

Via Electronic Mail

October 10, 2024

Tracie Wagoner, Director
Valerie Mayle, Deputy Director
Morgan County Board of Elections
155 E. Main St., Room 157
McConnelsville, Ohio 43756

Re: Regarding the Candidacy of Mark Howdyshell

Dear Director Wagoner and Deputy Director Mayle,

I have reviewed the tie vote referred to me by the Morgan County Board of Elections ("the Board") on October 2, 2024, as well as the statutory guidelines and evidentiary material relevant to the matter. Due to insufficient evidence presented, Ohio law requires me to reject the motion challenging the candidacy of Mark Howdyshell based upon the candidate's residency qualification.

Background

On September 23, 2024, the Board held a hearing on a protest filed against the county court judicial candidacy of Mark Howdyshell. The Board reached a tie vote on a motion to declare Mr. Howdyshell's personal residence to be 4131 Clark Lane, McConnelsville, Ohio 43756. At issue is whether Mr. Howdyshell is a resident of Morgan County or whether sufficient evidence would establish his residency in Perry County, thus making him ineligible to be a candidate on the November 5, 2024, general election ballot. The relevant law that applies to this matter is as follows:

A county court judge, at the time of filing a nominating petition for the office . . . shall be a qualified elector and a resident of the county court district in which the judge is elected or appointed.¹

The guidelines for determining residence are set forth in R.C. 3503.02. The relevant caselaw states, "When the applicability of multiple sections of the residency statute leads to conflicting results, it cannot be shown by the heightened standard of clear and

¹ R.C. 1907.13(A).

convincing evidence that the person is not a resident of that county, and great weight must be accorded to the person's claimed voting residence."² Furthermore, while the factors set forth in subsection R.C. 3503.02(B)-(D) that "are applicable in some cases,' [the] statute emphasizes the person's intent to make a place a fixed or permanent place of abode."³

Evidence

In this case, both sides presented evidence spanning several years, as well as testimony to establish Mr. Howdyshell's true residency. However, the burden is on the challengers to prove Mr. Howdyshell is not a resident of Morgan County. Based on the evidence and testimony submitted, the challengers did not meet this burden. Mr. Howdyshell presented evidence that he was a resident of Morgan County at the time he filed his petition and intends to remain a resident.

Decision

Based on my review of the evidence presented to me by the Board and the relevant laws applicable to this matter, I hereby vote yes and break the tie on the motion to declare Mr. Howdyshell's personal residence to be 4131 Clark Lane, McConnelsville, Ohio 43756, effectively rejecting the protest of his candidacy. Please direct any questions regarding this decision to Sarah Huffman, Deputy Chief Counsel for Elections, at the following email address: SHuffman@OhioSoS.gov.

Yours in service,



Frank LaRose

Ohio Secretary of State

cc: Jerry Lou Matheney, Chairperson, Morgan County Board of Elections
James B. Wilson, Morgan County Board of Elections
Judy Ray, Morgan County Board of Elections
Cindy Tuttle, Morgan County Board of Elections

² *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, ¶ 27.

³ *Id.* at ¶ 15, quoting *State ex rel. Duncan v. Portage Cty. Bd. Of Elections*, 115 Ohio St.3d 405, 2007-Ohio-5346, 875 N.E.2d 578, ¶ 11.