

SUPREME COURT OF PENNSYLVANIA

In re Nomination Petition of Kerry Benninghoff (Republican)
Candidate for Representative in the General Assembly from the 171st
Legislative District; Appeal of Kerry Benninghoff

578 Pa. 402 (2004) (Pa. 2004) · No. No. 41 MAP 2004 · Decided June 24, 2004

SUMMARY

The Supreme Court of Pennsylvania considered whether a candidate’s failure to list the Commonwealth as a direct income source on a financial-interest statement required striking his nomination petition. The Court held that the omission was a technical defect because the statement substantially disclosed his governmental employment and income, and that the defect was amendable rather than fatal. The Court reversed the Commonwealth Court and permitted the candidate’s name to remain on the primary-election ballot.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Baer; Cappy, C.J.; Castille, J.; Nigro, J.; Newman, J.; Saylor, J.; Eakin, J.; Baer, J.
JURISDICTION	Pennsylvania
DECIDED	June 24, 2004
DOCKET	No. 41 MAP 2004
DISPOSITION	reversed
PROCEDURAL POSTURE	Direct appeal from the Commonwealth Court's order granting Smith's petition to set aside Benninghoff's nomination petition and striking his name from the primary-election ballot.
STANDARD OF REVIEW	The Supreme Court reviewed the statutory interpretation and legal determination concerning whether the omission was a fatal or amendable defect de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kerry Benninghoff v. Paula F. Smith

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QUESTIONS PRESENTED

1. Whether a state representative's salary from the Commonwealth is income that must be disclosed under the Public Official and Employee Ethics Act.
2. Whether a timely filed financial-interest statement that identifies the candidate's governmental employment elsewhere on the form substantially complies with the Ethics Act despite omitting the governmental source of salary from the designated income-source block.
3. Whether the omission was an amendable technical defect rather than a fatal defect requiring removal of the candidate from the ballot.

HOLDINGS

1. A salary paid by a governmental entity for services as a state representative is income subject to disclosure under the Ethics Act; it is not excluded as a governmentally mandated payment or benefit.
2. Where a candidate timely files a financial-interest statement and substantially complies with the Ethics Act, a technical defect apparent on the face of the statement is amendable when the required information can be obtained from the statement as a whole.

KEY QUOTATIONS

"Thus, based on the foregoing, we hold that where, as here, a candidate has substantially complied with the requirements of the Ethics Act and there is a technical defect appearing on the face of a candidate's Financial Statement, such a defect is subject to the candidate's amendment." (852 A.2d at 1189)

"Having concluded that Benninghoff's receipt of a salary for his position as a state representative in the 171st Legislative District, is not excluded from the definition of "income" set forth in the Ethics Act" (852 A.2d at 1187)

FACTUAL BACKGROUND

Kerry Benninghoff, an incumbent state representative, timely filed a nomination petition and attached a financial-interest statement. The statement identified him as a state representative in Blocks 4, 5, and 6 and disclosed rental-property income in Block 10, but it did not identify the Commonwealth as the source of his legislative salary. Paula Smith challenged the petition, contending that the omission violated the Ethics Act and constituted a fatal defect.

PROCEDURAL HISTORY

Smith filed an action in the original jurisdiction of the Commonwealth Court challenging Benninghoff's nomination petition because his financial-interest statement did not identify the Commonwealth as a source of

income in Block 10. A Commonwealth Court panel granted the petition and struck Benninghoff's name from the ballot. The Supreme Court of Pennsylvania accepted the direct appeal, transferred the matter to the State Ethics Commission for an advisory disposition, then reversed the Commonwealth Court by per curiam order and later issued this opinion explaining its rationale.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Commonwealth Court's order striking Benninghoff's name from the ballot was reversed; the April 7, 2004 per curiam order directed that Benninghoff's name be printed on the primary-election ballot.

CASES CITED

- In re Nomination Petition of Anastasio, 820 A.2d 880 (Pa. Cmwlth. 2003), aff'd per curiam, 573 Pa. 512, 827 A.2d 373 (2003)
- Smith v. Brown, 139 Pa. Cmwlth. 304, 590 A.2d 816 (1991)
- Commonwealth v. Tilghman, 543 Pa. 578, 673 A.2d 898 (1996)
- Commonwealth v. Smith, 575 Pa. 203, 836 A.2d 5 (2003)
- Commonwealth, State Ethics Commission v. Baldwin, 498 Pa. 255, 445 A.2d 1208 (1982)
- Petition of Cioppa, 533 Pa. 564, 626 A.2d 146 (1993)

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