

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

IN THE MATTER OF CONTEST OF THE )  
CANDIDACY OF **BROOKE McGOWAN** )  
FOR THE OFFICE OF STATE ) CAUSE NO. 2016-13  
SENATOR, DISTRICT 17 )

**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 Ron Sharp was not present, but was represented by counsel, Glenn Coffee. Contestee Brooke McGowan appeared, pro se.

The Petition was filed and Notice of Hearing issued on April 19, 2016, at 2:50 p.m.

The Board received proof of attempted personal service on Ms. McGowan by the Oklahoma County Sheriff on April 19, 2016, at 8:13 p.m., stating the Contestee could not be found. The provisions for constructive service on Contestee, set forth in 26 O.S. § 5-125, therefore apply.

Ms. McGowan answered the contest, and presented a cashier’s check in the amount of \$250.00, as prescribed in 26 O.S. § 5-129.

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. Sharp filed with the Board a Declaration of Candidacy for the office of State Senator, District 17, during the filing period April 13-15, 2016.
2. Ms. McGowan filed with the Board a Declaration of Candidacy for the office of State Senator, District 17, during the filing period April 13-15, 2016.
3. Petitioner’s petition alleges there is reason to believe the address listed on Ms. McGowan’s Declaration of Candidacy is a vacant house and not her place of residence as required by 26 O.S. § 5-111. Petitioner further alleges that Ms.

McGowan's voter registration is invalid and defective because she failed to check some boxes on the registration application and the address listed on her application is not her place of residence.

4. The following exhibits offered by Petitioner were admitted into the record:

Exhibit 1[A]: Declaration of Candidacy of Ms. McGowan  
Exhibit B: Return of service by sheriff  
Exhibit C: Ethics Commission filings of Ms. McGowan  
Exhibit D: Certified copies of voter registration information re: Ms. McGowan

5. The following exhibits offered by Contestee were admitted into the record:

Exhibit 1: Seller's Counteroffer on 3900 S. Cinder Circle, dated 2/8/2016  
Exhibit 2: Addendum to Real Estate Contract for 3900 S. Cinder Circle  
Exhibit 3: Addendum to Purchase Contract for 3900 S. Cinder Circle  
Exhibit 4: Warranty Deed on 3900 S. Cinder Circle, filed April 21, 2016

6. 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).

7. 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).
8. 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).

9. 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.

10. 26 O.S. § 5-130 provides:

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

11. Ms. McGowan testified she had signed a contract to purchase the home at 3900 S. Cinder Circle in February, 2016, and was originally scheduled to close on the home in March, 2016. However, closing was delayed until on or before April 15, 2016. She has fully intended to make this new home her residence and that is why she used the address on her filings.
12. It was uncontested that Ms. McGowan was moving from one home in Senate District 17 to another home in District 17. There was no issue as to whether Ms. McGowan met the qualifications of 14 O.S. § 80.8.
13. The weight of the evidence presented indicates that Petitioner failed to sustain his burden of proving the address listed on Ms. McGowan’s Declaration of Candidacy

and voter registration is not her place of residence.

14. Even if the address listed on Ms. McGowan's Declaration of Candidacy and voter registration were not her place of residence, it would not disqualify Ms. McGowan from being a candidate for State Senator, District 17, as listing correct addresses on the declaration and voter registration is not a qualification for candidacy.
15. 14 O.S. § 80.8 requires a candidate for State Senator to be both a registered voter in the district for six months and reside in the district for six months.
16. The weight of the evidence presented showed Ms. McGowan had been both a registered voter and a resident of Senate District 17 for the requisite six month period.
17. Mr. Sharp's petition is therefore denied, and Ms. McGowan's name will appear on the ballot as a candidate for the office of State Senator, District 17.
18. Costs are assessed against Mr. Sharp, 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

  
STEVE CURRY, Chairman

