

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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FEB 22 2017

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brian P. Gibbons, Circuit Court Judge

Case No. 2016-CP-29-1418

Jackie Harris,

Appellant,

v.

Lancaster County Election Commission,
Lancaster Municipal Election
Commission, and Linda Blackmon-Brace,

Respondents.

NOTICE OF APPEAL

Jackie Harris appeals the order of the Honorable Brian P. Gibbons dated February 15, 2017, which affirmed the denial of her protest before the Lancaster County Election Commission. Appellant received written notice of the order on February 15, 2017.

February 16, 2017



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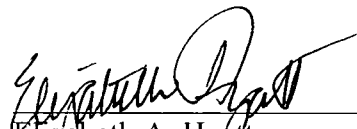
Lancaster County Election Commission,
Lancaster Municipal Election
Commission, and Linda Blackmon-Brace,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Lancaster County Election Commission, the Lancaster Municipal Election Commission, and Linda Blackmon-Brace, by depositing a copy of it in the United States Mail, postage prepaid, on February 17, 2017, addressed to their respective attorneys of record, John L. Weaver, Post Office Box 1809, Lancaster, South Carolina 29721; Mitchell A. Norrell, Post Office Box 994, Lancaster, South Carolina 29721; and Montrio M. Belton, Post Office Box 566, Rock Hill, South Carolina 29731.

February 17, 2017


Elizabeth A. Hyatt
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Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

JACKIE HARRIS,

Petitioner/Appellant,

vs.

LANCASTER COUNTY ELECTION
COMMISSION, LANCASTER MUNICIPAL
ELECTION COMMISSION,
and LINDA BLACKMON-BRACE

Respondents.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Docket No.: 2016-CP-29-1418

ORDER

CLERK OF COURT
LANCASTER, SC

2017 FEB 15 PM 2:06

FILED
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OF COURT

FACTS

Because Lancaster County for years has assumed administrative responsibility for the voter registration and elections for the City of Lancaster, this matter is before the Lancaster County Election Commission (Commission) based upon the timely filed protest of the Petitioner, Jackie Harris. The protest was served on November 10, 2016. The protest challenges the November 8, 2016, election for the District 3 seat on the City of Lancaster Council. The certified results of that election indicated that there were a total of 518 votes cast for that seat. Of those, the Petitioner received 235 total votes, 14 of which were absentee paper ballots. The Respondent, Linda Blackmon-Brace, received 281 votes, 154 of which were absentee paper ballots. Two votes were cast for others.

Based upon legal advice from the South Carolina Elections Commission (SCEC), and in compliance with §5-15-130 of the S.C. Code of Laws, the protest hearing was held

on Friday, November 11, 2016, at 2:30pm. The Petitioner and the Respondent were each given three (3) hours verbal notice of the hearing date, time, and location.

Upon conclusion of all testimony, the Commission voted unanimously that the evidence presented during the protest hearing of Jackie Harris was insufficient to, even if truthful in all respects, invalidate the certified results of the City of Lancaster District 3 election.

An appeal was filed by Jackie Harris on December 9, 2016. Respondent Linda Blackmon-Brace filed a Motion to Dismiss for Improper Service on January 13, 2017. A hearing was held on January 23, 2017, and the Court took that matter under advisement. Linda Blackmon-Brace later withdrew this Motion prior to the Court issuing a decision. The merits of the Appeal of the Commission's decision was heard by the Court of Common Pleas on February 2, 2017. The Court affirms the decision of the Lancaster County Election Commission.

LAW

Municipalities are authorized to allow County Election Commissions to conduct their municipal elections. S.C. Code Ann. § 5-15-145(A) (2004). "As a general matter, municipal election disputes are to be adjudicated by municipal election commissions." *Bluffton v. Fulgham, et. al*, 686 S.E. 2d 683 (2009). However, the Court of Common Pleas hears appeals from County Election Commissions when municipalities have abdicated their local administrative responsibilities for voter registration and elections.

Construing these statutes together [§5-15-145 and §7-17-30], we therefore hold that the only reasonable interpretation of §5-15-145 is that it establishes a framework whereby county boards act to authority bestowed upon them by municipal bodies. Therefore, the proper appellate court for any petitioner seeking review of a county boards's decision made pursuant to a transfer of authority from a municipality is the circuit court. *Id.*

Therefore, this appeal from the Lancaster County Election Commission was properly before the Court of Common Pleas.

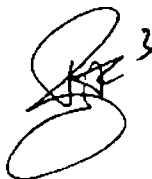
“The Circuit Court sitting in appellate capacity does not conduct a de novo hearing or take testimony. The circuit court must examine the decision for errors of law, but it must accept the factual findings of the commission unless they are wholly unsupported by the evidence.” *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005).

“The right to contest and election exists under common law and the procedure proscribed by statute must be strictly followed.” *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005).

S.C. Code 5-15-130 states,

Within forty-eight hours after the closing of the polls, any candidate may contest the result of the election as reported by the managers by filing a written notice of such contest together with a concise statement of the grounds therefor with the Municipal Election Commission. Within forty-eight hours after the filing of such notice, the Municipal Election Commission shall, after due notice to the parties concerned, conduct a hearing on the contest, decide the issues raised, file its report together with all recorded testimony and exhibits with the clerk of court of the county in which the municipality is situated, notify the parties concerned of the decisions made...

“The notice in an election contest should briefly state facts or a combination of facts sufficient to apprise the contestee of the cause for which his election is contested. It is insufficient to allege generally that fraud was committed, or to allege mere conclusions of the pleader. The purpose of notice requirement is to adequately inform the contestee as to the nature of the contest. *Butler v. Town of Edgefield*, 493 S.E. 2d 838 (1997). “Reason and justice require that grounds relied upon should be stated plainly and clearly that the contestee may prepare to meet them without unnecessary labor or expense. *Id.* After the hearing, “the statute does not require a written order containing findings of facts or



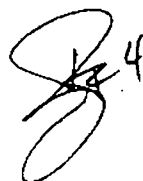
conclusions of law similar to those of [other tribunals]. *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005).

ANALYSIS

The Circuit Court has proper jurisdiction of this municipal election appeal. *Bluffton v. Fulgham, et. al*, 686 S.E. 2d 683 (2009). The Circuit Court is sitting in appellate capacity and cannot conduct a de novo hearing. *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005). "The Circuit Court must examine the decision for errors of law, but it must accept the factual findings of the Commission unless they are wholly unsupported by the evidence." *Id.*

S.C. Code 5-15-130 states a hearing of a municipal election protest must be heard within 48 hours of the protest being filed. The Commission conducted the hearing within 48 hours. Ms. Harris motioned the Commission to continue the hearing until "Monday or Tuesday" of the following week. The Commission denied the motion. The Commission has the discretion to grant or deny a Motion for Continuance. Therefore, the Commission's denial of a continuance was not an "error of law."

Ms. Harris also alleges the Commission violated her procedural due process. "The fundamental requirements of due process include an opportunity to be heard in a meaningful way and judicial review." S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C.90, 94, 406 S.E. 2d 340, 342 (1991). Ms. Harris filed the protest pursuant to S.C. Code 5-15-130. This statute states, inter alia, the hearing before the Commission will be held "within" 48 hours. [emphasis added]. The statute provided Ms. Harris notice that the hearing would be held within 48 hours. Ms. Harris was also notified on the date of the hearing approximately three (3) hours before the hearing. This was approximately three (3) days after the November 8th election results were announced and approximately twenty-four (24) hours after the protest was filed. Ms. Harris and her counsel were at the hearing.



The Court finds the statute affords procedural due process to all parties to a contested municipal election, specifically in this particular case. Ms. Harris, by and through her counsel, was allowed to present her case to the Election Commission. The hearing lasted approximately three (3) hours. The Commission took a fifteen (15) minute break to allow Ms. Harris and her counsel an opportunity to gather more evidence and information from the Lancaster County Voter Registration office. (Tr. p.17). After the break, Ms. Harris presented the Commission with a bundle of documents, testified, called witnesses and cross-examined witnesses. Ms. Harris concluded her direct testimony by stating, "All that – all that I have to offer right this minute without being able to –to do the research that I need, is—is there" (Tr. p. 80, Lines 20-23). The burden of proof was on Ms. Harris to present her case and prove the allegations of the protest. The Commission was sitting as a tribunal, not as an investigative body. The Commission concluded after a meaningful hearing, "[u]pon the conclusion of all testimony, the Commission voted unanimously that the evidence presented during the protest hearing of Jackie Harris was insufficient to prove that, even if truthful in all respects, would have changed the certified results of the City of Lancaster District 3 election." (Order, p. 2).

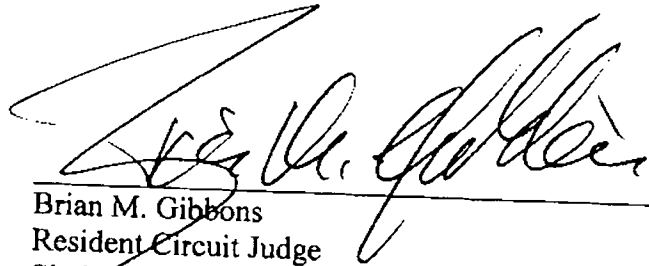
CONCLUSION

This Court is sitting in its appellate posture and cannot conduct a de novo hearing. There is no evidence in the record of an error of law by the Commission. The main thrust of Appellant's argument is that the election protest statute is unfair due to its time constraints. However, this is an argument best decided by the South Carolina Legislature, not the Courts. This Court upholds the decision of the Lancaster County Election



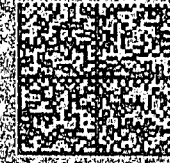
Commission and orders Ms. Linda Blackmon-Brace be sworn in on Lancaster City Council as the District #3 representative within 30 days.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Brian M. Gibbons", written over a horizontal line.

Brian M. Gibbons
Resident Circuit Judge
Sixth Judicial Circuit

February 15, 2017



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