

STATE OF MINNESOTA

IN SUPREME COURT

#C4-02-1354

Mark Piepho,

Petitioner,

vs.

FINDINGS OF FACT

Robert Bruns, as County
Auditor of Nicollet County,
Minnesota,

Respondent,

Sandra King, as County
Auditor of Blue Earth County,
Minnesota,

Respondent,

Lisa Pfarr, as County
Auditor of Sibley County,
Minnesota,

Respondent,

Mary Kiffmeyer,
Minnesota Secretary of State,

Respondent,

John C. Hottinger,

Intervenor.

The above-entitled matter came on for hearing before the undersigned referee on August 20, 2002, upon the order of the Minnesota Supreme Court dated August 15, 2002, to determine facts relevant to the petition filed by Mark Piepho in that court.

Appearances were as follows:

Tony Trimble and Matthew Haapoja, Trimble & Associates, 11700 Wayzata Blvd., Wazyata, MN 55305 (for petitioner Mark Piepho);

Michael K. Riley, Sr., Nicollet County Attorney, P. O. Box 360, St. Peter, MN 56082 (for respondent Robert Bruns);

Ross E. Arneson, Blue Earth County Attorney, 410 S. Fifth St., P. O. Box 3129, Mankato, MN 56002 (for respondent Sandra King);

David E. Schauer, Sibley County Attorney, 407 N. Main, P. O. Box H, Winthrop, MN 55396 (for respondent Lisa Pfarr);

Kenneth White, Farrish Johnson Law Office, P. O. Box 550, Mankato, MN 56002 (for intervenor John C. Hottinger);

Alan I. Gilbert, Solicitor General, Office of the Attorney General, 1100 NCL Tower, 445 Minnesota St., St. Paul, MN 55101, and Kenneth E. Raschke, Jr., and Christie B. Eller, Assistant Attorneys General, Suite 200, 525 Park Ave., St. Paul, MN 55103; (for Mary Kiffmeyer, Secretary of State).

Based on the affidavits, exhibits, and testimony, and all of the relevant proceedings herein, the undersigned makes the following findings of fact:

1. Petitioner Mark Piepho, who resides at 8 Skyline Drive, Mankato, Minnesota, is an eligible voter entitled to vote in the September 10, 2002, primary and November 5, 2002, general elections in Legislative District 23.
2. On August 9, 2002, Piepho filed a petition pursuant to Minn. Stat. § 204B.44 (2000), asking the Minnesota Supreme Court to direct respondents, Robert Bruns, the duly qualified and acting auditor of Nicollet County, Minnesota; Sandra King, the duly qualified and acting auditor of of Blue Earth County, Minnesota; and Lisa Pfarr, the duly qualified and acting auditor of Sibley County, Minnesota, to omit the name of respondent-intervenor John C. Hottinger from the ballots for Minnesota State Senator from Legislative District 23 for the 2002 primary and general elections.
3. The March 19, 2002, decision of the Minnesota Special Redistricting Panel mandated use of the panel's plan or, alternatively, any constitutional legislative plan subsequently enacted by the Minnesota Legislature and the Governor of the State of Minnesota. Pursuant to Minn. R. Civ. App. P. 104.01, subd. 1, the time for appeal did not expire for 60 days after service of notice of filing.
4. Petitioner alleges that Hottinger has not complied with the residency requirement for candidacy for legislators set out in Minn. Const. art. IV, § 6. The six-month residency period immediately preceding the November 5, 2002, general election began on May 5, 2002.
5. Based on an affidavit of candidacy filed with the office of Mary Kiffmeyer, Secretary of State for the State of Minnesota, the Secretary certified to the county auditors of Nicollet,

Blue Earth, and Sibley counties John C. Hottinger as a candidate for the Office of Senator from District 23, for inclusion on the ballot for the September 10, 2002 primary election.

6. The Secretary of State notes that absentee ballots for the primary election have been printed and were available for voting beginning on Friday, August 9, 2002.
7. The Nicollet, Blue Earth,^[1] and Sibley County Auditors state that they have received election ballots with the name of John C. Hottinger printed on the ballots as a candidate for the Minnesota State Senate from District 23, and a number of those ballots have been returned by absentee voters. The county auditors must act as they are directed by the Secretary of State, who has certified that Hottinger's name shall be printed on the ballots. The Nicollet, Blue Earth, and Sibley County Auditors have made no errors or omissions in the performance of their duties with respect to the ballot in question.
8. In 1990, Hottinger began his career as a state senator in District 29, which in 1992 was changed through redistricting to District 24, and which in 2002 was changed through redistricting to District 23.
9. Hottinger and his wife own and have owned property at 20100 Horseshoe Lane, Mankato, Minnesota, which is not in District 23. Sometime after the Redistricting Panel's March 19, 2002 decision, Hottinger and his wife decided to move so that Hottinger would be eligible to run for office in District 23.
10. In April 2002, Paul H. Tanis, Jr., a member of the law firm MacKenzie & Gustafson, researched apartments conforming to Hottinger's preferences and located the apartment at 304 West Grace Street, St. Peter, Minnesota.
11. On April 17, 2002, Hottinger entered into a twelve-month lease for 304 West Grace Street, St. Peter, Minnesota, with an effective date of May 1, 2002. Tanis paid the rent for the first month and was reimbursed by Hottinger.
12. On May 1, 2002, Hottinger demonstrated his intent to reside in the precinct by entering the space adjacent to 304 West Grace Street, which is located in District 23. Hottinger intended to move from that space to the apartment at 304 West Grace Street after the holdover tenants in that property had moved out. Hottinger placed possessions such as clothing and books into the space, which included a bathroom.
13. Mark Oberlander and Mary Gartner resided at the apartment at 304 West Grace Street from May 1, 2001 until May 24, 2002. Gartner signed a one-year lease for 304 West Grace Street, beginning May 1, 2001. Through a special arrangement with the landlord of 304 West Grace Street, Oberlander and Gartner held over their tenancy and occupied the premises until May 24, 2002. During the time they resided at 304 West Grace Street, Oberlander and Gartner neither saw nor had any contact with Hottinger. Oberlander and Gartner vacated the premises on May 24, 2002.
14. On May 27, 2002, Hottinger entered the apartment at 304 West Grace Street, and at that time he brought with him possessions such as a bed, sheets, towels, clothes, pots and pans, and toiletries. Hottinger did not install a telephone in the 304 West Grace Street

apartment because he relies upon his mobile telephone and an already-existing telephone number to which he has access and with which his constituents are familiar.

15. Hottinger attended the DFL convention from May 2 through May 4. The legislative session ended on May 20, 2002, until which time Hottinger was at his legislative office from approximately 8 a.m. until 6 p.m. Hottinger holds a lease for an apartment in St. Paul that runs through December 2002, although he has never intended to reside in St. Paul.
16. On April 22, 2002, Hottinger signed and filed with the Senate Fiscal Office an Internal Revenue Service form regarding mileage reimbursement to the following address: 304 West Grace Street, St. Peter, Minnesota 56082.
17. On April 25, 2002, the Journal of the Senate reflected that Hottinger's address had changed to 304 West Grace Street, consequently changing the round-trip mileage for which he is reimbursed from 186 to 160 miles.
18. In early May 2002, Hottinger took steps to change the address on his driver's license to 304 West Grace Street, St. Peter, Minnesota. The Department of Motor Vehicles gave him a confirmation of the address change in late May.
19. On May 1, 2002, Hottinger signed a Minnesota Voter Registration Card reflecting an address at 304 West Grace Street, St. Peter, Minnesota 56082.
20. Health insurance benefit forms from Blue Cross Blue Shield of Minnesota, dated May 3, 2002, and May 22, 2002, were mailed to and received by Hottinger at 304 West Grace Street, St. Peter, Minnesota 56082.
21. A city auditor's document dated June 6, 2002, confirmed that Hottinger's address had been changed.
22. On July 10, 2002, Hottinger signed a notarized Minnesota Affidavit of Candidacy reflecting his legal residence address as 304 West Grace Street, St. Peter, Minnesota 56082.
23. Hottinger has done all that is reasonably possible to establish residence in District 23 and has in fact established such residence.
24. Petitioner Mark Piepho has failed to sustain his heavy burden to clearly establish that the auditors in Nicollet, Blue Earth, and Sibley Counties should omit John C. Hottinger's name from the ballots for the September 10, 2002, primary election or the November 5 general election.

Dated: August 21, 2002

/s/ Edward Toussaint_____

Edward Toussaint
Referee

[1] Sandra King is not currently a Blue Earth County employee, though she was at one time Director of Land Records for that county. Previously enacted special legislation has eliminated the elected offices of auditor, treasurer, and recorder in Blue Earth County.

