

May 20, 2010

State of Delaware Commissioner of Elections

~~111. S. West Street, Suite 10~~
905 S. GOVERNORS AVE., Suite 170
Dover, DE 19904

Dear Commissioner of Elections,

We are writing to appeal the Delaware City's Board of Election's decision on May 18, 2010 regarding the April 6, 2010 Delaware City Elections. We understand, per State statute, that we have 2 business days after the Delaware City Board of Elections' written decision. Though there is no written decision as of 3:30 PM today, Thursday, May 20, 2010, we wish to appeal the oral rendering of the Delaware City Board of Elections decision given at approximately 8:30 PM on Tuesday, May 18, 2010.

We also would like to register a complaint that a written decision by the BOE has not been publically posted or made available, including the Delaware City website within the mandatory 24-hour period cited in the State statute.

The Delaware City Board of Elections rendered 2 oral decisions.

- 1) That because no one brought the card handed out by the Mayor to the Board of Election's attention prior to the election, that the card was legal even though it instructed voters to bring specific endorsements for candidates/election material into the polling area along with one's ID.
- 2) That because the law restricting voters to vote due unpaid "taxes, fees, charges, liens and debts that due" was legal in Delaware City at the time of the election, no new election will be held.

The Delaware City BOE stated that Delaware City is taking steps to repeal point #2 in the Delaware City Code. This does not remedy the unconstitutional election that was held on April 6, 2010. Too many voters were disenfranchised due to this unconstitutional law. To render an oral decision that Delaware City's law was legal at the time of the election is beyond the grasp of any logically thinking person. The Supreme Court settled this legal argument in 1966. A law on the books of any municipality or state that is unconstitutional, resulting in the disenfranchisement of its citizens, cannot be deemed legal after the Supreme Court ruling in 1966. It is for this reason, we, as Delaware citizens and citizens of Delaware City cannot accept a BOE decision that is based outside the constitutional rights of any citizen. The only remedy to an unconstitutional election is to throw out the results and have an election that is devoid of unconstitutional encumbrances.

The decision on whom to appoint for the tie was decided by counting total votes for one and two year positions, even though if this was done for all candidates, our Vice Mayor would not currently have a seat on Council at all. To fill the tied spot, Council was able to suggest anyone, thus disregarding 200+ votes in an election where only a 200 some people voted. The "vacancy" created by the tie was created not due to our city's vacancy rule per the charter (Sec. 3-09. Vacancies and Forfeiture of Office:

A. Vacancies. The office of Mayor or Councilperson shall become vacant upon death, removal from the City, resignation, removal from office in any manner authorized by law, or forfeiture of office.) but rather a member of council "resigning" his seat even though his term was up and he had not run for re-election.

At the Delaware City Board of Elections public hearing, we were repeatedly told that the Board of Elections has no authority to hear any complaints of activity that occurred once the polls opened.

No testimony on our complaint of how the ballots were laid out was accepted because the Board of Elections states that all other complaint issues had been resolved at previous Board of Election meetings. We appeal this issue because there is no information as to how these ballot issues were resolved, including the complaint regarding how the ballot was laid out. The unofficial minutes of the March 15, 2010 Board of Elections meeting has been removed from the Delaware City municipal website and no official minutes have been posted. They refused to answer any questions or respond to our requests that the public be informed as to how the ballot concerns brought up by Kathy Clifton, recorded in the unofficial minutes were resolved. The only thing that the BOE unofficial minutes state is: "discussion followed".

We attest that all statements above are true and accurate to the best of our knowledge.

Sincerely,

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TODD S. LIGHTCAP
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Nov. 28, 2011

TS 5/20/10