

DISTRICT OF COLUMBIA
BOARD OF ELECTION AND ETHICS

_____)
In Re:)
"The School Governance) ADMINISTRATIVE HEARING
Charter Amendment Act of 2000") DOCKET NO.00-036A
_____)

MEMORANDUM OPINION AND ORDER

I. BACKGROUND

This matter came before the Board of Election and Ethics ("The Board") on Tuesday May 2, 2000 pursuant to a challenge by Dino Drudi, to the Board's formulated short title and summary statement of "The School Governance Charter Amendment Act of 2000" ("the Act") as published in the D.C. Register April 21, 2000.

Pursuant to 3 DCMR § 1803.1 "Within ten (10) days of publication in the D.C. Register, any registered qualified elector who objects to the proposed short title or summary statement as formulated by the Board may request a hearing before the Board ... to raise any objections and to correct any alleged inaccurate or prejudicial short title or summary statement. (Emphasis added).

Mr. Drudi, a registered qualified elector, timely filed his challenge to the Board's formulated language on April 28, 2000. In his challenge Mr. Drudi raises two issues.

First, that the D.C. Council inappropriately passed the Act by not reading the proposed act twice in substantially the same form as required by Section 412 of the Home Rule Act.

Second, that the Board should include in the summary statement the ward pairings which may be meaningful to some voters and might influence whether they vote for or against the measure.

II. ANALYSIS

A. The Board Is Without Jurisdiction To Find That The D.C. Council Exceeded Its Legislative Authority

Section 412 of the Home Rule Act requires that each proposed act must be "read twice in substantially the same form" at least 13 days apart. Mr. Drudi alleges that "although the Council read Bill 13-469, The School Governance Charter Amendment Act of 2000, three times, no version of the bill approved at any reading was in substantially the same form as one approved at any other reading." Mr. Drudi, therefore, in essence, is requesting that the Board find that the D.C. Council acted inappropriately and exceeded its legislative authority by failing to comply with the provisions of section 412.

The Board derives its authority to promulgate rules for and to conduct elections for ratifying amendments to the Home Rule Act directly from Congress. Section 303(c) of the Home Rule Act states: "The Board of Election and Ethics shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act..." Nothing in section 303 even remotely gives the Board the authority to look behind the Council's actions to determine if they inappropriately exceeded their legislative authority. The Board's sole function, in the charter amendment process, is to place whatever act the Council adopts, which purportedly amends the Home Rule Act, before the voters for ratification and report those results to Congress.

In fact, there is a strong presumption in favor of the validity of actions by the legislature (in this case the District Council). Flemming v. Nestor 363 U.S. 603, 617, 80 S CT. 1367, 1376, 4 L Ed 2d 1435 (1960); Cobb v. Bymum 387 A2d 1095, 1097 (D.C. App 1978). This presumption attaches not because the Council has so interpreted its authority but because it is a legislative body, a coordinate branch whose actions are entitled to great respect. District of Columbia v. Washington Home 415 A2d 1349, 1370.

Therefore, the Board - unless instructed otherwise by an appropriate court - must accept the Council's act as valid. As an independent and impartial agency the Board serves merely as a

conduit between the Council and the voter to ensure whatever proposed amendment to the District Charter the Council adopts is fairly and accurately presented to the voters for their approval.

B. Proposed Revision to Summary Statement

Pursuant to Title 3 DCMR § 1803.1, any registered qualified elector can challenge the Board's formulated Short title and Summary Statement if it is inaccurate or prejudicial.

Mr. Drudi, however does not allege either, instead he submits proposed revisions to the Board's formulation which he believes "would improve the summary statement language".

The Board recognizes that there are many different ways that the proposed act could have been summarized. The Board, however, must formulate language that is both accurate and fair and can be easily understood by the average voter.

To the extent that the Board's summary language does not specifically state how the school election districts will be composed, the Board does not believe that this omission renders its Summary Statement inaccurate or prejudicial. Prior to the date of the election, the proposed Charter amendment act, in its entirety, will have been published twice in the D.C. Register and in at least two newspapers of general circulation. In addition, any voter interested in more specific or technical aspects of the act, such as the ward pairings, can obtain copies of the act in its entirety from the Board at no cost.

More importantly, any modification in the current statement would require republication in the D.C. Register and other formal notices which would jeopardize the likelihood of the Board being able to conduct a June 27, 2000 special election as planned for the charter amendment. A special election prior to July 7, 2000 is desired in order to resolve the question of how the school board will be composed before school board candidates begin circulating petitions.

III. CONCLUSION

The Board, having no jurisdiction to find that the D.C. Council exceeded its legislative authority and finding that the

Board's Summary Statement as published in the D.C. Register is accurate and fair, it is hereby,

ORDERED, that the challenge filed April 28, 2000 to the Board's Short title and Summary Statement be dismissed.

5/11/00

Date

Benjamin F. Wilson

Benjamin F. Wilson, Chair
D.C. Board of Elections and Ethics