



FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

In the Matter of: ) Case No.: EC-004-14
APRIL 1, 2014 PRIMARY ELECTION ) FINAL DECISION
CONTEST OF DISTRICT II (SAWYER) )
TINA SADLER, )
Contester. )

This matter was heard on April 14, 2014. The following persons appeared for the hearing:

- Tina Sadler – Contester
Juanita Anderson - Witness
Joe Halloran – Attorney for the FDL General Reservation Election Board
Veronica Smith – Chair, FDL General Reservation Election Board

Ms. Sadler alleges a violation of Sections 2.2(B)(1) of the MCT Election Ordinance #10 (Revised 11/5/2013) (“Ordinance”) arguing that the post office box used by the FDL General Reservation Election Board (“Board”) during the April 1, 2014 primary election was closed. Ms. Sadler’s Notice of Contest also contained three additional allegations which the Court declined to hear, for the reasons set out below.

The Court heard the testimony of Ms. Sadler, Contester; Veronica Smith, Chair, FDL General Reservation Election Board and Juanita Anderson.

The following exhibits were offered and accepted by the Court, without objection:

- Sadler Exhibit #1 – A one page document containing copies of several absentee voter request post cards and a written note signed by Connie Reinke.
Sadler Exhibit #2 – A written transcription of a recorded conversation with Todd Manisto, USPS;
Sadler Exhibit #3 - A copy of a letter from Todd Manisto to FDL Election Board dated March 21, 2014.

PROCEDURAL HISTORY

- 1. On the afternoon of Friday, April 11, 2014, Ms. Sadler filed a motion seeking subpoenas for three witnesses. The motion was not served on the Board.



This request was taken up at the start of the hearing on Ms. Sadler's Contest, on Monday, April 14, 2014. The Board advised the Court that it would move to quash any subpoenas that were issued.

Argument on the Court's authority to issue the requested subpoenas, argument on a motion to quash and then service of the subpoenas if any were issued, would have taken more time than was available to hold this hearing and issue a decision within the timeline set out in the Ordinance. The Court therefore declined to issue the requested subpoenas, because the request was untimely.

2. On April 9, 2014, the Court entered and served on all parties its Discovery Order, which Order governed each of the four contest hearings filed concerning the April 1, 2014 FDL Primary Election. Discovery Order filed April 9, 2014.
3. On April 10, 2014, the FDL General Reservation Election Board filed a Motion for Protective Order concerning the discovery ordered by the Court. The Court scheduled argument on the Board's Motion for Protective Order for April 11, 2014 at 10:00 a.m.
4. Ms. Sadler appeared at the hearing on the Motion.
5. After hearing argument on the Motion for the Protective Order, the Court issued an order granting the motion in part. *See Order Following Discovery Motion Hearing* dated April 11, 2014.
6. The Board promptly provided the discovery ordered by the Court, redacted as approved by the Court. *Response to Discovery Order* filed April 14, 2014.
7. At the start of the hearing on Ms. Sadler's Contest, the Court inquired into the allegation contained in Ms. Sadler's Notice of Contest as paragraph number 2, concerning the printing of the Absentee Envelopes. After hearing from Ms. Sadler, the Court determined that Ms. Sadler had concerns about an error in the envelope printing, but did not appear to have any evidence to present that such an error had an effect on the election or the counting of ballots. The Court therefore declined to hear testimony on this allegation, based on lack of relevancy to the proceeding.
8. At the start of the hearing on Ms. Sadler's Contest, the Court inquired into the allegation contained in Ms. Sadler's Notice of Contest as paragraph number 3, concerning an in person request by an on reservation voter for an absentee ballot by mail. After hearing Ms. Sadler's explanation, the Court determined that the facts alleged did not, as a matter of law, allege a violation of the Ordinance. The Court therefore declined to hear evidence on this allegation, based on its lack of relevance and materiality to the proceeding.
9. At the start of the hearing on Ms. Sadler's Contest, the Court inquired into the allegation contained in Ms. Sadler's Notice of Contest as paragraph number 4, concerning the mailing of ballots to the Board by the TEC prior to the start of the election. After hearing Ms. Sadler's



explanation, the Court determined that the facts alleged by Ms. Sadler did not, as a matter of law, allege a violation of the Ordinance. The Court therefore declined to hear evidence on this allegation, based on its lack of relevance and materiality to the proceeding.

10. Prior to testimony at the hearing, Ms. Sadler advised the Court that she would like to call two members of the FDL General Reservation Board as her witnesses for her case in chief. The Court advised Ms. Sadler that it did not find authority in the Ordinance for the Court to order Board members to testify on behalf of Contesters, but that if the Board chose to respond to her Contest, she was entitled to cross-examine any witnesses called. The Board thereafter chose to respond to the Contest, and called Ms. Veronica Smith to testify. The Court allowed Ms. Sadler great leeway in her cross examination of Ms. Smith.

## FINDINGS OF FACT

1. Tina Sadler was a candidate in the April 1, 2014 FDL Primary Election for District II (Sawyer) and was therefore qualified to contest this election.
2. Tina Sadler timely filed her Notice of Contest at the Office of the FDL Reservation Election Judge on April 8, 2014.
3. Tina Sadler timely filed her Notice of Contest with the Executive Director of the Minnesota Chippewa Tribe on April 8, 2014.
4. The rent for the post office box used by the FDL General Reservation Election Board to obtain election-related mail, including requests for ballots from absentee voters, lapsed on or about July 31, 2013. Sadler Exhibit #3. As a result, on or about August 10, 2013, the USPS closed the box. *Id.* The box was reopened on or about September 20, 2013. *Id.*
5. The FDL General Reservation Election Board was appointed on February 24, 2014. Testimony of Veronica Smith. Ms. Smith had no knowledge that the post office box usually used by the Board had been closed and re-opened prior to the appointment of the Board. *Id.*
6. On March 7, 2014, members of the Board picked up mail at the post office box. *Id.* The Board continued to receive mail at the box throughout the election. *Id.*
7. On March 17, 2014, the Board received a call from a voter advising the Board that his request for an absentee ballot had been returned. *Id.*
8. Ms. Smith visited the post office within 30 minutes of the call and inquired about the returned mail. She was advised that the box was open and receiving mail, and that there were no problems with the box. *Id.*
9. On March 18, 2014, the Board received another inquiry about an absentee ballot request that had been returned to the sender. *Id.* The Board contacted the post office within 30 minutes of receiving the inquiry. *Id.* On this date, the post office discovered that after the box had been re-



opened, it had failed to properly cancel a “Box (No Order)” in its automated delivery system. *Id.* Also on this date, Todd Manisto, the USPS Supervisor of Customer Service, advised the Board that “some of [the Board’s] mail was returned to sender.” Sadler Exhibit #3.

10. Mr. Manisto advised the Board that as a result of the USPS error, mail addressed to “FDL Election Board” would have been returned by the USPS automated system, but that other mail would have been delivered. *Id.*
11. The USPS advised the Board that it corrected the error in their automated system on March 18, 2014. *Id.*
12. The Board had no way to know that the USPS had erred when it re-opened the box; in fact, USPS itself did not appear to know that a computer error had occurred until it investigated further after the Board’s second inquiry. Testimony of Veronica Smith; Sadler Exhibit #3.
13. The Board had no control over the programming of the USPS automated delivery system.
14. The Board does not print the ballot postcards used by candidates, nor does it prescribe the form of the postcards. Neither does the Board have authority to oversee the use of metered mail stamps by candidates. Testimony of Veronica Smith.
15. Some postcards sent to absentee voters by a candidate or candidates made improper use of a bulk mail postage stamp by including a mailing date on the metered stamp. Testimony of Veronica Smith. USPS regulations prohibit the use of a bulk mail pre-paid stamp that includes a date, unless the stamped item is mailed on the same date as the stamp. *Id.* Such postcards would not have been delivered to the Board. *Id.* Therefore, at least some absentee voter request postcards were likely discarded by USPS for reasons unrelated to the error with the post office box, because they were improperly stamped with metered mail that included a date.
16. The postcards presented as evidence also contained no space or printed format for a return address. Sadler Exhibit #1. Postcards without a return address could not have been returned to the sender and would have been shredded or recycled by the USPS. Testimony of Veronica Smith.
17. Only two absentee voters contacted the Board prior to the election. Testimony of Veronica Smith. In each of these cases, the Board was able to accommodate the voters by providing absentee ballots. *Id.*

## DISCUSSION

The provisions of MCT Election Ordinance #10 (Revised 11/5/2013) govern this contest of the April 1, 2014 Fond du Lac Reservation Primary Election.

Chapter III, Section 3 of the MCT Election Ordinance #10 (Revised 11/5/2013) provides in



relevant part, as follows:

\* \* \*

3.2(B) (1) the burden of proof rests with the contestor who must show by clear and convincing evidence the alleged violations of this Ordinance. There shall be a presumption of correctness in favor of the General Reservation Election Board and other candidates until the contestor has met his or her burden of proof.

3.2(B) (2) the contestor \* \* \* must present relevant and material evidence demonstrating how any violations of the Ordinance, alleged and proven, affected the outcome of the election.

\* \* \*

MCT Election Ordinance #10 (Revised 11/5/2013), Chapter III, Section 3.2(B) (1); 3.2(B) (2).

“Clear and convincing evidence” is a higher standard of proof than a mere preponderance, and is generally understood to mean evidence “that the thing to be proved is highly probable or reasonably certain.” Black’s Law Dictionary (Ninth Edition).

The evidence showed that FDL failed to pay the rent on its long-time post office box. However, this failure occurred well before this election. Ms. Sadler did not provide any authority to support an argument that the post office box in question was required to be open in the months prior to this election, and this Court is aware of no such requirement. It was therefore, not a violation of the Ordinance when the box was allowed to close.

Ms. Sadler presented evidence that the United States Postal Service erred when it failed to properly remove an order from its automated delivery system after the Board’s post office box was re-opened in September 2013. Ms. Sadler did not provide any evidence that the Board itself was at fault or even aware of the USPS computer system error after the box was re-opened. The Court finds no authority to support a contention that an error by the USPS should be considered an error of the Board. The Board has no authority over the United States Postal Service. The evidence presented therefore does not support the allegation that the Board failed to comply with the provisions of Section 2.2(B) of the MCT Election Ordinance #10 (Revised 11/5/2013).

The candidates are responsible for the development and mailing of the postcards they send to registered voters. The evidence does not support a violation of the Ordinance by the Board based on the use by candidates of postcards that were designed, printed and mailed by the candidates themselves.

Ms. Sadler argued that a new election should be held because some absentee voters might not have received their ballots in a timely manner. Although it is very frustrating to all involved that the actions of the USPS caused difficulties to absentee voters, those voters had an independent obligation to ensure that their requests for ballots were honored in a timely manner. Indeed some voters did just that. Testimony of Veronica Smith.



Many circumstances that are not violations of the Election Ordinance may affect voter turn-out in an election. Extreme bad weather affecting the ability of in-person voters to get to the polling place is but one example. However, an outside circumstance, even it affects the election, does not trigger a new election in the absence of a violation of the Ordinance. As discussed above, a violation of the Ordinance was not proven here.

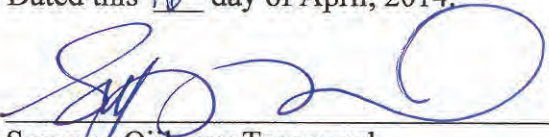
The General Reservation Election Board has no authority under the Ordinance to cancel an election or to extend the time of the election, no matter what outside circumstances occur. Further, the Ordinance does not provide the Election Judge with authority to order a new election in the absence of a proven violation of the Ordinance. MCT Election Ordinance #10 (Revised 11/5/2013), Section 3.2(B) (8).

### CONCLUSIONS OF LAW

For the reasons set out above, Contester failed to meet her burden to prove by clear and convincing evidence that a violation of the Ordinance occurred. The Court therefore does not make any findings of fact or other determinations regarding whether the violations alleged affected the outcome of this election.

**NOW THEREFORE, IT IS ORDERED:** The results of the April 1, 2014 primary election in District II (Sawyer) are **AFFIRMED**.

Dated this 16<sup>th</sup> day of April, 2014.



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Suzanne Ojibway Townsend  
Fond du Lac Election Contest Judge  
April 1, 2014 Primary Election