

SUPREME COURT OF NEBRASKA

Swanson v. Sorensen, 181 Neb. 312

148 N.W.2d 197 (1967) · No. No. 36570 · Decided January 27, 1967

SUMMARY

The Nebraska Supreme Court held that a State Railway Commissioner was eligible to run for and serve as State Treasurer. The court concluded that the constitutional provision creating the State Railway Commission was an independent part of the Constitution and did not place railway commissioners within the Article IV, section 2, prohibition against holding another state office. Judgment was entered for Wayne R. Swanson, and Fred Sorensen was ordered to deliver the Treasurer's office materials to him.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Spencer, Justice; White, C.J.; Carter, J.; Spencer, J.; Boslaugh, J.; Smith, J.; McCown, J.; Newton, J.
JURISDICTION	Nebraska
DECIDED	January 27, 1967
DOCKET	No. 36570
DISPOSITION	other
PROCEDURAL POSTURE	Original quo warranto action in the Nebraska Supreme Court to determine entitlement to the office of State Treasurer. The respondent filed a demurrer, separate demurrer, answer and cross-petition, and motion for summary judgment.
STANDARD OF REVIEW	The court considered the eligibility issue presented in the original quo warranto proceeding as a question of constitutional interpretation; it found no factual issue requiring resolution.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Nebraska
PARTIES	Wayne R. Swanson, relator v. Fred Sorensen, respondent

TOPICS

- election law
- election contests
- constitutional law
- administrative law

PRACTICE AREAS

constitutional law

election law

quo warranto

state government and public officers

QUESTIONS PRESENTED

1. Whether a Nebraska State Railway Commissioner is an officer covered by Article IV, section 2 of the Nebraska Constitution and therefore ineligible to become a candidate for or accept the office of State Treasurer during the commissioner's term.
2. Whether Swanson was entitled to the office of State Treasurer in the quo warranto proceeding.

HOLDINGS

1. A Nebraska State Railway Commissioner is not an officer mentioned in Article IV, section 2 for purposes of the constitutional restriction on eligibility for another state office. The State Railway Commission is an independent constitutional body, not an executive department or office within the enumerated executive officers covered by that provision.
2. Swanson was the duly elected and qualified Treasurer of Nebraska, and Sorensen was required to surrender the office's books and papers to him.

KEY QUOTATIONS

“For the last 48 years this court has been committed to the view that in adopting the constitutional provision creating the State Railway Commission, it was made an independent part of the Constitution and not as an amendment to the executive, legislative, or judicial articles thereof.” (at 200)

“The relator at all times was eligible to be a candidate for State Treasurer.” (at 201)

“For the reasons given, Wayne R. Swanson is the duly elected and qualified Treasurer of the State of Nebraska, and respondent is hereby ordered and directed to deliver to the said Wayne R. Swanson all books and papers in his custody and under his control belonging to said office.” (at 201)

FACTUAL BACKGROUND

Wayne R. Swanson was serving as a duly elected Nebraska State Railway Commissioner when he filed as a candidate for State Treasurer. He won the Republican nomination and was elected over Fred Sorensen, the Democratic nominee and incumbent. Swanson was declared elected and qualified by filing a bond and taking the oath, but Sorensen refused to surrender the office. Sorensen argued that Swanson was constitutionally ineligible because a railway commissioner was an executive state officer subject to Article IV, section 2's prohibition on holding or seeking another state office during the elected term.

PROCEDURAL HISTORY

The Supreme Court granted Swanson leave to file an original quo warranto proceeding. Swanson had been elected State Treasurer after serving as a State Railway Commissioner, but Sorensen, the incumbent and opposing candidate, refused to vacate the office. The court found no factual issue and resolved the case on the

legal question of Swanson's eligibility, entering judgment for Swanson and ordering Sorensen to deliver the office's books and papers.

DISPOSITION

other

CASES CITED

- In re Railroad Commissioners, 15 Neb. 679, 50 N.W. 276
- State ex rel. Shields v. Hall, 103 Neb. 17, 170 N.W. 173
- State ex rel. Mortensen v. Furse, 89 Neb. 652, 131 N.W. 1030
- In re Lincoln Traction Co., 103 Neb. 229, 171 N.W. 192
- Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S. Ct. 67, 53 L. Ed. 150
- Petersen v. Beal, 121 Neb. 348, 237 N.W. 146
- Furstenberg v. Omaha & C. B. St. Ry. Co., 132 Neb. 562, 272 N.W. 756
- State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1