

STATE OF MINNESOTA

IN SUPREME COURT

#C2-02-1353

Ralph Olson,

Petitioner,

vs.

FINDINGS OF FACT

Robert Zuehlke, as County Auditor
of Itasca County, Minnesota,

Respondent,

Kirk Peysar, as County Auditor of
Aitkin County, Minnesota,

Respondent,

Mary Kiffmeyer,
Minnesota Secretary of State,

Respondent,

Loren Solberg,

Intervenor.

The above-entitled matter came on for hearing before the undersigned referee on August 19, 2002, upon the order of the Minnesota Supreme Court dated August 15, 2002, to determine facts relevant to the petition filed by Ralph Olson in that court.

Appearances were as follows:

Tony Trimble and Matthew Haapoja, Trimble & Associates, 11700 Wayzata Blvd., Wayzata, MN 55305 (for petitioner Ralph Olson);

John J. Muhar, Itasca County Attorney, 123 Fourth St., Grand Rapids, MN 55744 (for respondent Robert Zuehlke);

Bradley C. Rhodes, Aitkin County Attorney, Courthouse West Annex, Aitkin, MN 56431 (for respondent Kirk Peysar);

Alan W. Weinblatt, 1616 Pioneer Bldg., 336 Robert St., St. Paul, MN 55101 (for intervenor Loren Solberg);

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 Ralph Olson, who resides at 821 Willow Drive, Grand Rapids, Minnesota 55744, is an eligible voter entitled to vote in the September 10, 2002, primary and November 5, 2002, general elections in Legislative District 3B.
2. On August 9, 2002, Olson filed a petition pursuant to Minn. Stat. § 204B.44 (2000) asking the Minnesota Supreme Court to direct respondents, Robert Zuehlke, the duly qualified and acting auditor of Itasca County, Minnesota, and Kirk Peysar, the duly qualified and acting auditor of Aitkin County, Minnesota to omit the name of respondent-intervenor Loren A. Solberg from the ballots for Minnesota State Representative from Legislative District 3B for the 2002 primary and general elections.
3. Petitioner alleges that Solberg has not complied with the residency requirement 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.
4. 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 expired 60 days after the order.
5. On July 9, 2002, candidate Loren A. Solberg filed with Mary Kiffmeyer, Secretary of State for the State of Minnesota, an affidavit of candidacy for the office of Minnesota State Representative from District 3B with a mailing address of 2114 Southwest Third Avenue, Grand Rapids, Minnesota.

6. Based on an affidavit of candidacy filed with the office of Mary Kiffmeyer, Secretary of State for the State of Minnesota, on July 25, 2002, the secretary certified to the county auditors of Itasca and Aitkin counties Loren A. Solberg as a candidate for Minnesota State Representative from District 3B, for inclusion on the ballot for the September 10, 2002, primary election.
7. On April 25, 2002, candidate Solberg filed a statement of organization with the Campaign Finance and Public Disclosure Board, indicating that his mailing address is 2114 Southwest Third Avenue, Grand Rapids, Minnesota.
8. Secretary of State Kiffmeyer reports that absentee ballots for the primary election have been printed and have been available for voting since Friday, August 9, 2002.
9. The Itasca and Aitkin County Auditors have confirmed that they ordered ballots for use during the primary election, those ballots have been delivered to their offices, and the ballots are currently in use by absentee voters. The name Loren A. Solberg is printed on the ballots as a candidate for the office of Minnesota State Representative from District 3B. The county auditors must act as they are directed by the secretary of state, who has certified that Solberg's name is to be printed on the ballots. The auditors have made no errors or omissions in the performance of their duties.
10. Solberg and his wife own and have owned a house in Bovey, Minnesota, which is not within the boundaries of District 3B, for 29 years.
11. Loren A. Solberg is currently a member of the Minnesota House of Representatives, and has been since 1983. He was aware of the 2002 redistricting and intended to run for the same office. Due to redistricting, he decided to move to and run for office in District 3B which he thinks encompasses 70-75% of his former district.
12. Prior to the 2002 redistricting, Solberg and his wife were considering moving into a smaller house. They contacted a real estate agent and hoped to purchase a new home in District 3B, before May 5, 2002. On April 16, 2002, they entered into a purchase agreement with Gordon Newstron to purchase his townhouse, which is within District 3B, at 2114 Southwest Third Avenue, Grand Rapids, Minnesota. Although the Solbergs asked for earlier possession or a leaseback arrangement, Mr. Newstron was unwilling to give up possession before July 2002. The purchase agreement provided for continued occupancy by the seller until July 1, 2002. On April 23, 2002, the Solbergs arranged financing of the townhouse purchase.
13. On April 29, 2002, Newstron signed a receipt for \$1 for Solbergs' rental of his mailbox. He did not actually receive that \$1 until the date of closing on the townhouse.
14. For the pay period ending April 30, 2002, Solberg's wife's pay stub, from the Grand Rapids Minnesota Historical Society, contained the address 2114 Southwest Third Avenue, Grand Rapids, Minnesota.
15. On April 16, 2002, Solberg applied for a new voter registration card corresponding to an address change from Bovey to 2114 Southwest Third Avenue, Grand Rapids, Minnesota.

16. Solberg has disseminated his new address to friends and family, and on April 24, 2002, he e-mailed his colleagues with his new address.
17. From May 5 to July 1, 2002, Solberg collected his mail and visited the townhouse numerous times. He stayed overnight there once during that time. He stayed primarily at the Bovey house, but also spent nights in St. Paul (his apartment for the legislative session which ended on May 20, 2002), in South Dakota (visiting family), at his cabin, and at Lake Vermillion. He moved into 2114 Southwest Third Avenue, Grand Rapids, Minnesota on July 1, 2002. Since then until this hearing, he has stayed about 10 to 15 nights at the townhouse in Grand Rapids, has spent some time on vacation, and has spent the remaining nights in Bovey.
18. Solberg and his wife have listed the Bovey property with a realtor for sale.
19. Solberg has done all that is reasonably possible to establish residence in District 3B and has in fact established such residence.
20. Petitioner Ralph Olson has failed to sustain his heavy burden to clearly establish that the auditors in Itasca and Aitkin Counties should omit Loren A. Solberg's name from the ballots for the September 10, 2002, primary election and the November 5 general election.

Dated: August 21, 2002

/s/ Edward Toussaint _____
Edward Toussaint
Referee