

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

STEPHEN KALINOSKI :
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 v. :
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 LAUREN LAMBRUGO, CHIEF CLERK : No. 2017-20026
 MONTGOMERY COUNTY ELECTION :
 BOARD :
 :
 :
 and :
 :
 :
 MARC BOZZACCO :

ORDER

And now, this 17th day of August, 2017, upon consideration of Stephen Kalinoski's Petition to Remove Marc Bozzacco from the General Election Ballot for November 7, 2017 as Abington Township Ward 6 Commissioner, and after hearing in open Court, it is hereby Ordered that this Petition is **DENIED**.

The Petition lists the following objection in paragraph 4:

The Pennsylvania Election law requires that a Statement of Financial Interests must first be filed with the municipality prior to being filed with the County Election Board. No time stamp from Abington Township appears on the Statement of Financial Interests (please see Exhibit A) which was filed by Defendant Marc Bozzacco.

No reference to legal authority or evidence was presented at the hearing that the law requires that the Statement of Financial Interest must contain a time stamp, or must be filed first with the municipality. In fact, it does not appear that there is a requirement that the Statement of Financial Interest must be filed before the Nomination Petition.

A candidate for local office is required to file a statement of financial interests under the Public Official and Employee Ethics Act, 65 Pa. C. S. §§ 1101–1113, and by the regulations of

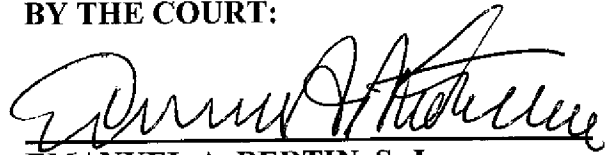
the State Ethics Commission. Pursuant to 65 Pa.C. S. § 1104(b)(2) “[a]ny candidate for county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. Further, the Pennsylvania Code Sections relevant to filing a candidate’s financial statements provide: “[a] candidate for county and local public office shall file a Statement of Financial Interests with the governing authority of the political subdivision wherein the candidate is seeking office on or before the last day for filing a petition to appear on the ballot and a copy of the Statement shall be appended to the petition.” 51 Pa. Code § 15.3(b). Pursuant to 51 Pa. Code § 15.3(d), [a] n independent candidate not running in a primary election shall file a Statement of Financial Interests on or before the last day for filing a petition to appear on the ballot for election. The filing shall be made in accordance with subsections (a) and (b).” We have found no mention of the order in which the two filings must be made or of a requirement of a time stamp by the municipality.

The evidence shows that Bozzacco Financial Statement was untimely filed with the municipality. This was a “fatal defect.” However, this objection was not made specifically in the Petition. Pursuant to 25 P.S. 2937, Kalinoski’s Petition was required to “specifically” set forth the objection to Bozzacco’s nominating papers. Objections to nominating papers must be specific enough to give fair notice, which means that they must provide enough information to permit a reasonable person to ascertain the substance of the claimed deficiency and the proof that must be presented at the hearing to mount a defense. *In re Bishop*, 525 Pa. 199, 579 A.2d 860 (1990). Further, as noted by Pennsylvania Supreme Court in *In Re Nominating Petition of Bryant*, 578 Pa. 421, 426, 852 A.2d 1193, 1196 (2004), “ in light of the requirement of [25 P.S. § 2937] that a nomination petition shall be deemed to be valid” where it is unchallenged within the requisite period, a candidate's noncompliance with Section 1104 of the Ethics Act may not be newly raised as a basis

for setting aside a petition outside of the statutorily-prescribed period.”

Keeping in mind that, as set forth in *In Re Brown*, 605 Pa 629, 992 A2d 882, (2010), the Election Code is to be construed so as not to deny a candidate the opportunity to run or deprive the electorate of the right to vote for the candidate of choice and that the protections offered by 25 P.S. 2937 and the interests sought to be furthered by that section are not to be defeated, it is the opinion of this Court that the Objection at issue here did not meet the specificity required under Pennsylvania law. It would have been simple enough for Petitioner to allege that Bozzacco’s Statement of Financial Interest was not timely filed with the municipality, rather than providing statements of law that are not supported by the law. The failure to do so provides the basis for this court’s decision.¹

BY THE COURT:



EMANUEL A. BERTIN, S. J.

¹ Mr. Bozzacco filed a Statement of Financial Interest with his timely filed Nominating Papers at the Montgomery County Election Board office on August 1, 2017. He later amended this Statement of Financial Interest and filed this with the municipality as well as with the County. All other objections listed in the Petition were withdrawn at the hearing.