

IN THE TWELFTH DISTRICT COURT OF APPEALS
BROWN COUNTY, OHIO

STATE OF OHIO, ex rel
DENNIS J. VARNAU,

Relator/Petitioner,

-vs-

DWAYNE WENNINGER,

Respondent/Defendant.

CASE NO. CA2009-02-10

FILED
COURT OF APPEALS

JUN 21 2010

TINA M. MBRANDA
BROWN CO. CLERK OF COURTS

RELATOR'S NOTICE OF
SUPPLEMENTAL AUTHORITY

Now comes the Relator, pursuant to 12th Dist. L.R. 11(F), and hereby submits the following supplemental authority, and requests the Court to consider same.

The Ohio Supreme Court recently decided State ex rel. Knowlton vs. Noble County Board of Elections, 125 Ohio St.3d 82, 2010-Ohio-1115 (decided March 23, 2010, and reported in the May 31, 2010, issue of the Ohio Bar Reports). In that case an elected sheriff resigned (under felony indictment), and a temporary appointment of a replacement was made, to take his place until the next election. The replacement filed as a candidate for the office, and a protest was filed, claiming he didn't meet the supervisory or educational requirements for the office per Statute. That candidate was saying his OPOTA training, which he received college credit for (along with other "life experience" credits), met both the OPATA requirements and the educational requirements, at the same time. The Board of Elections agreed, and denied the protest. The challenger filed for a writ of prohibition and a writ of mandamus at the same time, to prohibit the candidate being placed on the ballot.

The Supreme Court denied the mandamus for procedural reasons, but granted the writ of prohibition, essentially saying the candidate can't count the same classes to meet two separate requirements, strictly enforcing the statutory words and requirements, and not

implying exceptions and provisos that do not appear in the legislation. Further, the dissent -- a position obviously rejected by the majority -- argued that by the time of the election, he would have been actual sheriff for more than two years anyway, and that should count toward his "supervisory" experience, and argument similar to what Respondent in this case is arguing.

The opinion implicitly (if not explicitly) rejects their argument that the educational requirements can be "fudged," that is, "close enough is good enough," and rejects the additional argument that being in office, even if not *legally*, counts for "service." The Decision denies "work experience as sheriff" being used to make Respondent there, or here, qualified under (9)(a) (corporal or higher requirement). There, as here, even if the candidate (or office holder) could be considered as satisfying (9)(a), he was originally not qualified under (9)(a) or (b), and therefore not "the sheriff" legally, could not appoint himself with OPOTA as sheriff, and four years later under the OAC his certificate expired completely, whether or not he qualified under either (9)(a) or (b) in the 2004 election. Even if he were qualified to run in 2004 as a valid candidate, his OPOTA certificate expired before he could assume the seat elected to in that 2004 election.

Wherefore it is requested the Court consider this additional authority on the issues before the Court.

THOMAS G. EAGLE CO., L.P.A.



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon Gary A. Rosenhoffer, 302 E. Main St., Batavia, OH 45103, and Patrick L. Gregory, 717 W. Plane, Bethel, OH 45106, Attorneys for Respondent, by ordinary U.S. mail this 18th day of June 2010.


Thomas G. Eagle (#0034492)