

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001384-MR

JEFFERSON COUNTY BOARD OF ELECTIONS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 10-CI-007651

LOUISVILLE/JEFFERSON COUNTY  
DEMOCRATIC PARTY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, LAMBERT, AND TAYLOR, JUDGES.

CAPERTON, JUDGE: The Appellant, Jefferson County Board of Elections (hereinafter the “Board”), appeals the July 8, 2011 declaratory judgment of the Jefferson Circuit Court, granting the motion for summary judgment filed by the Appellee, Louisville/Jefferson County Democratic Party (hereinafter the “Party”). The arguments of the Party on appeal focus solely upon the construction and

interpretation of Kentucky law governing the duty of the Board to train certified challengers prior to a general election. Upon review of the record, the arguments of the parties, and the applicable law, we affirm.

This matter turns upon the construction and interpretation of Kentucky Revised Statutes (KRS) 117.187(2), which relates to the duty of the Board to train certified challengers prior to the general election. Below, the circuit court entered a declaratory judgment that the Board failed to comply with its duties pursuant to the statute because it did not provide all certified challengers with special training.

On October 13, 2010, Tim Longmeyer, then Chair of the Jefferson County Democratic Party, submitted the names of fifty-two individuals to serve as Election Day challengers.<sup>1</sup> Longmeyer requested that a written appointment of the challengers be provided. On October 28, 2010, the Board certified only seventeen of the fifty-two names submitted as qualified to serve as democratic challengers for the November 2, 2010, election. The Board contended that because only seventeen people attended the officer training session, only those seventeen people were eligible to receive an appointment to serve.

The training referenced by the Board was that mandated by KRS 117.187(2), which provides, in pertinent part, that, the “county board of elections shall provide special training before each primary and regular election ... to all election officers, alternative, and certified challengers regarding their duties and

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<sup>1</sup> It is undisputed that Longmeyer’s nomination of challengers was timely and complied with the provisions of KRS 117.315 relating to the appointment of challengers.

the penalties for failure to perform.” The provision also requires that, “certified challengers shall attend the training session, unless excused by the county board of elections for reason of illness or other emergency,” and that “[a]ny person who fails to attend a training session without being excused shall be prohibited from serving as an election officer or challenger for a period of five (5) years.” KRS 117.187(2).

The Board offered two training sessions after the October 13, 2010, deadline for the nomination of challengers – on October 14 and 23, 2010. On October 19, 2010, when only one training session remained, Tricia Gray, Chair of the Jefferson County Board of Elections, sent a letter to Longmeyer advising that the challengers were required to attend an election officer training session as set forth by Kentucky statute. As noted, only seventeen of the fifty-two individuals whose names were submitted attended the training session, and were subsequently certified by the Board.

We note that in an October 15, 2010 memorandum to all county clerks, the State Board of Elections discussed the nomination and appointment of challengers. It specifically addressed the training of challengers, stating:

If you have already conducted your precinct officer training, it is our recommendation that you invite the listed challengers to come to your office where you will present them with a copy of the 2010 General Election Precinct Officer’s Quick Reference Guide, being sure to point out the following pages: Page 15: Guide to Completing the Oath of Voter Form; Page 26: Voter’s Right to Vote is Challenged; Page 27: Challengers; Page 30: Electioneering; and Page 32: Election Crimes.

Nevertheless, on October 26, 2010, the Board certified the seventeen aforementioned challengers. No training session was offered by the Board after its certification of challengers on October 26, 2010. The Party asked the Board to conduct one additional training session, or, in the alternative, to provide the challengers with a copy of the 2010 General Election Precinct Officer's Quick Reference Guide as suggested by the State Board of Elections. The Board refused to provide the Guide, stating that the training requirement could only be met by attending an in-person training. Accordingly, on November 1, 2010, the Party filed its petition for declaratory and injunctive relief.

The petition filed by the Party sought a declaration of rights that the Board violated its statutory duty to train challengers under KRS 117.187 by refusing to offer an additional training session or to provide the Guide. The petition also sought an injunction ordering the Board to train challengers by providing them a copy of the Guide. On November 1, 2010, the court entered a restraining order prohibiting the Board from denying the Party the right to have designated challengers present in precinct polling places during the November 2, 2010 General Election because of the Board's refusal to train the challengers, including providing the Guide to designated challengers.

Later that same day, the Board moved to dissolve the restraining order, and the court held a hearing accordingly. On November 2, 2010, the trial court entered an order denying the motion to dissolve the restraining order and

reaffirmed that the Board was to allow those individuals who were designated as challengers for the Democratic Party on October 13, 2010, to be certified as challengers without having to attend a training session in-person if they had been provided a copy of and read the Guide.

Soon after the election, the Board moved for summary judgment, asking the court to deny the Party's request for a declaration of rights, and to find that the Board complied with its statutory duties in refusing to certify challengers who had not completed one of its training sessions. The Party opposed the Board's motion and filed a cross-motion for summary judgment seeking a declaration that the Board violated its statutory duty to train challengers under KRS 117.187(2) by refusing to provide a copy of the Guide as an alternative to an in-person training. In July of 2011, the circuit court granted the Party's motion for summary judgment and entered a declaratory judgment.

Therein, the court found that the clear and plain language of KRS 117.187(2) imposed a duty on the Board to provide a "special training" to all election officers, alternative, and certified challengers. In addition, the court found that the statute required certified challengers to attend a special training session, whether it be in-person, telephonically, virtually, or in some other form. The court ultimately declared that the Board failed to comply with its statutory duties under KRS 117.187(2) when it failed to provide adequate training sessions or alternative special training to the Party's designated challengers prior to election day. It is

from that order that the Board now appeals to this Court, challenging the grant of summary judgment to the Party as to its request for a declaratory judgment.

Prior to addressing the arguments of the parties, we note that when the outcome of a case is determined by an issue of law, including matters involving the construction and interpretation of statutes, we review *de novo*. See *General Electric Co. v. Cain*, 236 S.W.3d 579, 589 (Ky. 2007) (citing *Bob Hook Chevrolet Isuzu Inc. v. Commonwealth Transportation Cabinet*, 983 S.W.2d 488, 490-91 (Ky. 1998)). *Sub judice*, the sole issue is whether the Board violated its statutory duties in failing to certify or provide special training to qualified challengers nominated by the Democratic Party. Accordingly, we review *de novo*.

As its first and only basis for appeal, the Board argues that it properly interpreted the Kentucky statutes governing the appointment and certification of challengers, and that the court erred in granting the Party's motion for summary judgment. The Board asserts that prior to 2010, it provided twenty-six election training sessions in compliance with its statutory obligations. It also notes that KRS 117.187(2) gives it the responsibility to excuse challengers from attending an election training session for reason of illness or other emergencies, and contains a five-year penalty provision for instances where party-nominated challengers fail to attend a training session. The Board states that *sub judice*, there were no facts in the record to indicate that any of the forty-three party-named challengers missed training sessions because of illness or emergency. Thus, the Board reasons that the

challengers who refused to appear without excuse should not have been certified under the law.

In making these arguments, the Board acknowledges its responsibility pursuant to KRS 117.315(5) to certify the party-nominated challenger nominees, and to notify the party chair of the challenger certifications by the Thursday before Election Day. The Board asserts that it complied with this requirement when it notified Longmeyer that only seventeen of the party-nominated challengers had attended an election training session as it believed was required by statute, and accordingly, only those seventeen were eligible to be certified or receive an appointment as a challenger.

The Board argues that the certification and training prerequisites are vitally important to the Board in light of its interest in holding fair and impartial elections, and that it properly denied certification to the challengers at issue because the law clearly required them to “attend” a training session. The Board also asserts that the existence of a penalty for failing to attend the special training session evidences that the legislature did not intend the responsibility to be placed on the county board of elections to train every individual party-nominated challenger. The Board argues that in finding as it did, the court below effectively eliminated the penalty provision of the statute by placing the burden on the county boards of election to train each and every party-nominated challenger when the Board is also responsible for administering election laws.

The Board focuses on the language contained in KRS 117.187(2), which provides that, “The county board of elections shall provide special training before each primary and regular election ... to all ... certified challengers regarding the duties and the penalties for failure to perform ... [C]ertified challengers shall attend the training session ....” The Board argues that based upon the language of the statute, it is required to hold only one training session, and that the burden is not on the Board to train each individual challenger, but instead is on the challenger to attend the session that is held. The Board notes that in preparation for the 2010 General Election Day, it held twenty-six training sessions, two of which were available after Longmeyer had submitted the party-nominated challenger list.<sup>2</sup>

Finally, the Board argues that the memorandum of the Kentucky State Board of Elections previously referenced herein does not trump the Kentucky statutory requirements for certification of challengers. The Board asserts that this was only an advisory interpretation of the statute, narrowly targeted to address the situation where no more training sessions were scheduled. It notes that at the time that the Party submitted its list of challengers, it had two more training sessions available.

In response, the Party argues that the court below correctly determined that in declining to offer more training sessions, or to make the Guide

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<sup>2</sup> While this is so, we note that those two sessions were held on October 17, and October 23. Longmeyer was notified in writing of the “obligation” to attend one of these sessions on October 19, after one of the sessions had already been held.



available in place of a training session, the Board violated its statutory duties. It argues that while the term “training session” is not defined in the statute, the common and approved usage of the term “session” means a meeting or a period of time devoted to a specific activity, and that the court below correctly determined that the terms “special training” and “training session” are not necessarily limited to an in-person meeting, but can include a training “in-person, telephonically, virtually, or in some other form.” The Party asserts that providing challengers a copy of the Guide in lieu of personally attending a training session is consistent with this interpretation.

The Party adds that by reading an “in-person” requirement into the “special training” term, the Board seeks to impermissibly restrict its legal duty to conduct training for certified challengers, and would create the absurd result of precluding qualified challengers from serving because the Board refused to offer additional training sessions. The Party argues that the Board’s interpretation of the statute is contrary to the plain meaning of the word “session,” and is also inconsistent with other rules of statutory construction, including the rule that statutes be liberally construed to carry out the intent of the legislature, and the rule that all terms and provisions in the statute be harmonized.

Moreover, the Party notes that KRS 117.187(2) provides that the Board must give “special training” to all “certified challengers.” The Party notes that the statute does not say that in order to be certified as a challenger the person nominated to be a challenger must first attend a training session. Instead, it asserts

that the Board must first certify the challengers, assuming they meet the requirements set forth in KRS 117.315(3),<sup>3</sup> after which the Board is required to provide special training to those certified. The Party asserts that there is nothing in the statute which requires the challengers to be trained in order to be certified by the Board. Additionally, the Party argues that once the challengers were certified on October 26, 2010, the Board had a duty to either schedule additional training sessions or provide a copy of the Guide in lieu of doing so. Thus, it argues that the court below correctly held that the Board violated its statutory duties in refusing to provide adequate training sessions or alternative special training to all of the certified challengers before the general election.

Finally, the Party disagrees with the Board's assertion that the memorandum from the State Board of Elections was merely advisory in nature. It asserts that pursuant to KRS 117.035(1), it is clear that our legislature intended that the various county boards of election administer the election laws under the direction and supervision of the State Board. In this instance, it argues that the State Board's interpretation of KRS 117.187(2) is additional evidence that the County Board should have offered adequate training sessions or additional special training.

Having reviewed the arguments of the parties, the findings of the court below, and the applicable law, we affirm. Upon review of the applicable law, we note that KRS 117.315 allows a political party to designate "two (2)

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<sup>3</sup> These requirements include being a registered voter of the county in which the election is held, and being appointed in writing at least twenty days before the regular election. KRS 117.315.

challengers to be present at and witness the holding of the election in each precinct in the county.” For a party to have challengers present in a precinct, KRS 117.135(3) requires the party chair to “present the county clerk with a list of designated challengers at least twenty (20) days preceding a regular election,” and that the Board shall, “not later than the Thursday preceding the election, certify the nominees of the committee for the respective precincts to serve as challengers for the election.” KRS 117.315(5). Further, the law is clear that the party-nominated challengers must: (1) be “registered voters of the county in which the election is held,” and (2) attend an election training session administered by the county board of elections. KRS 117.315(3) and KRS 117.187(2).

Moreover, KRS 117.187(2) provides, in relevant part, that:

The county board of elections shall provide special training before each primary and regular election, and any special election held during a year in which no elections are scheduled, to all election officers, alternates, and certified challengers regarding their duties and the penalties for failure to perform. Election officers, including alternates, and certified challengers shall attend the training session, unless excused by the county board of elections for reason of illness or other emergency. Any person who fails to attend a training session without being excused shall be prohibited from serving as an election officer or challenger for a period of five (5) years.

Concerning statutory construction and interpretation, the law of the Commonwealth is clear. Kentucky courts are guided by the basic principle that “if the words of a statute are plain and unambiguous, the statute must be applied to those terms without resort to any construction or interpretation.” *Kentucky*

*Unemployment Insurance Comm. v. Kaco Unemployment Ins. Fund, Inc.*, 793 S.W.2d 845, 847 (Ky. App. 1990).

Upon review of the provision above, it is clear that the Board is required to provide training to all “certified challengers.” It further requires that the certified challengers “attend” the training session. Further, we note that the law is clear in its mandate that the Board provide “special training” to “*all* election officers, alternates, and certified challengers.”

Our reading of these provisions, and the statutory scheme of which they are a part, indicates that in order to be “certified,” challengers must meet two requirements, namely, being a registered voter of the county in which they wish to be certified, and being appointed in writing twenty days prior to the election at issue. It is likewise clear in its requirement that the Board provide training to all challengers who are “certified.” Our reading of the statute does not support the interpretation argued by the Board that challengers must be trained before being certified. To the contrary, it merely provides a penalty for those certified challengers who fail to do so. Accordingly, we believe that the Board had an affirmative duty to train the challengers whose names were timely submitted and met the requirements of the statute.

*Sub judice*, the challengers were notified of the duty to attend the session when only one session remained. Additional sessions were requested, and were denied by the Board. Moreover, despite the clear intention of the State Board for provision of the Guidebook to substitute for in-person training, the Board

declined to provide copies to the challengers at issue. While we do not believe that the Board had an affirmative duty to provide additional in-person training sessions beyond those which it had already offered, we do believe it had an obligation to provide an alternative form of training in the form of providing the Guidebook to challengers as it was advised to do by the State Board. In light of the Board's refusal to do so, we believe the declaratory judgment entered by the court below to have been proper, and in accordance with the law of the Commonwealth.

Wherefore, for the foregoing reasons, we hereby affirm the July 8, 2011 declaratory judgment of the Jefferson Circuit Court, the Honorable Barry Willett, presiding.

ALL CONCUR.

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