

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. TIMOTHY
A. SWANSON,

Relator,

vs.

GEORGE T. MAIER,

Respondent.

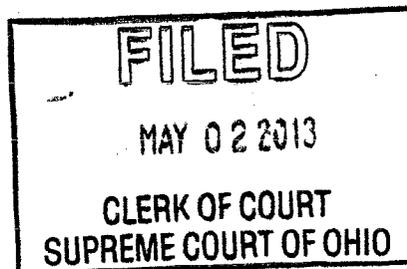
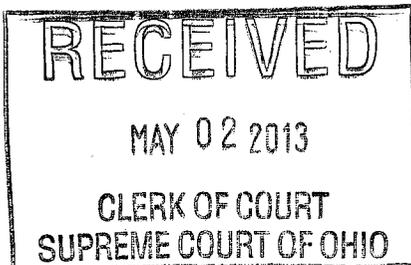
CASE NO. 2013-0274

*ORIGINAL ACTION IN
QUO WARRANTO*

**RELATOR'S MEMORANDUM IN RESPONSE TO
RESPONDENT'S MOTION FOR RULINGS ON DEPOSITION OBJECTIONS**

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RESPONDENT'S MOTION FOR RULINGS ON DEPOSITION OBJECTIONS**

Three depositions were taken by the parties in connection with this original *quo warranto* action. The transcripts of those depositions, for Timothy A. Swanson, George T. Maier, and Ronald J. Myers, have been submitted as part of the evidence for the Court's consideration. In his motion filed on April 22, 2013, the Respondent correctly observes that, during the depositions, there were various objections stated. Because the objections do not address any material matters affecting the substantive evidence submitted for this Court, Relator respectfully submits that the objections should be overruled.

A. Testimony of Timothy A. Swanson.

1. Page 40, lines 12 through 15

The question, by Respondent's counsel, on page 40 beginning at line 3, contained a misleading premise: "Are you aware that he [Administrative Judge Forchione] found him [Respondent] qualified to run as sheriff." Relator's counsel objected accordingly. Under the process at issue in this case, an Administrative Judge of a local Common Pleas Court called upon to review an application from one seeking election or appointment to the position of County Sheriff does not make any determination that an applicant is qualified. Frankly, the witness' answer correctly identified this point.

In any event, in light of the objection to the question posed by Relator's counsel in the first instance, the motion to strike at page 40, lines 12 through 15 may be granted. Of course, the Relator and his counsel are confident that the members of this Court are able to address such matters in the record (the identified objections, and others, that appear in the transcripts) without any particular formality.

2. Page 24, lines 14 through 16

Withdrawn by Respondent.

B. Testimony of George T. Maier.

1. Page 28, line 7

The question does not imply or infer disregarding the “application” submitted by the Respondent. Rather, the reference was to disregarding the inclusion, under employment history, of reference to the January 2013 Harrison County position included by the Respondent through an addendum or supplement. Respondent testified that he did not believe that he needed that position to qualify. (Page 28, line 3). Thus, Respondent testified that reference to the Harrison County position, as part of his application, could be disregarded because it was not important. (Page 28, lines 4-8).

2. Page 28, line 10

Refer to the foregoing response under item 1.

3. Page 28, line 15

Refer to the foregoing response under item 1.

4. Page 31, line 5

Withdrawn by Respondent.

5. Page 31, line 10

The witness testified that he submitted a written resignation letter to the Harrison County Sheriff. (Page 31, lines 13-14). The record can stand for that point. Otherwise, Relator accepts that, in response to the specific question as to why a copy of any such letter was not among items produced under a Public Records request, the Respondent may well not be aware of any reason for

exclusion of a copy.

6. Page 36, line 6

Refer to the foregoing response under item 1. This evidence simply further addresses the point that the Respondent himself felt there was no relationship between his two days of work with Harrison County in January of 2013 and his application for appointment. (Page 36, lines 8, 10). The Respondent repeated the word "relationship," and thus must have felt that the term as used in the question was applicable.

7. Page 36, line 9

Refer to the foregoing response under item 6.

8. Page 36, lines 14 through 17

Refer to the foregoing response under item 6. While going the same point, the question poses a different emphasis. The question at line 11-13 stresses that the Respondent reportedly did not take the two-day job in Harrison County for any purpose of assisting with his application.

9. Page 38, lines 13 through 14

The witness was free to offer, in answer, whether he knew or did not know how information was obtained to complete the document in question.

Moreover, any objection to the form of the question was cured at Page 38, lines 16-19.

10. Page 42, lines 15 through 19

Withdrawn by Respondent.

11. Page 43, line 13

The statute referred to in the question speaks to positions of "rank." The witness was merely asked whether the ranks of corporal or sergeant, in service as a peace officer, were familiar to him.

The witness answered that he was familiar with such positions. (Page 43, line 14). He further acknowledged that he did not hold the rank of either corporal or sergeant when he served as Assistant Director for Public Safety (his full time employment at the relevant time). (Page 43, lines 15-17).

12. Page 50, line 8

The question does not ask the witness to explain any statute under consideration. The clear import of the question (at lines 5-7) is whether the witness knew how many hours were required (that he needed) to qualify under the post secondary education section of the Sheriff's qualifications statute. The witness responded that he did not know. (Page 50, line 9).

13. Page 53, line 12

Withdrawn by Respondent.

14. Page 105, line 7

The question (Page 104, lines 22-25, Page 105, lines 1-6) may be considered withdrawn, and the objection and answer ignored.

15. Page 109, line 8

The question (Page 109, lines 5-7) merely asked the witness to acknowledge that, if he does not satisfy the statutory qualifications for the Office of Sheriff, then he should not hold such position. Asking for acknowledgment of such point, while perhaps obvious, by the Respondent himself, is fair and appropriate.

16. Page 109, line 19

Refer to the foregoing response under Item 15.

17. Page 113, line 9

In the testimony directly in advance of the objection, the Respondent effectively concedes that the two-days he worked for Harrison County, in January of 2013, do not necessarily qualify him as a full-time peace officer, in light of his full time employment with the City of Massillon at the same time. (Page 112, line 20-25, Page 113, line 1-4). The question addressed Respondent's claim, not any legal conclusion under any statute.

18. Page 113, line 15

Refer to the foregoing response under Item 17.

19. Page 113, line 23

The question reaffirms the concession from the witness that the inclusion of the Harrison County work, from one weekend in January of 2013, was not, from his standpoint, necessarily important as part of the application process. (Page 113, line 10).

20. Page 114, lines 1 through 3

Refer to the foregoing response under Item 19.

21. Page 114, line 15

The question merely explores the fact that the Respondent's assistance with the Harrison County Sheriff's Office, on one weekend in January, 2013, could have been service on a part time basis. Respondent previously served with other agencies on a part time or reserve basis and was familiar with such appointments.

22. Page 114, line 20

Refer to the foregoing response under Item 21.

23. Page 114, lines 24 through 25

Refer to the foregoing response under Item 21.

24. Page 115, line 3

Refer to the foregoing response under Item 21.

25. Page 117, line 24

The points made at Page 117, lines 22-25, and Page 118, lines 3, are not necessarily material to the substance for the Court's determination, and the questions may be considered withdrawn.

26. Page 118, line 3

Refer to the foregoing response under Item 25.

27. Page 118, line 11

Withdrawn by Respondent.

C. Testimony of Ronald J. Myers.

1. Page 12, line 20

Any objection to the form of the question was cured at Page 13, lines 3-6.

2. Page 13, line 1

Refer to the foregoing response under Item 1.

3. Page 13, line 19

Any objection to the form of the question was cured at Page 13, lines 21-23.

4. Page 18, line 14

Any objection to the form of the question was cured at Page 18, lines 15-18.

5. Page 21, line 3

The fact that Respondent worked on a single Saturday in January, 2013, for the Harrison

County Sheriff's Office, is not contested in any fashion in this case. Regardless, any objection to the form of the question is cured, for purposes of the record, at Page 20, lines 6-12.

6. Page 22, line 22

Any objection to the form of the question was cured at Page 22, lines 23-25, and continuing on Page 23, lines 1-3.

7. Page 24, line 19

The question (Page 24, lines 15-17) simply asked the witness to confirm whether a copy of Respondent's personnel file was included as part of the response to a Public Records request made by the witness. The file (response) marked as an exhibit for the deposition was referred to throughout the deposition and identified for the record by the witness.

8. Page 26, line 5

The fact that Respondent worked on a single weekend, Saturday the 12th and Sunday the 13th, in January, 2013, for the Harrison County Sheriff's Office, is not contested in any fashion in this case. Regardless, any objection to the form of the question is cured, for purposes of the record, at Page 57, lines 16-19.

9. Page 27, line 10

Any objection to the form of the question is cured at Page 26, lines 24-25, Page 27, lines 1-2. The ID card issued to the Respondent is not in dispute in this case in any fashion.

10. Page 35, line 11

The witness was simply asked his familiarity with the process of reporting new hires, as peace officers, to OPOTA. The fact that the witness was familiar with the process may account for why a notice was submitted by the witness with respect to the Respondent's short-lived, January

2013 appointment.

11. Page 36, lines 6 through 7

Refer to the foregoing response under Item 10.

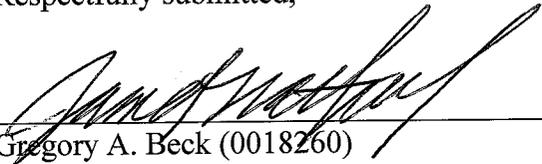
12. Page 40, line 23

The expectation of the witness that the Respondent was required to serve 80 hours in 14 day periods, to be considered full time with the Harrison County Sheriff's Office, is well established in the record, through the testimony of Ronald J. Myers. Thus, the question at Page 40, lines 19-22 may be ignored. Refer to the following.

13. Page 41, line 1

Any objection to the form of the question is cured in the record. *See*, Page 18, lines 4-10, lines 15-18; Page 11, lines 3-15; Page 17, lines 14-17 (Q. "Would the same provision of the union contract, relating to providing the 80 hours in 14 days, apply to George's [Respondent's] position?" A. "That is correct."). *See too*, Page 25, lines 9-16.

Respectfully submitted,



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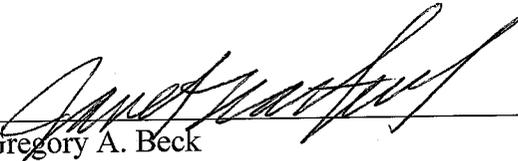
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PROOF OF SERVICE

A copy of the foregoing memorandum was served by regular U.S. mail this 1st day of May, 2013, to:

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