

IN THE COURT OF APPEALS OF BROWN COUNTY, OHIO

FILED
COURT OF APPEALS

STATE OF OHIO ex rel.
DENNIS J. VARNAU

MAY 11 2011

CASE NO. CA2009-02-010

Relator,

VS

TINA M. MERANDA
BROWN COUNTY CLERK OF COURTS

DWAYNE WENNINGER

RESPONDENT WENNINGER'S ARGUMENT
IN SUPPORT OF SUMMARY JUDGMENT

Respondent.

Respondent Wenninger appends hereto his argument in support of summary judgment.

(Signatures of Respondent Wenninger's counsel and a certificate of service are at the last page).

STATEMENT OF THE CASE

A. Procedural Posture

Relator Varnau (Varnau) instituted this action for quo warranto. In response to Varnau's complaint, Respondent Wenninger (Wenninger) filed a motion to dismiss with supporting evidentiary material, the affidavit of Wenninger. The Court converted Wenninger's motion to dismiss to a motion for summary judgment.¹ Extensive discovery was undertaken and, as a result of the discovery, the record has been supplemented with additional evidence. After discovery was closed, Varnau filed a motion for summary judgment. This case is now before the Court on cross-motions for summary judgment.

B. Statement of Facts

Varnau is a Brown County resident who ran as an independent candidate and sought the office of Brown County Sheriff in the November 4, 2008 general election. Wenninger, the Republican nominee in that election and who has served as Brown County Sheriff since January 1, 2001, won the election by receiving 62.92% of the vote.² Varnau thereafter filed this action in quo warranto. Throughout the pendency of this matter, Varnau insists that Wenninger failed to meet the requirements found in R.C. 311.01 (B) and (C) to be a valid candidate in the 2000, 2004 and 2008 elections and that, as a result, Wenninger is not legally entitled to hold the office. The crux of Varnau's argument is that Wenninger did not then have the educational credentials qualifying him to be an Ohio Sheriff upon taking office on January 1, 2001, that this alleged deficiency caused Wenninger to have a break in service from January 1, 2001 to January 1, 2005, thereby disqualifying Wenninger from holding the office following the 2004 election, and that, as a result of Wenninger's "break in service," Wenninger did not possess a valid peace officer certificate prior to the 2008 general election making Wenninger's current service a continuation of an "illegal" holding of the

¹ 12th App. Entry of May 1, 2009

² 12th App. Decision filed August 16, 2010, ¶2.

office.³ Hereinafter, Wenninger will provide the Court with unrefuted facts present in this record that establish that he met the educational qualifications as required to become a candidate prior to his election in 2000.

Attached to Wenninger's motion to dismiss is his affidavit that establishes that he met the requirements of R.C. 311.01 at the time of the 2000 general election and when he took the office of Brown County Sheriff. R.C. 311.01 (hereinafter the sheriff qualification statute or qualification statute) as effective for general election year 2000 is appended to this brief. Factually, Varnau does not dispute that, prior to the 2000 general election: (1) Wenninger was a citizen of the United States [R.C. 311.01(B)(1)]; (2) Wenninger was a resident of Brown County for one year prior to the qualification date [R.C. 311.01(B)(2)]; (3) that Wenninger was a qualified elector and complied with the election laws [R.C. 311.01(B)(3)]; (4) that Wenninger was a high school graduate [(R.C. 311.01(B)(4)]; (5) that Wenninger had not been convicted of a felony or crime of moral turpitude or a misdemeanor of the first degree [R.C. 311.01(B)(5)]; (6) that Wenninger had been fingerprinted and had been the subject of a local, state, and national fingerprint files to disclose any criminal record and that the common pleas judge notified the board of elections of all findings [R.C. 311.01(B)(6)]; (7) that Wenninger had prepared a complete history of his place of residence and employment history for the six years preceding the qualification date and that the common pleas judge forwarded appropriate findings based thereon to the board of elections [R.C. 311.1(B)(7)]; and, (8) that within the four years preceding the qualification date, Wenninger obtained or held 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 5503.05 of the Ohio Revised Code and within the four year period 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

³ 12th App. Decision filed August 16, 2010, ¶ 5 and the footnote thereto.

[R.C. 311.01(B)(8)(a)]. Varnau contests that section of the qualifying statute that states as follows

[R.C. 311.01(B)(9)]:

The person meets at least one of the following conditions:

(b) Has satisfactorily completed 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.⁴

Varnau does not dispute that Wenninger attended Technichron Technical Institute (TTI) and obtained a diploma from TTI.⁵ TTI was registered with the State Board of School and College Registration (formerly known as the State Board of Proprietary School Registration) and TTI was authorized to offer diploma programs under "...Section 311.01.9B of the Ohio Revised Code."⁶ In an affidavit dated February 5, 2003, Lee Spievack, the former owner of TTI, stated that during the period of Wenninger's attendance at TTI, TTI was accredited by the Accrediting Commission of the National Association of Trade and Technical Schools and was approved by the U.S. Department of Education Institutional Eligibility. Each of these entities had more stringent guidelines with regard to accreditation than the Ohio Board of Regents. Spievack also stated that the State Board of School and College Registration was under the auspices or umbrella of the Ohio Board of Regents during Wenninger's attendance at TTI. Spievack went on to say that Wenninger attended TTI full time and by such fulltime attendance, attained more than two years of post-secondary education.⁷

On February 28, 2003, Jamie Callender gave an affidavit as to his knowledge of interrelationship of TTI, the Ohio Board of Regents and the State Board of School and College

⁴ The qualifying statute was amended effective December 9, 2003. The amendment added the following language: "...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." A copy of qualifying statute as amended is appended to this brief.

⁵ Wenninger's diploma as appended to this brief was obtained pursuant to a subpoena duces tecum issued by Varnau. TTI was registered with the State Board of Career Colleges and Schools during Wenninger's attendance. Wenninger also testified in his deposition as to attending and receiving a diploma from TTI.

⁶ Letter of Sevy as found in the records of the State Board of Proprietary School Registration as obtained pursuant to the subpoena duces tecum of Varnau. The letter is appended to this brief.

⁷ Affidavit of Spievack, found in the records of the Brown County Board of Elections and obtained by Varnau pursuant to a subpoena duces tecum. The Brown County Board of Elections were certified. The affidavit is appended to this brief.

Registration.⁸ At the time of his affidavit, Callender was in a unique position in that he was a licensed Ohio attorney, a member of the Ohio House of Representatives and an *ex officio* member of the Ohio Board of Regents. Callender states that during the time period of Wenninger's attendance at TTI, the Board of Proprietary School Registration was under the umbrella of the Ohio Board of Regents. Callender stated that during Wenninger's attendance at TTI, proprietary schools were authorized to confer two year post-secondary education diplomas and associate degrees. Further, in reviewing the Certificate of Registration of TTI, the affidavit of Spievack and Wenninger's diploma, it appeared that Wenninger met the educational requirements of R.C. 311.01(B)(9)(b) so as to run for, and qualify to become, sheriff. Callender went on to observe that, at the time that Wenninger's attended TTI, TTI was in good standing with the State Board of School and College Registration and accredited by the National Association of Trade and Technical Schools (NATTS), a national accrediting body comparable to the Ohio Board of Regents. Callender noted that NATTS standards would meet or exceed requirements of the Ohio Board of Regents.

The Court should note that the sworn statements of Spievack and Callender stand un rebutted.

To the extent that Varnau may argue that Wenninger had a break in service by virtue of a lack of continuous employment in law enforcement for the four years previous to taking office after being elected in the 2000 general election, Wenninger's deposition testimony is clear that he continuously held the necessary Peace Officer Training Certificate and met the experience requirement of the qualifying statute and that testimony stands likewise stands unrefuted.

C. Quo Warranto

Though at common law quo warranto had constitutional roots, in Ohio, it is characterized as

⁸ Callender's affidavit was obtained by Varnau pursuant to a subpoena duces tecum issued to the Ohio Board of Regents. Callender's affidavit is found in the records of the Ohio Board of Regents. Callender's affidavit is appended to this brief.

a special or specific statutory proceeding that is at law.⁹ The action is civil in nature and provides the extraordinary remedy that ousts one that improperly holds an office. The Court's original jurisdiction arises from Article IV, § 3 of the Ohio Constitution.¹⁰ Summary judgment is appropriate in quo warranto actions and, in order to prevail on a motion for summary judgment, the relator must show that the respondent unlawfully holds or exercises a public office.¹¹ No action in quo warranto shall be brought against an officer unless it is brought within three years after the cause of ouster, or the right to hold office, arose.^{12, 13} The Court has jurisdiction to render judgment in favor of either Varnau or Wenninger with regard to the right or title to office.¹⁴ As the statutory scheme is worded in terms of a finding of guilt,¹⁵ Wenninger suggests that Varnau's proof that Wenninger is illegally holding office must be established by proof beyond a reasonable doubt. Holding Varnau to such a standard of proof is consistent with the public policy that the conduct of an election is entitled to a strong presumption of validity¹⁶ and regularity.¹⁷ Quo warranto may not be used as a substitute for an election contest.¹⁸ Lastly, where a relator fails to establish his entitlement to office, it has been held that costs may be assessed against that relator.¹⁹

D. The Summary Judgment Standard

The Court is well familiar with the Civ. R. 56 summary judgment standard: A party moving for summary judgment bears the burden of establishing that (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to summary judgment as a matter of law; and (3) it appears from the evidence, when viewed in a light most favorable to the nonmoving party, that

⁹ R.C. 2733.01, et seq.

¹⁰ See also R.C. 2733.03

¹¹ *State ex rel. Corrigan v. Habarek*, 35 Ohio st.3d 150

¹² R.C. 2733.35.

¹³ The majority of this paragraph has been extracted from *Anderson's Ohio Civil Practice* (2007), §118. Quo Warranto

¹⁴ R.C. 2733.08 Query: Is an earlier election opponent of Wenninger's a necessary party to this proceeding as Varnau's theory, if successful, relates to election year 2000?

¹⁵ R.C. 2733.14 "When a defendant in an action in quo warranto *is found guilty* of...unlawfully...holding office..."

¹⁶ *In Re Sugar Creek Local School District* (1962), 21 Ohio Op.2d 16

¹⁷ *Wilson v. Kennedy* (1949), 151 Ohio St.485

¹⁸ *State ex rel Felder v. McVay* (1926), 23 Ohio App. 418

¹⁹ *State ex rel. Janson v. Eschliman* (1926), 115 Ohio St. 509

reasonable minds can only come to a conclusion adverse to that party.²⁰ Consistent with the summary judgment standard, in situations like the one at bar, the Court may grant summary judgment to either Varnau or Wenninger.²¹

ARGUMENT

By his affidavit that was filed with his motion to dismiss (now a motion for summary judgment) and the affidavits of Spievack and Callender, Wenninger has clearly established that he qualified to be elected and hold the office of Brown County Sheriff in general election year 2000 and every election thereafter. There is no *evidence* (emphasis on the term of art, *evidence*, as that term is used in Civ. R. 56) that refutes the facts established by these sworn statements. The Court need only 'check list' the qualification statute as set forth in the statement of facts (or as the statute is appended to this brief) to see that Wenninger has always qualified to hold (and continue to hold) the office of Brown County Sheriff.

Varnau has historically argued: (1) Wenninger does not hold a proper peace officer certificate; (2) that Wenninger suffered from some 'break in service'; and, (3) as the Court noted in its Decision of August 16, 2010, that Wenninger failed to meet the two year post-secondary education requirement prior to the 2000 general election. These arguments were addressed in Wenninger's brief as filed on August 20, 2009 and will be again set forth.

Varnau's claim that Wenninger does not hold a proper peace officer certificate and/or suffered a break in service

Varnau's argument is swiftly dispatched. Wenninger cites the Court to two quo warranto cases where a candidate for sheriff was seeking office based upon a theory that the opponent failed to possess a valid peace officer training certificate. *State ex rel. Hayburn v. Kiefer* (1993), 68 Ohio St.3d 132 (*Hayburn*) and *State ex rel. Yeagley v. Harden* (1993), 68 Ohio St.3d 136 (*Yeagley*). As the Ohio Supreme Court noted in *Hayburn, infra*, at 135, most peace officer training certificates have no expiration dates and, therefore have continued validity and vitality. Further, in *Yeagley, infra* at 138,

²⁰ *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107

²¹ See *Ward v. Cent. Inv. L.L.C.*, 2010-Ohio-6114 (1st App., ¶11, et seq.).

the Ohio Supreme Court reinforced the point that 'some peace officer training' was required, not necessarily that established by *R.C. 311.01*. Wenninger asks the Court to note that the certificate that he obtained from the Ohio Peace Officer Basic Training Course has no expiration date.

Wenninger testified in his deposition as to various continuing education schools or classes that he has attended since holding the office of sheriff.²² Wenninger testified that there had been no break in service since he has held an Ohio peace officer training commission certification as a peace officer.²³ A last observation is in order: by virtue of being the Brown County Sheriff since January 1, 2001, Wenninger has met the supervisory experience aspect of the qualification statute for the elections after the general election in 2000. Varnau's argument is meritless.

**Varnau's contention that Wenninger has failed to meet an educational requirement of
*R.C. 311.01***

Varnau's argues that Wenninger failed to meet the post-secondary education requirement under the version of *R.C. 311.01* as effective in 2000. This issue was long ago resolved in four ways: (1) the affidavit of the Rep. Jamie Callender; (2) the affidavit Lee Spievak, the former owner of TTI; (3) the 2003 amendment of *R.C. 311.01(9)(b)*; and (4) the Brown County Board of Elections various reviews over the years of Wenninger's candidacies.

Beyond all of Varnau's legal and factual impediments set forth in the previous paragraph, Wenninger had been the Brown County Sheriff for over seven years previous to the candidate qualification date in 2008. By the 2008 general election, Wenninger met the experience qualification of the alternatives set forth in *R.C. 311.01(9)*. The inquiry ends there.

CONCLUSION

Varnau has produced no *evidence* as required by Civ. R. 56 to establish that Wenninger was unqualified to hold the office of Brown County Sheriff. Wenninger has established his qualification to

²² Wenninger deposition, p. 10, 11, 39

²³ Wenninger deposition, p. 13, 42, 47

hold office beyond doubt. The Court should issue an order that Sheriff Wenninger is entitled to retain his position as Brown County Sheriff, denying Varnau's motion for summary judgment in the process. The Court, based upon the evidence before it, should specifically find that Varnau has not produced current proof of his eligibility to hold the office of Sheriff. This Court should dismiss Varnau's action in *quo warranto* and order Varnau to pay costs herein including attorney fees.



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CERTIFICATE OF SERVICE

I certify that on May 10, 2011, a copy of this brief was served by ordinary mail, postage prepaid on Thomas Eagle, Esq., Attorney for Relator Varnau, 3386 North State Route 123, Lebanon, Ohio 45036.



Attorney for Respondent Wenninger

CHAPTER 311: SHERIFF

§ 311.01 Qualifications for sheriff; basic training course; continuing education.

(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.

(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.

HISTORY: RS § 1202; S&C 1403; 55 v 150; 93 v 351; GC § 2823; 116 v PULL 184; Bureau of Code Revision, 10-1-53; 141 v H 683 (Eff 3-11-87); 146 v S 2 (Eff 7-1-96); 146 v H 670 (Eff 12-2-96); 146 v H 351 (Eff 1-14-97); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

§ 311.02 Bond.

The sheriff shall, within ten days after receiving his commission and before the first Monday of January next after his election, give a bond, signed by a bonding or surety company authorized to do business in this state and to be approved by the board of county commissioners, or, at the option of such sheriff, signed by two or more freeholders having real estate in the value of double the amount of the bond, over and above all

encumbrances to the state, in a sum not less than five thousand nor more than fifty thousand dollars, which sum shall be fixed by the board, and such bond shall be conditioned for the faithful performance of the duties of his office. The expense or premium for such bond shall be paid by the board and charged to the general fund of the county. Such bonds, with the approval of the board and the oath of office required by sections 3.22 and 3.23 of the Revised Code, and Section 7 of Article XV, Ohio Constitution, indorsed thereon, shall be filed with the county auditor and kept in his office.

The board may require the sheriff, at any time during his term of office, to give additional sureties on his bond, or to give a new bond.

No judge or clerk of any court or attorney at law shall be received as surety on such bond.

If the sheriff fails to give a bond within the time required, or fails to give additional sureties on such bond or a new bond within ten days after he has received written notice that the board so requires, the board shall declare the office of such sheriff vacant.

HISTORY: RS §§ 1203 to 1205; S & C 190, 191, 1404; 51 v 301, §§ 1-7; 55 v 150, § 3; GC §§ 2824 to 2827; 112 v 111; Bureau of Code Revision, 10-1-53; 129 v 1365. Eff 10-12-61.

§ 311.03 Disability or absence.

When the sheriff, by reason of absence, sickness, or other disability, is incapable of serving any process required to be served, or by reason of interest is incompetent to serve it, the court of common pleas, if in session, or, if not in session, a judge of such court may appoint a suitable person to serve such process or to perform the duties of sheriff during the continuance of such disability. Such appointee shall give such bond as the court or judge requires, conditioned for the faithful performance of his duties, and take the oath of office.

HISTORY: RS § 1208; S&C 539, 1402; 29 v 410, §§ 1, 2; 50 v 311, § 35; 84 v 208; GC § 2828; 121 v 343; Bureau of Code Revision, 10-1-53; 126 v 205 (Eff 1-1-56); 129 v 582 (625) (Eff 1-10-61); 129 v 1365. Eff 10-12-61.

§ 311.04 Deputy sheriffs.

(A) As used in this section, "felony" has the same meaning as in section 109.511 [109.51.1] of the Revised Code.

(B)(1) Subject to division (C) of this section, the sheriff may appoint, in writing, one or more deputies. At the time of the appointment, the sheriff shall file the writing upon which the appointment is made with the clerk of the court of common pleas, and the clerk of the court shall enter it upon the journal of the court. The sheriff shall pay the clerk's fees for the filing and journal entry of the writing. In cases of emergency, the sheriff may request of the sheriff of another county the aid of qualified deputies serving in those other counties of the state, and, if the consent of the sheriff of that other county is received, the deputies while so assigned shall be considered to be the deputies of the sheriff of the county requesting aid. No judge of a county court or mayor shall be appointed a deputy.

(2) Notwithstanding section 2335.33 of the Revised Code, the sheriff shall retain the fee charged pursuant to division (B) of section 311.37 of the Revised Code.

escape and, if applicable, of his subsequent apprehension. The notice of escape shall be given as soon as possible after receipt of the notice from the department, sheriff, or chief law enforcement officer of the municipal corporation and shall be given by telephone or in person, except that, if a prosecuting attorney tries and fails to give the notice of escape by telephone at the victim's last known telephone number or tries and fails to give the notice of escape in person at the victim's last known address, the notice of escape shall be given to the victim at his last known

address by certified mail, return receipt requested. The notice of apprehension shall be given as soon as possible after the person is apprehended and shall be given in the same manner as is the notice of escape.

Any prosecuting attorney who fails to give any notice required by this section is immune from civil liability for any injury, death, or loss to person or property that might be incurred as a result of that failure to give notice.

HISTORY: 142 v H 207 (Eff 9-24-87); 145 v H 571. Eff 10-6-94.

CHAPTER 311: SHERIFF

Section

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[SHERIFFS' STANDARD CAR-MARKING AND UNIFORM COMMISSION]

- 311.25 Sheriffs' standard car-marking and uniform commission.
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- 311.29 Contracts to perform police functions; payments; deputy sheriffs.
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§ 311.01 Qualifications for sheriff; basic training course; continuing education.

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(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.

HISTORY: RS § 1202; S&C 1403; 55 v 150; 93 v 351; CC § 2823; 116 v PHL 184; Bureau of Code Revision, 10-1-53; 141 v H 683 (Eff 3-11-87); 146 v S 2 (Eff 7-1-96); 146 v H 670 (Eff 12-2-96); 146 v H 351 (Eff 1-14-97); 148 v H 283. Eff 9-29-99; 150 v H 75, § 1, eff. 12-9-03.

The effective date is set by section 3 of H.B. 75.

§ 311.02 Bond.

The sheriff shall, within ten days after receiving his commission and before the first Monday of January next after his election, give a bond, signed by a bonding or surety company authorized to do business in this state and to be approved by the board of county commissioners, or, at the option of such sheriff, signed by two or more freeholders having real estate in the value of double the

BROWN COUNTY COURT OF APPEALS

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

State of Ohio, ex rel Dennis J. Varnau
Relator,

Case No. CA2009-02-10

vs.

Dwayne Wenninger
Respondent,

SUBPOENA
Civil/Criminal
Duces Tecum
Grand Jury

STATE OF OHIO

BROWN COUNTY, SS:

SERVICE
Personal
Residential
Certified Mail

TO: Brown County Board of Elections

800 Mt. Orab Pike, Ste. 111
Georgetown, Ohio 45121

You are hereby commanded to produce to Thomas G. Eagle, Esq. 3386 N. State Rt. 123, Lebanon, Ohio 45036 on or before the 29th day of June A.D., 2009, at 12:00 o'clock noon all of the following documents:

Duces Tecum:

(A) Certified copies of A true, accurate, authentic, and certified copy of the "MEMORANDUM ON BEHALF OF SHERIFF DWAYNE WENNINGER" that was submitted to the Brown County Board of Elections (BCBE) by counsel for Respondent, Patrick L. Gregory and Gary A. Rosenhoffer, on or about January 16, 2004, in response to Sandra L. Martin's January 12, 2004 formal protest letter to the BCBE. (B) certified copies of any and all journal entries and any other documentation held by the BCBOE that pertains to the certification of Duane Wenninger as a candidate for Brown Co. Sheriff for the elections in 2000, 2004 and 2008; (C) certified copies of documentation of the certified candidates running in the 2008 election for Brown Co. Sheriff, and the number of votes obtained by each as certified by the BCBOE; and (D) the Certification of Candidacy signed by Duane Wenninger from his petition for election to the Office of Brown Co. Sheriff for any election year.

SHERIFF USE ONLY FEES

Thomas G. Eagle (signature)

Service \$ Type of Service WITNESS my hand and seal of said Mileage \$
Court this day of
TOTAL \$ Date of Service

Clerk

Sheriff of Brown County, Ohio

COURT OF COMMON PLEAS
BROWN COUNTY, OHIO

, Sheriff

Deputy Clerk

, Deputy

Technichron Technical Institute

4040 Spring Grove Avenue - Cincinnati, Ohio 45223-2684

This Certifies That

Dwayne Weninger

has satisfactorily completed the prescribed course of training in

Microprocessor - Robotics Technician

and is awarded this

Diploma

In testimony to the above, we affix our hand and seal at

Cincinnati, Ohio This 23rd Day of Oct. 1987

Thomas L. Wood

Instructor

W. J. Wood

President, Technichron Inc.

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).

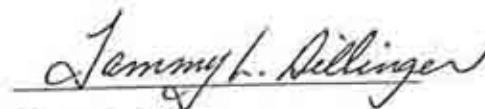
5. Dwayne Wenninger attended Technichron on a full time student basis for the period from August of 1986 through October 23, 1987 completing a course of study in robotics and received a diploma. Dwayne Wenninger, by his full time attendance at Technichron attained more than two years of post secondary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

Affiant further sayeth naught.



Lee Spievack

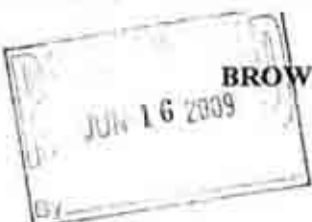
Sworn to and subscribed before me on FEBRUARY 5TH, 2003.



Notary Public

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

7



BROWN COUNTY COURT OF APPEALS

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

COPY TO SERVE

State of Ohio, ex rel Dennis J. Varnau
Relator,

Case No. CA2009-02-10

vs.

SUBPOENA
Civil/Criminal
Duces Tecum
Grand Jury

Dwayne Wenninger
Respondent,

SERVICE
Personal
Residential
Certified Mail

STATE OF OHIO

BROWN COUNTY, SS:

TO: State Board of Career Colleges and Schools
[Formerly called: State Board
of Proprietary School Registration]

35 East Gay Street, Suite 403
Columbus, OH 43215-2219

You are hereby commanded to produce to Thomas G. Eagle, Esq. 3386 N. State Rt. 123, Lebanon, Ohio 45036 on or before the 29th day of June A.D., 2009, at 12:00 o'clock noon all of the following documents:

Duces Tecum:

All documents that use Technichron Technical Institute status with your agency at any time, including verification of meeting the definitions of Ohio Revised Code 311.0(B)(9)(b).

**SHERIFF USE ONLY
FEES**

Thomas G. Eagle

Service \$ _____ Type of Service _____
Mileage \$ _____ Date of Service _____
TOTAL \$ _____

WITNESS my hand and seal of said
Court this 11th day of June

Clerk

Sheriff of Brown County, Ohio

**COURT OF COMMON PLEAS
BROWN COUNTY, OHIO**

_____, Sheriff
_____, Deputy

Deputy Clerk



STATE BOARD OF PROPRIETARY SCHOOL REGISTRATION

35 East Gay Street, Suite 403, Columbus, OH 43215-3138

• (614) 466-2752 • Fax (614) 466-2219 •

• Toll Free (877) 275-4219 •

E-mail: bpsr@scr.state.oh.us

Website: <http://www.state.oh.us/scr/>

Mr. John Ware
Executive Director

September 24, 2002

Board Members

Dr. Leonard Kingsley
Chairman

Ms. Linda Hanaway
Vice Chairman

Mr. Charles Kramer
Board Secretary

Mr. Neil Collins
Board Member

Dr. Steven Puckett
Board Member

Dr. Garrison Walters
Board Member

Sheriff Dwayne Wenninger
750 Mt. Orab Pike
Georgetown, OH 45121

Dear Sheriff Wenninger:

This is to advise and certify to anyone who has a need to know that Technichron Technical Institute, 4040 Spring Grove Avenue, Cincinnati, Ohio 45223 was officially closed as of January 1990. The responsibility for responding to questions or inquiries about the school, reviewing student records, certifying academic program requirements and issuing diplomas and academic transcripts rest with the Ohio State Board of Proprietary School Registration.

This school was registered with this Board from October 1978 to January 1990. During this period the school was authorized to offer diploma programs under Section 311.01.9B of the Ohio Revised Code.

We regret to inform you that there are no student records available from this school.

If you need additional information, please feel free to contact this office.

Sincerely,

MARLENE J. SEVY
Account Clerk



STATE BOARD OF CAREER COLLEGES AND SCHOOLS

35 East Gay Street, Suite 403, Columbus, OH 43215-3138
(614) 466-2752 • Fax (614) 466-2219 • Toll Free (877) 275-4219
E-mail: bpsr@scr.state.oh.us • Website: <http://www.scr.ohio.gov/>

June 24, 2009

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

Dear Mr. Eagle

Enclosed please find true and accurate copies of the documents requested per your subpoena (see attached copy of subpoena). To the best of my knowledge, these documents are the only documents maintained by this agency that conform to your subpoena.

Please let me know if you have any questions.

For the Board,

John P. Ware
Executive Director



STATE BOARD OF PROPRIETARY SCHOOL REGISTRATION

35 East Gay Street, Suite 403, Columbus, OH 43215-3138

• (614) 466-2752 • Fax (614) 466-2219 •

• Toll Free (877) 275-4219 •

E-mail: bpsr@scr.state.oh.us

Website: <http://www.state.oh.us/scr/>

Mr. John Ware
Executive Director

January 21, 2003

Board Members

Dr. Leonard Kingsley
Chairman

Ms. Linda Haaway
Vice Chairman

Mr. Charles Kramer
Board Secretary

Mr. Neil Collins
Board Member

Dr. Steven Puckett
Board Member

Dr. Garrison Walters
Board Member

To Whom It May Concern:

This is to advise and certify to anyone who has a need to know that Technichron Technical Institute, 4040 Spring Grove Avenue, Cincinnati, OH 45223 was officially closed as of January 1990. The responsibility for responding to questions or inquiries about the school, reviewing student records, certifying academic program requirements and issuing diplomas and academic transcripts rest with the Ohio State Board of Proprietary School Registration.

This school was registered with this Board from October 1978 to January 1990. During this period of time, our records indicate that the school was authorized to offer diploma programs under Chapter 3332 of the Ohio Revised Code.


The records indicate that the Microprocessor/Robotics Technician program was authorized as a Diploma level program.

Diploma level programs, in accordance with Administrative Rule 3332-1-16, are defined as program ranging from a minimum of 60 clock hours to less than 1500 clock hours or 40 quarter hours to less than 90 quarter hours or 27 semester hours to less than 60 semester hours.

Students enrolling in proprietary schools in Ohio are required to sign an "enrollment agreement." The school keeps the original which becomes part of the student's record and is required to give a copy to the enrolling student. Current enrollment agreements must contain the length of the program, the cost of the program, and the level of rigor (Certificate, Diploma, Associate Degree), among other items.

Unfortunately, there are no student records available for this school. Please feel free to contact this office if additional concerns or questions arise from this letter.

Sincerely,


JOHN P. WARE
Executive Director

JPW/rem

cc: Dr. Harold Brown, Curriculum Consultant
Marlene Sevy, Account Clerk

D:\My Files\John Ware\Letters\2003\january\1-21-03 technichron.wpd

State of Ohio

STATE BOARD OF SCHOOL AND COLLEGE REGISTRATION

30 E. BROAD ST., 36th FLOOR, COLUMBUS, OHIO 43215

Certificate of Registration

This Certificate of Registration Witnesseth that

TECHNICHRON TECHNICAL INSTITUTE

(NAME OF SCHOOL)

4040 Spring Grove Avenue, Cincinnati, Ohio 45223

(ADDRESS OF SCHOOL)

is hereby approved to offer the following program(s) of instruction,

DIPLOMA PROGRAMS:

Automotive/Automotive - Diesel Technician

Microprocessor/Robotics Technician

Diesel Technician

Under the provisions of Chapter 3332 of the Revised Code of Ohio and the standards, rules and regulations of this Board for the period beginning

August 22 19 88 through August 22 19 90.

No 3284

Al J. Melonski
CHAIRMAN

Harold H. Brown
EXECUTIVE SECRETARY

REGISTRATION NO.

70-12-0040T

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

Duces Tecum

Grand Jury

SERVICE

Personal

Residential

Certified Mail

STATE OF OHIO

BROWN COUNTY, SS:

TO: Ohio Board of Regents

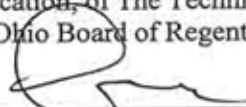
30 East Broad Street, 36th floor
Columbus, OH 43215-3414

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:

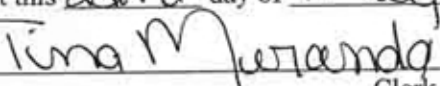
1. Certified copies of each and every educational certificate, diploma, or other evidence of graduation or completion of any educational program, for Dwayne Lee Wenninger, DOB: 4-2-1968, to satisfy the requirements imposed by Ohio Revised Code Sections 311.01(B).
2. Certification, or proof of absence of certification, of The Technichron Technical Institute, as a school authorized to confer degrees by the Ohio Board of Regents.

SHERIFF USE ONLY
FEES



Thomas G. Eagle

Service \$ _____	Type of Service _____
Mileage \$ _____	_____
TOTAL \$ _____	Date of Service _____

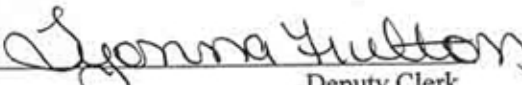
WITNESS my hand and seal of said
Court this 22nd day of May


Tina M. Meranda
Clerk

Sheriff of Brown County, Ohio

COURT OF COMMON PLEAS
BROWN COUNTY, OHIO

_____, Sheriff
_____, Deputy



Dyanne Y. Hutton
Deputy Clerk



Board of Regents

Ted Strickland Governor
Eric D. Fingerhut Chancellor

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

**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,

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
EDMUND J. ADAMS
REPRESENTATIVE JAMIE CALLENDER
SENATOR ROBERT GARDNER
TAMMIAN KRUMM, JR.
PAUL M. MILLER
FRANK W. NICKERSON
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,

A handwritten signature in black ink that reads "Shane DeGarmo" with a stylized flourish at the end.

Shane DeGarmo
Administrative Assistant

COURT OF COMMON PLEAS
BROWN COUNTY, OHIO

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

03/08/2003 10:12:01 AM


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.

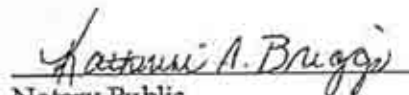
7. I believe that Dwayne Wenninger met the substance of R.C. 311.10(B)(9)(b) at the time that he circulated his petitions for candidacy as well as at the time that the petitions were presented to the Brown County Board of Elections.

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

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

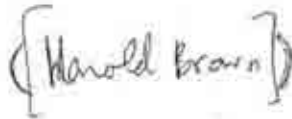
• Comments:

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

**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

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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