

STATE OF SOUTH CAROLINA FILED TOWN OF ATLANTIC BEACH  
COUNTY OF HORRY HORRY COUNTY

2023 FEB 13 P 3:55

IN RE: PROTEST OF ELECTION )  
BY MICHAEL ISOM ) RENE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC  
**Order and Report of Town of Atlantic  
Beach Municipal Election Commission**

Michael Isom protests the results of the Special Election held on January 17, 2023 and run-off held January 31, 2023 for the Town of Atlantic Beach (hereinafter the "Special Election"). This election protest came before the Town of Atlantic Beach Municipal Election Commission (the "Commission") at the Election Protest Hearing noticed and held on February 6, 2023 at 4:00 p.m.

Interested parties present at the hearing were Michael Isom and John David. Candidate Lenny Evans was not present. At the commencement of the hearing, the Commission entered into evidence Commission "Exhibits A, B, C, and D". In support of his election protest, Mr. Isom presented the testimony of Josephine Isom.

The Commission held a full hearing on the election protest. As a result of the testimony, the Commission moved and by majority vote, found as follows:

- (1) That no conflict of interest exists for members of the Commission, Kenneth McIver and Joe Montgomery;
- (2) Candidate John W. David met the qualifications of a candidate or voter in the Town of Atlantic Beach; and
- (3) No other voters challenged would invalidate the election.

As such, the Commission determined that there were no irregularities in the Town of Atlantic Beach January 17, 2023 Special Election that rendered doubtful the result of the election.

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As a result and for the reasons set forth herein, the Commission denies the election protest filed Michael Isom and upholds the Certified Results of the Special Election declaring John David the winner of the Special Election.

The Commission finds as follows:

1. Joe Montgomery, Kenneth McIver, and Carolyn Gore, are appointed members of the Town of Atlantic Beach Municipal Election Commission by the Town Council for Atlantic Beach.
2. Pursuant to the February 2, 2015 Resolution and the Town of Atlantic Beach Ordinance 02-2015, the Commission noticed Special Election to be held on January 17, 2023, by Public Notice published in The Sun News on November 9, 2022, as corrected and re-published on November 16, 2022.
3. Pursuant to the Public Notice of the Special Election, the filing period for Statements of Candidacy was open from November 11, 2022 at 12:00 noon through November 29, 2022 at 12 noon.
4. Four candidates filed Statements of Candidacy for the Special Election during the filing period: John David, Michael Isom, Lenny Evans, and Brian Taylor. Thereafter, Mr. Taylor removed his name from consideration.
5. The Commission held the Special Election on January 17, 2023 as set forth in the Public Notice.
6. The Commission announced the unofficial results of the election at the close of the polls on January 17, 2023.

7. The Commission held a provisional ballot and canvassing hearing on January 19, 2023 at 10:00 a.m. and because no candidate received a majority, a run-off was held on January 31, 2023.

8. The Commission held the run-off on January 31, 2023 as set forth in the Public Notice.

9. The Commission announced the unofficial result of the run-off at the close of the polls on January 31, 2023 and announced that a provisional ballot and canvassing hearing for the run-off would be held on February 4, 2023 at 10:00 a.m.

10. A provisional ballot and canvassing hearing for the run-off was held on February 4, 2023 at 10:00 a.m. in which challenged ballots, including the ballot of John David, were decided and the vote was certified with John David declared the winner.

11. Thereafter, one protest of election was timely filed with the Commission by candidate Michael Isom.

12. As a result of the protest, this Election Protest Hearing was scheduled, and notice and copies of the protest were served on all interested parties, with the hearing scheduled for February 6, 2013 at 4:00 p.m.

13. Mr. Isom challenges the results of the Special Election alleging that:

- a. A conflict of interest exists for members of the Commission, Kenneth McIver and Joe Montgomery;
- b. Candidate John W. David does not meet the qualifications of a candidate or voter in the Town of Atlantic Beach; and
- c. Two other voters do not meet the qualifications of a voter in the Town of Atlantic Beach.

14. The Commission marked: Exhibit A, a copy of the agenda, protest letter, and service documents of the protest letter; Exhibit B, a copy of the Town of Atlantic Beach election ordinance; Exhibit C, a copy of the public notices for the Special Election; and Exhibit D, a copy of the statements of candidates for candidates in the Special Election.

15. Mr. Isom presented the testimony of Josephine Isom.

16. Candidate John David did not present any testimony.

17. A copy of the transcript of hearing is filed contemporaneously herewith pursuant to S.C. Code Ann. 5-15-130.

18. As to the first challenge, no evidence was presented related to a conflict of interest by any member or members of the Commission. The Commissioners are unaware of any conflict of interest pursuant to the S.C. Code Ann. 8-13-100 et seq. nor any political activity prohibited by S.C. Code Ann. 7-3-75. The Commission unanimously moved and held that Kenneth McIver and Joe Montgomery do not have a conflict of interest for the Special Election.

19. As to the second challenge, the Commission has the authority pursuant to S.C. Ann. 5-15-100 to, among other things, determine the legal qualifications of electors.

20. The decision on provisional ballots by the Commission at the canvassing hearing for the run-off held on February 4, 2023 is final. S.C. Code Ann. 7-13-830.

21. Article VI, Section 1 and Article XVII, Section 1 of the South Carolina Constitution establishes that an elected official must meet the "qualifications of an elector," or in other words, must be eligible to vote for the office they propose to hold.

22. These requirements apply to city council: "Mayors and councilmen shall be qualified electors of the municipality and, if they are elected subject to residential or ward

requirements as provided in this section, they shall be qualified electors of the ward prescribed for their election qualification." S.C. Code Ann. 5-15-20.

23. In order to be a qualified elector in the Town of Atlantic Beach, the person must have resided within municipal limits for at least 30 days prior to an election. This requirement would be applicable also for serving as a councilmember. If the council seat represents a specific ward, then the person must have lived within that ward specifically. S.C. Code Ann. 7-5-610 through -675.

24. Pursuant to S.C. Code Ann. 7-1-25(A), "[a] persons' residence is his domicile. 'Domicile' means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile."

25. Section 7-1-25 sets forth the following:

- a. For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.
- b. For voting purposes, a spouse may establish a separate domicile.
- c. For voting purposes, factors to consider in determining a person's intention regarding his domicile include, but are not limited to:
  1. a voter's address reported on income tax returns;
  2. a voter's real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12-43-220(c);
  3. a voter's physical mailing address;

4. a voter's address on driver's license or other identification issued by the Department of Motor Vehicles;
5. a voter's address on legal and financial documents;
6. a voter's address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;
7. a voter's address on an automobile registration;
8. a voter's address utilized for membership in clubs and organizations;
9. the location of a voter's personal property;
10. residence of a voter's parents, spouse, and children; and
11. whether a voter temporarily relocated due to medical care for the voter or for a member of the voter's immediate family.

26. A person's residence requires the person's intent to reside there.

27. John David submitted a statement of candidacy received on November 18, 2022, whereby he affirmed, among other things, that "I meet, or will meet by the time of the General or Special Election or as otherwise required by law, the qualifications to hold this office. I the underside certify that I am a legal resident and a registered voter of the Town of Atlantic Beach, South Carolina."

28. Mr. Davis' vote at the run-off election was previously subject to a challenge by Josephine Isom, which was decided at the provisional ballot and canvassing hearing for the run-off on February 4, 2023.

29. As a result and in consideration of the evidence presented by the candidates, Kenneth McIver moved that John David does meet the qualifications to be a candidate for council and to vote in the election. Joe Montgomery seconded the motion. Kenneth McIver and Joe Montgomery voted in favor of the motion and Caroline Gore voted against the motion. The motion carried by majority vote.

30. As to the third challenge, Mr. Isom asserts that two additional voters are not qualified electors in the Town of Atlantic Beach. One elector was previously addressed at the provisional ballot and canvassing hearing on February 4, 2023 and the other elector's vote was not subject to any previous challenge. Typically, an election will not be set aside due to alleged irregularities or illegalities unless the result is changed or rendered doubtful. See e.g., Taylor v. Town of Atlantic Beach, 363 S.C. 8 (2005). The Commission unanimously moved and held that the protest raised no voter challenges that would invalidate the election.

31. As a result, the Commission denies the election protest filed by Michael Isom.


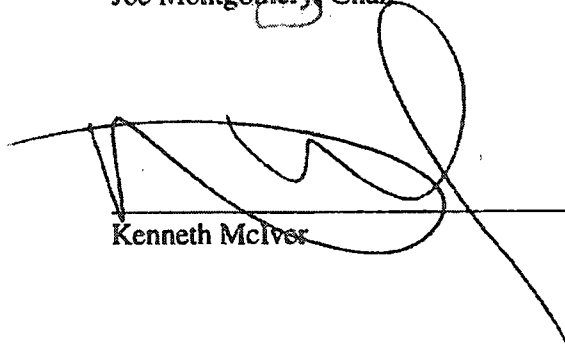
*(Signatures on following page)*

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**Town of Atlantic Beach Election Commission**

  
\_\_\_\_\_  
Joe Montgomery, Chair  
\_\_\_\_\_  
Kenneth McIver  
\_\_\_\_\_  
Carolyn Gore

February 13, 2023

Atlantic Beach, South Carolina

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