

**BEFORE THE STATE ELECTION BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF THE CONTEST OF)
THE CANDIDACY OF **GREGORY**)
DUNSON FOR THE OFFICE OF STATE) CAUSE NO. 2020-01
REPRESENTATIVE, DISTRICT 51)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

The above-styled cause was heard by the State Election Board for the State of Oklahoma on Tuesday, April 21, 2020, meeting pursuant to lawful notice and posting of an agenda consistent with the Open Meeting Act and SB 661, 2020 O.S.L. 3, § 3, amending the Open Meeting Act.

The following members of the State Election Board (“Board” or “SEB”) were present: Mr. Tom Montgomery, Chair¹; Dr. Tim Mauldin, Vice Chair²; and Ms. Heather M. Cline³, Member (videoconference). Also present were Paul Ziriak, Secretary; and counsel for the State Election Board, Niki Batt, Vice-Deputy Attorney General; and Thomas R. Schneider, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member⁴; and Debi Thompson, Alternate Member⁵.

Petitioner State Rep. Brad Boles appears by counsel, Geoffrey Long. Contestee Gregory Dunson appears in by videoconference with counsel, Brian Putnam.

Petitioner State Rep. Brad Boles’ Petition was filed and Notice of Hearing was issued on Monday, April 13, 2020. The Board received proof from the Petitioner that the Grady County Sheriff’s Office successfully served Contestee Dunson within 24 hours of setting the Petition for hearing, as required by 26 O.S. 2011, § 5-124. The Petitioner provided Return of Sheriff Service to the Secretary of the State Election Board before or on the date of the hearing.

Contestee did submit a cashier’s or certified check in the amount of \$250.00, as required by 26 O.S. 2011, § 5-129, as well as an Answer and Brief in Support.

During the hearing, the following exhibits were offered into the record and testimony was heard from the following persons:

Petitioner’s Exhibit 2 (Voter Registration Record for Oklahoma County)	ADMITTED
Petitioner’s Exhibit 3 (Voter Registration Form for Grady County)	ADMITTED
Petitioner’s Exhibit 4 (Voter Registration Record for Grady County)	ADMITTED

In his Answer and Brief in Support to the Petition, Contestee Dunson demurred to the evidence as admitted. *See* Contestee’s Answer and Br. in Supp., ¶ 2, pg. 1.

¹ Chairman Montgomery appeared by videoconference.

² Vice Chair Dr. Mauldin appeared by teleconference.

³ Member Cline appeared by videoconference.

⁴ Alternate Member Buchanan appeared by videoconference.

⁵ Alternate Member Thompson appeared by videoconference.

The Board conducted the hearing. After considering all evidence and testimony offered and admitted, and after bearing arguments by the Parties, the Board makes the following findings of fact and conclusions of law:

1. Contestee Dunson filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 51, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
2. Petitioner Boles filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 51, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
3. The SEB received proof of personal service made on Contestee within twenty-four (24) hours of setting the Petition for hearing, as required by 26 O.S. 2011, §§ 5-124 & 5-125.
4. Under 26 O.S. 2011, § 5-130, “[t]he burden of proof shall be upon the petitioner to sustain the allegations in his petition.” In order to sustain his or her burden of proof, the petitioner must prove the allegations set forth in the Petition by the greater weight of the evidence.
5. The allegations contained in the Petition filed by Petitioner Boles are:
 - a. Contestee Dunson has only been a registered voter of House District 51 since February 2020 and is thus ineligible to be a candidate for the Office of State Representative, District 51, and
 - b. The notarization contained on the Declaration of Candidacy Form was incorrectly completed.

At the time of hearing, counsel for Petitioner Boles informed the Board that he was dismissing the allegation set forth in subparagraph b above as it was not an appropriate ground for disqualification.

6. Pursuant to 14 O.S. 2011, § 108, a candidate for State Representative “must have been a registered voter in such district and a resident residing within such district for at least six (6) months immediately preceding the filing period prescribed by law.”
7. The filing period began on Wednesday, April 8, 2020, pursuant to 26 O.S. 2011, § 5-110. Consequently, Contestee Dunson was required to have been a registered voter of House District 37 on or before October 7, 2019.
8. A certified copy of Contestee’s Oklahoma County voter registration record from the State Election Board shows a county transfer deletion transaction date for Contestee Dunson’s registration in Oklahoma County as February 25, 2020, and his voter registration in Oklahoma County was filed on April 10, 2018. *See* **Petitioner’s Exhibit 2.**
9. A certified copy of Contestee Dunson’s Grady County voter registration form from the Grady County Election Board shows that Contestee Dunson filed his voter registration form in Grady County on or about February 7, 2020. His voter registration in Grady County was activated on February 21, 2020. *See* **Petitioner’s Exhibit 3.**

10. A certified copy of Contestee Dunson's Grady County voter registration record from the Grady County Election Board shows that Contestee Dunson filed his registration form in Grady County on or about February 7, 2020. The audit date for the new registration on the Grady County voter registration record for Contestee Dunson shows that the registration became active on or about February 20, 2020. *See* **Petitioner's Exhibit 4**.
11. Contestee Dunson, citing to the *Matthews* case⁶, also claimed the six month requirement applies only to residency, not registration, and to hold otherwise is a violation of his constitutional rights. However, the Oklahoma Supreme Court has interpreted the six month durational requirement in 14 O.S. § 108 to apply to registration and not merely residence. *Hendrix v. State ex rel. Oklahoma State Election Bd*, 1976 OK 111, 554 P.2d 770. Even more, 14 O.S. 2011, § 108 "is a valid statutory enactment of the Legislature of Oklahoma and complies fully with the Equal Protection of the Law clause of the Fourteenth Amendment of the Constitution of the United States." *Fleak v. Allman*, 420 F. Supp. 822,825 (W.D. Okla. 1976).
12. The Oklahoma Supreme Court has long held that words such "must" impose a command, and thus a candidate for the State House of Representatives must meet a six month durational requirement for both registration and candidacy.⁷
13. Moreover, the use of the conjunctive "and" in 14 O.S. 2011, § 108 implies that the six-month durational requirement applies both to registration and residency.⁸
14. Petitioner Boles has sustained his burden of proof by the greater weight of the evidence in showing that Contestee Dunson does not meet the six-month registration requirement set forth in 14 O.S. 2011, § 108.
15. Petitioner Boles's Petition is therefore **SUSTAINED**, pursuant to 26 O.S. 2011, § 5-130, and Contestee Dunson's name shall not appear on the ballot as a candidate for the office of State Representative, District 51.
16. Costs are assessed against Contestee Dunson pursuant to 26 O.S. 2011, § 5-131.

⁶ *Matthews v. State Election Bd. Of Oklahoma*, 1978 OK 113, 582 P.2d 1318.

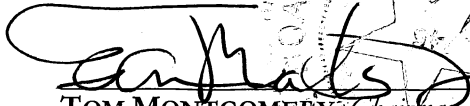
⁷ *Independent School Dist. No. 2, Tulsa County v. Okla. Tax Comm'n, et al.*, 2018 OK CIV APP 49, ¶ 6, 419 P.3d 1281, 1284 (citing *Oglesby v. Liberty Mut. Ins. Co.*, 1992 OK 61, ¶ 19, 832 P.2d 834).

⁸ "Where the legislative intent would be defeated by construction of a statute as written the Court may transpose words and phrases as is necessary to arrive at the true meaning. *Russell v. Flanagan*, 544 P.2d 510, 512, 1975 OK 173 (citing *Talley v. Harris*, 182 P.2d 765, 768, 1947 OK 218).

On the 21st day of April, 2020, all members of the State Election, constituting a quorum, voted to **SUSTAIN** the Petitioner Boles's Petition for Contest of Candidacy and **STRIKE** the candidacy of Contestee Gregory Dunson from the ballot.

OKLAHOMA STATE ELECTION BOARD

5-18-20
Date


TOM MONTGOMERY, *Chairman*

