

IN THE SUPREME COURT OF THE STATE OF HAWAII

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RUSSELL BLAIR, Plaintiff-Appellee,

vs.

JEREMY HARRIS, in his individual capacity and as
Mayor of the City and County of Honolulu,
Defendant-Appellant.

NO. 24986

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 02-1-0008-1)

MAY 7, 2002

MOON, C.J., LEVINSON, AND NAKAYAMA, JJ.,
AND RAMIL, J., CONCURRING SEPARATELY, AND
ACOPA, J., CONCURRING IN PART AND DISSENTING IN PART

OPINION OF THE COURT BY MOON, C.J.

Defendant-appellant Jeremy Harris appeals from the March 11, 2002 order of the First Circuit Court, the Honorable Sabrina M. McKenna presiding, granting declaratory relief in favor of plaintiff-appellee Russell Blair, and from the March 14, 2002 entry of judgment thereon. The circuit court ruled that article 2, section 7 of the Hawai'i Constitution [hereinafter, section 7], which requires any elected public officer to resign

from office "before being eligible as a candidate for another public office, if the term of the office sought begins before the end of the term of the office held[,]" required Harris to have resigned from his office as Mayor of the City and County of Honolulu by the time that he filed a gubernatorial campaign spending organizational report on May 15, 2001. Harris contends that the circuit court erred because "filing nomination papers under [Hawai'i Revised Statutes (HRS) § 12-2 (Supp. 2001)] is the relevant point in time for purposes of being forced to resign under [section 7.]"

We hold that, under section 7, a public officer becomes "eligible as a candidate for another public office" at the time he or she files nomination papers for the second office. Therefore, he or she must resign from his or her present office before filing nomination papers for the second office, if the term of the office sought begins before the end of the term of the office held. Accordingly, we reverse the judgment of the circuit court.

I. BACKGROUND

Harris is the current mayor of the City and County of Honolulu. His term of office began on January 2, 2001 and will expire on January 2, 2005. In April 2001, Harris announced his intention to run for the office of Governor of the State of Hawai'i. On May 15, 2001, Harris filed a gubernatorial campaign

organizational report with the Campaign Spending Commission. A committee working on behalf of Harris has raised more than \$100,000 in support of his quest for the governor's office. The general election for governor is in November of this year. The deadline for filing nomination papers for the election is July 23, 2002. The term of the newly-elected governor will begin on Monday, December 2, 2002. Thus, the term of the office that Harris seeks will commence before the term of the office he presently holds expires. As of this date, Harris has not filed nomination papers and has not resigned his current office as mayor.

On January 3, 2002, Blair, a resident, taxpayer, and registered voter in Honolulu, filed a complaint for declaratory relief in the circuit court. Blair sought: (1) a declaratory judgment that Harris violated section 7 because he was required to resign his current position as Mayor when he filed his gubernatorial campaign organizational report pursuant to HRS § 11-194(a) (Supp. 2001);¹ and (2) (a) an injunction restraining Harris from continuing to serve as Mayor and removing him from

¹ HRS § 11-194(a) provides in relevant part:

Each candidate, committee, or party shall file an organizational report . . . within ten days from the date a candidate or candidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$100, or, within ten days from the date a noncandidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$1,000.

that office or, alternatively, (b) an injunction restraining Harris from soliciting campaign contributions or making campaign expenditures and requiring Harris to withdraw his campaign organizational report. Blair subsequently moved for partial summary judgment as to the declaratory relief sought. Harris moved for judgment on the pleadings or, in the alternative, summary judgment on the ground that section 7 does not require him to resign until he files nomination papers pursuant to HRS § 12-3(a).²

² HRS § 12-3(a) provides:

No candidate's name shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in the candidate's behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

- (1) A statement by the registered voters signing the form that they are eligible to vote for the candidate;
- (2) A statement by the registered voters signing the form that they nominate the candidate for the office identified on the nomination paper issued to the candidate;
- (3) The residence address and county in which the candidate resides;
- (4) The legal name of the candidate, the name by which the candidate is commonly known, if different, the office for which the candidate is running, and the candidate's party affiliation or nonpartisanship; all of which are to be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate;
- (5) Space for the name, signature, date of birth, social security number, and residence address of each registered voter signing the form, and other information as determined by the chief election officer;
- (6) A sworn certification by self-subscribing oath by the candidate that the candidate qualifies under the law for the office the candidate is

(continued...)

Following a consolidated hearing on March 11, 2002, the circuit court ruled in favor of Blair and against Harris. The court ruled that section 7 became applicable to Harris "at least" at the time he filed his campaign spending organizational report. The court's ruling was based on its determination that the phrase "eligible as a candidate" was "patently ambiguous" as between the interpretations offered by either party. In order to resolve this ambiguity, the circuit court looked primarily to its perception of the intent of the framers of section 7 and of the voters who ratified it, the ordinary meaning of the word "candidate," and the objectives sought to be served by section 7. The circuit court determined that all of the foregoing considerations weighed in favor of Blair's position. The court subsequently stayed its order pending appeal, and a judgment certified pursuant to Hawai'i Rules of Civil Procedure Rule 54(b)

²(...continued)

- seeking and that the candidate has determined that, except for the information provided by the registered voters signing the nomination papers, all of the information on the nomination papers is true and correct;
- (7) A sworn certification by self-subscribing oath by a party candidate that the candidate is a member of the party;
 - (8) A sworn certification by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of article II, section 7, of the Constitution of the State of Hawaii;
 - (9) A sworn certification by self-subscribing oath by the candidate that the candidate is in compliance with section 831-2, dealing with felons, and is eligible to run for office; and
 - (10) The name the candidate wishes printed on the ballot and the mailing address of the candidate.

(HRCP) (2000)³ was entered March 14, 2002. Harris timely appealed.

II. STANDARDS OF REVIEW

An order granting summary judgment is reviewed de novo, using the same standard as that applied by the circuit court: whether there were any genuine issues of material fact and whether the movant was entitled to judgment as a matter of law. Keliiupeole v. Wilson, 85 Hawai'i 217, 220-21, 941 P.2d 300, 303-04 (1997) (citation omitted).

Issues of constitutional interpretation present questions of law that are reviewed de novo. Price v. Zoning Bd. of Appeals, 77 Hawai'i 168, 171-72, 883 P.2d 629, 632-33 (1994).

In construing the constitution, we observe the following basic principles:

Because constitutions derive their power and authority from the people who draft and adopt them, we have long recognized that the Hawai'i Constitution must be construed with due regard to the intent of the framers and the people adopting it, and the fundamental principle in interpreting a constitutional provision is to give effect to that intent. This intent is to be found in the instrument itself.

. . . [T]he general rule is that, if the words used in a constitutional provision are clear and unambiguous, they are to be construed as they are written. In this regard, the settled rule is that in the construction of a constitutional provision the words are presumed to be used in their natural sense unless the context furnishes some ground to control, qualify, or enlarge them.

³ HRCP Rule 54(b) permits the circuit court to direct the entry of a final judgment as to fewer than all of the claims or parties "upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

Moreover, a constitutional provision must be construed in connection with other provisions of the instrument, and also in the light of the circumstances under which it was adopted and the history which preceded it.

Hawai'i State AFL-CIO v. Yoshina, 84 Hawai'i 374, 376, 935 P.2d 89, 91 (1997) (internal quotation marks, citations, brackets, and ellipsis points omitted).

III. DISCUSSION

Section 7 states:

Any elected public officer shall resign from that office before being eligible as a candidate for another public office, if the term of the office sought begins before the end of the term of the office held.

Harris contends that the plain language of section 7 supports the conclusion that the act of filing nomination papers triggers the resignation requirement. The critical question turns on the meaning of the phrase "eligible as a candidate[.]" A candidate is "a person who seeks an office, honor, etc.[,]" or "a person selected by others as a contestant for an office, honor, etc." Random House College Dictionary 197 (Rev. Ed. 1979).

We believe that the circuit court, in essentially determining that Harris "sought" the office of Governor when he filed campaign organizational reports, failed to give effect to all of the words of section 7. "Courts are bound to give effect to all parts of a statute, and . . . no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to

and preserve all words of the statute." Keliipuleole, 85 Hawai'i at 221, 941 P.2d at 304 (citations, brackets, and internal quotation marks omitted); see also Marbury v. Madison, 5 U.S. (1 Cranch) 137, 174 (1803) ("It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such construction is inadmissible, unless the words require it."); Oneida Indian Nation of New York v. New York, 691 F.2d 1070, 1085 (2d Cir. 1982) ("It is the court's duty in such circumstances to make every effort to give effect [to] every word of a constitution, to resolve ambiguities, and to reconcile inconsistencies." (Citations and internal quotation marks omitted.)). In particular, the circuit court failed to give effect to the word "eligible."

The word "eligible" must be construed so as to give it meaning within the context of section 7. "Eligible" means "fit or proper to be chosen" or "legally qualified to be elected or appointed to office." Random House College Dictionary at 429. Thus, the resignation requirement is triggered when an individual becomes "qualified" to "seek" office as a candidate. The "eligibility" or "qualification" requirement must be significant in helping to determine the definition of the word "candidate." If the "eligibility" or "qualification" requirement did not help to shape the meaning of the word "candidate," any valid

officeholder would always be "qualified" to "seek" another office as a candidate. Thus, the officeholder would be required to resign immediately upon taking office. Clearly, such an absurd result was not intended. The question, therefore, focuses on how the phrase "eligible as a candidate" determines the definition of "candidate."

In discussing the language of section 7, the circuit court stated that "[t]he court is not aware of any legal requirement for a person running for office to establish 'legal qualification to serve' at the time of filing a campaign [o]rganizational [r]eport or at any other time before the filing of nomination papers, at which time a candidate must certify that he or she is legally qualified to serve in the office sought." (Emphases added.) We believe that the foregoing statement answers the question in this case. The parties point to no other provisions in the statutes that establish qualifications for seeking office other than those attendant to the nomination requirements in HRS § 12-3. Contrary to Blair's contention, an individual does not become "eligible" or qualified to be a candidate solely because the law mandates that the individual file a campaign organizational report as soon as the individual receives contributions of, or expends, \$100 in support of a potential campaign. See HRS § 11-194. We do not believe that

any individual who contemplates running for another office, or who, by filing a campaign organizational report seeks to ascertain whether he or she can garner sufficient support to run for office, automatically becomes "qualified" for such office by virtue of those actions. Although filing a report may be a necessary step in the process of running for office, this requirement alone is insufficient to establish an individual's eligibility or qualifications "as a candidate."

Moreover, the framers of section 7 are deemed to have been aware of the statutory scheme in effect at the time that section 7 was promulgated. See Hawai'i State AFL-CIO v. Yoshina, 84 Hawai'i 374, 377, 935 P.2d 89, 92 (1997). Section 7 was promulgated at the Constitutional Convention of 1978, see Stand. Comm. Rep. No. 72 in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 678 (1980), and HRS chapter 12 existed substantially in its current form at that time. Compare HRS chapter 12 (1976 & Supp. 1977) with HRS chapter 12 (1993 & Supp. 2001). This contemporaneous understanding is further supported by the fact that the legislature amended HRS § 12-3(a) shortly after the 1978 Constitutional Convention to require that a person filing nomination papers comply with section 7 by the time of the filing. See 1980 Haw. Sess. L. Act 264, § 2 at 499-500 (codified at HRS § 12-3(a)(8)). Accordingly, a public officer becomes "eligible as candidate for another public office"

at the time he or she files nomination papers for the second office. Therefore, he or she must resign from his or her present office before filing nomination papers for the second office, if the term of the office sought begins before the end of the term of the office held.

We do not discern a contrary intent in the constitutional history, the ordinary meaning of the term "candidate" as it is used in section 7, or the objectives to be served by section 7. The Committee on Bill of Rights, Suffrage and Elections of the 1978 Constitutional Convention reported on section 7 as follows:

Your Committee believes that it would be justified to require a person to resign from office before becoming eligible to run for another public office with an overlapping term. By running for another office, the person is in effect saying that he no longer wishes to fulfill the responsibilities of the office to which he was elected, and accordingly he should resign from that office. The voters should not be saddled with an elected public official who no longer wishes to fulfill the duties of the office to which he was elected and will do so only if he fails to win election to the other office. This is not fair to the voters, who elected him to serve a full term, and is a violation of the public trust.

. . . .

Your Committee does not believe it would be warranted for a candidate to resign if the office he is seeking has a concurrent term. In this case, he is in effect resigning since, if he loses the election, he does not have an office to return to. He is not abusing his elected office by using it as a safe haven from which to make political forays and return if he proves unsuccessful.

Stand. Comm. Rep. No. 72, supra (emphasis added). The voter information booklet at the 1978 general election, which ratified section 7, stated that the amendment "makes any elected public

officer who wants to run for another office quit before running for another office if the terms of the office are not the same." None of the foregoing history addresses the dispositive issue of when an officeholder becomes "eligible as a candidate" for another office. As stated earlier, the original intent is to be derived primarily from the language of section 7 itself, which we have already determined can refer to little else than to the time when an individual files nomination papers.

Similarly, Blair's reliance on In Re Pioneer Mill Co., Ltd., 53 Haw. 496, 497 P.2d 549, reh'g denied, 53 Haw. 573, 497 P.2d 549 (1972), is misplaced. In Pioneer Mill, this court, relying on the "ordinary meaning" of the word "candidate," held that a judge was required to resign his office at the time he availed himself of a campaign headquarters set up for him and made a public announcement that he would run for governor. See id. at 498, 497 P.2d at 551. The constitutional provision at issue stated that "[a]ny justice or judge who shall become a candidate for an elective office shall thereby forfeit his office." Id. The language of the constitutional provision in Pioneer Mill was different from the language at issue here because (1) the meaning of the word "candidate" in Pioneer Mill was not shaped by the word "eligible" as it is in section 7 and (2) the provision related solely to judges, as opposed to "elected public officers."

Finally, the parties dispute the applicability to this case of the various "objectives" of section 7 as they are discussed in Fasi v. Cayetano, 752 F. Supp. 942 (Dist. Haw. 1990). In Fasi, the court summarized these objectives, which were put forth by the state in defending the constitutionality of section 7, as follows:

First, the resign-to-run law encourages elected public officials to devote themselves exclusively to the duties of their respective offices. Second, the resign-to-run amendment reduces the possibility of public subsidies for officials merely using public office as a "stepping stone" to higher office. Third, the provision prevents abuse of office before and after an election. Fourth, it protects the expectations of the electorate in voting a candidate into office. Fifth, the resign-to-run amendment ensures loyalty of public servants to their electorate. Finally, the rule minimizes the possibility of disruptions in public office and reduces the need for special elections.

Id. at 951. Assuming these to be the policy arguments for the existence of section 7, they are on the whole equally applicable to either party's interpretation of when the resignation requirement is triggered. Consequently, they are not useful in determining that date.

IV. CONCLUSION

Based on the foregoing, we hold that under article 2, section 7 of the Hawai'i Constitution, a public officer becomes "eligible as a candidate for another public office" at the time he or she files nomination papers for the second office. Therefore, he or she must resign from his or her present office before filing nomination papers for the second office, if the term of the office sought begins before the end of the term of

the office held. Accordingly, we reverse the judgment of the circuit court.

On the briefs:

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