify to hold the office should he be re-elected. Ms. Martin's specific complaint stated in her protest is that Sheriff Wenninger does not meet the criteria set forth in "...ORC 311.01(B)(9)(a) or (b)." Initially, the Board should note that Ohio Revised Code Section 311.01 was amended effective December 9, 2003 (copy attached).

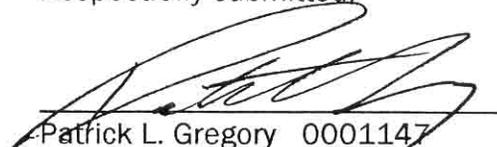
In dealing with the substance of Ms. Martin's protest, clearly Sheriff Wenninger assumed his office more than two years ago and thus has more than two years of supervisory experience at the rank of corporal or above as required by Ohio Revised Code 311.01(B)(9)(a). With regard to any protest Ms. Martin makes that Sheriff Wenninger does not meet the specific criteria of Ohio Revised Code 311.01(B)(9)(b), the Board should note that the Legislature has changed the criteria under that section to include proprietary schools. This Board has on file from the previous quadrennial petition of Sheriff Wenninger the two year post secondary diploma from the technical school that Sheriff Wenninger attended (as well as the other materials that he filed that supported his nominating petition four years ago). Sheriff Wenninger also attaches hereto the affidavit of Lee Spievack, the former owner of the technical school. Clearly, Sheriff Wenninger meets the statutory criteria that is the subject to Ms. Martin's protest and is qualified to return to the office that he presently holds.

Ms. Martin's conclusion that the jury that acquitted Sheriff Wenninger found the Sheriff not guilty of "...intentionally falsifying his application..." is pure speculation as it is as likely that the jury found that Sheriff Wenninger, in fact, met the qualifications to become sheriff and determined his prosecution to be a political witch hunt.

Under the circumstances, this Board has no choice but to deny the protest and maintain its certification of Sheriff Wenninger's candidacy.

EXHIBIT #2

Respectfully submitted,


Patrick L. Gregory 0001147
717 West Plane Street
Bethel, Ohio 45106
(513) 734-0950
fax (513) 734-7958

and


Gary A. Rosenhoffer
190 E. Main Street
Batavia, Ohio 45103
(513) 732-0300
fax (513) 732-0648

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon Sandra L. Martin, 5891 Tracy Road, Sardinia, Ohio 45171 by ordinary mail, postage prepaid on January 16, 2004.



2003 Ohio Laws File 40 (Am. Sub. H.B. 75)

OHIO 2003 SESSION LAW SERVICE
125TH GENERAL ASSEMBLY
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Additions are indicated by **Text**; deletions by
~~Text~~. Changes in tables are made but not highlighted.

File 40
Am. Sub. H.B. No. 75
COUNTIES--EDUCATION--QUALIFICATIONS FOR COUNTY SHERIFFS--GRANTING OF HIGH
SCHOOL DIPLOMAS TO KOREAN CONFLICT VETERANS

< Emergency: Pursuant to O Const, Art II, § 1d, this Act was declared to be an emergency measure necessary for the preservation of the public peace, health, and safety. See Act section 3. >

To amend sections 311.01 and 3313.616 of the Revised Code to grant high school diplomas to veterans of the Korean Conflict, to expand eligibility for diplomas to certain veterans, to clarify the educational qualifications for county sheriffs, and to declare and emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 311.01 and 3313.616 of the Revised Code be amended to read as follows:

<< OH ST **311.01** >>

(A) A sheriff shall be elected quadrennially in each county. A sheriff shall hold office for a term of four years, beginning on the first Monday of January next after the sheriff's election.

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements:

(1) The person is a citizen of the United States.

(2) The person has been a resident of the county in which the person is a candidate for or is appointed to the office of sheriff for at least one year immediately prior to the qualification date.

(3) The person has the qualifications of an elector as specified in section 3503.01 of the Revised Code and has complied with all applicable election laws.

(4) The person has been awarded a high school diploma or a certificate of high school equivalence issued for achievement of specified minimum scores on the general educational development test of the American council on education.

(5) The person has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this state.

(6) The person has been fingerprinted and has been the subject of a search of local, state, and national fingerprint files to disclose any criminal record. Such fingerprints shall be taken under the direction of the administrative judge of the court of common pleas who, prior to the applicable qualification date, shall notify the board of elections, board of county commissioners, or county central committee of the proper political party, as applicable, of the judge's findings.

(7) The person has prepared a complete history of the person's places of residence for a period of six years immediately preceding the qualification date and a complete history of the person's places of employment for a period of six years immediately preceding the qualification date, indicating the name and address of each employer and the period of time employed by that employer. The residence and employment histories shall be filed with the administrative judge of the court of

common pleas of the county, who shall forward them with the findings under division (B)(6) of this section to the appropriate board of elections, board of county commissioners, or county central committee of the proper political party prior to the applicable qualification date.

(8) The person meets at least one of the following conditions:

(a) Has obtained or held, within the four-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to section 5503.05 of the Revised Code, and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to section 5503.01 of the Revised Code or as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes;

(b) Has obtained or held, within the three-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission and has been employed for at least the last three years prior to the qualification date as a full-time law enforcement officer, as defined in division (A)(11) of section 2901.01 of the Revised Code, performing duties related to the enforcement of statutes, ordinances, or codes.

(9) The person meets at least one of the following conditions:

(a) Has at least two years of supervisory experience as a peace officer at the rank of corporal or above, or has been appointed pursuant to section 5503.01 of the Revised Code and served at the rank of sergeant or above, in the five-year period ending immediately prior to the qualification date;

(b) Has completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located **or in a school that holds a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.**

(C) Persons who meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, may take all actions otherwise necessary to comply with division (B) of this section. If, on the applicable qualification date, no person has met all the requirements of division (B) of this section, then persons who have complied with and meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, shall be considered qualified candidates under division (B) of this section.

(D) Newly elected sheriffs shall attend a basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of section 109.80 of the Revised Code. A newly elected sheriff shall complete not less than two weeks of this course before the first Monday in January next after the sheriff's election. While attending the basic training course, a newly elected sheriff may, with the approval of the board of county commissioners, receive compensation, paid for from funds established by the sheriff's county for this purpose, in the same manner and amounts as if carrying out the powers and duties of the office of sheriff.

Appointed sheriffs shall attend the first basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of section 109.80 of the Revised Code within six months following the date of appointment or election to the office of sheriff. While attending the basic training course, appointed sheriffs shall receive regular compensation in the same manner and amounts as if carrying out their regular powers and duties.

Five days of instruction at the basic training course shall be considered equal to one week of work.

The costs of conducting the basic training course and the costs of meals, lodging, and travel of appointed and newly elected sheriffs attending the course shall be paid from state funds appropriated to the commission for this purpose.

(E) In each calendar year, each sheriff shall attend and successfully complete at least sixteen hours of continuing education approved under division (B) of section 109.80 of the Revised Code. A sheriff who receives a waiver of the continuing education requirement from the commission under division (C) of section 109.80 of the Revised Code because of medical disability or for other good cause shall complete the requirement at the earliest time after the disability or cause terminates.

(F)(1) Each person who is a candidate for election to or who is under consideration for appointment to the office of sheriff shall swear before the administrative judge of the court of common pleas as to the truth of any information the person provides to verify the person's qualifications for the office. A person who violates this requirement is guilty of falsification under section 2921.13 of the Revised Code.

(2) Each board of elections shall certify whether or not a candidate for the office of sheriff who has

filed a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate meets the qualifications specified in divisions (B) and (C) of this section.

(G) The office of a sheriff who is required to comply with division (D) or (E) of this section and who fails to successfully complete the courses pursuant to those divisions is hereby deemed to be vacant.

(H) As used in this section:

(1) "Qualification date" means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under section 305.02 of the Revised Code.

(2) "Newly elected sheriff" means a person who did not hold the office of sheriff of a county on the date the person was elected sheriff of that county.

<< OH ST 3313.616 >>

(A)(1) Notwithstanding the requirements of sections 3313.61, 3313.611, and 3313.612 of the Revised Code, the board of education of any city, exempted village, or local school district or the governing authority of any chartered nonpublic school may grant a high school diploma to any ~~World War II~~ **World War II veteran of World War II or the Korean conflict** who is a resident of this state **or who was previously enrolled in any high school in this state** if all of the following apply:

(a) The veteran ~~left either:~~

(i) Left a public or nonpublic school located in any state prior to graduation in order to serve in the armed forces of the United States;

(ii) Left a public or nonpublic school located in any state prior to graduation due to family circumstances and subsequently entered the armed forces of the United States.

(b) The veteran received an honorable discharge from the armed forces of the United States.

(c) The veteran has not been granted a diploma as provided in section 3313.61 or 3313.612 of the Revised Code, a diploma of adult education as provided in section 3313.611 of the Revised Code, or a diploma under this section.

(2) If a veteran who would otherwise qualify for a diploma under this section is deceased, the board of education of any school district or the governing authority of any chartered nonpublic school may award such diploma to the veteran posthumously and may present that diploma to a living relative of the veteran.

(B) The governor's office of veterans' affairs, in accordance with section 111.15 of the Revised Code, and with the advice and consent of the veterans advisory committee established under division (K) of section 5902.02 of the Revised Code, shall develop and adopt rules to implement this section. Such rules shall include, but not be limited to, rules establishing procedures for application and verification of eligible veterans for a diploma under this section.

SECTION 2. That existing sections 311.01 and 3313.616 of the Revised Code are hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the number of living veterans of World War II and the Korean Conflict is decreasing each day and the sacrifices they made by foregoing the completion of their own educations should be acknowledged and honored without delay. Therefore, this act shall go into immediate effect.

Date Passed: November 13, 2003

Approved December 9, 2003

Act. Eff. December 9, 2003

OH LEGIS 40 (2003)
END OF DOCUMENT

AFFIDAVIT OF LEE SPIEVACK

1. I am an adult and not under legal disability. I have been sworn and cautioned as to the import of this affidavit. A copy of my resume' is attached hereto and incorporated herein by reference.

2. I am the former owner of Technichron Technical Institute, Inc. (hereinafter Technichron). Technichron was a privately owned post secondary school. Portions of one of the catalogues from Technichron are attached.

3. Technichron was accredited by the Accrediting Commission of the National Association of Trade and Technical Schools (a true and accurate copy of the certificate of accreditation is attached hereto) and approved by the U.S. Department of Education Institutional Eligibility Branch. This accrediting agency had guidelines more stringent with regard to accreditation than the Ohio board of regents at the time period applicable to Dwayne Wenninger's attendance at Technichron. The State Board of School and College Registration was under the auspices or umbrella of the Ohio board of regents during the time periods applicable to Dwayne Wenninger's attendance at Technichron.

4. Technichron possessed a Certificate of Registration from the State Board of School and College Registration during all periods applicable to Dwayne Wenninger's attendance at Technichron (a certified copy of the Certificate of Registration is attached hereto).

5. Dwayne Wenninger attended Technichron on a full time student basis for the period from August of 1986 through October 23, 1987 completing a course of study in robotics and received a diploma. Dwayne Wenninger, by his full time attendance at Technichron attained more than two years of post secondary education.

Affiant further sayeth naught.



Lee Spievack

Sworn to and subscribed before me on FEBRUARY 5TH, 2003.



Notary Public

Tammy L. Dillinger
Notary Public State of Ohio
My Commission Expires 03-24-2003
Recorded in Brown County

Published: May, 1989
Volume 23, Number 1

school catalog



Technichron Technical Institute
4040 Spring Grove Avenue
Cincinnati, Ohio 45223-2684
(513) 541-8111

acknowledgements:

accreditation:

Accrediting Commission of the
National Association of Trade and Technical Schools (NATTS)

approvals:

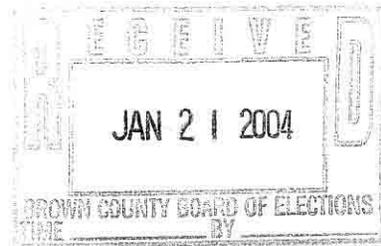
Ohio State Board of School and College Registration:
Registration Number :0-12-0040T

program approvals:

Ohio Rehabilitation Service - Bureau of Vocational Rehabilitation (BVR)
Industrial Commission of Ohio (ICO)
Ohio Department of Education -
State Approval Agency for Veteran's Training
U.S. Department of Labor -
Job Training Partnership Act (JTPA)
U.S. Department of Education
Institution Eligibility Branch
Ohio Student Loan Commission (State of Ohio)
Kentucky Higher Education Assistance Authority
UAW-GM Tuition Assistance Plan

memberships:

National Association of Trade and Technical Schools (NATTS)
Ohio Council of Private Colleges and Schools
National Association of Student Financial Aid Administrators (NASFAA)
Midwest Association of Student Financial Aid Administrators (MASFAA)
Ohio Association of Student Financial Aid Administrators (OASFAA)
North Side Business Club
Cincinnati Better Business Bureau, Inc.



Sandra L. Martin
5891 Tracy Road
Sardinia, Oh 45171
(937) 446-4062

January 20, 2004

Brown County Board of Elections
800 Mt. Orab Pike
Georgetown, OH 45121

To Whom It May Concern:

Please accept this letter as a withdrawal of my formal protest of Dwayne Wenninger to file a petition for the office of Sheriff of Brown County, Ohio.

It has been brought to my attention that the Ohio Legislature, through Am. Sub. H.B. No. 75, amended ORC 311.01 (B) (9) (b) to accept post-secondary education to include schools that holds a certificate of registration by the state board of career colleges and schools under Chapter 3332 of the Revised Code. I will assume that this would include the technical school that Mr. Wenninger attended.

The protest is therefore withdrawn.

Respectfully,

Sandra L. Martin

SUBSCRIBED TO AND SUBSCRIBED BEFORE ME THIS 18TH DAY OF JANUARY, 2004

Rebel L. Martin
Notary Public, State of Ohio
My Commission Expires
March 24, 2008

EXHIBIT #3