BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS STATE OF GEORGIA



Kevin Westray, Legal Assistant

3 2016

BRIAN KEMP, SECRETARY OF

STATE,

Petitioner,

: Docket No.:

v. : OSAH-SECSTATE-CE-1644051-63-

Howells

STEVE REIGHARD.

:

Respondent.

:

INITIAL DECISION

Brian Kemp, Secretary of State ("Petitioner"), challenges Respondent's qualification to be a candidate for State House of Representative in District 167. Specifically, Petitioner contends that Respondent has not been a legal resident of House District 167 for at least one year.

Every candidate for state office must meet the constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a). One such requirement is that at the time of their election, members of the Georgia House of Representatives must "have been legal residents of the territory embraced within the district from which elected for at least one year." Ga. Const., art. III, § 2, para. 3(b); O.C.G.A. § 28-2-1(b). The Georgia Election Code provides that the Secretary of State or a qualified elector from the district in which the candidate is seeking election may challenge the candidate's qualifications to hold office. O.C.G.A. § 21-2-5(b).

Respondent bears the burden of proof to establish his eligibility for office. *Haynes v. Wells*, 273 Ga. 106, 108-09 (2000). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

The hearing in this matter was scheduled for May 3, 2016. Prior to the hearing, Petitioner filed a motion for summary determination, supported by joint stipulations of fact and certified copies of maps showing House Districts 167 and 179. While Respondent stipulated to his address and the authenticity of the maps, he did not go so far as to stipulate that he was not qualified to be a candidate for House District 167.¹

Respondent failed to attend the hearing, and therefore failed to meet his burden to prove his eligibility for office. Accordingly, Respondent is not qualified to be a candidate for House District 167.

SO ORDERED this the 3rd day of May, 2016.

STEPHANIE M. HOWELLS, Administrative Law Judge

¹ On May 2, 2016, Petitioner submitted a proposed order which concluded that Respondent is not qualified to be a candidate for State House District 167. Subsequently, Respondent sent an email to the Calendar Clerk stating that he did not oppose the entry of the proposed order drafted by Petitioner. Thus, it appears that Respondent has conceded his ineligibility.