[J-87-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

IN RE: NOMINATION PETITION OF TIMOTHY J. CARROLL	:	No. 37 MAP 2006
	:	Appeal from the Order of the Commonwealth Court entered March 22, 2006 at No. 115 M.D. 2006
APPEAL OF: TIMOTHY J. CARROLL	:	
	:	SUBMITTED: April 5, 2006

DISSENTING OPINION

JUSTICE BAER **DECIDED: May 2, 2006**

While the Majority emphasizes our mandate in statutory interpretation to effectuate the intent of the General Assembly, and acknowledges that legislative intent typically is reflected in a statute's plain language, it construes the Public Official and Employee Ethics Act (Ethics Act or Act), 65 Pa.C.S. §§ 1101, *et seq.*, to permit Timothy J. Carroll (Candidate) to appear on the primary ballot despite his failure to make a mandatory disclosure under the Act. Because I believe this result defies the Ethics Act's plain language, I respectfully dissent.

The Commonwealth Court found fatal to Candidate's nomination petition his failure to disclose his positions as President of the not-for-profit "Timothy J. Carroll's Mayors Club of Dallas Borough" (the Club), see id. § 1105(b)(8) (requiring disclosure of "[a]ny office, directorship or employment of any nature whatsoever in any business entity"), and as board member on the Dallas Area Municipal Authority (DAMA), see id.

§ 1105(b)(1) (requiring disclosure of "[n]ame, address and public position"). I find no cause to disagree with the Majority to the extent that it finds that Candidate was not obligated to disclose his uncompensated office as president of the Club. I would not reach that question, however, because I believe Candidate's failure to disclose his position as board member for DAMA standing alone requires that his nomination petition be set aside. The analysis that follows, accordingly, concerns only that aspect of the Majority's opinion that forgives Candidate's failure to disclose his undisputedly public position with DAMA.[1]

Our object in construing a statute is "to effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Id. § 1921(b). We construe a statute to give effect to all of its provisions, id., rendering the entirety of a statute "effective and certain," id. § 1922(2), and guided by the presumption "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable." Id. § 1922(1).

The Ethics Act requires each public official and public employee to file an annual statement of financial interests (Statement), 65 Pa.C.S. § 1104(a), and requires a candidate for local, county, or state office to file his Statement on or before the last day for filing a petition to appear on the ballot. Id. § 1104(b). The Statement is to be filed on

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[1] My inclination is to construe the term "public position" narrowly to avoid undue challenges to would-be candidates' ballot access. That said, even on a narrow definition, board membership with a municipal sewage authority, which funnels substantial public funds into a function critical to public health, certainly qualifies. Indeed, testifying before the Commonwealth Court, Candidate all but conceded the point. See, e.g., Notes of Testimony, 3/20/06 (N.T.), at 11 (DAMA authorized to expend public funds), 12 (DAMA identified by the Pennsylvania Department of State as a Pennsylvania municipal authority).

a form promulgated by the State Ethics Commission (Commission), id. § 1105(a), and must contain the information enumerated in § 1105(b). That section provides, *inter alia*, that a candidate for public office "shall" disclose his or her "[n]ame, address and public position." 65 Pa.C.S. § 1105(b)(1). The Statement of Financial Interests form (Form) promulgated by the Commission is consistent with this provision, requiring, in block 4, the candidate to disclose any "PUBLIC POSITION OR OFFICE (member, Commissioner, job title, etc.) [the candidate is] seeking[,] hold[s, or] held." The Ethics Act leaves no doubt as to the sanction for noncompliance with § 1105: "Failure to file the statement in accordance with the provisions of this chapter shall . . . be a fatal defect to a petition to appear on the ballot." Id. § 1104(b)(3) (emphasis added).

The "fatal defect" rule is the product of the General Assembly's amendment to the Ethics Act following rulings by this Court allowing for some modicum of leniency in addressing candidates' good faith failures to observe the Act's requirements in cases such as Commonwealth, State Ethics Comm'n v. Baldwin, 445 A.2d 1208 (Pa. 1982). See In re Petition of Cioppa, 626 A.2d 146, 148-49 (Pa. 1993) (opinion announcing the judgment of the Court).[2] In Cioppa, we discerned in the legislature's amendment to the Ethics Act, see Act of June 26, 1989, P.L. 26, No. 9, § 1, its intent to render unequivocal the consequence of a candidate's failure to file a Statement "in accordance with the provisions" of the Act, and found the "fatal defect" language added to then section § 404(b)(3) to be "clear and unambiguous." Id. (quoting 65 Pa.C.S. § 404(b)(3), now 65

[2] In Cioppa, Chief Justice Nix authored the opinion announcing the judgment of the Court. Then-Justice Cappy concurred in the result, and Justice Papadakos authored a concurring opinion joined by Justice Larsen. Justices McDermott and Zappala did not participate in the decision.

Pa.C.S. § 1104(b)(3)).[3] In the years since, the legislature has made no effort to alleviate the more severe effects spawned by the decisions of the Commonwealth Court and this Court in the wake of the 1989 amendments and Cioppa, even when those cases set aside nomination petitions due to omissions from timely but incomplete Statements. See In re Nomination Petition of Braxton, 874 A.2d 1143 (Pa. 2005) (*per curiam*) (undisclosed income); In re Nomination Petition of Katofsky, 872 A.2d 1196 (Pa. 2005) (*per curiam*) (same); In re Nomination Petition of Anastasio, 820 A.2d 880 (Pa. Cmwlth.), aff'd per curiam, 827 A.2d 373 (Pa. 2003) (same). But see In re Petition of Benninghoff, 852 A.2d 1182, 1189 (Pa. 2004 (Castille, J., concurring) (interpreting the 1989 amendments as requiring application of the "fatal defect" rule only to untimely financial interest statements).[4]

While our interpretive function sometimes requires us to attend to structural cues and the larger picture of a statutory scheme in discerning legislative intent, the Majority crosses the fine line that separates this salutary approach from disregarding the letter of the law in pursuit of its spirit. The Majority finds support for its exclusive focus on a

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[3] The language of § 1104(b)(3) does not differ materially from that of former § 404(b).

[4] In Benninghoff, Mr. Justice Castille interpreted Cioppa as signaling that the only fatal defect is timeliness. 852 A.2d at 1192 (Castille, J., concurring) ("Given the occasion for the amendment [to the Ethics Act], I would conclude that fatal defects are limited to **untimely** filings." (emphasis in original)). I do not read the Court's decision in that case so narrowly, though certainly it was couched in terms of the issues of timeliness that then faced this Court. To the extent the opinion announcing the judgment of the Court in Cioppa was correct that the legislature intended to clarify the Ethics Act in favor of more stern consequences in the wake of our decision in Baldwin, it could have specified that only untimeliness in filing a Statement would constitute a fatal defect. To the contrary, however, the Act's amended language emphasized that a fatal defect would be found for failure to file a Statement "in accordance with the provisions" of the Act, a far more sweeping proposition than that espoused by Mr. Justice Castille.

candidate's financial entanglements from the Act's statement of purpose, which, as the Majority appropriately notes, is steeped in language emphasizing the importance of full financial disclosure. See 65 Pa.C.S. § 1101.1(a) ("Purpose"). In section 1101.1(c) ("Legislative intent"), however, the legislature charges the independent State Ethics Commission (Commission) with "promoting public confidence in government," a mandate that I read to encompass more than mere oversight of a candidate's financial interests. For example, our legislature under the same title has deemed it necessary to preclude a party from holding certain offices contemporaneously, see 65 P.S. §§ 1, *et seq*. (enumerating "incompatible" offices), and has barred "subversive" persons from holding Commonwealth office. See 65 P.S. §§ 211, *et seq.* While these provisions do not appear in the Chapter before us, they illustrate the legislature's cognizance of the danger of attending only to a candidate's financial interests when assessing his candidacy, or, alternatively, going through the motions of requiring other disclosures but providing no sanction sufficient to deter noncompliance.

The Majority acknowledges that § 1105(b)(1) differs in its emphasis on identifying information from §§ 1105(b)(2)-(10), which require a candidate to divulge information explicitly directed at revealing nascent financial conflicts of interest. Maj. Slip Op. at 15 (acknowledging that "subsection (1) is unlike the other subsections in 1105(b) in that it does not address matters that necessarily involve financial information"). Nevertheless, the Majority finds in the larger statute evidence that this particular provision is directed not at candidates for public office, but rather at career public employees whose "public positions" are a form of identifying information and who also are required to file annual Statements. In order to take the statute at face value and require that candidates for public office disclose a "public position" regardless of whether the position is compensated, the Majority argues, requires viewing § 1105(b)(1) in "splendid isolation

from the rest of the Act." Thus, it concludes that "[a] reasonable person interested in seeking public office who consulted the statute, the Commission's form, and its accompanying instructions -- all of which speak in terms of financial interests -- could reasonably understand the subsection (1) requirement to apply only to those 'positions' necessary to identify the candidate, the office he seeks, and his **financial** interests." Maj. Slip Op. at 16 (emphasis in original).[5] This reading fails, however, to give real effect to the term "public position" in the context of § 1105(b)(1) in violation of our interpretive mandate. 1 Pa.C.S. § 1921(b).

The Majority maintains that a contrary reading would lead to an absurd result unintended by the legislature. To this end, the Majority adopts wholesale Appellant's doomsday scenario: that to require disclosure of his position with DAMA, a "position" he does not dispute is "public" for purposes of the Ethics Act,[6] would be tantamount to requiring disclosure of positions such as "President of the Parent Teachers Association, Treasurer of the Township Youth Soccer Program, Chair of a church committee, and a myriad of others." Brief for Appellant at 10; see Maj. Slip Op. at 17 (noting that "[t]hese associations simply reflect active lives of good citizenship," and finding "disproportionate" the "consequence of denying a candidate the right to run for office [for] failure to disclose a public 'position' which does not involve the candidate's financial interests").

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[5] This "could reasonably understand" formulation, it bears noting, is inconsistent with Pennsylvania courts' prior indifference to whether a candidate's failure to make a mandatory disclosure was in good faith. See In re Nomination Petition of Braxton, 874 A.2s 1143 (Pa. 2005); In re Nomination Petition of Anastasio, 820 A.2d 880 (Pa. Cmwlth.), aff'd per curiam, 827 A.2d 373 (Pa. 2003).

[6] See supra n.1 and accompanying text.

Candidate's litany, however, is a strawman argument to the extent that it is any argument at all. No positions in the above list would be interpreted by reasonable people as "public positions" for purposes of the statute. To find otherwise would require disregarding the narrower definition of "public" manifest in the Act's full title and its definitional section. See 65 Pa.C.S. § 1101 (identifying the statute as the "Public Official and Employee Ethics Act"); § 1102 (defining a "public official" as "[a]ny person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof" and "public employee," in relevant part and with exceptions immaterial to this discussion, as "[a]ny individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature").[7] Informed by these definitions, we can conclude at a minimum that a "public position" is one intimately involved with the functions of state or local government.[8]

To the extent the Act is less than clear, I would look to the Form promulgated by the Commission in satisfaction of its express statutory responsibility, 65 Pa.C.S.

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[7] Notably, the Act's definition of "public official" does not require that the official be compensated.

[8] I share the Majority's concern that an overbroad definition of "public position" will simultaneously impose a potentially onerous burden on the most civically active candidates for office, and might leave parties acting in good faith vulnerable to specious challenges. As noted, infra, I believe that the distinction drawn by the Commission between "public position" and "public office" is material, and consistently with the Ethics Act requires disclosure of the position here at issue. I also note, however, that the Act already contains the seeds of much mischief in its broad definition of "public official." Perhaps, to the extent the result reached herein does not reflect legislative intent in either direction, the General Assembly will clarify the disclosures necessary to strike a fair balance between ballot access and transparency.

§ 1105(a), which effectively manifests its administrative interpretation of the Act. In block 4, the Form requires disclosure of "PUBLIC POSITION OR PUBLIC OFFICE (member, Commissioner, job title, etc.)," and the accompanying instructions provide as follows:

> Please check the appropriate block (seeking, holding, held) for each position you list in the blocks below. List all of the public position(s) which you are seeking, currently hold or have held in the **prior** calendar year, Please be sure to include job titles and official titles such as "member" or "commissioner" (even if serving as an alternate/designees).

Maj. Slip Op. at 2 n.3 (emphasis in original). "[A]n administrative agency's interpretation of a statute for which it has enforcement responsibility is entitled to substantial deference." Borough of Pottstown v. Pennsylvania Mun. Retirement Bd., 712 A.2d 741, 744 (Pa. 1998); see 1 Pa.C.S. § 1921(c). Of course, where an administrative interpretation of a statute is inconsistent with the statute itself, or where the statute's meaning is unambiguous, administrative interpretations carry little or no weight. Pottstown, 712 A.2d at 744; 1 Pa.C.S. § 1921(c). In the instant case, however, either § 1501(b)(1)'s requirements are not clear on their face and are clarified by the Ethics Commission's uncomplicated reiteration on the Form and its accompanying instructions of the requirement that candidates disclose "public position[s]" without regard to whether the positions are compensated, or the statute is unambiguous and means precisely what it says -- that a candidate's "public position[s]," like his name and address, are disclosures required by the Act.

The Form and accompanying instructions also resist the Majority's attempt to limit the "public position" language to apply only to "public employees," its only effort at giving effect to the language. The instructions' express requirement that a signatory detail not only positions currently held but those formerly held during the prior year

seldom will apply to public employees filing the Form for purposes of continuing employment.[9] Moreover, the statute clearly identifies public *employees* as such, and we should not read "public position" to apply only to those individuals picked out by another, specifically defined term. See 65 Pa.C.S. § 1102 (defining "public employees").[10] The Form calls for the disclosure of any "PUBLIC POSITION OR PUBLIC OFFICE," and notes parenthetically that these include "member" and "Commissioner," but does not require that these be compensated, a circumstance necessitated by the definition of "public employee." See id. Reading these terms in a commonsense fashion and in tandem with the statutory language they effectuate, it is difficult not to conclude that the Commission envisaged the disclosure of more than mere paying public positions.

I think it far less absurd to interpret 65 Pa.C.S. § 1105(b)(1) consistently with the Commission to require disclosure of any "public position" held in the year preceding execution of the Form. The Majority's reading of § 1105 effectively reduces the plain language requirement that candidates for public office disclose any "public position" to mere surplusage, an untenable result where an equally reasonable construction of the Act gives substantial effect to that term and all others. I detect no harm in the prospect that the statute should be construed in a way that dictates broader disclosures from prudent candidates for office; certainly, the reading advanced herein is neither absurd

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[9] Admittedly, the Act envisages circumstances where former public employees will file such a form. See 65 Pa.C.S. § 1104 (requiring a public official or employees to file a Statement by May 1 of the year after he leaves a covered position).

[10] For the same reason, I do not believe our ruling with regard to the term "public position" bears on the meaning of "public official," which, as noted, supra n.7, is defined broadly by the Act.

nor incapable of execution. Moreover, this reading has the virtue of flowing directly from, and effectuating word by word, the Act's plain language.

Even if our ruling were to prod candidates to read the Act overinclusively, little obvious harm would descend from additional disclosures, the burden of which would be offset by the benefit to the electors both in knowledge of whom they are electing and in their confidence that the Commonwealth privileges the sort of transparency the Ethics Act plainly is designed to enhance. For the same reasons, no serious candidate would be deterred by the prospect of such disclosures. Regardless, I believe that to err in favor of disclosure especially of public positions held by a candidate best reflects legislative intent, see 65 Pa.C.S. § 1101.1(b) (recognizing the often myriad civic and public involvements of candidates for public office, but underscoring the legislature's intent "to foster maximum compliance with [the chapter's] terms"). Especially in light of the 1989 amendments to the Ethics Act, only a far more strained reading could conclude that the legislature intended candidates to parse the statute narrowly to minimize disclosure of public and private involvements that might bear on a candidate's fitness for office (and intended courts to err in favor of less than forthcoming candidates) based upon overly formal readings of the disclosure statute. Indeed, I find it perversely contrary to manifest legislative intent to encourage candidates to err on the side of non-disclosure.

In sum, I believe any reasonable candidate reading the Ethics Act in conjunction with the Commission's Form, both of which require the disclosure of any "public position," would in prudence disclose a position like Candidate's board membership with

DAMA. In failing to do so, Candidate violated the letter and the spirit of the Act.[11] For the foregoing reasons, I would affirm the Commonwealth Court's ruling. Thus, I dissent.

Madame Justice Baldwin joins this Dissenting Opinion.

[11] My resolution of this issue would leave open the possibility that the "substantial compliance" exception carved out by this Court in In re Nomination Petition of Benninghoff, 852 A.2d 1182 (Pa. 2004), and distinguished by the Commonwealth Court in this case, would excuse Candidate's nondisclosure in this case. Although he opined that his appointment to the board of DAMA by the Dallas Borough Council occurred only in virtue of his office as Mayor, Candidate conceded that the position was neither a direct nor a necessary consequence of that office. See N.T. at 24 (acknowledging that the appropriate representative to DAMA was not necessarily the Mayor, but rather "whoever council would appoint," and that his position as Mayor did not "mandate that [he] serve with a municipal authority," and that he could have turned the appointment down). Thus, *contra* our ruling in Benninghoff, the face of the Candidate's form neither expressly revealed his position on the board of DAMA nor justified even the most astute reader in inferring, without more, that one necessarily entailed the other. Benninghoff is distinguishable and should afford Candidate no quarter from the consequences of his non-disclosure.