

## Ohio Supreme Court Decision Concludes Sixteen-Month Saga Regarding Who Can Serve and Run for Sheriff of Stark County, Ohio

On April 2, 2014, the Ohio Supreme Court issued its decision in *State ex rel. Balas-Bratton v. Husted*, Slip Opinion No. 2014-Ohio-1406, an expedited elections' law matter, definitively ruling that the incumbent Sheriff of Stark County, Ohio meets the statutory qualifications to be sheriff. The decision ends a 16-month-long saga during which Roetzel's Columbus partners, Thomas L. Rosenberg and Michael R. Traven, tenaciously represented Sheriff George Maier.

Much of Maier's career has been in law enforcement, but his qualifications to serve as sheriff were challenged on three separate occasions, concluding with the Court's recent decision. In Ohio, the qualifications to be a sheriff are set forth in R.C. 311.01(B)(1) – (9). At issue was whether Maier satisfied R.C. 311.01(B)(8)(a), and (9)(a) or (9)(b), which set forth specific experience, law enforcement, and educational requirements, respectively.

On February 5, 2013, Maier was appointed by the Stark County Democratic Central Committee ("DCC") as Sheriff of Stark County following the inability of the duly-elected sheriff to take office for health reasons. Shortly thereafter, Maier's appointment as sheriff was challenged, for the first time, via *quo warranto* proceedings<sup>1</sup> before the Ohio Supreme Court. See *State ex rel. Swanson v. Maier*, 137 Ohio St.3d 400, 2013-Ohio-4767. On November 6, 2013, in the *Swanson* decision, the Court determined that Maier failed to satisfy the experience requirements. See *id.* ¶ 39. Following the decision in *Swanson*, Maier was hired by the Harrison County Sheriff's Office as a full-time Deputy Sheriff, a position Maier held from November 8, 2013, until December 5, 2013.

Because his employment with Harrison County satisfied the statutory experience requirement that the *Swanson* decision determined he lacked, Maier sought re-appointment as Sheriff at the DCC's December 11, 2013 meeting. Maier was again appointed by an overwhelming majority vote. Since that time, Maier has served and performed his duties as Stark County Sheriff.

In order to run for election as sheriff in 2014, Maier submitted his Application for Candidacy with the Stark County Board of Elections ("BOE") on January 28, 2014. On February 11, 2014, a protest was filed with the BOE, the second challenge to Maier's qualifications, claiming that Maier still failed to meet the statutory qualifications to serve as sheriff. The protest sought to exclude Maier from appearing on the May 6, 2014 Democratic Primary ballot.

On February 21, 2014, the BOE held a public hearing on the protest, during which multiple witnesses testified and documentary evidence was introduced. At the conclusion of the hearing, the four BOE members voted 2-2 on whether Maier met the qualifications. Because of the tie-vote, the matter was referred to Jon Husted, Ohio Secretary of State ("Husted"). On March 7, 2014, Husted issued his tie-breaking decision, voting to deny the protest, thereby allowing Maier's name to appear on the ballot.

Unwilling to accept the decision of the BOE and Husted, the protestor filed an original action on March 11, 2014, for an extraordinary writ of prohibition with the Ohio Supreme Court, the third challenge to Maier's qualifications. This case sought to prohibit the BOE and/or Husted from (1) recognizing the vote of one of the BOE members, who was claimed to be unfairly biased, and (2) placing Maier's name on the primary ballot. The Court quickly discarded the claim regarding the BOE member's alleged bias, ruling that the protestor failed to establish the first necessary element of obtaining a writ of prohibition—that the BOE or Husted were about to exercise or were required to exercise quasi-judicial power. See *Balas-Bratton*, 2014-Ohio-1406, ¶ 19. The Court likewise held that Husted lacked the authority to remove a BOE member under an allegation of conflict of interest. See *id.* ¶ 20.

The second issue was whether Husted abused his discretion in breaking the tie vote in favor of Maier, and presented an issue of first impression in Ohio. The dispute was whether Maier's time as Assistant and Interim Director of the Ohio Department of Public Services, and as the safety and service director of the City of Massillon met the law enforcement requirement of having "supervisory experience . . . at the rank of corporal or above" under the statute. The Court concluded that, "[a]lthough Maier was not himself a ranked officer in these positions, he was supervising

<sup>1</sup> A *quo warranto* action may be filed by certain statutorily-defined parties in which the legal right of an individual to hold public office is challenged. See Ohio Revised Code Chapter 2733.

officers well above the rank of corporal, so it is clear that this experience satisfies the statutory requirement.” *Id.* ¶ 30. Thus, the Court denied the writ of prohibition.

The Court’s decision was an important victory for Maier not only because it denied the writ of prohibition, but because the Court took the extra step to definitely declare that Maier satisfied the statutory requirements to be sheriff. Indeed, the Court could have simply denied the writ without deciding the underlying issue, thereby leaving the door ajar for another *quo warranto* proceeding. The Court’s decision slammed that door shut.

In the unique and specialized area of election law litigation, Roetzel attorneys Rosenberg and Traven were able to carefully and meticulously establish a favorable record during the protest hearing, which certainly paid dividends to obtain a favorable ruling from the Ohio Supreme Court. Moreover, because of the expedited nature of this election proceeding—the case was filed, briefed, and decided by the Supreme Court all in the span of approximately three weeks—Rosenberg and Traven quickly and comprehensively presented dispositive factual and legal information and arguments to the Court.

For further information regarding the *Balas-Bratton* decision or any other election law litigation issues, please contact attorneys Thomas L. Rosenberg or Michael R. Traven:

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