



## Conclusions of Law

1.

The State Election Board (the "Board") is charged with maintaining the integrity of elections in the State of Georgia. *See generally*, O.C.G.A. § 21-2-31. In pursuit of this objective, the Board is charged with the responsibility of investigating allegations of fraud and irregularities in elections in this State. O.C.G.A. § 21-2-31(5). In addition, the Board is vested with the responsibility to take any other action, consistent with the law, to ensure the fair, legal, and orderly handling of primaries and elections. O.C.G.A. § 21-2-31(10).

2.

The Board is authorized to pursue civil enforcement of the election laws by issuing orders requiring the violator:

- (1) To cease and desist from committing further violations;
- (2) To pay a civil penalty not to exceed \$5,000.00 for each violation of [Chapter 2] or for each failure to comply with any provision of this chapter or of any rule or regulation promulgated under [Chapter 2] . . . ;
- (3) To publicly reprimand any violator found to have committed a violation;
- (4) To require that restitution be paid by any violator to a state, county, or city governing authority when it has suffered a monetary loss or damage as the result of the violation;
- (5) To require violators to attend training as specified by the [B]oard; and
- (6) To assess investigative costs incurred by the [B]oard against any violator found to have committed a violation.

O.C.G.A. § 21-2-33.1.

3.

The Board contends that the Respondent's act of granting permission to Judge Vines to use the office postal meter was unlawful and constituted the commission of eighteen (18) violations of the statutory prohibition against the unlawful possession of a ballot. Georgia election law provides as follows:

"Any person, other than an officer charged by law with the care of ballots or a person entrusted by any such officer with the care of the same for a purpose

required by law, who has in his or her possession outside the polling place any official ballot shall be guilty of a felony.”

O.C.G.A. § 21-2-574. Notably, the Board has failed to assert or provide any factual basis for a finding that the Respondent possessed the eighteen (18) absentee ballots in question. Absent a factual assertion of possession, the Board’s assertion of the Respondent’s violation of O.C.G.A. § 21-2-574 must fail.

4.

The Board also contends that the Respondent’s grant of permission to Judge Vines for the use of his office postal meter was unlawful and constituted the commission of eighteen (18) violations of the statutory procedure for possession and delivery of absentee ballots in violation of O.C.G.A. § 21-2-385(a). Again, it is notable that the Board has failed to assert or provide any factual basis for a finding that the Respondent possessed the eighteen (18) absentee ballots in question. Further, as observed recently, O.C.G.A. § 21-2-385(a) provides for the lawful possession of an absentee ballot in certain circumstances. State Election Board v. Quinton Talton , OSAH Docket No. OSAH-ELE-LV-1103346-133-Howells, November 23, 2010. Absent facts establishing possession, lawful or otherwise, the Board’s assertion of the Respondent’s violation of O.C.G.A. § 21-2-385(a) must fail.

5.

The Board also argues that its regulation permitting the provision of postage for the mailing of an absentee ballot is inapplicable to the facts in this matter. Through regulation, the Board has provided guidance to the electorate regarding the provision of postage to a person for the purpose of mailing an absentee ballot as follows:

“[T]he State Election Board has determined that the prohibition . . . against the giving . . . of money . . . for . . . voting does not include the provision of postage to a person solely for the purpose of . . . mailing an absentee . . . ballot that was voted and sealed by such person in order for such person to vote.”

Ga. Comp. R. & Regs. 183-1-19-.01. The Board’s argument that this exemption is inapplicable to the present matter is not persuasive.

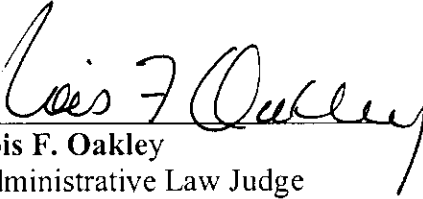
6.

The Board’s contentions of election code violations by the Respondent fail on their face. Despite a case file replete with documentation, the Board’s allegations remain critically deficient in the omission of an assertion of the Respondent’s possession of the eighteen (18) absentee ballots in question. Having failed to assert and establish the critical evidentiary connection, the Board did not meet its burden of proof. Accordingly, a summary determination in favor of the Respondent is appropriate. See Georgia Board of Dentistry v. Brooks, 273 Ga. 852, 853 (2001).

Decision

For all the above and foregoing reasons, the matter is hereby **DISMISSED**.

This 16<sup>th</sup> day of December, 2010.

  
Lois F. Oakley  
Administrative Law Judge