

**BEFORE THE STATE ELECTION BOARD  
STATE OF OKLAHOMA**

**In the matter of the contest of the** )  
**Candidacy of Mike Hunter, Attorney General,** )  
**filed by Gentner Drummond** ) Cause No. 2018-10  
**with the State Election Board on** )  
**April 17, 2018.** )

**FINDINGS AND ORDER**

This matter was heard by the Election Board of the State of Oklahoma on April 23, 2018 pursuant to lawful notice.

The following members of the State Election Board (“Board”) were present: Steve Curry, Chair; Tom Montgomery, Vice Chair; Tim Mauldin, Ph.D. Member. Also present were Paul Ziriak, Secretary, and substitute counsel Carol Price Dillingham, and James Robertson, Assistant District Attorneys, District 21. Substitute counsel was retained upon suggestion that the office of the Attorney General, the usual counsel for the Board, had a conflict with the representation. To avoid the appearance of impropriety, the Board requested substitute counsel.

Petitioner Gentner Drummond appeared in person and through counsel Garry Gaskins. Attorney General Mike Hunter appeared in person and through counsel Bob Nance and Neal Leader.

The Board received proof of service made on the Contestee by leaving a copy with a staff member of the Attorney General’s office. General Hunter appeared in person, answered the contest, and submitted a cashier’s check in the amount of \$250.00 as prescribed in 26 O.S. 2011 §5-129.

Additionally, Petitioner, on or about Friday afternoon April 20, 2018, requested that the Board Secretary issue subpoenas to compel the testimony of First Deputy Oklahoma County Assessor, Larry Stein as well as a document subpoena requesting that Mr. Stein produce homestead exemption forms filed in 2010 and 2011 and “any documents explaining or describing why the homestead exemption was removed” for property in Oklahoma owned by Contestee. The subpoenas were served only via electronic mail, and no witness fee was tendered to Mr. Stein. Oklahoma County Assistant District Attorney Aaron Etherington entered a special appearance for Mr. Stein and presented a motion to quash both subpoenas to Stein alleging that the Petitioner failed to effect lawful service on Mr. Stein for his testimony and the documents.

On that same Friday afternoon, Petitioner caused subpoenas to be issued to compel the testimony of Contestee and a document subpoena for Contestee’s federal and state income tax returns from 2008 to present. These subpoenas were served upon Contestee in the hearing chamber immediately before commencement of the hearing in this Cause. Counsel for Contestee filed a Motion in Limine and for Protective Order for Contestee’s tax returns arguing that

effecting service mere minutes before the hearing began afforded Contestee no time to gather ten years of records, that tax returns were not probative as to the limited legal issue in this case, that the subpoena for those documents was unduly burdensome, that Petitioner failed to demonstrate on the face of the Petition how review of ten years of Contestee's federal and state tax returns would be probative of the ultimate issue in this cause, and further arguing that the tax returns did not reflect Contestee's opinions but rather those of his Oklahoma CPA. After hearing arguments of counsel and being fully advised in the premises, the Board unanimously voted to quash the Stein subpoenas and unanimously voted to grant the Motion in Limine for Contestee's tax returns. The subpoena to compel General Hunter to appear was irrelevant since he voluntarily appeared to give testimony on his own behalf, and therefore could be questioned by Petitioner.

Thereafter, the Board heard the testimony of one witness, Attorney General Mike Hunter, received documents in evidence by agreement and with certain stipulations, and heard arguments of counsel.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Findings of Fact and Applicable Constitutional and Statutory Provisions

1. Attorney General Mike Hunter filed his Declaration of Candidacy on Wednesday, April 12, 2018.
2. Candidate Gentner Drummond filed a Declaration of Candidacy on Wednesday, April 12, 2018.
3. Petitioner claims that Contestee fails to meet the constitutional requirements to stand as a candidate for the office of Attorney General because he has not been a bona fide resident of Oklahoma for ten years immediately preceding the election date, or from November 7, 2008 forward to the date of this year's General Election on November 6, 2018. In support of his contention, Petitioner offered documents and a clip of a television interview and claimed that the following facts were among the most important to the ultimate legal issue in this Cause:
  - a. Contestee owned residences in the state of Virginia for many of the past ten years.
  - b. Contestee worked in the state of Virginia for many of the past ten years.
  - c. Contestee gave a television interview during which Contestee stated that he was going to "move back" to Oklahoma.
  - d. Contestee earned salary and paid taxes in the state of Virginia.
  - e. Contestee satisfied an occupancy clause in documents related to his Virginia residence.
4. Contestee presented the following facts in support of his contention that he remains a bona fide resident of Oklahoma
  - a. Contestee continuously maintained a home in Oklahoma, paid all utilities, performed necessary upkeep and kept the house equipped with furnishings, clothing, and a vehicle.

- b. Contestee maintained his voter registration in Oklahoma and has never voted outside the state, offering his voting record without objections in support.
  - c. Contestee maintains an Oklahoma driver's license, Oklahoma bank account and a banking relationship with Oklahoma banking personnel at an Oklahoma branch of the Bank of America.
  - d. Contestee's spouse and family continued to be involved in numerous activities in Oklahoma.
  - e. Contestee returned to Oklahoma for necessary medical treatment.
5. A candidate for the office of Attorney General must be 31 years of age and "shall have been ten (10) years next preceding his or her election or appointment, a qualified elector of this State." Okla. Const. Art. 6 Sect. 3.
  6. Subject to legislative exceptions, "all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state." Okla. Const. Art. 3, Sect. 1.
  7. The Petition in a contest of candidacy before the board "must allege that the Contestee was not qualified by law to become a candidate for the office for which he filed a Declaration of Candidacy and must contain the reasons therefor. Reasons not appearing on the face of the petition shall be considered waived and shall not be grounds for a contest." 26 O.S. 2011 §5-120.
  8. The burden of proof shall be upon the Petitioner to sustain the allegations in his Petition. 26 O.S. §5-130.
  9. The decision of the Board [in a contest of candidacy] shall in all cases be final. 26 O.S. 2011 §5-126.

#### Conclusions of Law

1. The determination of the term "residence" for the Board's purposes is purely a judicial question not a legislative one because "there can be no absolute criterion by which to determine where a person actually resides. Each case must depend on its particular fact or circumstance. *Stevens v. Union Graded School Dist. No. 2 of Canadian County* 275 P. 1056 at 1057 (Okla. 1929) It is therefore this Board's responsibility to make the determination regarding Contestee's residence as set forth in the Oklahoma Constitution. The Board properly admitted into testimony evidence from each party in support of the facts and circumstances claimed by each, and the Board had ample evidence to support its decision.
2. The question of residence for voting purposes has been held to be synonymous with domicile and involves a factual inquiry into the place where one is habitually present, and to which, when he departs, he intends to return. *Moore v. Hayes*, 87 OK 82, ¶7, 744 P.2d 934, 937 (citing *Jones v. Burkett*, 346 P.2d 338, 341 (Okla. 1959) (emphasis supplied). The evidence admitted during this Cause demonstrated that for at least the past ten years,

Contestee maintained contacts with Oklahoma sufficient to conclude that although he had departed for significant periods of time, Contestee continuously had the intention to return.

3. The “controlling factor to be considered is the fact of intent and to determine this fact [the Board] may take into consideration all the movements, transactions, and attending circumstances of the party or parties involved in the question.” *Box v. State Election Board of Oklahoma*, 1974 OK 104 526 P.2d 936, 940 (Okla. 1974). In making its decision, the Board considered the totality of circumstances presented by both parties.
4. In evaluating the evidence presented today, the Board may consider many factors, but “to effect a change of domicile, there must be (a) actual abandonment of the first domicile coupled with (b) the intention not to return to it and (c) actual residence in another place with intention of making it a permanent home. Indicia of a changed domicile are to be found in the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities and other pertinent objective facts ordinarily manifesting the existence of requisite intent. *Suglove v. Oklahoma Tax Commission*, 1979 OK 168, 605 P.2d 1315, 1317-1318. The Board considered all of the evidence submitted, and concluded that Petitioner failed to meet his burden of proving that Contestee’s proof satisfied the *Suglove* test. Rather, the evidence demonstrated a continuing desire to domicile in Oklahoma.
5. Petitioner put great weight on his argument that the lengthy period of time that Contestee lived in Virginia presented significant evidence of intent to abandon. However, “one’s place of present abode is only one of the factors which may be considered, but it cannot be regarded as conclusive. A temporary absence, even if it extends for a period of years will not effect a change of residence” for purposes of this Cause. *Moore, supra* at ¶8. The Board concludes that even considering Contestee’s lengthy absence from Oklahoma, the evidence of Contestee’s habits within the totality of circumstances satisfies the tests announced in both *Suglove* and *Moore, supra*, and fails to disqualify him as a candidate.
6. Petitioner additionally claimed that Contestee had not consistently maintained his homestead exemption, and also offered a portion of a televised interview in which Contestee commented that he was “moving back home” as evidence of intent to abandon domicile. Petitioner argued that had Contestee not abandoned his Oklahoma domicile, he would have said that he was “returning home.” The Board reviewed all of the evidence and concluded that it is consistent with the rule that even quite a few facts tending to show abandonment may not be enough. The Oklahoma Supreme Court has ruled that “[m]aintaining a current Oklahoma driver license, instate voting, having a local bank account, keeping property in storage within the State and ownership of Oklahoma situated real estate – each perhaps a neutral factor in isolation from other – when all added together show a pattern” highly consistent with intent not to abandon the Oklahoma domicile. *Suglove, supra* at 1317. Accordingly, the Board concludes that Petitioner has not shown that Contestee has abandoned Oklahoma as his domicile.

7. Finally, the Board concludes that Petitioner has not presented evidence sufficient to rebut the legal presumption that “Oklahoma domicile, once established, is presumed to continue unless an individual can show that a change has occurred.” *Suglove, supra* at ¶5. The totality of circumstances does not show that Contestee has abandoned Oklahoma as his domicile with the intention not to return to it, coupled with the intention to establish a new domicile.

#### RECENT BOARD PRECEDENTS UNDER SIMILAR FACTS

This Board has recently rendered decisions on this issue in the following causes:

1. 2010-06 Contesting the candidacy of WILLIAM W. CHOATE for the office of District Attorney, Dist. 22. Petitioner was Chris Ross. The Board sustained the Petition finding that Petitioner met his burden of proof demonstrating that despite the fact that Contestee owned property in Seminole County, within Judicial District 22, Contestee actually lived in Pottawatomie County, outside of Judicial District 22, intended to live in Pottawatomie County and had no intent to abandon this residence for voting purposes.
2. 2010-08 Contesting the candidacy of DOUG MERRITT for the office of District Attorney, Dist. 24. In this case, the only evidence tending to support striking candidate Merritt’s name from the ballot was that he last voted in 2008 in Canadian County. Contestee’s evidence was that he lived in Creek county and intended to continue residing there. Accordingly, the Board denied the Petition, and Contestee’s name appeared on the ballot.
3. 2010-07 Contesting the candidacy of STEPHEN E. COVERT for the office of State Treasurer. The qualifications for State Treasurer are the same as those for Attorney General. Petitioner claimed that because Contestee owned property in Wisconsin, lived there during the week, returning to Oklahoma only on weekends, voted in the 2000 Presidential election in Wisconsin and did not own property in Oklahoma, but rather his family lived in Midwest City in a home owned by Contestee’s father, he had abandoned his Oklahoma domicile and should be stricken from the ballot. The Board found that the evidence did not indicate Mr. Covert had abandoned his residence in Oklahoma coupled with an intention not to return there at any time during the past 10 years, and that no evidence was presented demonstrating that Contestee Covert intended to make Wisconsin his permanent home.


#### CONCLUSION AND RULING


1. As stated previously, the Petitioner bears the burden of sustaining the allegations in the Petition. 26 O.S. 2011 §5-130. The weight of the evidence presented, considered in conjunction with applicable legal precedents and previous rulings of this Board indicates that Petitioner failed to rebut the presumption that General Hunter has maintained his Oklahoma domicile with no intent to abandon it.

2. Contestee has been domiciled in Oklahoma for more than the ten years required for purposes of his candidacy for the post of Oklahoma Attorney General.
3. Mr. Drummond's Petition is denied, and General Hunter's name will appear on the ballot as a candidate for the office of Attorney General of Oklahoma.
4. Costs are assessed to Mr. Drummond pursuant to 26 O.S. 2011 §5-131.

Done this 23<sup>rd</sup> day of April, 2018 by a unanimous vote of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD

  
\_\_\_\_\_  
STEVE CURRY, Chair

The seal of the Oklahoma State Election Board is circular. It features a central five-pointed star. The words "OKLAHOMA STATE ELECTION BOARD" are inscribed around the perimeter of the seal.