

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

IN THE MATTER OF THE CONTEST OF)
THE CANDIDACY OF ISMAIL A. SHAN)
FOR THE OFFICE OF STATE) CAUSE NO. 2020-07
REPRESENTATIVE, DISTRICT 72)

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 Zirix, 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. Monroe Nichols appeared by counsel, State Rep. Emily Virgin, via videoconference. Contestee Ismail A. Shan appeared in person and without counsel.

Petitioner State Rep. Monroe Nichols’ Petition for Contest of Candidacy was filed and Notice of Hearing was issued on Tuesday, April 14, 2020. The Board received proof from the Petitioner that the Tulsa County Sheriff’s Office successfully served Contestee Shan 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.

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

Petitioner’s Exhibit 1 (Printout of Property Search in Tulsa County Assessor website database for 2116 N. Lewis Pl. E., Tulsa, OK 74110) **ADMITTED**
Petitioner’s Exhibit 2 (Photograph with time stamp of July 2015 from Tulsa County Assessor website) **ADMITTED**
Petitioner’s Exhibit 3 (Google Maps Printout showing location of 1247 N. Osage Dr., with attached picture) **ADMITTED**

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.

Petitioner's Exhibit 4 (2020 Declaration of Candidacy for Ismail A. Shan)	ADMITTED
Petitioner's Exhibit 5 (House District 73 Map, indicating points of interest, 2208 W. Newton St. and 1247 N. Osage, Tulsa, OK)	ADMITTED
Petitioner's Exhibit 6 (Picture of vacant lot)	ADMITTED
Petitioner's Exhibit 7 (Picture of vacant lot)	ADMITTED
Petitioner's Exhibit 8 (Picture of vacant lot)	ADMITTED
Petitioner's Exhibit 9 (Picture of vacant lot)	ADMITTED
Petitioner's Exhibit 10 (Picture of vacant lot)	ADMITTED
Petitioner's Exhibit 11 (Letter from City of Tulsa Utilities Services Division dated April 17, 2020)	ADMITTED
Petitioner's Exhibit 12 (Shows representatives for Contestee if registered at 1247 N. Osage, Tulsa OK [Address where Contestee served with Petition])	ADMITTED
Petitioner's Exhibit 13 (Shows representatives for Contestee if registered at 2208 W. Newton St., Tulsa OK [Mailing Address on Declaration of Candidacy])	ADMITTED

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 Ismail A. Shan filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 72, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
2. Petitioner, State Rep. Monroe Nichols, filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 72, 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 allegation contained in the Petition filed by Petitioner Nichols argues that since Contestee Shan has not been a resident in House District 72 for the six months immediately preceding the filing period, he does not qualify to be a candidate under 14 O.S. 2011, § 108.
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 Shan was required to have been a registered voter and resident of House District 72 on or before October 7, 2019.

8. Contestee Shan's Declaration of Candidacy lists his residential address as 2116 N. Lewis Pl. E., Tulsa, OK and his mailing address as 2208 W. Newton St., Apt. B, Tulsa OK. *See* **Petitioner's Exhibit 4.**
9. An unofficial printout and picture from the Tulsa County Assessor's website shows that 2116 N. Lewis Pl. E. in Tulsa, OK is a vacant lot. *See* **Petitioner's Exhibits 1 & 2.**
10. Contestee Shan operates a business at 1247 N. Osage Dr. in Tulsa OK. *See* **Petitioner's Exhibit 3.**
11. A map printout of House District 73 shows that both the Newton St. address and N. Osage Dr. business address are closely located to one another, and both are located within House District 73. *See* **Petitioner's Exhibit 5.**
12. Pictures of a vacant lot show a street number, 2116, which was confirmed to be 2116 N. Lewis Pl. E., Tulsa, OK. *See* **Petitioner's Exhibits 6 through 10.**
13. A letter signed by Troy Stafford, Utilities Systems Manager for the City of Tulsa answered an Open Records request in a letter dated April 17, 2020, indicating that there is no utility account set up for and no request for an account for 2116 N. Lewis Pl. E., Tulsa, OK. *See* **Petitioner's Exhibit 11.**
14. Printouts from the Finding my Legislator tool on the Oklahoma Legislature's website indicate that two addresses for Contestee Shan—Newton St. and N. Osage Dr.—both fall within House District 73, rather than House District 72. *See* **Petitioner's Exhibits 12 through 13.**
15. During the hearing, Contestee Shan admitted to working from the N. Osage Dr. address where he was served with the Petition to Contest Candidacy. Contestee Shan also testified, when questioned by Member Cline, that he has lived at the 2208 N. Newton St. address for almost two years. This is the same address listed as the mail address on Contestee Shan's Declaration of Candidacy He also offered that he *intends* to build a home at the 2116 N. Lewis Pl. E. lot. (Emphasis added). This is the same address Contestee Shan listed as his residential address. *See* **Petitioner's Exhibit 4.**
16. The Oklahoma Supreme Court ruled on the question of residency as it was set forth in 14 O.S. § 108, in *Box v. State Election Bd. of Okla.*, 1974 OK 104, 526 P.2d 936. In determining the question of residency, the Court noted that it was one of fact, not law. *Id.* at ¶ 21, 526 P.2d at 940. Moreover, the Court also stated, '[t]he controlling fact to be considered is *the fact of intent* and to determine this fact . . . may take into consideration all the movements, transactions, and attending circumstances of the party or parties involved in the question.' *Id.* (emphasis added).
17. While Tulsa County Assessor records indicate that Contestee Shan does own the property at the N. Lewis Pl. E. address (*see* **Pet'r.'s Ex. 1**), other evidence offered by the Petitioner demonstrates that Contestee Shan does not possess a present intent to live there. There are no utilities servicing the N. Lewis Pl. E. address (*see* **Pet'r.'s Ex. 11**); the lot has no dwelling on it and is vacant (*see* **Pet'r.'s Exs. 6-10**); and the mailing address on his


Declaration of Candidacy (*see* **Petr.'s Ex. 4**) is the same address that he testified to presently living at during the hearing (*see* **Finding of Fact 15**).

18. In light of the evidence provided and testimony given, Contestee has not resided continuously at the N. Lewis Pl. E. address at all times since October 7, 2019 (*see* **Finding of Fact 7**), Contestee Shan has not met the six-month residential requirement under 14 O.S. 2011, § 108. Even more, Contestee Shan's own admission of living at the Newton St. address and stating that he intends to build on the N. Lewis Pl. E. lot further undercuts any reasonable argument that he intends to reside at this address for the purposes of meeting the requirements under 14 O.S. 2011, § 108.
19. Petitioner State Rep. Monroe Nichols has sustained his burden of proof by the greater weight of the evidence in showing that it is more likely true than it is not that Contestee Shan does not meet the six-month residential requirement set forth in 14 O.S. 2011, § 108.
20. Petitioner Nichols' Petition is therefore **SUSTAINED**, pursuant to 26 O.S. 2011, § 5-130, and Contestee Shan's name shall not appear on the ballot as a candidate for the office of State Representative, District 72.
21. Costs are assessed against Contestee Shan pursuant to 26 O.S. 2011, § 5-131.

On the 21st day of April, 2020, all members of the State Election, constituting a quorum, voted to **SUSTAIN** Petitioner Monroe Nichols' Petition for Contest of Candidacy and **STRIKE** the candidacy of Contestee Ismail A. Shan from the ballot.

5-18-20
Date

OKLAHOMA STATE ELECTION BOARD



TOM MONTGOMERY, Chairman

