



New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman

P.O. Box 5424

Somerset, NJ 08875-5424

Phone: 732-873-1251 - Fax: 908-325-0129

Email: lpsmc@pobox.com

August 3, 2009

Criminal Practice Committee

Supreme Court of New Jersey

P.O. Box 970

Trenton, NJ 08625

(via e-mail Melaney.Payne@judiciary.state.nj.us)

Municipal Court Practice Committee

Supreme Court of New Jersey

P.O. Box 970

Trenton, NJ 08625

(via e-mail Lawrence.Walton@judiciary.state.nj.us)

RE: Request for Rule or Directive

Ladies and Gentlemen:

I have detected a specific instance of what may be a general, recurring problem regarding enforcement of N.J.S.A. 2C:51-2--the public office forfeiture statute.

In essence, unless there are tighter rules and guidelines, I don't believe it is realistic to expect a municipal prosecutor to apply for forfeiture of office sanctions against a municipal official, especially when the official belongs to the same political party as the majority of the governing body that appointed the prosecutor.

Enclosed are: a) my February 13, 2009 letter to Hon. David E. Krell, P.J.M.C. for the Cumberland/Salem/Gloucester vicinage, b) a March 25, 2009 newspaper article, and c) a March 25, 2009 letter from the Cumberland/Salem/Gloucester Municipal Division Manager that, I believe is fair to say, doesn't seriously address the issues raised in my February 13, 2009 letter.

To summarize the facts, an "electioneering" charge was brought against a Penns Grove Borough Council member. Even though the Council member was convicted of the charge, the municipal prosecutor, Charles A. Fiore, Esq., was not "comfortable" recommending forfeiture, and the municipal judge, Hon. Thomas M. North, J.M.C., did not rule on forfeiture because Fiore did not request it.

Further, the Salem County Prosecutor's Office, which is quoted in the news article as saying that I am "certainly right in [my] analysis" that the municipal court should have


ruled on the forfeiture issue, did not apply for forfeiture when invited to do so in Judge North's March 3, 2008 letter.

In sum, the merits of the Council member's forfeiture were never addressed in any forum and nobody was held accountable for making the decision to not pursue forfeiture. Unless a court rule or directive is promulgated or the forfeiture statute itself is amended, it remains too easy for politically appointed municipal prosecutors to avoid raising the politically sensitive question of whether a given offense ought to result in an public official's forfeiture of office.

Would the Committee please consider promulgating such a rule or directive?

Thank you for your attention to this matter, I appreciate your time and look forward to receiving your response.

Respectfully,

A handwritten signature in black ink, appearing to be 'John Paff', written in a cursive style with a large loop at the end.

John Paff



New Jersey Libertarian Party

Open Government Advocacy Project

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P.O. Box 5424

Somerset, NJ 08875-5424

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February 13, 2009

Hon. David E. Krell, P.J.M.C.

P.O. Box 668

Woodbury, NJ 08096

(via regular mail and fax to 856-853-3497)

RE: State v. Baytops

Westville Municipal Court, Summons No. S-2007-000537

Dear Judge Krell:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project. While the Project's main goal is to increase governmental transparency, particularly through civil enforcement of the Open Public Records Act and Meetings Act, we also seek to ensure that laws intended to hold dishonest or errant public officials accountable are observed and enforced.

We write to you in your capacity as Presiding Judge of the Municipal Courts for the Cumberland, Gloucester and Salem Vicinage. We would like your opinion as to whether the Westville Municipal Court properly discharged its duties under the forfeiture of office statute, N.J.S.A. 2C:51-2(a), in the captioned matter. If you find that the Westville Municipal Court did not properly discharge its statutory duties, we request that you direct that court to make a determination now on the question of whether the defendant in the captioned matter—Tami Baytops--forfeited of her position on the Penns Grove Borough Council.

The relevant facts are as follows. On August 27, 2007, Baytops, who then sat and now sits on the Penns Grove Borough Council, was charged with "electioneering" at the Penns Grove polls on June 5, 2007. The matter was transferred to Westville Municipal Court where, after a trial on November 28, 2007, Baytops was convicted of violating N.J.S.A. 19:34-15¹ and fined \$200 plus appropriate court costs.

¹ N.J.S.A. 19:34-15 states: "Electioneering within or about polling place.

If a person shall distribute or display any circular or printed matter or offer any suggestion or solicit any support for any candidate, party or public question within the polling place or room or within a distance of one hundred feet of the outside entrance to such polling place or room, he shall be guilty of a disorderly persons offense."

At the time of the conviction, Westville Municipal Prosecutor Charles A. Fiore, Esq. wasn't "comfortable . . . in making a recommendation that Ms. Baytops be removed from office." Rather, he felt that the decision as to whether the conviction warranted forfeiture of Ms. Baytops' office "should be considered by the Penns Grove Borough Municipality." See, December 9, 2007 letter from Prosecutor Fiore to Penns Grove Borough Solicitor Benjamin Telsey, attached. Similarly, the Hon. Thomas M. North, J.M.C., who presided over Baytops' trial, felt that the Salem County Prosecutor's office should determine whether Baytops should be forced to resign her office. See, March 3, 2008 letter from Judge North to the Salem County Prosecutor's Office, attached.

The Westville Municipal Court was required to rule on the question of Baytops' forfeiture "immediately upon" Baytops' conviction unless a stay of forfeiture was requested. N.J.S.A. 2C:51-2(b)(1). Nothing in the records suggests that a stay was requested or granted, so it was not appropriate for the Municipal Court to escape its statutory duty and leave the decision of whether to seek Baytops' forfeiture to the Salem County Prosecutor's Office or the Borough of Penns Grove.

I am cognizant of N.J.S.A. 2C:51-2(g) which permits the County Prosecutor or Attorney General to apply for forfeiture when "the issue of forfeiture is not raised in a court . . . at the time of a finding of guilt," but it is incongruent for the statute to a) expressly require forfeiture of an official who is convicted of a disqualifying offense, but then to b) allow the court to punt the politically difficult forfeiture question to the county prosecutor whenever it is disinclined to make the decision itself. Such a construction would allow an intolerable practice where courts could turn a willful blind eye toward the forfeiture question knowing full well that the county prosecutor or attorney general will probably lack the political will, interest or resources or to apply for forfeiture.

In State v. Ercolano, 335 N.J.Super. 236 (App. Div. 2000), the Appellate Division stated that "viewing N.J.S.A. 2C:51-2 as a whole, it is clear that the Legislature intended a forfeiture of public employment upon conviction for a qualifying offense to be mandatory, regardless of whether forfeiture is ordered at the time of conviction or at some later date." Thus it appears that the Westville Court's handling of Baytops' forfeiture question (i.e. declining to rule on the forfeiture question and instead forwarding it to other officials who also decline to rule on the question) works directly against the Legislature's purpose in enacting the statute.

Thank you for your attention to this matter, I appreciate your time and look forward to receiving your response.

Respectfully,



John Paff

cc. Westville Municipal Court (via fax only to 856-456-1040)
John T. Lenahan, Salem County Prosecutor (via email to jlenuhan@salemcountynj.gov)
(both with attachments)

C:m+c
file

Charles A. Fiore

Attorney at Law

34 South Main Street
P.O. Box 525

Williamstown, New Jersey 08094

e-mail address: cfiore@monroetownshipnj.org

Charles A. Fiore
Member of
NJ and PA Bars

Telephone: (856) 875-1166
Fax: (856) 875-1412

Atlantic County Office
105 N. White Horse Pike
Hammonton, NJ 08037

Please reply to:
Williamstown Office

December 9, 2007

Benjamin Telsey, Solicitor
107 West Broadway
Salem, NJ 08079



Re: State of New Jersey v. Tami Baytops
Violation: N.J.S.A. 19:34-15

Dear Mr. Telsey:

Please be advised that this office served in the capacity of Municipal Prosecutor for the Borough of Westville. This matter was recently transferred to the Westville Borough Municipal Court for adjudication by the Honorable Thomas North.

Please note that a Trial took place on November 28, 2007 with respect to the outstanding charges against Ms. Baytops. She was charged with two counts of violations of N.J.S.A. 19:34-15. Based upon my review of the facts, I indicated that both charges could be merged and dealt with as one count.

Be that as it may, a Trial occurred with respect to this matter and testimony was provided on behalf of the State. Upon Judge North considering the testimony of the State's five witnesses as well as the testimony of Ms. Baytops, he entered a guilty plea against Ms. Baytops. The Court imposed a fine of \$200.00 plus Court costs.

Pursuant to N.J.S.A. 2C:51-2a(1), an individual who holds a public office shall be removed for a position for a disorderly persons offense. The determination as to whether or not removal should take place in my opinion should be considered by the Penns Grove Borough Municipality. 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. I believe that any action decided should be taken by the Borough of Penn Grove.

Benjamin Telsey, Solicitor
December 9, 2007
Page two

Upon receipt and review of this correspondence, should you have any questions or would like to discuss same, please feel free to contact me.

Very truly yours,



Charles A. Fiore

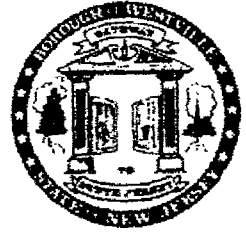
CAF/dt

cc: Mayor John A. Washington
Members of Council
Sharon R. Williams, Township Clerk
John T. Lenahan, Salem County Prosecutor



MUNICIPAL COURT
BOROUGH OF WESTVILLE
"Gateway to South Jersey"

114 Crown Point Road · Westville, New Jersey 08093
Telephone: (856) 456-0066 · Fax: (856) 456-1040



HON. THOMAS M. NORTH
Municipal Court Judge

March 3, 2008

KAREN J. CALIVA
Municipal Court Administrator

Salem County Prosecutor's Office
Attn: Thomas DeSimone, Esquire
87 Market Street, PO Box 462
Salem, NJ 08079

RE: State v. Tammi Baytops
Summons No. S-2007-000537
Offense: N.J.S.A. 19:34-15
Location of Offense: Penn Grove Boro

Dear Mr. DeSimone:

As you may know, I am the Judge of the Municipal Court in the Borough of Westville. This matter was transferred to the Borough by the Division Office last year. The defendant was convicted on the second count of that Complaint at trial on November 28th, 2007.

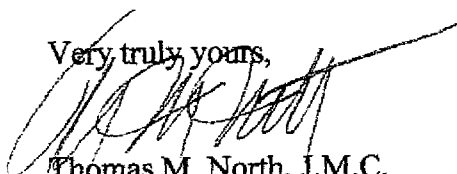
I understand the matter is under review by Salem County Prosecutor's Office, on behalf of State, pursuant to *N.J.S.A. 2C:51-2(g)* as to whether an application will be made for forfeiture of public office held by the defendant, Tammi Baytops.

Enclosed is a letter from Mr. Ken James, recently received by the Court Clerk. The letter requests a forfeiture of office under the Statute.

Be advised that 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. I note that the application, if it is made, may be made directly to, and determined by, the Superior Court under *N.J.S.A. 2C:51-2(g)*.

A copy of this letter, and the enclosure, is provided to the defendant, Tammi Baytops, as well as to Mr. James.

Very truly yours,


Thomas M. North, J.M.C.

TMN/trt

Enclosure

Cc: Karen Caliva, Clerk, Borough of Westville Municipal Court
Ken James, 35 Maple Avenue, Penns Grove, NJ 08069
Tammi Baytops, 260 S. Broad Street, Penns Grove, NJ 08069

Should Penns Grove councilwoman lose her job?



WEDNESDAY, 25 MARCH 2009 23:44 ADMINISTRATOR

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.

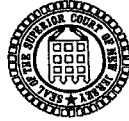
As for Baytops, she maintains her innocence as well as her office. The electioneering incident seemingly blew over, and there was no point dragging it out, she said.

"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."

LAST UPDATED (SATURDAY, 04 APRIL 2009 21:20)

SUPERIOR COURT OF NEW JERSEY
CUMBERLAND / GLOUCESTER / SALEM VICINAGE

MARK SPROCK
Trial Court Administrator



CAROLE A. CUMMINGS, ESQ.
Vicinage Municipal Division Manager

Gloucester County Courthouse
19 North Broad Street
Woodbury, NJ 08096
Phone – (856) 853-3482
Fax – (856) 853-3497
TTY/TDD – (856) 853-3494

EMAIL: Carole.Cummings@judiciary.state.nj.us

March 25, 2009

John Paff, Chairman
New Jersey Libertarian Party
PO Box 5424
Somerset, New Jersey 08875-5424

RE: State v. Baytops
S-2007-000537

Dear Mr. Paff:

Your letter to the Honorable David E. Krell has been forwarded to me for review and response. Please be advised that Judge Krell recused himself upon receipt of the referenced complaint in Penns Grove and that complaint was forwarded to the Municipal Division. Pursuant to our existing cross-assignment order, this case was reassigned to the Honorable Thomas M. North at the Westville Municipal Court.

It appears that your concerns center upon whether a job forfeiture should have been entered when the original finding was made or whether a subsequent request of a forfeiture should have been considered.

The Code of Conduct for Judiciary Employees prohibits any court staff person, whether in municipal or superior court, to provide you with legal advice. Analyzing the specific facts and circumstances of the case in relation to statutes and conduct of the court or any individual party is not permitted. Accordingly, I am unable to provide an assessment of the conduct by Judge North or the municipal prosecutor.

As you are aware, both the municipal prosecutor and Judge North wrote to Penns Grove and the Salem County Prosecutors' Office regarding forfeiture. Any further action to request forfeiture would have to be made by the appropriate parties to the case. A review of the file does not reflect any pending motions at this time.



New Jersey Courts
Independence - Integrity - Fairness - Quality Service

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RE: State V. Baytops S-2007-000537

March 25, 2009

If you feel that there was inappropriate conduct by the municipal prosecutor, you may file a complaint with the County Prosecutor in Gloucester located at the Justice Complex, 70 Hunter Street, PO Box 623, Woodbury, NJ 08096 (856-384-5500). Similarly if you feel that there was inappropriate conduct by the Judge you may file a complaint with the Advisory Committee on Judicial Conduct located at Hughes Justice Complex, 25 W. Market Street, PO Box 037, Trenton, NJ 08625 (609-292-2552).

If you have any questions or need any additional information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carole A. Cummings', written in a cursive style.

Carole A. Cummings, MDM

CAC:kg

Cc: Hon. Thomas M. North, JMC
John T. Lenahan, Salem County Prosecutor
file