

IN THE TWELFTH DISTRICT COURT OF APPEALS
BROWN COUNTY, OHIO

State of Ohio, ex rel. Varnau

Petitioner

Vs

Sheriff Wenninger

Respondent

FILED
COURT OF APPEALS

Case No. CA2009-02-10

AUG 13 2009

:

RESPONDENT'S PARTIAL REPLY
TO PETITIONER'S MOTION FOR
SUMMARY JUDGMENT

TINA M. MERANDA
BROWN COUNTY CLERK OF COURTS

Now comes the Respondent Sheriff Dwayne Wenninger (Wenninger), pursuant to Loc. App. R. 20 (H) and (J) and partially replies to the motion for summary judgment as filed by Petitioner Varnau (Varnau) as received by counsel for Wenninger on August 12, 2009. Wenninger incorporates herein the memorandum below. Wenninger will otherwise timely brief the matter was required by the Loc. App. Rule 20.

Respectfully submitted,



Gary A. Rosenhoffer 0003276
and Patrick L. Gregory
Attorneys for Respondent Wenninger
302 E. Main Street
Batavia, Ohio 45103
(513) 732-0300

MEMORANDUM

On August 12, 2009, Wenninger's counsel received a motion for summary judgment from counsel for Varnau. Apparently, Varnau has also filed an exhibit packet with the motion as Wenninger's counsel has received a pleading from Varnau's counsel entitled "Relator's Exhibits filed in Support of Motion for Summary Judgment and Memorandum in Opposition to Respondent's Motion for Summary Judgment". Some records that had been subpoenaed from the Ohio Board of Regents are part of Varnau's Exhibit packet. However, the entirety of the records as produced by the

Ohio Board of Regents are not in Varnau's Exhibit packet. Wenninger appends hereto and incorporates herein by reference the entirety of the records that were produced by the Ohio Board of Regents as they were received by Wenninger's counsel. The entirety of the records produced by the Ohio Board of Regents are admissible in this matter and should be considered by the Court. *Ohio Rule of Evidence 106.*

Respectfully submitted,



Gary A. Rosenhoffer
Attorney for Respondent Wenninger

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served by ordinary mail, postage prepaid on August 13, 2009 upon Thomas Eagle, Esq, Attorney for Varnau, 3386 N. State Route 123, Lebanon, Ohio 45036; and a copy was delivered to the offices of Tina Meranda, Brown County Clerk of Courts and the office of Brown County Prosecutor Jessica Little on August 13, 2009.

8/13/2009



Gary A. Rosenhoffer

BROWN COUNTY COURT OF APPEALS

Court House Square
101 S. Main St.
Georgetown, OH 45121

State of Ohio, ex rel Dennis J. Varnau

Case No. CA2009-02-10

Relator,

vs.

Dwayne Wenninger

Respondent,

RETURN

SUBPOENA

Civil/Criminal [checkbox]

Duces Tecum [checkbox]

Grand Jury [checkbox]

SERVICE

Personal [checkbox]

Residential [checkbox]

Certified Mail [checkbox]

STATE OF OHIO

BROWN COUNTY, SS:

TO: Ohio Board of Regents

30 East Broad Street, 36th floor
Columbus, OH 43215-3414

You are hereby commanded to produce to Thomas G. Eagle, Esq. 3386 N. State Rt. 123, Lebanon, Ohio 45036 on or before the 5th day of June A.D., 2009, at 12:00 o'clock noon all of the following documents:

Duces Tecum:

1. Certified copies of each and every educational certificate, diploma, or other evidence of graduation or completion of any educational program, for Dwayne Lee Wenninger, DOB: 4-2-1968, to satisfy the requirements imposed by Ohio Revised Code Sections 311.01(B).

2. Certification, or proof of absence of certification, of The Technichron Technical Institute, as a school authorized to confer degrees by the Ohio Board of Regents.

SHERIFF USE ONLY
FEES

Service \$ _____ Type of Service _____

Mileage \$ _____ Date of Service _____

TOTAL \$ _____

WITNESS my hand and seal of said Court this 22nd day of May

[Signature] Clerk

Sheriff of Brown County, Ohio

COURT OF COMMON PLEAS
BROWN COUNTY, OHIO

_____, Sheriff

[Signature] Deputy Clerk

_____, Deputy

190 Main Street
Batavia, Ohio 45103
Phone: 513-732-0300
Fax: 513-732-0648

**GARY A.
ROSENHOFFER, LLC**

Fax

To: SHANE DE GARMO From: GARY

Fax: 614 466 5866 Pages: 4

Phone: Date: MARCH 4, 2003

Re: CC:

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:

GARY WOULD LIKE FOR YOU TO CALL HIM REGARDING THIS INFORMATION, HOWEVER, HE WILL BE AT A TRIAL IN KY FOR 3 DAY 3/5-3/7

PLEASE CALL THE WEEK OF MARCH 10, 2003

THANKS

JIM

COURT OF COMMON PLEAS
BROWN COUNTY, OHIO

State of Ohio : Case No. CRI 2020 2234
: (Judge Ringland)
vs :
: AFFIDAVIT OF JAMIE
Dwayne Wenninger : CALLENDER
:
Defendant :

I, Jamie Callender, being first duly sworn and cautioned, do depose and state as follows:

1. I was admitted to the Bar of Ohio on November 9th, 1992 and I have practiced law in this State since that date;
2. I am a member of the Ohio House of Representatives representing the 62nd House District and I am presently serving my fourth term;
3. During the period from January 2001 to December 2003, I was the House of Representatives member of the Ohio Board of Regents serving *ex officio*;
4. I have reviewed the indictment and bill of particulars filed in this matter and I am generally familiar with the allegations made against Dwayne Wenninger through those documents. I have also reviewed a letter from the Ohio Board of Regents dated October 4, 2002 issued by Shane DeGarmo as well as the affidavit of Lee Spievack as it is filed in this case. I have also reviewed Ohio Revised Code Section 311.01(B)(9)(b). I offer this affidavit based upon the totality of my experience, that is, as a Member of the Ohio House of Representatives; a former member of the Ohio Board of Regents; and as an attorney at law licensed to practice in the State of Ohio;
5. During the periods of time applicable to the facts of this case, that is,

from 1987 when Dwayne Wenninger received his two year diploma from Technichron Technical Institute through December of 1999, the Board of Proprietary School Registration (formerly known as the State Board of School and College Registration) was under the umbrella of the Ohio Board of Regents. Further, at the time that Dwayne Wenninger received his two year diploma from Technichron Technical Institute, proprietary schools were authorized to confer two year post secondary education diplomas and associate degrees. In reviewing the Certificate of Registration of Technichron Technical Institute, Inc. as effective from August of 1986 through August of 1987; the Affidavit of Lee Spievack; and the diploma of Dwayne Wenninger, it appears to me that Dwayne Wenninger's education met the educational standards set by R.C. 311.01(B)(9)(b) to run for Sheriff in 1999 at the time [that he received his diploma from Technichron Technical Institute as having two years of post secondary education at an institution then authorized to confer degrees and diplomas by the Ohio Board of Regents as the State Board of School and College Registration functioned under the umbrella of the Ohio Board of Regents at the time that Dwayne Wenninger received his two year diploma.]

6. I would observe that the letter that Prosecutor Grennan received from the Board of Regents dated October 4, 2002 over the signature of Shane DeGarmo is deceiving in that nowhere does that piece of correspondence address the question presented: was Technichron Technical Institute, Inc. at the time periods applicable to this dispute, able to confer two year post secondary education diplomas, certificates or degrees. The fact is, at the time that Dwayne Wenninger obtained his diploma from Technichron Technical Institute, Inc., that Institution not only was in good standing with the State Board of School and College Registration but was also accredited by the National Association of Trade and Technical Schools (NATTS), a national accrediting body. NATTS was listed by the U.S. Department of Education and, as such was a nationally recognized accrediting agency that complies with R.C. 311.09(B)(9)(b) as a comparable

agency to the Ohio Board of Regents. The NATTS standards would meet or exceed requirements of the Ohio Board of Regents both at the time that Dwayne Wenninger received his diploma as well as at present.

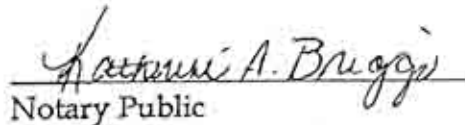
7. I believe that Dwayne Wenninger met the substance of R.C. 311.10(B)(9)(b) at the time that he circulated his petitions for candidacy as well as at the time that the petitions were presented to the Brown County Board of Elections.

Affiant further sayeth naught.



Jamie Callender

Sworn to and subscribed before me this 28 day of February, 2003.


Notary Public

KATHERINE A. BRIGGS
Notary Public - State of Ohio
My Commission Expires June 20, 2005
Recorded in Geauga County

**THOMAS F. GRENNAN
PROSECUTING ATTORNEY
BROWN COUNTY, OHIO**

Assistant Prosecutors

Tresa Gossett
Mary McMullen
Christian Erhardt, Jr.

200 East Cherry Street
Georgetown, Ohio 45121



Investigators

Robert W. Gifford
Larry W. Littleton

Victim Advocate

Connie Waltz

937-378-4151
FAX: 937-378-6529

September 30, 2002

Shane DeGarmo
Ohio Board of Regents
30 East Broad Street
36th Floor
Columbus, Ohio 43215-3414

Re: Technichron Technical Institute

Dear Mr. DeGarmo:

Please advise whether the Ohio Board of Regents has ever authorized Technichron Technical Institute to confer degrees. Further, please advise if Technichron Technical Institute was authorized in 1987 to confer degrees by the Board of Regents.

Thank your for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas F. Grennan", with a long horizontal line extending to the right.

Thomas F. Grennan
Prosecuting Attorney



OHIO BOARD
OF REGENTS

October 4, 2002

JEANETTE GRASSELLI BROWN, CHAIR
THOMAS W. NOE, VICE CHAIR
GERALD H. GORDON, SECRETARY
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J. GILBERT REESE
RALPH E. SCHEY

RODERICK G. W. CHU, CHANCELLOR

Thomas F. Grennan
Prosecuting Attorney
Brown County, Ohio
200 East Cherry Street
Georgetown, Ohio 45121

Dear Mr. Grennan:

The Ohio Board of Regents has not authorized Technichron Technical Institute to deliver academic programming in the State of Ohio.

Technichron Technical Institute is a for-profit institution and does not confer baccalaureate degrees or graduate degrees. As a result this institute does not fall within the jurisdiction of the Ohio Board of Regents.

Proprietary institutions that offer certificate, diploma, or associate degree programs are required by Ohio Revised Code §1713.02 to register with the State Proprietary Board before they are authorized to operate in Ohio. All inquiries about Technichron Technical Institute should be directed to the State Proprietary Board. Their phone number is (877) 275-4219 and their email address is www.state.oh.us/scr. If you have any further questions, please contact me at 614-387-1215 or by email at sdegarmo@regents.state.oh.us.

Respectfully,

Shane DeGarmo
Administrative Assistant

**Shane DeGarmo**

From: sdegarmo [sdegarmo@regents.state.oh.us]
Sent: Wednesday, March 19, 2003 10:35 AM
To: Kris Frost; janeiger@ag.state.oh.us
Cc: Garrison Walters; Jack Connell; myahle@regents.state.oh.us
Subject: Technichron Technical Institute

Greetings,

I spoke with Ruth Myers, Administrative Assistant to John Ware, at the Proprietary Board and she provided the following information. Technichron Technical Institute (TTI) initially registered with the State Board of School and College Registration in 1970 to operate two centers in the Cincinnati area. In 1984, the two centers merged into a single location, also in the Cincinnati area, and remained in operation until 1990.

I downloaded the rules in which the Proprietary Board operates under off their web site and it indicates in Section 3332.05, Part B of the Ohio Revised Code that:

The board shall issue program authorization for an associate degree, certificate, or diploma program to an applicant holding a certificate of registration pursuant to division (A) of this section upon receipt of the fee established in accordance with section 3332.07 of the Revised Code and upon determining the applicant has the facilities, resources, and faculty to provide students the kind of program it proposes to offer and meets the minimum standards of the state board.

The state board shall promptly furnish the Ohio board of regents a copy off all applications for issuance or renewal of program authorization to offer any associate degree program. Prior to the issuance or renewal of such program authorization the state board shall conduct an on-site visit of the school proposing the program.

A representative of the board of regents shall participate in the visit. Within twenty-one days of the on-site visit the representative of the board of regents shall provide the state board with a written state recommending approval or disapproval of the application.

I also downloaded Senate Bill No. 266 from their web site. The bill, introduced at the 124th General Assembly Regular Session 2001-2002, proposed to remove the language above (the second paragraph only) requiring the Proprietary Board to submit applications for issuance or renewal of authorization of associate degree programs. Other documents on the site mentions that the State Board of Career Colleges and Schools was created in 1989 by House Bill 153 to replace the State Board of School and College Registration and grant more regulatory authority over career schools and colleges, but the bill was not available to view.

In my conversation with Ms. Myers, an employee of nearly ten years at the Proprietary Board, she could not recall when the Board of Regents was involved in the approval of associate degree programs. It was her understanding that it has been about fifteen years since a member of the Board of Regents accompanied a review, citing staff and budget concerns as the reason OBR was no longer involved. It was also her understanding that an associate degree granting proprietary institution was exclusively under the oversight of the Proprietary Board.

All institutions that register with the Board must renew their registration every two years. Ms. Myers indicated that this process is handled by the Proprietary Board and that the Board of Regents does not get involved at any time during this process.

The original questions posed to me by Thomas Grennan, Prosecuting Attorney of Brown County, Ohio, were 1) if the Board of Regents has ever authorized TTI to confer degrees; and 2) if TTI was authorized in 1987 to confer degrees by the Board of Regents. TTI does not have a Certificate of Authorization on file with the Board of Regents and I could not find any records indicating that a member of the Board of Regents was involved with the initial registration of TTI in 1970. Furthermore, I could not find any documentation that would indicate that a member of the Board of Regents participated in the registration renewal process. Jack suggested that I

possibly contact Dr. Rayma Smith, former Administrator of program approval, to see if she ever participated in associate degree reviews with the Proprietary Board. I will contact her if you feel that is appropriate. I will also provide copies of the correspondence pertaining to this issue to everyone. If you have further questions, please contact me.

Thanks,

Shane



Board of Regents

Ted Strickland
Eric D. Fingerhut

University System of Ohio

Thomas G. Eagle, Esq
3386 N. State Rt. 123
Lebanon, Ohio 45036

RE: State of Ohio, ex rel Dennis J. Varnau vs. Dwayne Wenninger

Mr. Eagle,

Attached please find documents responsive to your subpoena. I apologize for the delay in responding. If you have any questions, please do not hesitate to call.

Thank You,



Karen Doty