



SUPREME COURT OF THE LUMBEE TRIBE

Samuel Kerns,
Petitioner
vs.
Lumbee Tribal Elections Board,
Respondent

Case #: 2008-0001
Case #: 2008-0003

Hearl Oxendine,
Petitioner
vs.
Lumbee Tribal Elections Board,
Respondent

This matter was heard before the Lumbee Supreme Court on February 7th, 2008 at the Tribal Office on Union Chapel Road. These petitions allege violations of Tribal Ordinance #2005-002 section 5(2) (c) and section 5(3) (b).

Present at the hearing were petitioners Mr. Hearl Oxendine and Mr. Sam Kerns. Tribal Council Member Mr. Welford Clark spoke for petitioner Hearl Oxendine. Election Board Chairman, Oceanus Lowry, was present and was represented by Attorney Brooke Clark, and also present was Election Board members, Mr. Ertle Oxendine and Ms. Sharon Locklear.

This matter was before the Court based on petitions filed by Mr. Hearl Oxendine, candidate for Tribal Council in District 3, and a petition filed by Mrs. Danita Locklear, candidate for Tribal Council in District 12. A petition was also filed by Tribal Member Mr. Sam Kerns. Since these petitions raise the same issues we are considering them together.

The petitions were scheduled for hearing on January 31st, 2008, but we were unable to go forward at that time. The hearings were re-scheduled for February 7th, 2008. On that date we received word that Mrs. Danita Locklear was ill and could not attend the hearing. We are proceeding on the petitions filed by Mr. Hearl Oxendine and Mr. Sam Kerns.

The petitioners allege that the procedure for absentee voting was flawed in that the envelopes used to mail the absentee ballots back to the Election Board were not signed on the outside by the voter as required by the ordinance.

Mr. Oceanus Lowry, Chairman of the Tribal Election Board acknowledged that the Election Board had not required the signature on the outside of the envelope, but that the Board had required a signature on an accompanying document that was on the inside of the envelope. The Board did in effect require a signature but not on the envelope.

In addition, the Election Board assigned a tracking number to each absentee ballot. This tracking number was an additional measure taken to prevent FRAUD in the absentee voting process. The petitioners acknowledged that there was no indication of fraud in the absentee voting process.

ARCHIVE

There were also allegations that section 5-3(b) was violated in that the Election Board opened ballots outside the time frame as specified in the ordinance.

The ordinance states that the Election Board may retrieve the ballots during the time frame of not more than two working days before the election and after the deadline for absentee ballots to be returned but before the beginning of the election. The Election Board Chairman testified that no ballots were opened outside that time frame.

Since there was no fraud committed, we next consider whether there were irregularities committed during the absentee voting process that would entitle the petitioners to a new election.

Section 6 (5)(a) states that an election result may be challenged on the basis of an allegation of irregularities if such challenges alleges material and substantial irregularities and are of such a nature that the outcome of the election would have been contrary to the reported result and/or that it would be impossible to determine with mathematical certainty which candidate is entitled to be certified as elected.

As it related to this case we hold that while there were irregularities, they were not of material or substantial nature.

We believe that the Election Board had placed in effect sufficient safeguards as to assure that only those persons who were entitled to cast absentee ballots were the ones to cast absentee ballots. We find that the procedure as used by the Election Board did not deprive the petitioners of any votes nor did this procedure effect the out come of the election in any way. The procedures as usual by the Elections Board did not place the petitioner at a disadvantage nor did they give any advantage to the opposing parties.

For the foregoing reasons we decline to declare the election invalid or to order a new election.

We decline to take any action in regard to the Election Board.

Since Mrs. Danita Locklear did not take part in this hearing, we are not issuing a ruling in her case; we will schedule a hearing in her case at a later date.

Justices Darlene Ransom and David Locklear concur in this opinion.

This order is issued this 6th day of March, 2008.

Henry W. Oxendine
Chief Justice of the Supreme Court of the Lumbee Tribe of North Carolina