

STATE OF MINNESOTA

IN SUPREME COURT

C0-02-1352

David McGuire,

Petitioner,

vs.

Fran Windschitl, as County Auditor
of Rice County, Minnesota,

Respondent,

Laura Ihrke, as County Auditor
of Steele County, Minnesota,

Respondent,

Joan Manthe, as County Auditor
of Waseca County, Minnesota,

Respondent,

Mary Kiffmeyer, Minnesota
Secretary of State,

Respondent,

Jeremy W. Eller,

Intervenor.

ORDER

PER CURIAM

In this petition brought under Minn. Stat. § 204B.44 (2000), petitioner claims that candidate Jeremy Eller's name should not appear on the primary or general election ballots because the candidate will not have resided in District 26 for six months immediately preceding the general election as required by Minn. Const. art. IV, § 6. *See also* Minn. Stat. § 204B.06, subd. 4(f) (2000). Candidate Eller brought a motion to dismiss the proceeding arguing, inter alia, that the petition alleged insufficient facts upon which to grant the relief sought. In light of the time constraints inherent in a challenge to the ballot, we referred the matter to a referee and

deferred ruling on the motion to dismiss pending receipt of the parties' submissions to the report of the referee on August 23, 2002.

In his petition, petitioner makes several allegations and purports to support the allegations with attachments to an affidavit. First, petitioner alleges that candidate Eller placed his property located outside the district for sale on June 23, 2002, 48 days after the residency deadline of May 5, 2002. However, there is no necessary inference that because petitioner's previous home was outside the district, he did not reside within the district since May 5, 2002.

Second, petitioner alleges that candidate Eller treated his property outside the district as his homestead. Petitioner attached a copy of an Original Statement of Economic Interest filed by candidate Eller that did not identify his real property located outside the district. Petitioner claims that directions for the statement direct the preparer to omit any real property classified as homestead property. At the time the statement was prepared, candidate Eller apparently still owned the property outside the district and there is no indication that the property's tax classification had been changed from homestead, however a property's homestead classification relates to the ownership and occupation of a homestead on January 2 of the year in which the tax is payable. *See* Minn. Stat. § 290A.03, subd. 13 (2000) (providing that for claims related to "property taxes payable" claimant must have owned and occupied the homestead on January 2 of year in which the tax is payable). *See also* Minn. Stat. §§ 273.124, subd. 1(a) (definition of homestead), 273.124, subd. 1(e) (providing assessor must not deny homestead treatment if only one of the spouses occupies the property and the other spouse is absent due to "other personal circumstances causing the spouses to live separately"), 273.124, subd. 13(e) (providing for continuing homestead classification until property sold or owners or relatives no longer use as homestead). In addition, petitioner attaches a property tax statement from the Rice County Auditor identifying candidate Eller and his wife as owners of real property located outside the district that is classified as residential homestead property. However, there is no indication on the property tax statement of when it was issued.

Petitioner also alleges that the property candidate Eller claimed to have been residing at in the district was owned by Stanley and Angela Eller. Ownership of the property says nothing about whether a candidate resides on that property, however.

Petitioner also alleges that on May 10, 2002, candidate Eller "received" a combination sports license from the Department of Natural Resources listing as his address an address outside the district. The attachment to the petition indicates that May 10, 2002 was the date the license was processed, not the date on which it was received, however. Moreover, the date the license was processed or received says nothing about when candidate Eller applied for the license and his

intended and actual residence on and after May 5, 2002.

Petitioner also alleges that candidate Eller changed his driver's license information to include his address inside the district on May 10, 2002, five days after the residency deadline of May 5, 2002. That candidate Eller changed his driver's license information on a date relatively close to the residency deadline in no way refutes his claimed residency in the district on and after May 5, 2002.

Petitioner also alleges that candidate Eller has a telephone number listed at an address outside the district. The attachment to the affidavit does not indicate the date on which the listing was generated, and does not indicate that candidate Eller resided outside the district on and after May 5, 2002.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition is dismissed as insufficient upon which to grant the relief sought.

Dated: August 28, 2002

