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Date 8/15/13 10:49 AM

IN RE: NOMINATION PAPER OF NATE CURTIS AS CANDIDATE FOR MAYOR OF HARRISBURG

: IN THE COURT OF COMMON PLEAS : DAUPHIN COUNTY, PENNSYLVANIA

: NO. 2013-CV-6975-EL

: CIVIL ACTION (ELECTION LAW)

2013 AUG 15 PM 1:49 DAUPHIN COUNTY PENNSYLVANIA

MEMORANDUM OPINION

Before this Court is the Petition to Set Aside the Nomination Paper of Nate Curtis for the Office of Mayor of the City of Harrisburg, filed on August 8, 2013 by Autumn L. Cooper and Joseph K. Lahr.

Factual and Procedural Background

Nate Curtis ("Mr. Curtis") filed his Nomination Paper as a candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections on June 18, 2013, June 24, 2013, July 29, 2013, and July 31, 2013. In Mr. Curtis's Nomination Paper, he indicated the name of his political body was "Curtis for Mayor." On August 8, 2013, Autumn L. Cooper ("Ms. Cooper") and Joseph K. Lahr ("Mr. Lahr") filed Objections to Mr. Curtis's Nomination Paper, claiming that Mr. Curtis (1) is ineligible to be elected or serve as mayor of Harrisburg, as he has not resided in the City of Harrisburg for at least one year before election to the office, (2) failed to identify a Committee to Fill Vacancies in his Nomination Papers, in violation of the Election Code, and (3) filed a defective Statement of Financial Interests.

A hearing on the petition was held on August 14, 2013 and the Petitioners' Post-Hearing Brief in Support of Petition to Set Aside the Nomination Paper of Nate Curtis was filed August 15, 2013.



## Discussion

Under Pennsylvania law, the City of Harrisburg is classified as a city of the Third Class. Accordingly, the City of Harrisburg is governed by 53 P.S. § 35101 et seq., known as the Third Class City Code (hereinafter "Third Class City Code"). The Third Class City Code stipulates that all matters relating to nominations of candidates and elections of city officials, including mayor, shall be governed by the applicable provisions of the Pennsylvania Election Code. 53 P.S. § 35703.

Under the Third Class City Code, "The mayor shall be at least twenty-one years of age, and shall be elected at large by the qualified electors of the city. He shall have been a resident of the city wherein he shall be elected for one year, next before his election." 53 P.S. §36201. Under the Election Code, "[t]he municipal election shall be held biennially on the Tuesday next following the first Monday of November in each odd-numbered year." 25 P.S. §2752. The next election for the office of Mayor of Harrisburg is scheduled to be held on November 5, 2013.

At the August 14, 2013 hearing, Mr. Curtis testified that he moved into the City of Harrisburg on or about April 19, 2013. Mr. Curtis testified that he had been deployed to Afghanistan on October 5, 2012 for the Pennsylvania Air National Guard, after spending the majority of September 2012 at training in Texas. Mr. Curtis testified that, prior to his deployment, he resided with his wife in Mechanicsburg, which is located in Cumberland County. Although Mr. Curtis and other witnesses testified to Mr. Curtis's desire and intent to move into the City of Harrisburg before he was deployed, he failed to establish residency in the City of Harrisburg prior to April 19, 2013. Further, according to testimony at the hearing, while Mr. Curtis was deployed, his wife resided in Cumberland County with her family. Additionally, after

originally registering to vote in Cumberland County in 2007, Mr. Curtis remained registered to vote in Cumberland County until April 19, 2013.

Following the hearing held on August 14, 2013, this Court found that Mr. Curtis has not lived in the City of Harrisburg for one year, and therefore is ineligible to run for Mayor of Harrisburg in the election of November 5, 2013. As this Court found Mr. Curtis is ineligible to run for Mayor of Harrisburg due to his failure to meet residency requirements, this Court shall not discuss any other objections to Mr. Curtis's candidacy raised in the Petition to Set Aside the Nomination Paper of Nate Curtis for the Office of Mayor of the City of Harrisburg.

Pursuant to 53 P.S. §36201, a candidate running for the position of Mayor of Harrisburg is **required** to reside within the city limits for one year prior to the election of that position. The Pennsylvania Supreme Court has held that a domicile is the place at which an individual has fixed his family home and principal establishment for an indefinite period of time. In re Prenergast, 673 A.2d 324, 327 (Pa. 1996). An established domicile is presumed to continue and can be retained without physical presence or residence until it is proven a new domicile has been acquired. Id. at 328. A new domicile can be acquired *only* by physical presence at a new residence plus the intent to make the new residence the principal home. Id. at 328 (emphasis added).

The election for Mayor of Harrisburg is to be held on November 5, 2013. The Third Class City Code specifies that candidates, "shall have been a resident of the city wherein he shall be elected for one year, next before his election." 53 P.S. §36201. Accordingly, Mr. Curtis was required to establish domicile within the City of Harrisburg at least one (1) year prior to this election. In his testimony, Mr. Curtis admitted that it was not until April 19, 2013 that he obtained residence within the boundaries of the City of Harrisburg. Upon consideration of the

foregoing, this Court determined that Mr. Curtis is ineligible to be elected or serve as mayor of Harrisburg in the November 5, 2013 election, as he has not resided in the City of Harrisburg for at least one year before election to the office.

Ms. Cooper and Mr. Lahr's petition additionally requested this Court to issue an Order directing Mr. Curtis to pay the costs of the proceedings, including related fees. In the event that a candidate's nomination paper is dismissed, the court "shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just." In re Nomination Paper of Rogers, 942 A.2d 915, 926 (Pa. Cmwlth. 2006) (single-judge opinion by Kelley, S.J.). This Court deems it just that Mr. Curtis shall not have to pay the costs of the proceedings, nor shall he pay related fees.

Accordingly, the following Order is ENTERED:

