

**BEFORE THE STATE ELECTION BOARD OF THE  
STATE OF OKLAHOMA**

IN THE MATTER OF CONTEST OF THE )  
CANDIDACY OF **BOB ED CULVER** )  
FOR THE OFFICE OF STATE ) CAUSE NO. 2016-10  
REPRESENTATIVE, DISTRICT 4 )

**FINDINGS AND ORDER**

The above-styled cause was heard by the Election Board of the State of Oklahoma on April 25, 2016, meeting pursuant to lawful notice.

The following members of the State Election Board (“Board”) were present: Steve Curry, Chair; Tom Montgomery, Vice-Chair; and Dr. Tim Mauldin, Member. Also present were Paul Zirix, Secretary; and counsel for the State Election Board, Jan Preslar, Deputy Attorney General; and Jason Seay, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member; and Debi Thompson, Alternate Member.

Petitioner Matt Meredith was present and represented by counsel, Scott Inman. Contestee Bob Ed Culver was present and represented by counsel, Travis V. Jett.

The Petition was filed and Notice of Hearing issued on April 19, 2016, at 12:27 p.m.

The Board received proof of personal service made on Contestee by the Cherokee County Sheriff on April 19, 2016, at 8:20 p.m., within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.

Mr. Culver answered the contest, and presented a cashier’s check in the amount of \$250.00, as prescribed in 26 O.S. § 5-129. Mr. Culver also filed a written answer in the cause.

After considering all evidence and testimony offered and admitted, and after hearing arguments of counsel, the Board made the following findings of fact and conclusions of law:

1. Mr. Meredith filed with the Board a Declaration of Candidacy for the office of State Representative, District 4, during the filing period April 13-15, 2016.
2. Mr. Culver filed with the Board a Declaration of Candidacy for the office of State Representative, District 4, during the filing period April 13-15, 2016.
3. Petitioner’s petition alleges Mr. Culver failed to meet the requirements of Okla. Const. art. III, § 1 or the requirements set forth in 26 O.S. § 4-101 and 26 O.S. § 5-105.

4. Okla. Const. art. III, § 1 provides in pertinent part:

Subject to such exceptions as the Legislature may prescribe, all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state.

5. 26 O.S. § 4-101 provides:

Every person who is a qualified elector as defined by Section 1 of Article III of the Oklahoma Constitution shall be entitled to become a registered voter in the precinct of his residence, with the following exceptions:

1. Persons convicted of a felony shall be ineligible to register for a period of time equal to the time prescribed in the judgment and sentence.
2. Any person who has been adjudged to be an incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes, shall be ineligible to register to vote. When such incapacitated person has been adjudged to be no longer incapacitated such person shall be eligible to become a registered voter. The provisions of this paragraph shall not prohibit any person adjudged to be a partially incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes from being eligible to register to vote unless the order adjudging the person to be partially incapacitated restricts such persons from being eligible to register to vote.

6. 26 O.S. § 5-105 provides:

A. To file as a candidate for nomination by a political party to any state or county office, a person must have been a registered voter of that party for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state. Provided, this requirement shall not apply to a candidate for the nomination of a political party which attains recognition less than six (6) months preceding the first day of the filing period required by law. However, the candidate shall be required to have registered with the newly recognized party within fifteen (15) days after such party recognition.

B. To file as an independent candidate for any state or county office, a person must have been registered to vote as an independent for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state.

7. As a preliminary matter, Contestee sought to dismiss the petition, challenging the sufficiency of the allegations in the petition to disqualify Mr. Culver as a candidate for State Representative, District 4. Upon unanimous vote of the Board, the Board found the allegations in the petition were sufficient, and denied Contestee's motion.
8. The following exhibits offered by Petitioner were admitted into the record:
  - Exhibit 1: Contest of Candidacy and Service of Process
  - Exhibit 2: Copies of 26 O.S. §§ 4-101, 5-105 and Okla. Const. art. 3, § 1
  - Exhibit 3: Contestee's voter registration information
  - Exhibit 4: Hemphill County, TX Commissioner's Court meeting minutes
  - Exhibit 5: Hemphill County, TX budget, adopted Sept. 14, 2015
  - Exhibit 6: The Canadian Record article, dated Sept. 24, 2015
  - Exhibit 7: White Pages premium as of April 19, 2016 re: Bob Ed Culver
  - Exhibit 8: Texas Const. art. 16, § 14
  - Exhibit 9: *Prince v. Inman*, 280 S.W.2d 779 (Tex. Civ. App. 1955).
  - Exhibit 10: Texas Penal Code Title 8, Chapter 39
  - Exhibit 11: *Richardson v. Gregg*, 1930 OK 327, 290 P. 190
  - Exhibit 12: Various Oklahoma Statutes, Title 21
9. The following exhibits offered by Contestee were admitted into the record:
  - Exhibit 1: Voter Registration Application of Bob Ed Culver, dated 7/20/2015
  - Exhibit 2: Voter Identification Card of Bob Ed Culver, issued 7/21/2015
  - Exhibit 3: Warranty Deed from Cowan to Culver, filed 7/1/2015
  - Exhibit 4: Quit Claim Deed, from Culver to Arrington filed 7/1/2015
  - Exhibit 5: Quit Claim Deed from Arrington to Culver, dated 12/31/2015
  - Exhibit 6: Liberty Mutual policy information for period 7/1/2015-7/1/2016
  - Exhibit 7: Rural Water Dist. No. 3 membership transfer dated 7/1/2015
  - Exhibit 8: Application for PO Box, dated 7/2/2015
  - Exhibit 9: ADT Burglar Alarm Customer Acceptance Form, dated 7/14/2015
  - Exhibit 10: Warranty Deed from Culver to Neumeier, dated Sept. 14, 2015
  - Exhibit 11: Lake Region Electric Cooperative bill, dated 7/20/2015
  - Exhibit 12: Residential Contract from Culver to Neumeier, dated 6/15/2015
10. Petitioner argued that: Texas law requires that Texas county officers must be a Texas resident or else the office becomes vacant: Mr. Culver acted as a county commissioner at meetings of the Commissioners' Court in July and August, 2015, after he was registered to vote in Oklahoma; therefore, Mr. Culver was not a

qualified elector and his Oklahoma voter registration is void.

11. The evidence showed that Mr. Culver grew up in Tahlequah and moved to Texas in 1982. He came back to Tahlequah because he has family there. He intended to make Tahlequah his residence when he bought property in Tahlequah in July, 2015. In July, 2015, Mr. Culver registered to vote in Cherokee County, he purchased property in Cherokee County, he insured his property in Cherokee County, he obtained a post office box in Cherokee County, and he obtained water, electrical, and obtained alarm service to his property in Cherokee County.
12. Mr. Culver testified he did not know Texas law required him to be a county resident to serve on the Commissioners' Court. He said he planned to resign from the Commissioners' Court when he moved to Oklahoma in July, 2015, but the judge on the Commissioners' Court asked him to stay on until September, 2015. The closing on his house in Texas occurred on September 14, 2015. Mr. Culver testified it has been his intent since July, 2015, to make Cherokee County his residence, and he has made Cherokee County his residence since that time.
13. In *Stevens v. Union Graded School Dist. No. 2 of Canadian County*, 275 P. 1056 (Okla. 1929), the court said:

“The meaning of the term ‘residence’ for voting purposes as used in a state Constitution cannot be made a matter of legislative construction, it is purely a judicial question, \*\*\* *there can be no absolute criterion by which to determine where a person actually resides. Each case must depend on its particular fact or circumstances. \*\*\* While bodily presence ordinarily is essential* in effecting a domicile in the first instance, \*\*\* *the most important factor being the intent to establish a new domicile, coupled with acts evincing such intent.*”

275 P. at 1057 (emphasis added)(citation omitted).

14. Similarly, in *Moore v. Hayes*, 744 P.2d 934, 937 (Okla. 1987), the court said the question of voter's residence is synonymous with domicile and involves a factual inquiry into the place where one is habitually present, and to which, when he departs, he intends to return. *See also, Bixby v. Bixby*, 261 P.2d 1075, 1076 (Okla. 1961)(the word “resident” contemplates an actual residence with substantially the same attributes as are included when the word “domicile” is used).
15. In *Box v. State Election Board*, 526 P.2d 936, 940 (Okla. 1974), the court said the most important factor in effecting a change in domicile is intent to establish a new

domicile, coupled with acts evincing such intent, saying:

“The controlling fact to be considered is the fact of intent and to determine this fact \*\*\* may take into consideration all the movements, transactions, and attending circumstances of the party or parties involved in the question.”

*Id.*, quoting *Pope v. Pope*, 243 P. 962, syl. of the court (Okla. 1926).

16. More recently, in *Suglove v. Oklahoma Tax Commission*, 605 P.2d 1315, 1317-18 (Okla. 1979), the court said:

[T]o effect a change of domicile, there must be (a) actual abandonment of the first domicile coupled with (b) the intention not to return to it and (c) actual residence in another place with intention of making it a permanent home. Indicia of a changed domicile are to be found in the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities and other pertinent objective facts ordinarily manifesting the existence of requisite intent. As a general principle, Oklahoma domicile, once established, is presumed to continue unless an individual can show that a change has occurred.

17. 26 O.S. § 5-130 provides:

The burden of proof shall be upon the petitioner to sustain the allegations in his petition.

18. The fact that Mr. Culver continued to serve as County Commissioner on the County Commissioners' Court in Texas, and that Texas law requires county officers to reside in their counties or otherwise vacate their office, is not determinative of whether he was an Oklahoma resident and qualified elector.
19. The weight of the evidence presented indicates that Petitioner failed to sustain his burden of proving Mr. Culver is not a qualified elector, as required by law; and Petitioner further failed to sustain his burden of proving any other grounds for disqualification set forth in his Petition.
20. The weight of the evidence presented showed Mr. Culver has been a resident of Cherokee County since July, 2015, and a qualified elector and registered voter of

Cherokee County since that time.

21. Mr. Meredith's petition is therefore denied, and Mr. Culver's name will appear on the ballot as a candidate for the office of State Representative, District 4.
22. Costs are assessed against Mr. Meredith, pursuant to 26 O.S. 2011, § 5-131.

Done this 25<sup>th</sup> day of April, 2016, by a vote of 3-0 of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD

  
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STEVE CURRY, Chairman

