

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

IN THE MATTER OF THE CONTEST OF)	
THE CANDIDACY OF KEVIN McDUGLE)	
FOR THE OFFICE OF STATE)	CAUSE NO. 2020-03
REPRESENTATIVE, DISTRICT 12)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

The above-styled cause was heard by the State Election Board for the State of Oklahoma on Tuesday, April 21, 2020, meeting pursuant to lawful notice and posting of an agenda consistent with the Open Meeting Act and SB 661, 2020 O.S.L. 3, § 3, amending the Open Meeting Act.

The following members of the State Election Board (“Board” or “SEB”) were present: Mr. Tom Montgomery, Chair¹; Dr. Tim Mauldin, Vice Chair²; and Ms. Heather M. Cline³, Member (videoconference). Also present were Paul Ziriak, Secretary; and counsel for the State Election Board, Niki Batt, Vice-Deputy Attorney General; and Thomas R. Schneider, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member⁴; and Debi Thompson, Alternate Member⁵.

Petitioner Justin Dine appeared personally by telephone and without counsel. Contestee State Rep. Kevin McDugle appeared in person and without counsel.

Petitioner Justin Dine’s Petition was filed and Notice of Hearing was issued on Monday, April 13, 2020. The Board received proof from the Petitioner that the Wagoner County Sheriff’s Office successfully served Contestee Wilson within 24 hours of setting the Petition for hearing, as required by 26 O.S. 2011, § 5-124. The Petitioner provided the Return of Sheriff Service to the Secretary of the State Election Board on or before the date of the hearing.

Contestee submitted a cashier’s or certified check in the amount of \$250.00, as required by 26 O.S. 2011, § 5-129.

During the hearing, the following exhibits were offered into the record (in the order indicated below) and sworn testimony was heard from the following persons:

Petitioner’s Exhibits	
Petitioner’s Exhibit 13 (Findings and Order in In re Contest of the Candiacy of Kevin McDugle for the Office of State Representative, District 12, Cause No. 2018-06)	ADMITTED

¹ Chairman Montgomery appeared by videoconference.
² Vice Chair Dr. Mauldin appeared by teleconference.
³ Member Cline appeared by videoconference.
⁴ Alternate Member Buchanan appeared by videoconference.
⁵ Alternate Member Thompson appeared by videoconference.

Petitioner's Exhibits	
Petitioner's Exhibit 6 (Screenshots of Decree of Divorce and Dissolution of Marriage requiring, inter alia, sale of the marital home, ¶ 23, p. 5)	ADMITTED
Petitioner's Exhibit 1 (Certified copy of Voter Registration Record for Contestee Kevin McDugle)	ADMITTED
Petitioner's Exhibit 2 (Oklahoma Ethics Commission Candidate Committee Contributions and Expenditures Report for Q4/2019 for Kevin McDugle for State House District 12 in 2020)	ADMITTED
Petitioner's Exhibit 3 (County Assessor Data Sheet for 12336 S. 273 E. Ave., Coweta, OK 74429)	ADMITTED
Petitioner's Exhibit 4 (Warranty Deed for Central Park Condominiums, Unit 1223)	ADMITTED
Petitioner's Exhibit 5 (Warranty Deed for Central Park Condominiums, Unit 923)	ADMITTED
Petitioner's Exhibit 11 (Affidavit of Service indicating that Contestee Kevin McDugle was served at Unit 1223 at the Central Park Condominiums)	ADMITTED
Petitioner's Exhibit 10 (Screenshot of Facebook Marketplace post, selling kitchen cabinets for \$500)	ADMITTED
Petitioner's Exhibit 12 (Declaration of Candidacy of Contestee State Rep. Kevin McDugle)	ADMITTED
Petitioner's Exhibit 14 – (Screenshots from various websites showing profile for the late Shirley Ford who lived at 5307 S. 321st St. E. Ave., Broken Arrow, OK)	ADMITTED
Petitioner's Exhibit 7 (Digital pictures from social function at Central Park Condominiums, Tulsa, OK)	ADMITTED
Petitioner's Exhibit 8 (Picture of Condominium door with five-gallon water jug)	ADMITTED
Petitioner's Exhibit 9 (Front-facing picture of White Acura motor vehicle with a PikePass and Parking Permit issued to unit owners)	ADMITTED

Witnesses for Petitioner

Petitioner Justin Dine, *for himself*

Mr. Kent Morlan

Ms. Kimberly Wiley

Ms. Terri Ann Hallberg

Contestee's Exhibits	
Contestee's Exhibit 1 (Landlord-Tenant Agreement dated July 1, 2017 between Randy Scott [Landlord] and Kevin McDugle [Tenant], to rent extra bedroom space/garage apartment located at 12336 S. 273rd E. Ave, Coweta, OK 74429)	ADMITTED
Contestee's Exhibit 2 (Landlord-Tenant Agreement between Kevin Hefley, doing business as 321 Investments, Inc. [Landlord] and Kevin McDugle [Tenant] effective March 1, 2020)	ADMITTED
Contestee's Exhibit 3 (Lease Agreement between Kevin McDugle, Lessor, and Superior Operating Systems, Lessee)	ADMITTED

Contestee's Exhibits	
Contestee's Exhibit 4 (Various receipts for Superior Operating Systems and Invoice to Kevin McDugle for April 2020 rent for 5307 S. 321st E. Ave., Broken Arrow)	ADMITTED

Witnesses for Contestee

Contestee State Rep. Kevin McDugle, *for himself*

Mr. Randy Scott, Coweta, OK

Mr. Kevin B. Hefley, Broken Arrow, OK

Mr. David L. McClure, Superior Operating Systems, LLC.

Ms. Kathy Evington, Central Park Condominiums Management, Tulsa, OK

The Board conducted the hearing. After considering all evidence and testimony offered and admitted, and after bearing arguments by the Parties, the Board makes the following findings of fact and conclusions of law:

1. Contestee McDugle filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 12, during the 2020 Candidate Filing Period occurring on April 8 – April 10, 2020.
2. Petitioner Dine filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 12, during the 2020 Candidate Filing Period occurring on April 8 – April 10, 2020.
3. The SEB received proof of personal service made on Contestee within twenty-four (24) hours of setting the Petition for hearing, as required by 26 O.S. 2011, §§ 5-124 & 5-125.
4. Under 26 O.S. 2011, § 5-130, “[t]he burden of proof shall be upon the petitioner to sustain the allegations in his petition.”
5. The allegation contained in the Petition filed by Petitioner Dine is that Contestee State Rep. Kevin McDugle has not been a resident in House District 12 for the six months immediately preceding the filing period as required by 14 O.S. 2011, § 108.
6. Pursuant to 14 O.S. 2011, § 108, a candidate for State Representative “must have been a registered voter in such district and a resident residing within such district for at least six (6) months immediately preceding the filing period prescribed by law.”
7. The filing period began on Wednesday, April 8, 2020, pursuant to 26 O.S. 2011, § 5-110. Consequently, Contestee Wilson was required to have been a resident residing within House District 12 on or before October 7, 2019.
8. The question of residence for voting purposes has been held to be 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. *Moore v. Hayes*, 87 OK 82, ¶ 7, 744 P.2d 934, 937 (citing *Jones v. Burkett*, 346 P.2d 338, 341 (Okla. 1959) (emphasis supplied)). The evidence admitted during this Cause demonstrated that Contestee McDugle maintained a

residence within House District 12. *See* **Contestee Exs. 1 & 2.** Both landlords testified to the nature of their arrangements with Contestee McDugle. Mr. Scott testified that he allowed Contestee McDugle to live in what he called a “Mother-in-Law Suite” at his residence in Coweta and that McDugle leased the property for at least two and a half years. On cross examination, he clarified that once the lease “ended,” McDugle leased month to month for an indefinite term. Contestee McDugle corroborated this testimony by offering that all of his furniture and personal effects were used at this address.

Mr. Hefley testified that in 2020, McDugle and he entered into a landlord-tenant agreement wherein McDugle would rent the residence located at 5307 S. 321st E. Ave., Broken Arrow, OK. According to both Hefley and McDugle, the lease started on March 1, 2020.⁶ Hefley also admitted to helping Contestee McDugle move his belongings from the Coweta address to the residence in Broken Arrow. He confirmed that this home was that of his late mother, Shirley Ford.⁷

9. The “controlling factor to be considered is the fact of intent and to determine this fact [the Board] may take into consideration all the movements, transactions, and attending circumstances of the party or parties involved in the question.” *Box v. State Election Board of Oklahoma*, 1974 OK 104, 526 P.2d 936, 940 (Okla. 1974). In making its decision, the Board considered the totality of circumstances presented by both parties. In determining Contestee’s intent, the Board reviewed the evidence and concluded that his ownership of a condominium in the Central Park Condominiums in downtown Tulsa did not in and of itself mean that Contestee had an intent to move into the condominiums. Testimony by Contestee McDugle explained he purchased the unit as an investment property and currently leases it to Superior Operating Systems. *See* **Contestee Ex. 3.** He also indicated that he has received complaints from his tenant, Mr. McClure, which he [McDugle] then sends to the condominium’s management.
10. In his testimony, Contestee acknowledged a clause in his lease agreement with Superior Operating Systems, which allows him to stay in the condo on weekends when he has visitation with his children. This allows the children and Constee to stay in downtown Tulsa and to swim at the Central Park Condominium’s swimming pool.
11. Petitioner’s witnesses and the Petitioner himself, at best, provided unsubstantiated speculation⁸ as to Contestee’s intent to reside at Unit 1223 in the Central Park Condominiums.

⁶ Member Cline confirmed that Contestee resided in Coweta from July 2017 through March 1, 2020, and in Broken Arrow starting March 1, 2020, which he considers his current residence.

⁷ Prior to the Contestee’s case in chief, Petitioner contended that there is no way that this residence could have been sold to Contestee McDugle as the resident had died in just November 2019. Petitioner reasoned that a family would not so quickly dispose of the possessions and home. *See* **Petitioner’s Ex. 14.**

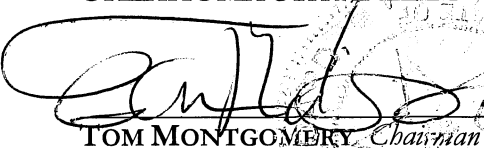
⁸ Upon question from Member Cline, Petitioner conceded that a landlord has to right to make improvements as he desires. In another instance, Mr. Morlan insinuated that Mr. McDugle had to have been a resident of the condos because the assistant property manager notarized Mr. McDugle’s Declaration of Candidacy. Ms. Wiley stated that McDugle violates the condominium’s bylaws because he does not keep the hallway clear of a five-gallon jug of water, with both Wiley, Hallberg, and Morlan

12. Petitioner Dine has failed to sustain his burden of proof by the greater weight of the evidence in showing that Contestee McDugle does not meet the six-month residency requirement as set forth in 14 O.S. 2011, § 108. Neither the evidence presented nor the witnesses who testified for the Petitioner's case were able to show that it was more likely true than not true that Contestee McDugle intended to live outside House District 12.
13. Petitioner Dine's Petition is therefore **DENIED**, pursuant to 26 O.S. 2011, § 5-130, and Contestee McDugle's name shall appear on the ballot as a candidate for the office of State Representative, District 12.
14. Costs are assessed against Petitioner Dine pursuant to 26 O.S. 2011, § 5-131.

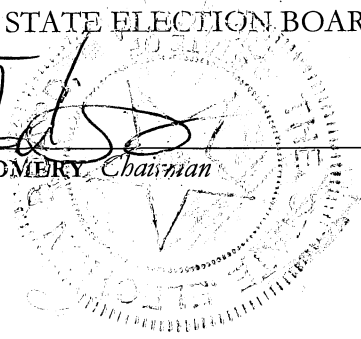
On the 21st day of April, 2020, all members of the State Election, constituting a quorum, voted to **DENY** the Petitioner Dine's Petition for Contest of Candidacy and **RETAIN** the candidacy of Contestee State Rep. Kevin McDugle on the ballot.

5-27-20
Date

OKLAHOMA STATE ELECTION BOARD



TOM MONTGOMERY, *Chairman*



stating it was impossible for him not to live at unit because no one can drink that much water in a one-week time period. They testified that this behavior became common on Contestee McDugle assuming ownership of Unit 1223. In Contestee's case in chief, Mr. McClure explained simply that he was unable to retrieve the bottles of water as he is not regularly at Unit 1223. His company is using the unit for its expansion into Oklahoma.