

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

IN THE MATTER OF THE CONTEST OF)
THE CANDIDACY OF **JAMIE MCGUIRE**)
FOR THE OFFICE OF STATE) CAUSE NO. 2020-05
REPRESENTATIVE, DISTRICT 69)

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 State Rep. Sheila Dills appears by counsel, Geoffrey Long via videoconference. Contestee Jamie McGuire appears in person and with counsel, Daniel Wilson.

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

Contestee did submit 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 and testimony was heard from the following persons:

Petitioner’s Exhibit 1 (Certified copy of SEB voter record for Jamie McGuire show registration in Creek County, House District 30)	ADMITTED
Petitioner’s Exhibit 2 (Certified copy of Tulsa County Election Board record, Voter Registration Form signed by Jamie McGuire on January 28, 2020)	ADMITTED
Petitioner’s Exhibit 3 (Certified copy of voter record for Jamie McGuire)	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.

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 Jamie McGuire filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 69, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
2. Petitioner, State Rep. Sheila Dills, filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 69, during the 2020 Candidate Filing Period occurring on April 8 through 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.” In order to sustain his or her burden of proof, the petitioner must prove the allegations set forth in the Petition by the greater weight of the evidence.
5. The allegation contained in the Petition filed by Petitioner Dills argues that since Contestee McGuire has not been a registered voter in House District 69 for the six months immediately preceding the filing period, she does not qualify to be a candidate under 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 McGuire was required to have been a registered voter of House District 69 on or before October 7, 2019.
8. A certified copy of Contestee’s McGuire’s voter registration record from the State Election Board shows a county transfer deletion transaction date for Contestee McGuire’s registration in Creek County as March 10, 2020. *See* **Petitioner’s Exhibit 1.**
9. A certified copy of Contestee McGuire’s Grady County voter registration record from the Tulsa County Election Board shows that Contestee McGuire filed her voter registration form in Tulsa County on or about January 28, 2020. Her voter registration in Tulsa County was activated on or about February 21, 2020. *See* **Petitioner’s Exhibit 2.**
10. A certified copy of Contestee McGuire’s voter registration record from the State Election Board shows that Contestee McGuire filed her registration form in Tulsa County on or about January 28, 2020 (Transaction Date). The audit date for the new registration in Tulsa County shows that the registration became active on February 21, 2020. *See* **Petitioner’s Exhibit 3.**

11. Because Contestee's registration in Tulsa County and House District 69 did not become effective until February 21, 2020, which is more than four (4) months after October 7, 2019 (*see Finding of Fact 7*), Contestee has not met the six-month registration requirement under 14 O.S. 2011, § 108.
12. Contestee McGuire claims that the six-month requirement applies only to residency, not registration, and to hold otherwise is a violation of her constitutional rights. However, the Oklahoma Supreme Court has interpreted the six month durational requirement in 14 O.S. § 108 to apply to registration and not merely residence. *Hendrix v. State ex rel. Oklahoma State Election Ed*, 1976 OK 111, 554 P.2d 770. Even more, 14 O.S. 2011, § 108 "is a valid statutory enactment of the Legislature of Oklahoma and complies fully with the Equal Protection of the Law clause of the Fourteenth Amendment of the Constitution of the United States." *Fleak v. Allman*, 420 F. Supp. 822,825 (W.D. Okla. 1976).
13. The Oklahoma Supreme Court has long held that words such "must" impose a command, and thus a candidate for the State House of Representatives must meet a six month durational requirement for both registration and candidacy.⁶
14. Moreover, the use of the conjunctive "and" in 14 O.S. 2011, § 108 implies that the six-month durational requirement applies both to registration and residency.⁷
15. Petitioner State Rep. Sheila Dills has sustained her burden of proof by the greater weight of the evidence in showing that it is more likely true than it is not that Contestee McGuire does not meet the six-month registration requirement set forth in 14 O.S. 2011, § 108.
16. Petitioner Dills' Petition is therefore **SUSTAINED**, pursuant to 26 O.S. 2011, § 5-130, and Contestee McGuire's name shall not appear on the ballot as a candidate for the office of State Representative, District 69.
17. Costs are assessed against Contestee McGuire pursuant to 26 O.S. 2011, § 5-131.


⁶ *Independent School Dist. No. 2, Tulsa County v. Okla. Tax Comm'n, et al.*, 2018 OK CIV APP 49, ¶ 6, 419 P.3d 1281, 1284 (citing *Oglesby v. Liberty Mut. Ins. Co.*, 1992 OK 61, ¶ 19, 832 P.2d 834).

⁷ "Where the legislative intent would be defeated by construction of a statute as written the Court may transpose words and phrases as is necessary to arrive at the true meaning. *Russell v. Flanagan*, 544 P.2d 510, 512, 1975 OK 173 (citing *Talley v. Harris*, 182 P.2d 765, 768, 1947 OK 218).

On the 21st day of April, 2020, all members of the State Election, constituting a quorum, voted to **SUSTAIN** Petitioner Sheila Dills' Petition for Contest of Candidacy and **STRIKE** the candidacy of Contestee Jamie McGuire from the ballot.

5-18-20
Date

OKLAHOMA STATE ELECTION BOARD



TOM MONTGOMERY, *Chairman*

