

ORIGINAL



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

**FILED
SUPREME COURT
STATE OF OKLAHOMA**

JAN 13 2016

**MICHAEL S. RICHIE
CLERK**

JASON R. JACKSON,)
)
 Petitioner,)
)
 vs.)
)
 TULSA COUNTY ELECTION BOARD,)
 ELAINE DODD, GEORGE WILAND, and)
 PATRICIA BRYANT,)
)
 Respondents,)
)
 And)
)
 JOHN R. FITZPATRICK, III,)
)
 Real Party in Interest.)

Case No. 114591

Received 1-13-16
 District
 Marshal
 CCA/OKC
 CCA/TUL

**REAL PARTY IN INTEREST'S RESPONSE TO EMERGENCY
 APPLICATION TO ASSUME ORIGINAL JURISDICTION
 AND PETITION FOR WRIT OF MANDAMUS**

Respectfully Submitted,

Donald A. Lepp, OBA #16260
 Logan James, OBA #32430
 DRUMMOND LAW, PLLC
 1500 South Utica, Suite 400
 Tulsa, OK 74104-6522
 (918) 749-7378
Attorneys for John R. Fitzpatrick, III

INDEX

INTRODUCTION 1

 19 O.S. § 510 1

 70 O.S. § 3311 2

SUMMARY OF THE RECORD..... 2

JURISDICTION 3

 19 O.S. § 510 3

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS 3

 19 O.S. § 510 3

 21 O.S. § 99 3

 21 O.S. § 648 3

 70 O.S. § 3311 3

Dolese Brothers Co. v. Privett, 1981 OK 2, 622 P.2d 1080 3

 I. 70 O.S. § 3311 Does Not Provide The Applicable Definition for
 “Peace Officer.” 3

 19 O.S. § 510 3,4

 70 O.S. § 3311(E)(5)..... 4,5

Russell v. Chase Investment Services Corp., 2009 OK 22, ¶ 20, 212 P.3d 1178 5

C.J.S. Statutes § 433 5

 II. The Proper Definition of “Peace Officer” is Found at 21 O.S. § 99,
 or at 21 O.S. § 648 6

 A. 21 O.S. § 99 6

 21 O.S. § 99 6

 11 O.S. § 34-101(B)..... 6

| | |
|---|-------|
| 63 O.S. § 2-501 | 6,7 |
| <i>Dolese Brothers Co. v. Privett</i> , 1981 OK 2, 622 P.2d 1080 | 7 |
| B. 21 O.S. § 648..... | 7 |
| 19 O.S. § 510 | 8,9 |
| 21 O.S. § 99 | 8,9 |
| 21 O.S. § 648 | 7,8,9 |
| 21 O.S. § 649 | 8 |
| 70 O.S. § 3311 | 9 |
| III. Fitzpatrick Will Require No Additional Training Beyond the Sherriff's Administrative School Referenced in 19 O.S. § 510 | 9 |
| CONCLUSION..... | 9 |

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

| | | |
|---------------------------------|---|------------------------|
| JASON R. JACKSON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case No. 114591 |
| |) | |
| TULSA COUNTY ELECTION BOARD, |) | |
| ELAINE DODD, GEORGE WILAND, and |) | An Original Action for |
| PATRICIA BRYANT, |) | Writ of Mandamus |
| |) | |
| Respondents, |) | |
| |) | |
| <i>And</i> |) | |
| |) | |
| JOHN R. FITZPATRICK, III, |) | |
| |) | |
| Real Party in Interest. |) | |

REAL PARTY IN INTEREST’S RESPONSE TO EMERGENCY APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF MANDAMUS

Real Party In Interest, John R. Fitzpatrick, III (“Fitzpatrick”), through his attorneys Drummond Law, PLLC, objects to the issuance of a Writ of Mandamus because the decision of the Tulsa County Election Board (“Board”) was proper in all respects. In support, Fitzpatrick shows this Court the following:

INTRODUCTION

Petitioner Jason Jackson contends that the Board erred in finding that Fitzpatrick, a current certified reserve peace officer in good standing, is qualified to run for sheriff under 19 O.S. § 510, which provides that “in counties with populations of five hundred thousand (500,000) or more, the person seeking election shall also be a **current certified peace officer in good standing.**” 19 O.S. § 510 (emphasis added.) Section 510 does not provide a definition for

“peace officer.” However, “peace officer” is defined in three other places in the Oklahoma Statutes, twice in Title 21 (“Crimes and Punishment”) and once in title 70 (“Schools”). The two definitions of “peace officer” in Title 21 include reserve peace officers such as Fitzpatrick. Petitioner relies upon the definition of “peace officer” in 70 O.S. § 3311 (E)(5), which would exclude reserve officers. Petitioner’s reliance on the definition in Title 70 is misplaced because that section expressly limits its use to the Council on Law Enforcement Educational and Training (“CLEET”) statute. There is no such limitation for the definitions of “peace officer” in Title 21. Petitioner’s arguments are unsupported by statutory construction rules or a reasonable reading of Section 510.

SUMMARY OF THE RECORD

Fitzpatrick submits the following objections to Petitioner’s Summary of the Record:

1. Petitioner’s citation to various statutes is not proper for inclusion in the record. Rule 1.11(e)(“The brief of the moving party shall contain a Summary of the Record, setting forth the material parts of the pleadings, proceedings, facts and documents upon which the party relies, together with such other statements from the record as are necessary to a full understanding of the questions presented to this Court for decision.”).

2. The Summary of Record does not contain the complete Answer of Fitzpatrick filed with the Board, which included exhibits. *See Tab 1 of Appendix of Record* filed contemporaneously herewith.

3. In addition, during the Board hearing, the attached documents were also submitted to the Election Board for its review. *See Tab 2 of Appendix of Record* filed contemporaneously herewith.

JURISDICTION

Fitzpatrick objects to this Court assuming original jurisdiction to the extent that it finds Fitzpatrick is not qualified under 19 O.S. § 510.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

Section 510 does not define “peace officer.” Therefore, the meaning of “peace officer” as used in Section 510 must be found elsewhere in the statutes. “Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase whenever it occurs, except where a contrary intention plainly appears.” *See Dolese Brothers Co. v. Privett*, 1981 OK 2, ¶ 8, 622 P.2d 1080, 1084. The Oklahoma statutes define “peace officer” in only three places: 21 O.S. § 99, 21 O.S. § 648 and 70 O.S. § 3311. Based upon standard statutory construction rules, the definitions provided in Title 21 are the most appropriate for this court to use in interpreting 19 O.S. § 510.

I. 70 O.S. § 3311 DOES NOT PROVIDE THE APPLICABLE DEFINITION FOR “PEACE OFFICER.”

Petitioner claims that the applicable definition of “peace officer” is the definition provided in Title 70 because it deals with police training and Section 510 referenced CLEET. However, Petitioner’s reading of Section 510 is a strained interpretation. The reference to CLEET in Section 510 is in connection with the training for newly elected or appointed sheriffs. This reference, upon which Petitioner’s entire claim is premised, is contained in the last sentences in Section 510, which states:

Any person, otherwise qualified, who has been a resident of the State of Oklahoma for two (2) years, has been a registered voter of the party whose nomination he or she seeks, or a registered Independent, within the county from which such person seeks election for the six (6) months next preceding the first day of the filing period, except in 2004, when such person must have been a qualified registered elector no later than December 21, 2003, is at least twenty-five (25) years of age next preceding the date of filing for office, possesses at least

a high school education, shall be eligible to hold the office of county sheriff or to file therefor. Provided, however, in counties with populations of five hundred thousand (500,000) or more, the person seeking election shall also be a current certified peace officer in good standing. **Within twelve (12) months of taking office, all newly elected or appointed sheriffs shall complete a sheriff's administrative school which has been developed by the Oklahoma Sheriff's Association and which has been approved by the Council on Law Enforcement Education and Training (CLEET). Failure to complete the sheriff's administrative school within the specified period shall preclude the new sheriff from obtaining CLEET certification. New sheriffs with prior CLEET certification, who fail to attend the sheriff's administrative school, shall have their CLEET certification revoked.**

19 O.S. § 510. The **only** reasonable interpretation of these final sentences is that the Legislature's sole purpose for referencing CLEET was ensuring that the new sheriff's training with regard to administrative school was approved by CLEET. There is no logical basis to conclude that this reference to CLEET in connection with the new sheriff's administrative school evidences an intent on the part of the Legislature that a definition within the CLEET statute should control for any preceding sentences. Importantly, each sentence referencing the sheriff's administrative school cites to CLEET by name. Clearly, the Legislature possessed the ability to specifically reference CLEET where it saw fit, as demonstrated by its four (4) references to CLEET with regard to the sheriff's administrative school. Consequently, it is absurd to assert that the Legislature similarly intended for the CLEET statute to apply to the preceding sentences when it specifically declined to provide such therein.

Furthermore, and perhaps most importantly, the definition within the CLEET statute, upon which Petitioner relies, specifically states that it is only applicable to the CLEET statute, and, therefore, **cannot** be used for Section 510. The provision within the CLEET statute that Petitioner cites is 70 O.S. § 3311(E)(5), which expressly states: "**For purposes of this section**, a police or peace officer is defined as a full-time duly appointed or elected officer who is paid for working more than twenty-five (25) hours per week and whose duties are to preserve the public

peace” (Emphasis added). Thus, the introductory clause of this provision unequivocally provides that the following definition is limited to Section 3311.

Petitioner’s reliance on the definition in Section 3311(E)(5) is further belied by the fact that the CLEET statute and regulations use the term “full-time” and “reserve” as a modifier of “police officer” or “peace officer” on several occasions. *See Petitioner’s Brief in Support of Emergency Application to Assume Original Jurisdiction and Petition for Writ of Mandamus*, p. 7, n. 1 (referencing five (5) instances where the Legislature delineated between “full-time” and “reserve” officers). Thus, if the Legislature intended to restrict the pool of candidates to just full-time peace officers, then it certainly knew how to do so and chose to not so restrict the pool of candidates. If, as Petitioner contends, peace officer is inclusive of full-time officers alone, then the Legislature’s repeated use of full-time as a modifier for peace officer is superfluous. *See Russell v. Chase Investment Services Corp.*, 2009 OK 22, ¶ 20, 212 P.3d 1178 (“This Court construes statutes to avoid rendering any language superfluous.”); *see also* 82 C.J.S. Statutes § 433 (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word will be superfluous, void, nugatory, or insignificant.”).

This Court should not interpret peace officer in a manner which leads to such an absurd result, as espoused by Petitioner. Moreover, in addition to Fitzpatrick’s interpretation being more reasonable than that of Petitioner, it seems more likely that the Legislature would not have intended to limit the pool of eligible candidates to such a small pool, which would prevent extremely qualified candidates such as Fitzpatrick,¹ but permit a twenty-five (25) year-old rookie

¹ Mr. Fitzpatrick’s qualifications for Sheriff are beyond reproach. He is a “Top Gun” graduate of Fighter Weapons Instructor School, who served for fourteen years as a fighter pilot in the Tulsa Air National Guard. He spent many years in the private sector and held executive management

police officer with only a high school education to run for Sheriff. Accordingly, Petitioner's attempt to tie the definition in Section 3311(E)(5) in Title 70 to Section 510 in Title 19 is untenable.

II. THE PROPER DEFINITION OF "PEACE OFFICER" IS FOUND AT 21 O.S. § 99, OR AT 21 O.S. § 648.

A. 21 O.S. § 99

By contrast, the definition of "peace officer" in 21 O.S. § 99 is not limited to that section. It provides, in pertinent part, "[t]he term 'peace officer' means any sheriff, **police officer**, federal law enforcement officer, tribal law enforcement officer, **or any other law enforcement officer whose duty it is to enforce and preserve the public peace.**" 21 O.S. § 99 (emphasis added). There is no question that Fitzpatrick, as a certified reserve peace officer, is a law enforcement officer whose duty it is to enforce and preserve the public peace.

Fitzpatrick, in his role as a reserve police officer with the Tulsa Police Department, has the same authority as a peace officer or regular full-time municipal police officers. *See* 11 O.S. § 34-101(B) ("Reserve municipal police officers shall have the powers, duties and functions as set forth in law or ordinance for regular full-time municipal police officers . . ."). In his role as a reserve municipal officer, Fitzpatrick has the same duties and powers generally afforded "peace officers" under Oklahoma law. Pursuant to Oklahoma law, any peace officer may:

1. Carry firearms;
2. Execute search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;

positions with numerous companies, including Hewlett-Packard, Indian Motorcycle and Harley-Davidson. Mr. Fitzpatrick graduated Valedictorian from the Tulsa Reserve Academy and has over ten years of service with the Tulsa Police Reserve Program with over 8,000 hours of active police patrol. He is qualified as an Emergency Program Manager with Homeland Security and the Federal Emergency Management Agency. *See* John Fitzpatrick for Tulsa County Sheriff, <http://www.johnfortulsa.com> (last visited Jan. 12, 2016).

3. Make an arrest without warrant of any person the officer has probable cause for believing has committed any felony under the Uniform Controlled Dangerous Substances Act or a violation of Section 2-402 of this title;
4. Make seizures of property pursuant to the provisions of the Uniform Controlled Dangerous Substances Act;
5. Perform such other lawful duties as are required to carry out the provisions of the Uniform Controlled Dangerous Substances Act;
6. Conduct investigations and make an arrest of any person the officer has probable cause to believe is involved in money laundering activities, as otherwise set forth by laws of this state; and
7. Conduct investigations and make an arrest of any person the officer has probable cause to believe is involved in human trafficking activities, as otherwise set forth by laws of this state.

63 O.S. § 2-501.

Fitzpatrick is a current reserve police officer with the Tulsa Police Department. He has received the appropriate CLEET training for his position as a reserve police officer. *See* Exhibit "A" attached to Fitzpatrick's Answer in Appendix Tab 1. In his position as a reserve police officer for the Tulsa Police Department, it is Fitzpatrick's duty to enforce and preserve the public peace. Thus, Fitzpatrick's powers and responsibilities are consonant with those of a "peace officer." Further, Fitzpatrick is currently in good standing regarding his certifications and status as a reserve police officer. *See* Exhibit "B" in Appendix Tab 1.

Under the standard rule of statutory construction provided in *Dolese Brothers, supra*, the definition at 21 O.S. § 99 is the applicable definition of "peace officer." Therefore, Fitzpatrick is qualified to run for the office of Tulsa County Sheriff because he is a current police officer or law enforcement officer whose duty it is to enforce and preserve the public peace, and he is currently in good standing.

B. 21 O.S. § 648

As further support for this position, 21 O.S. § 648 provides:

'peace officer' means any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement

of all laws, ordinances or orders of this state or any of its political subdivisions and who is authorized to bear arms in execution of his responsibilities, **including reserve force deputies, reserve municipal police officers**, and tribal law enforcement officers who are commissioned pursuant to a cross-deputization agreement authorized by Section 1221 of Title 74 of the Oklahoma Statutes.

(Emphasis added). While this statute applies to assault and battery, it is notable that the Legislature specifically included reserve officers in the definition of “peace officer.”

Further, consistent with the foregoing, Fitzpatrick has previously been determined to be a “police officer” by a Tulsa County District Court. In 2012, P. Williams was charged with Assault and Battery With A Dangerous Weapon Upon A Police Officer, i.e., Fitzpatrick, pursuant to 21 O.S. § 649. *See* Exhibit “C” in Appendix Tab 1. For the purposes of enforcing section 649, “police officer” means “any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement of all laws, ordinances or orders of this state or any of its political subdivisions and who is authorized to bear arms in execution of his responsibilities” 21 O.S. § 648. On August 27, 2013, the District Court entered Judgment against P. Williams for Assault and Battery With A Dangerous Weapon Upon A Police Officer, i.e., Fitzpatrick. *See* Exhibit “D” in Appendix Tab 1. In entering the foregoing Judgment, a court of law conclusively determined that Fitzpatrick is a police officer charged with enforcing and preserving the public peace. Consequently, this Court should similarly determine that Fitzpatrick is a peace officer duly qualified for the office of Tulsa County Sheriff.

Petitioner asserts that the 21 O.S. § 99 and 21 O.S. § 648 definitions are inapplicable because they deal with crimes and punishments. It is curious that Petitioner is dissatisfied with the foregoing definitions since they describe what constitutes a peace officer when peace officers are performing the tasks for which they were duly trained and qualified. Further, as discussed above, both of the foregoing definitions can be applied generally, and specifically to 19 O.S. §

510, because they have no limiting language. To the contrary, the definition of “peace officer” provided in 70 O.S. § 3311 is specifically limited to that section. Consequently, this Court should apply the generally applicable definitions of peace officer from 21 O.S. § 99 and 21 OS. § 648, and determine that Fitzpatrick is a duly qualified candidate for Tulsa County Sheriff.

III. FITZPATRICK WILL REQUIRE NO ADDITIONAL TRAINING BEYOND THE SHERRIFF’S ADMINISTRATIVE SCHOOL REFERENCED IN 19 O.S. § 510.

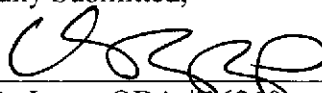
Finally, Petitioner argues that Fitzpatrick, if elected, will need to undergo additional training in order to serve as Sheriff of Tulsa County. This issue is completely irrelevant to the issue at hand. However, because Petitioner will attempt to use this issue against Fitzpatrick on the campaign trail, Fitzpatrick will address it.

Title 19 provides the requirements to be Sheriff. Once it is established that Fitzpatrick is a certified peace officer in good standing and qualified to be elected Sheriff, Fitzpatrick is thereby qualified to be Sheriff. The only additional training that is required by Section 510 to be qualified for sheriff is that Fitzpatrick attend sheriff’s administrative school within twelve (12) months. Consequently, if elected, Fitzpatrick will not have to undergo additional training beyond that required by the other candidates for Tulsa County Sheriff.

CONCLUSION

WHEREFORE, premises considered, John R. Fitzpatrick, III, respectfully requests that this Court deny Jason R. Jackson’s Petition for Writ of Mandamus and find that Mr. Fitzpatrick is a duly qualified candidate for the office of Tulsa County Sheriff.

Respectfully Submitted,



Donald A. Lepp, OBA #16260

Logan James, OBA #32430

DRUMMOND LAW, PLLC

1500 South Utica, Suite 400

Tulsa, OK 74104-6522

(918) 749-7378

Attorneys for John R. Fitzpatrick, III

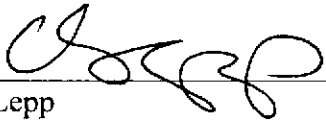
CERTIFICATE OF MAILING

This is to certify that on this 13th day of January, 2016, the foregoing instrument was mailed via U.S. first class mail to:

Tara D. Zickefoose, Esq.
SAVAGE BAUM & GLASS
401 So Boston Ave., Suite 2300
Tulsa, OK 74103
Attorneys for Petitioner

John David Luton, Esq.
Chief of the Civil Division
TULSA COUNTY DISTRICT ATTORNEY'S OFFICE
500 So Denver Ave., Suite 900
Tulsa, OK 74103
Attorneys for Respondents

Jason T. Seay, Esq.
Assistant Attorneys General
General Counsel Unit
OFFICE OF THE ATTORNEY GENERAL
313 Northeast 21st Street
Oklahoma City, OK 73105
Attorney for Oklahoma Election Board



Donald A. Lepp