

ELECTION COMMITTEE CONTEST DECISION

For

DETERMINATION OF ELIGIBILITY of SHELIA BERGER

Contestant: Shelia Berger

March 26, 2014

FACTS

On February 14, 2014, Shelia Berger submitted a Letter of Intent and Background Investigation Form seeking eligibility as a Unit 1 candidate for the 2014 general election. Berger's Background Investigation Form ambiguously stated that her only conviction may possibly be a personal protection order violation in 2006. During the investigation of Berger's criminal history a 2007 conviction for disorderly person-jostling was discovered. On February 27, 2014, Berger was notified that due to the failure to disclose the 2007 conviction she had been declared ineligible to run for tribal office by the Election Committee.

On March 24, 2014, Berger submitted a new Letter of Intent and a new Background Investigation Form. The new Background Investigation Form included the 2007 conviction. On that same date Berger submitted a contest pursuant to Ch. 10 at Section 10.118. Berger indicated her intent is for the Election Committee to either accept her new filings and process her eligibility there under or, via her contest, challenge the prior determination of ineligibility. The Election Committee will not consider the resubmitted Letter of Intent and Background Investigation Form as Ch. 10 does not expressly allow for the two forms to be resubmitted and the Election Committee is not prepared to interpret Ch. 10 to allow for refiling at this time. Rather, the Election Committee will accept Berger's contest and issues its decision herein.

PROCEDURE

This contest is being disposed of via this written decision pursuant to Ch. 10 at Section 10.110 (2)(c).

ANALYSIS

Berger asks the Election Committee to overturn her ineligibility for failure to disclose a conviction on her Background Investigation Form and declare her eligible to run for tribal office. Berger argues that her omission was not intentional, but rather, she believed that the 2007 incident had not resulted in a conviction that would appear on her record. Berger seems to argue that she either was not convicted at all or that she had received what is commonly referred to as a delayed sentence but offers no proof.¹ Berger is not clear on this point and her statements only make the issue more clouded as discussed below.

Berger further argues that since the 2007 conviction would not prohibit her from sitting on the Board of Directors, as it is not a disallowed conviction under Ch. 10 at Section 10.100(1) *et al*, it should not prevent her from being declared eligible to run for tribal office, her omission notwithstanding.

The Election Committee debated the issues involved and believes the following is an accurate assessment based on Berger's written complaint and upon comments attributable to Berger. The Election Committee believes that Berger knew she had gone through a criminal proceeding in 2006 or 2007. Berger knew that the criminal proceeding resulted in a disposition of some type. Berger knew, or should have known, that the disposition left a fingerprint that a background investigation would reveal. Berger should have taken the precautionary step of disclosing to the Election Committee her uncertainty about the disposition or contacted the court and sought clarification. Finally, the Election Committee believes that comments attributable to

¹ Berger may have offered proof had this matter been set for a hearing.

Berger regarding the conviction do not necessarily mirror the arguments made in her contest.² There is enough of a discrepancy for one to conclude that at best Berger was simply hoping that the conviction would not come to light.

The Election Committee believes that Berger more than likely was aware that there was a criminal conviction of some type that may or may not appear on her criminal record and she chose to rely on her hope that it would not appear. The Election Committee is prepared to temper this position though by acknowledging that Berger did in fact hold some level of actual doubt as to whether or not the conviction existed or perhaps whether it continued to exist, as she expresses in her contest. It is this undefined level of doubt that leads the Election Committee to believe that Berger's intentions, ambiguous as they may be, were not malicious, deceitful or fraudulent and the Election Committee is therefore comfortable reversing its earlier finding of intelligibility.

FINDINGS

The Election Committee by a vote of six to two finds:

- (1) That Berger determined to submit her letter her information knowing there was likelihood the 2007 conviction would be discovered.
- (2) The 2007 conviction itself will not bar eligibility.

² Note that this matter was not set for a hearing and Berger was not able to present her own version of these discussions.

(3) Berger's actions have been forward to the Prosecutor's Office as is required pursuant to Ch. 10 and that action stands. The Election Committee takes no position on whether the Prosecutor's Office should or should not proceed on the matter.

(4) To deny eligibility based would be an injustice because it would not further the intent of Ch. 10 at Section 10.110 to deny eligibility to individuals having those stated prohibitive convictions.

ORDER.

NOWHEREFORE BE IT ORDERED the Election Committee sets aside it's earlier finding of ineligibility and declares Berger an eligible Unit 1 candidate for the 2014 general election.

BE IT FURTHER ORDERD that this decision be published as is required by Ch. 10 at Section 10.120(2)(c).

The Election Committee

March 26, 2014