

PENNSYLVANIA COURT OF COMMON PLEAS, PHILADELPHIA COUNTY

Jaspan v. Osser

43 Pa. D. & C.2d 346 (C.P. Phila. County 1967) · Decided July 12, 1967

SUMMARY

The court dismissed an equitable action seeking to prevent certification of John B. Kelly Jr. as a Democratic candidate for Philadelphia councilman-at-large based on alleged lack of residency. It held that the Pennsylvania Election Code provided the exclusive and mandatory procedure for challenging a nomination petition, barring a challenge filed after the statutory deadline, and also concluded that the next-highest vote-getter would not automatically become the nominee if the winning candidate were disqualified.

CASE DETAILS

COURT	Pennsylvania Court of Common Pleas, Philadelphia County
WRITING FOR THE COURT	Gold, P.J.
JURISDICTION	Pennsylvania
DECIDED	July 12, 1967
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought an action in equity seeking to enjoin certification of John B. Kelly, Jr., as a Democratic candidate for Philadelphia city councilman-at-large and to obtain certification of the next five qualified vote-getters. Kelly intervened, defendants filed preliminary objections, and the court sustained the objections and dismissed the amended complaint.
STANDARD OF REVIEW	The court considered the legal sufficiency and jurisdictional effect of the preliminary objections to the amended complaint.
PRECEDENTIAL VALUE	Published Pennsylvania Court of Common Pleas decision; persuasive authority subject to binding appellate precedent.
PARTIES	Jaspan v. Osser, City Commissioners of Philadelphia, City of Philadelphia, John B. Kelly, Jr., D. Donald Jamieson

TOPICS

- election contests
- election law
- statutory interpretation
- motions to dismiss
- equitable relief

PRACTICE AREAS

election law

civil procedure

statutory interpretation

municipal law

equitable remedies

QUESTIONS PRESENTED

1. Whether the Pennsylvania Election Code provides the exclusive method for challenging a candidate's nomination petition and thereby bars an equitable challenge filed after the statutory objection deadline.
2. Whether a candidate who receives the next-highest number of votes is automatically entitled to election if the winning candidate is disqualified.

HOLDINGS

1. The Election Code provides the exclusive procedure for attacking a nomination petition, and a challenge filed after the seven-day statutory period is barred, even when fraud or candidate ineligibility is alleged.
2. A candidate receiving the next-highest number of votes is not automatically elected merely because the candidate receiving the highest number of votes is disqualified.

KEY QUOTATIONS

“The basic question which must, perforce, be answered in this case is whether the Election Code provides the exclusive method of attacking a nomination petition of a candidate for the position of councilman-at-large.” (349)

“We, therefore, conclude that equity has no power to upset the clear mandate of the Election Code and that the Election Code means exactly what it says in the first portion of section 977, viz., that the nomination petition shall be deemed to be valid unless within seven days thereafter an appropriate objecting petition is presented to the Court of Common Pleas.” (350)

“The law is abundantly clear that even where the winner of an election is disqualified for some proper reason, the person receiving the next highest number of votes is not automatically elected.” (351)

FACTUAL BACKGROUND

Jaspan, a Philadelphia resident and taxpayer, sought to prevent certification of John B. Kelly, Jr., as a Democratic nominee for Philadelphia councilman-at-large. Jaspan alleged that Kelly lived in Wynnewood, Montgomery County, and therefore failed the Philadelphia Home Rule Charter's residency requirement. The challenge was initiated after the March 14, 1967, deadline for filing objections to nomination petitions and after the May 17 primary election.

PROCEDURAL HISTORY

Jaspan challenged Kelly's eligibility after the primary election, alleging that Kelly did not satisfy the Philadelphia Home Rule Charter's one-year Philadelphia residency requirement. After the complaint was amended to add allegations concerning Kelly's voter registration and alleged concealment of his residence, and to add Judge Jamieson as a defendant, the court treated the original preliminary objections as directed to the amended complaint. The court sustained the objections and dismissed the action because the Election Code's

objection procedure was exclusive and untimely, and because the court lacked jurisdiction to entertain the equitable action.

DISPOSITION

dismissed

CASES CITED

- American Labor Party Case, 352 Pa. 577 (1945)
- Thompson v. Morrison, 352 Pa. 616 (1945)
- Turtzo v. Boyer, 370 Pa. 526 (1952)
- Sherwood v. Elk County Board of Elections, 33 Pa. D. & C.2d 230 (1963)
- Commonwealth ex rel. McLaughlin v. Cluley, 56 Pa. 270 (1867)
- Bensalem Township Election Contest, 26 Pa. D. & C.2d 433 (1961)
- Franklin Township Contest of Election of Justice of the Peace, 34 Westmoreland 173 (1952)