STOCKBRIDGE-MUNSEE COMMUNITY ELECTION BOARD

IN THE MATTER OF THE CHALLENGES TO THE OCTOBER 8, 2016 ELECTION FILED BY JOE MILLER AND WAYNE MURPHY

DECISION AND ORDER

I. INTRODUCTION

The Stockbridge-Munsee Community ("Tribe") held its constitutionally prescribed annual election on Saturday, October 8, 2016. The Election Board ("Board") conducted the election in accordance with its obligations under the Tribe's Election Ordinance ("Ordinance"), Tribal Code, Chapter 49.

The position of Vice-President, all four Council seats, and two education board seats were contested. The apparent winner of the Vice-President contest won by a single vote. Eleven candidates competed for the four Council seats. The vote totals of the four apparent winners were 169, 161, 153 and 146. The competition for the fourth seat was especially close, with three candidates polling 144 votes. The Board certified the results on October 8, 2016.

II. CHALLENGES

Two letters challenging the election results were delivered at the offices of the Election Board on October 12, 2016. Councilor Joe Miller, who won reelection with 153 votes, asserts that six members of the Murphy family were duly enrolled at a regular meeting of the Council on September 20, 2016[1] but denied the right to vote on October 8th because their names did not appear on the list of eligible voters.

In a separate challenge, Wayne Murphy alleges that he and Mike Murphy appeared at the polls on October 8th but were denied the right to vote. According to Mr. Murphy (1) poll workers told him that the Enrollment Office had failed to update the rolls, (2) he and other family members had visited the Enrollment Office to verify their status "on several prior occasions and including the day of the election" and (3) a sign posted on the Enrollment Office on October 8th stated that the office was closed. Mr. Murphy alleges that the Enrollment Department's "refusal" to update the voting rolls prior to the election was deliberate. He requests that he be allowed to cast a vote now.

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[1] The Board takes official notice that the Council took additional action on October 4th to finalize the Murphy enrollments.

Two members of the Board, Jeff Vele and Stacy Schreiber, recused themselves on the ground the outcome of the challenges could affect close relatives who were candidates in the October 8th election. They took no part in discussions relating to the challenges.

III. RELEVANT LAW

The following provisions of tribal law are relevant:

Section 49.2 Duty of Election Board

It shall be the duty of the Election Board to conduct the election, including the caucus. All disputes arising out of the election process, including the caucus, shall be resolved by the Election Board consistent with this Ordinance and the Tribe's goal of having impartial and equitable elections. The Election Board has authority over all proceedings it administers and oversees.

Section 49.8 Procedures for Conducting the Election

The Election Board having sole authority to conduct the election shall follow these procedures:

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(G) Enrollment will be verified by the Election Clerk by consulting the certified tribal roll of tribal members who are voting age provided by the Stockbridge-Munsee enrollment office.

Section 49.12 Election Board Authority

(A) The Election Board shall have the sole authority to resolve disputes arising out of the election, except where the tribal court may have the authority to hear appeals in accordance with Section 49.12.5.

> (1) A candidate with a dispute arising out of the election must provide written notice of the dispute to the Election Board judge within three (3) working days after the later of the certification of the election or the recount results. Such notice must identify the alleged Ordinance violation or prohibited acts committed during the election.
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> (2) The Election Board shall provide notice of the dispute to other affected candidates on the ballot.
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> (3) Hearings conducted before the Election Board shall use a quasi-judicial format.
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> > (a) The Election Board may appoint an individual to act as the hearing examiner for conducting the hearing.

(b) All affected candidates shall have an opportunity to be present at the hearing and present their position on the dispute either on their own behalf or through a representative.

(c) Candidates will be allowed to present witnesses, who may be cross-examined by the other affected candidates, to support their position.

(d) Hearings shall be recorded.

(4) The Election Board shall issue a written decision within five (5) working days.

(B) The Election Board shall:

(1) Have the authority to recount the ballots.

(2) Have the authority to hold a run-off election in case of ties.

(3) Have the authority to consider and hear all challenges to the election in accordance with subsection 49.12 (A).

(4) Have the authority and shall destroy all election ballots only after all challenges, recounts, and run-off elections have been resolved.

(5) Have the authority and shall clear the memory card only after all challenges, recounts, and run-off elections have been resolved.

(6) Have the authority to obtain legal advice in relation to disputes before the Election Board.

(7) Have the authority to investigate disputes before the Election Board.

Section 49.16 Elected Office

(A) Persons newly-elected to office will be required to swear or affirm an oath of office and will not be sworn into office until at least four (4) working days after the election to allow for the filing of any disputes.

(B) All undisputed office holders will be sworn into office in a timely manner.

(C) When an office is in dispute, that office will remain vacant until the dispute is resolved and the newly-elected candidate is sworn into office. However, when such vacancies would prevent the Tribal Council from being able to meet due to there not being a quorum or neither the President nor Vice-President is sworn into office, then the incumbents shall continue to serve in their offices until the dispute is resolved and the newly elected candidate is sworn into office.

Section 49.17 Prohibited Acts

No person shall engage in acts or omissions in an attempt to impede or influence the voting or election. Persons who disrupt the voting process or who are not authorized to be present at the polling place will be removed from the premises. Violations of law may be forwarded for prosecution as appropriate.

IV. DECISION

The Ordinance gives the Board authority to resolve "[a]ll disputes arising out of the election process ... consistent with this Ordinance and the Tribe's goal of having impartial and equitable elections." Section 49.2. The Board construes this authority broadly and concludes that the denial of a tribal member's right to vote based on an unreasonable delay in processing by the Enrollment Department may constitute a violation of the Ordinance.

Because the issue is largely a matter of law, the Board will not hold a hearing. There appears to be no factual dispute that (1) Mr. Murphy's enrollment was approved by the Council initially on September 20th and finalized not later than October 4th, (2) the certified tribal roll that the Enrollment Department furnished to the Election Board on October 7th did not include Mr. Murphy's name and (3) as a result, Mr. Murphy was not permitted to vote on October 8th.

Based on these undisputed facts, the Board determines that a violation of the ordinance occurred and that a new election shall be held for the offices of Vice-President , Tribal Council (all four seats), and two education board seats. All of the candidates for these positions on the October 8th ballot are affected and will receive notice under Section 49.12.5 (B). The election will be held on November 12th 2016 at the Tribal Office.

Under Section 49.12(C), an office "in dispute" remains vacant until the dispute is resolved and the newly-elected candidate is sworn into office. The Board determines that a new election could affect the offices of Vice-President and all four Council seats. All of these offices are, therefore, "disputed" until the dispute is resolved. By operation of Section 49.12(C), the incumbents remain in office in order to assure a quorum.

Affected candidates may appeal this decision to the Tribal Court within five days.

Dated this 14th day of October, 2016

Melissa Penass-Clerk

Jessica Boyd- Teller

Beverly Miller-Teller