

ORIGINAL

IN THE SUPREME COURT OF OHIO

HARRISON W. SMITH, JR., et. al.,
Appellants,

v.

GRANVILLE TOWNSHIP BOARD OF
TRUSTEES
Appellees.

:

:

CASE NO. 96-2350

:

:

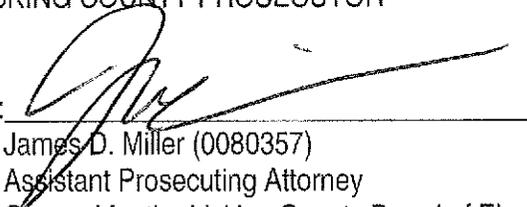
MOTION FOR ORDER PERMITTING DESTRUCTION OF IMPOUNDED AND SEALED BALLOTS

Now comes the undersigned, on behalf of the Licking County Board of Elections, and hereby respectfully submits the following as its Motion for Order Permitting Destruction of Impounded and Sealed Ballots. The reasons for this motion are more fully supported in the memorandum below.

Respectfully submitted,

KENNETH W. OSWALT
LICKING COUNTY PROSECUTOR

By:


James D. Miller (0080357)
Assistant Prosecuting Attorney
Counsel for the Licking County Board of Elections
Licking County Prosecutor's Office
20 South Second Street, 4th Floor
Newark, Ohio 43055
PH: 740.670.5255
FX: 740.670.5241

MEMORANDUM IN SUPPORT

The facts and procedural history of this matter are of long duration. The relevant facts, in short, are as follows: Gebhart W. Keny owned undeveloped property in Granville Township, Licking County, Ohio, which was situated between the Village of Granville and the City of Newark. On October 31, 1994, Keny initiated a petition to the Licking County Board of Commissioners seeking to annex the property to the City of Newark pursuant to R.C. § 709.02. While this procedure for annexation was underway, on November 2,

RECEIVED
MAR 12 2010
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
MAR 12 2010
CLERK OF COURT
SUPREME COURT OF OHIO

PROSECUTING ATTORNEY
KENNETH W. OSWALT
20 SOUTH SECOND ST.
NEWARK, OH 43055

FELONY AND CIVIL
DIVISIONS
670-5255

JUVENILE COURT
DIVISION
670-5264

TAX FORECLOSURES
670-5021

FAX 670-5241

1994, the Village of Granville filed a petition under R.C. § 709.13, *et. seq.*, requesting a merger with the Village of Granville of all township property, including Keny's property that was the subject of his previously submitted annexation petition. Further, on November 7, 1994, a number of electors from the Village of Granville and the Township of Granville filed their own petition under R.C. § 709.45 instituting merger proceedings of the Village and Township.

The competing annexation and merger petitions became the basis for a long dispute among the parties. During the dispute, the merger election instituted by the electors of the Village and Township occurred on November 5, 1996, resulting in ballots being cast and submitted to the Licking County Board of Elections. Many legal proceedings ensued, ultimately leading this Court to determine that the Licking County Board of Elections was ordered to hold the votes cast in said election "impounded and sealed" via this Court's decision in Smith v. Granville Township Bd. of Trustees (May 13, 1998), 81 Ohio St.3d 608, Ohio Supreme Court Case Number 98-2350.

The undersigned, who statutorily provides legal guidance and representation to the Licking County Board of Elections, was recently informed that the Board of Elections still has possession of said impounded and sealed votes from the above-described merger election held on November 5, 1996. These votes remain in the Board of Elections' vault, impounded and sealed pursuant to this Court's order of May 13, 1998.

On behalf of the Board of Elections, the undersigned endeavored to discover if any subsequent orders or proceedings had been issued, determining whether the Board of Elections was authorized to destroy or otherwise handle the impounded and sealed votes at issue. No further orders, either in state or federal court proceedings, were found by the undersigned that addressed these votes. Further, it is the opinion of the undersigned that no further action has been taken in regard to this matter, judicially or otherwise, since 1998; and further, that any such legal action attempted at this juncture would be barred

PROSECUTING ATTORNEY
KENNETH W. OSWALT
20 SOUTH SECOND ST.
NEWARK, OH 43055

FELONY AND CIVIL
DIVISIONS
670-5255

JUVENILE COURT
DIVISION
670-5264

TAX FORECLOSURES
670-5021

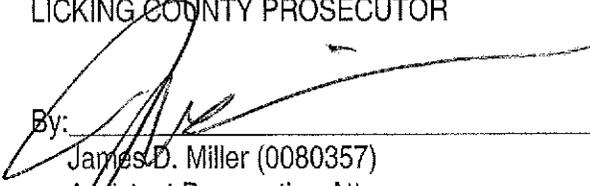
FAX 670-5241

due to *res judicata* and mootness. As such, the Board of Elections seeks direction from this Court as to the proper destruction or disposal of said votes still in its possession.

WHEREFORE, based on the foregoing, the Licking County Board of Elections respectfully requests an order from this Court permitting the Board of Elections to destroy said impounded and sealed votes from the November 5, 1996 merger election that was part of this instant litigation, as the undersigned, on the Board's behalf, believes that no further orders have been made regarding these votes, and that the legal issues surrounding these votes have been fully and completely litigated, and that no further legal proceedings can ever be forthcoming regarding these issues due to *res judicata* and mootness.

Respectfully submitted,

KENNETH W. OSWALT
LICKING COUNTY PROSECUTOR

By: 

James D. Miller (0080357)
Assistant Prosecuting Attorney
Counsel for the Licking County Board of Elections
Licking County Prosecutor's Office
20 South Second Street, 4th Floor
Newark, Ohio 43055
PH: 740.670.5255
FX: 740.670.5241

PROSECUTING ATTORNEY
KENNETH W. OSWALT
20 SOUTH SECOND ST.
NEWARK, OH 43055

FELONY AND CIVIL
DIVISIONS
670-5255

JUVENILE COURT
DIVISION
670-5264

TAX FORECLOSURES
670-5021

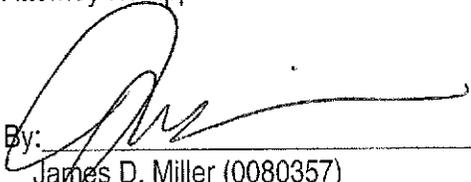
FAX 670-5241

CERTIFICATE OF SERVICE

This certifies that a true copy of the foregoing document was served upon the following parties and/or attorneys by ordinary U.S. Mail, postage prepaid, on this 11th day of March, 2010.

Duke Thomas, Esq.
Vorys, Sater, Seymour & Pease
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Attorney for Appellant

Wanda Carter, Esq.
Newhouse, Prophater, Letcher & Moots
5025 Arlington Centre Boulevard
Suite 400
Columbus, Ohio 43220
Attorney for Appellee

By: 
James D. Miller (0080357)
Assistant Prosecuting Attorney

PROSECUTING ATTORNEY
KENNETH W. OSWALT
20 SOUTH SECOND ST.
NEWARK, OH 43055

FELONY AND CIVIL
DIVISIONS
670-5255

JUVENILE COURT
DIVISION
670-5264

TAX FORECLOSURES
670-5021

FAX 670-5241