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COURT OF APPEALS
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GREGORY A. BRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
36

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO ex rel.	:	
MONTGOMERY COUNTY	:	Case No.
PROSECUTING ATTORNEY,	:	
	:	
Relator,	:	
	:	
v.	:	ORIGINAL ACTION IN QUO
	:	WARRANTO
WILBURT SHANKLIN,	:	
	:	HEARING REQUESTED
Respondent.	:	

ORIGINAL ACTION IN QUO WARRANTO

Anne Jagielski, #0093047
Assistant Prosecuting Attorney
Montgomery County Prosecutor's Office
P.O. Box 972
Dayton, Ohio 45422
Telephone: (937) 496-7195
Fax Number: (937) 225-4822
E-mail: jagielskia@mcohio.org
ATTORNEY FOR MONTGOMERY
COUNTY PROSECUTING ATTORNEY

Wilbert O. Shanklin
376 Copper Beech Court
Dayton, OH 45459

Relator, Mathias H. Heck, Jr., as the duly elected Prosecuting Attorney of Montgomery County, Ohio, brings this *quo warranto* pursuant to Ohio Revised Code 2733.05. *State ex rel. Mikus v. Hirbe*, 7 Ohio App.2d 325, 326, 220 N.E.2d 290 (1966). This *quo warranto* is the proper pleading and proceeding to challenge the legal right of another to public office. *Beasley v. City of East Cleveland*, 20 Ohio App.3d 370, 373, 489 N.E.2d 859 (1984). Relator is ensuring that the voices of the veterans in Montgomery County, Ohio are heard and that the people nominated to the Veterans Service Commission are duly qualified and properly appointed and validly represents the veterans and their chapter. It is imperative that the Disabled American Veterans are not compelled or feel they are compelled to do something they did not want to do. The Prosecuting Attorney, in this original action, is challenging the appointment of Mr. Wilbert Shanklin to the Veterans Service Commission.

The people of the State of Ohio, by and through the office of MATHIAS H. HECK, JR., Prosecuting Attorney of Montgomery County, Ohio, of his own accord, allege as follows:

1. The Montgomery County Veterans Service Commission (“VSC”) is a five-member commission, comprised of veterans from various veteran organizations within Montgomery County. The members are nominated by their respective chapters/posts and then appointed by the Common Pleas Court to serve a five-year term;
2. The Disabled American Veterans (DAV) shall have one person to nominate and represent them on the VSC who was nominated by the DAV.
3. Pursuant to R.C. 5901.02(C), the person appointed to the VSC by the DAV is for a term to commence in the years ending in two and seven;
4. In Montgomery County there are two DAV chapters: Chapter 9 and Chapter 140.

5. Pursuant to R.C. 5901.02, the appointing judge must notify each post or chapter of the DAV that they may submit a list of three (3) recommendations of persons to be considered for appointment to the VSC;
6. In a letter dated August 4, 2016, the Montgomery County Common Pleas Court ("Court"), through its administrative judge, notified both DAV chapters in Montgomery County that they may submit a list of three names as recommendations from which the Court shall appoint to the VSC no later than October 4, 2016;
7. DAV Chapter 140 did not make any nominations.
8. DAV Chapter 9 nominated three individuals: Mr. Tommy Adkins, Mr. Jerry Hayes, and Mr. Lee Sink;
9. Mr. Tommy Adkins is the incumbent VSC commissioner whose seat is up for appointment;
10. In a letter dated October 20, 2016, the Court notified both DAV chapters that one of the three recommendations, Mr. Sink, had withdrawn from consideration and that the Court wished to have another recommendation from the chapters to replace him by November 15, 2016.
11. In November, 2016, Mr. Wilburt Shanklin joined the DAV Chapter 9. On the same day he joined, he paid for a lifetime membership and he requested to be considered for nomination to the VSC.
12. Mr. Shanklin was allegedly told by Mr. Tommy Adkins that the deadline for nomination to the VSC had passed.
13. In a subsequent letter by the Court to both DAV chapters, dated October 31, 2016, the Court stated that it had been contacted by a citizen who attempted to seek nomination by a DAV chapter for consideration for the VSC appointment, but that such individual had been informed by Mr. Tommy Adkins that the deadline for consideration had passed;

14. The Court further stated in the letter that “[t]he Court expects to receive, forthwith, the nomination of the individual who recently sought to be nominated.”
15. The DAV Chapter 9 commander, Mr. David Weeks, unilaterally and without consideration or a vote of the members of that chapter, submitted a nomination for Mr. Shanklin solely because he felt he was forced to by the Court;
16. The DAV would never have submitted Mr. Shanklin’s name but for the letter from the Court dated October 31, 2016.
17. Mr. Shanklin is a brand new member of the DAV. Mr. Shanklin is not an active member, has no association, no history, and no knowledge of DAV Chapter 9.
18. The Court appointed Mr. Shanklin to represent the DAV on the VSC.
19. Mr. Shanklin did not go through the normal vetting process and vote by the DAV prior to his recommendation.
20. On or about December 19, 2016, Mr. Shanklin was sworn in as the VSC appointee for the five-year term beginning January 15, 2017;
21. The DAV Chapter 9 believes the nomination of Mr. Shanklin was improper because he was not nominated and voted on by the members of DAV Chapter 9. Instead the DAV Chapter 9 believe they were compelled by the Court to submit a nomination for someone they did not and do not want representing them on the VSC. But for feeling forced by the Court, Mr. Weeks would not have submitted Mr. Shanklin’s name for nomination. Therefore, Mr. Shanklin’s name should never have been considered by the Court for a seat on the VSC.

WHEREFORE, the Montgomery County Prosecuting Attorney, for and in the name of the people of the State of Ohio, requests that Respondent be required to show by what warrant, right or authority he holds and exercises, or claims to hold and exercise, the office of Veterans Service

Commissioner, and that, if he does not disclaim or justify, he may be ousted by judgment of this court from this office and exercise of its functions and powers.

Relator requests a hearing on this matter.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By: Anne Jagielski
Anne Jagielski, #0093047
Assistant Prosecuting Attorney
Montgomery County Prosecutor's Office
P.O. Box 972
Dayton, Ohio 45422
Telephone: (937) 496-7195
Fax Number: (937) 225-4822
E-mail: jagielskia@mcohio.org
ATTORNEY FOR MONTGOMERY
COUNTY PROSECUTING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2017, the foregoing document was served on all parties or their counsel of record through the Montgomery County Electronic Filing System, if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

Wilbert O. Shanklin
376 Copper Beech Court
Dayton, OH 45459

Anne Jagielski
Anne Jagielski, #0093047
Assistant Prosecuting Attorney

AFFIDAVIT OF DAVID WEEKS

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

Now comes David Weeks, having been duly sworn and having personal knowledge of the facts stated herein, and hereby states and avers as follows:

1. I am an adult individual and competent to testify herein.
2. I have been a member of the Disabled American Veterans Dayton Chapter 9 ("DAV #9") for approximately 20 years, and the acting commander of DAV #9 for approximately 32 months. As commander, my job duties include running the DAV #9 meetings, drafting the DAV #9 newsletter and meeting agenda, running emergency meetings, organizing outreach events, and ruling on "ayes" and "nays" during meeting votes.
3. On or about September 8, 2016, I was present at the monthly DAV #9 meeting. As commander, I was running this meeting. At some point during this meeting, I asked the DAV #9 members who was interested in being considered for the Veterans Service Commission ("VSC") commissioner position. The only three members of DAV #9 that were interested were Tommy Adkins, Jerry Hayes, and Lee Sink. I am personally familiar with all three of these gentlemen by name and appearance. The membership of DAV #9 voted and officially nominated Tommy Adkins, Jerry Hayes, and Lee Sink as the three recommendations from DAV #9.
4. On or about October 1, 2016, I placed all three nominations in a priority overnight envelope and shipped to them to the Montgomery County Common Pleas Court ("Court"). On October 3, 2016, I received notification from the United States Postal Service that the envelope containing the nominations had been received by the Court.
5. On or about November 1, 2016, I was present at an emergency meeting of DAV #9. At this meeting, Lee Sink informed me that he had withdrawn his name from consideration for the VSC position.
6. On or about November 8, 2016, the adjutant of DAV #9 gave me two letters from the Court. My understanding of the letter dated October 20, 2016, was that the Court was extending the deadline to November 15, 2016. My understanding of the second letter, dated October 31, 2016, was that the Court was telling me to determine who recently sought to be nominated, to determine that person's name, and to nominate that person to be considered for the VSC.

7. On or about November 8, 2016, after receiving the two letters from the Court, I obtained the name of the individual of whom the Court referenced in its October 31, 2016 from Vince Dec, a DAV volunteer at the Dayton Veterans' Affairs Hospital. The name of that individual was Wilbert Shanklin.

8. On or about November 10, 2016, at the monthly DAV #9 meeting, I met Mr. Shanklin and gave him the application paperwork for the VSC nomination. Mr. Shanklin filled out and returned the same application to me by the end of that same meeting.

9. On or about November 12, 2016, I shipped Shanklin's application for the VSC position to the Court via overnight priority mail. I received notification that the parcel was delivered to the Court on Monday November 14, 2016.

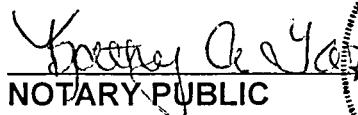
10. At no time was Mr. Shanklin voted on, recommended, or considered by the DAV #9 members. I submitted Mr. Shanklin's nomination solely because I felt compelled to do so based on the letter sent to me by the Court.

Further Affiant sayeth naught.

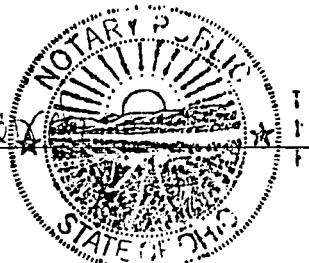


David Weeks

Sworn to and subscribed before me, a Notary Public, in and for the State of Ohio, by on this 13th day of January, 2017.



NOTARY PUBLIC



KATHY A TAXIS, Notary Public
In and for the State of Ohio
My Commission Expires May 13, 2021