

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE <i>EX REL.</i>	§	
RICHARD L. ABBOTT,	§	No. 219, 2004
	§	
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
FRANK B. CALIO, STATE	§	in and for New Castle County
ELECTION COMMISSIONER,	§	C.A. No. 04M-01-078
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: October 6, 2004  
Decided: November 4, 2004

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

**O R D E R**

This 4<sup>th</sup> day of November, 2004, on consideration of the briefs of the parties, it appears to the Court that:

1) Richard L. Abbott appeals from the Superior Court's decision granting a motion to dismiss this mandamus petition. Abbott argues that the State Election Commissioner failed to perform his duty when he responded to Abbott's request for certain rulings pursuant to 15 *Del.C.* §8041. Since the Commissioner had no discretion to refuse the request, Abbott contends that a writ of mandamus should be issued.

2) Section 8041 provides, in relevant part, that the Commissioner shall:

(2) At the request of any person, make a ruling that applies this chapter [Campaign Contributions and Expenditures] to a set of facts specified by the person....

By letter dated November 6, 2003, Abbott requested rulings on two questions. First, Abbott asked whether New Castle County employees may be assigned to work on a political campaign during work hours. Second, he asked whether a campaign's use of a county employee's services would violate the campaign contribution limits if the value of those services exceeded those limits.

3) The Commissioner responded by letter dated December 15, 2003. He wrote that the first question did not raise a campaign finance issue. Rather, it raised a question "as to the use or misuse of county services." As a result, the Commissioner advised that he was without jurisdiction to answer that question. The Commissioner did attempt to respond to the second question:

Your second question raises a campaign finance issue. However, your question contains no set of facts to which I can apply 15 *Del. C.* ch. 80. There may be several sets of facts to which your query may apply, and each may have a different outcome. If the county employee were directed by his or her supervisor to work on a political campaign during the employee's work day for the County, those services may constitute a contribution by the County. I would note that such a contribution would be prohibited by 15 *Del. C.* §8012(d). However, if the county employee provided the services to the political campaign on his or her own time, the value of the services is expressly excluded from the definition of contribution. 15 *Del.C.* §8002(6)(f).

4) Abbott was not satisfied with the Commissioner's response. By letter dated January 5, 2004, Abbott explained that he needed a "specific, definitive answer" to his questions within ten days. Absent compliance, Abbott advised that he would be forced to seek a writ of mandamus. On January 28, 2004, Abbott filed the instant Petition for Writ of Mandamus.

5) The Superior Court properly granted the Commissioner's motion to dismiss.

It is settled Delaware law that:

Mandamus is issuable not as a matter of right, but only in the exercise of sound judicial discretion. Moreover, when directed to an administrative agency or public official, mandamus will issue only to require performance of a clear legal or ministerial duty. For a duty to be ministerial and thus enforceable by mandamus, the duty must be prescribed with such precision and certainty that nothing is left to discretion or judgment.<sup>1</sup>

The Commissioner complied with his statutory obligation to make rulings. Although Abbott is not satisfied with the rulings, the Commissioner is under no legal duty, much less a clear legal duty, to make the substantive rulings Abbott demands.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

---

<sup>1</sup> *Guy v. Greenhouse*, 1993 WL 557938 (Del. Supr.) at \*\* 1 (Citations omitted.).