

Should Penns Grove councilwoman lose her job?



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Civil activist isn't sure ... but wants someone – anyone – to decide

BY JOE TYRRELL



More than a year after her conviction for electioneering at a polling place, Penns Grove Councilwoman Tami Baytops remains in office because court and elected officials have never asked her to step down.

The issue has bounced from the municipal court in Westville, where the case was heard, to the municipal government in Penns Grove, where Baytops chairs the general government committee, to the Salem County Prosecutor's Office, which agrees something should be done.

Now, civic activist John Paff wants authorities to stop sidestepping the matter. Paff, who spearheads the Libertarian Party's open government committee in New Jersey, acknowledges "there are good arguments on both sides of the question of whether Baytops' offense requires her to forfeit her office."

But he wonders why no one has made them, especially in court.

Like so much else in New Jersey, the law is not straightforward. Public officials forfeit office when convicted of third-degree or more serious offenses, or any charge involving "dishonesty."

But they also lose their posts when convicted of a charge "touching" their official duties. If a judge does not rule on the issue, prosecutors are able to request forfeiture of office.

That language does create potential for procedural "confusion," but mainly when courts want to duck an unpleasant duty, Paff said.

"There are always politically sensitive decisions," he said. "This is exactly the kind of thing that a judge or politician isn't ever going to want to rule on, especially because it's usually going to involve someone in their own party."

"The citizens aren't being served," said Ingrid Reed, who researches government ethics as director of the New Jersey Project at Rutgers University's Eagleton Institute. "It's very unclear... what's the remedy under the law."

Opposite Wilmington on the Delaware River, Penns Grove has just under 5,000 residents in its nine-tenths of a square mile. Its major exports are actors Bruce Willis and John Forsythe. For its diminutive size, though, the borough produces more politics than can be consumed locally.

Last year, the borough's former mayor and retired police chief ran an independent campaign for Salem County freeholder. They didn't come close to winning, but they did pull enough votes to prevent Council President A.J. Crescenzi from being elected to the county post. The kicker is: they're all Democrats.

"It's a small town and everything is always involved in politics," Baytops said. "We have two factions, two Democratic parties, and one sued the other."

Baytops said she viewed the electioneering case, which stemmed from the June 2007 Democratic primary, as a put-up job by opponents. She was convicted of campaigning among voters at a polling place, but said she was "never" told that could mean removal from office.

"This is the first I'm hearing of this," she said. "We're in 2009, that was 2007. Why is this coming up now?"

But at the time the case was heard, Charles Fiore, the Westville municipal prosecutor, concluded the conviction should require Baytops to forfeit her office.

In a Dec. 9, 2007, letter to the Penns Grove borough attorney, copied to the mayor, council and county Prosecutor John Lenahan, Fiore said flatly that an officeholder "shall be removed" for conviction on the disorderly persons offense. But Fiore went on to say that was not his job.

"The determination as to whether or not removal should take place in my opinion should be considered by the Penns Grove Borough Municipality," Fiore wrote. "I am not comfortable, nor was I comfortable at the time of trial, in making a recommendation that Ms. Baytops should be removed from office."

In March 2008, Westville Magistrate Thomas North wrote to the Salem County Prosecutor's Office, saying "no order of forfeiture was made or requested at trial, and no such application for same is either pending or contemplated in the municipal court."

Salem Assistant Prosecutor William Brennan said his office responded that the judge "has to make that call." Paff is "certainly right in his analysis" that the court should rule.

Meanwhile, Paff, a Somerset County resident who prods governments around the state to obey open public meeting and records laws, has made it his mission to see that the Baytops case reaches a proper conclusion.

"I have no interest in seeing Baytops lose or keep her position," he said. "My only interest is that the court properly discharges its statutory duties."

In February, Paff wrote to Superior Court Judge David Krell, the presiding judge for municipal courts in the vicinage for Cumberland, Gloucester and Salem counties, asking whether the municipal court acted properly under the forfeiture law. If not, "we request that you direct that court to make a determination now," he wrote.

Krell has not yet replied to Paff, but Brennan said the judge has been in the loop on the status of the case. Word is that the matter will be sent back to the Westville court, "but I have nothing formal on that," Brennan said.

As for Baytops, she maintains her innocence as well as her office. The electioneering incident seemingly blew over, and there was no point dragging it out, she said.

"I'm tired of going through it," she said. "I wasn't going to pay a lawyer \$20,000 or \$30,000 for an appeal."

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