

No. SC-CV-41-18

NAVAJO NATION SUPREME COURT

Vincent Yazzie,
Appellant,

v.

Joe Shirley, Jr.,
Appellee.

OPINION

Before JAYNE, J., Chief Justice, SHIRLEY, E., Associate Justice, and PLATERO W., Associate Justice by Designation.

Appeal from a decision of the Office of Hearings and Appeals, Cause No. OHA-NEA-22-18, Chief Hearing Officer Richie Nez, presiding.

Bernadine Martine, Gallup, New Mexico, for Appellant; Justin Jones, Gallup, New Mexico, for Appellee.

OPINION delivered by JoAnn Jayne, Chief Justice.

This case concerns the dismissal of an election complaint for lack of sufficiency. The Court affirms the dismissal by the Office of Hearings and Appeals. The Court explains its ruling in this opinion.

I

This case arises out of an appeal from the Office of Hearings and Appeals (OHA). Appellant Vincent Yazzie (“Yazzie”) filed an appeal with OHA asserting that Appellee Joe Shirley, Jr. (“Shirley”) has served two terms and should be disqualified from running as a candidate for President of the Navajo Nation in the November 6, 2018 general election.

On May 31, 2018 the Navajo Election Administration certified eighteen (18) candidates to run for president of the Navajo Nation. The candidates engaged in a number of political events

from that time leading up to the primary election of August 28, 2018. The two presidential candidates with the greatest number of votes in the primary election advanced to the November 6, 2018 election. Shirley is one of the two (2) presidential candidates on the ballot for the November 6, 2018 presidential election.

Shirley is a former president and now a candidate for president of the Navajo Nation. Shirley served two (2) consecutive terms as Navajo Nation President ending in 2011. In 2010, Shirley filed as a candidate for Navajo Nation President but was disqualified by NEA in *Todacheene v. Shirley*, 9 Nav. R. 380 (2010). In *Todacheene*, this Court interpreted 2 N.N.C. § 1002(D) to prohibit more than two *consecutive* terms by an incumbent office holder.

Yazzie participated as a candidate for President of the Navajo Nation in the primary election on August 28, 2018. Initially, Yazzie filed a statement of grievance with the Navajo Election Administration after the August 28, 2018 primary election. In the complaint, Yazzie alleged that Shirley served two (2) terms as Navajo Nation President, and that Shirley would violate 2 N.N.C. § 1002(D) if elected in November, 2018.

The OHA reviewed and dismissed the complaint finding it insufficient for three reasons: 1) a complaint under 11 N.N.C. § 24(A) was untimely and should have been filed within 10 days from the certification of Shirley's application; 2) a complaint under 11 N.N.C. § 341 as to a candidate's qualification requires allegations of a false statement and none are alleged here; and 3) interpreted in light of *Todacheene v. Shirley*, 9 Nav. R. 380 (Nav. Sup. Ct. 2010), there is no violation of 2 N.N.C. § 1002(D).

Yazzie filed an appeal, and a hearing at the Supreme Court followed.

II

The question presented is whether the Office of Hearings and Appeals abused its discretion when it concluded the complaint was insufficient and dismissed the action without a hearing.

III

The Supreme Court is expressly granted jurisdictional authority to hear appeals of the decisions of OHA out of election grievances pursuant to statute. 11 N.N.C. § 341(A)(4). Review by the Navajo Nation Supreme Court is limited to whether or not the decision of the OHA is sustained by “sufficient evidence” on the record. *Id.* However, a complaint dismissed prior to hearing is reviewed for abuse of discretion. *Secatero v. Navajo Board of Election Supervisors*, 6 Nav. R. 385 (Nav. Sup. Ct. 1991); *Brown v. Navajo Board of Election Supervisors*, 5 Nav. R. 139, 140 (Nav. Sup. Ct. 1987); *Williams v. Navajo Election Commission*, 5 Nav. R. 25 (Nav. Sup. Ct. 1985).

IV

OHA is limited to the authority given to them by statute. *See e.g., Mustach v. Navajo Board of Election Supervisors*, 5 Nav. R. 115 (Nav. Sup. Ct. 1987); *Secatero*, 6 Nav. R. 385. The Navajo Election Code provides candidates with two (2) mechanisms to challenge under Title 11. The first mechanism is a challenge of a candidate’s qualification under 11 N.N.C. § 24. A candidate has ten (10) days after certification to challenge a candidate’s qualification for office. The second mechanism is to challenge under 11 N.N.C. § 341, which provides for challenges after an incident or election. Each mechanism requires a candidate to file a statement of grievance, however, 11 N.N.C. § 341 (2005) provides that: “If, on its face, the [complaint] is

insufficient under the Election Code, the complaint shall be dismissed by the Office of Hearings and Appeals.” *Id.*

In this case, Yazzie filed a complaint after the August 28, 2018 primary election. Although he did not state which law he filed under, this Court understood the complaint to be filed under 11 N.N.C. § 341.

Yazzie’s complaint under 11 N.N.C. § 24 would clearly have been outside of the statutory time limit. Candidates are provided 10 days after certification to challenge a candidate’s qualification. 11 N.N.C. § 24(A). In this case, the deadline for a challenge would have been in early June, 2018. This complaint, however, came nearly three (3) months later.

It appears that Yazzie intended to file his statement of grievance under 11 N.N.C. § 341. Once the statement is filed, OHA is mandated to assess the statement for facial sufficiency and either set for a hearing or dismiss. 11 N.N.C. § 341(A).

The statement of grievance itself must contain a facially sufficient statement. *Williams v. Navajo Election Commission*, 5 Nav. R. at 26. In order to be sufficient a complaint must specify the election law that was violated, and contains facts that, if taken as true, suggest an election law was violated. *Brown v. Navajo Board of Election Supervisors*, 5 Nav. R. at 140.

In *Brown*, this Court looked to the discretion of the Election Board, a role now filled by OHA. *Id.* "The [Election] Board has considerable discretion in determining whether a statement is sufficient on its face. Absent a clear abuse of that discretion this Court will not disturb the Board's decision." *Id.* Further, the *Brown* Court warned the board to avoid reaching a decision on the merits when addressing the sufficiency of the complaint. *Id.* Thus, case law gives the Court a three-part test to analyze if the OHA abused its discretion in determining sufficiency that the Court applies here.

On the first prong, the Court assesses the statement for a citation to the election law. *Id.* Yazzie filed a complaint citing to Title 2, but failed to cite the elections law of the Navajo Nation. Thus, on its face, the grievance is insufficient, but we go further.

Under the second prong of the test, the Court must determine if there are facts that, if taken as true, violate the election law. *Id.* Here, there are neither facts nor an election law to apply. The statement that Shirley was elected twice before is settled in fact, but does not in and of itself violate an election law.

Third, we look to the OHA order. Here, OHA states that the dismissal was due to the finding in *Todacheene, supra*. This fails for two reasons: 1) Nothing in statute appears to give OHA the authority to hear cases outside of the Election Code, and 2) OHA pre-hearing dismissal orders must not go to the merits. In this case, the OHA reached the correct result, but the dismissing order goes too far, treading where there is neither statutory authority, and into the merits of the complaint which we have repeatedly ruled against. *See, Nelson v. Initiative committee to reduce Navajo Nation Council*, 9 Nav. R. 350 (Nav. Sup. Ct. 2010); *Chee v. Navajo Election Administration*, 9 Nav. R. 447 (Nav. Sup. Ct. 2010).

Therefore, we agree that this complaint was insufficient on its face, and the OHA did not abuse its discretion in dismissing the case. However, as stated above, we disagree with the OHA reasoning.

V

We take this opportunity to dispel a dangerous misconception in the role of the Navajo Nation Judicial Branch (Branch). Yazzie argued that this Court made law in his presentation and brief to the Court. We disagree.

The role of the Branch is that of teacher, interpreter, and disciplinarian. “The leader(s) of the Judicial Branch (*Alqaji Hashkééji Naat'ááh*) shall uphold the values and principles of *Diné bi beenahaz'áanii* in the practice of peace making, obedience, discipline, punishment, interpreting laws and rendering decisions and judgments.” 1 N.N.C. § 203.

The Navajo Nation Council (“Council”) has told us that government must learn, practice and educate the Diné on the values and principles of these laws. *Benally v. Benally*, 8 Nav. R. 796, 802 (Kay. Fam. Ct. 2003). Judges who adjudicate dispute using these fundamental laws must thoroughly explain the concepts so that we can all learn. *Id.* This is the role of the Court, to resolve, teach, and when required discipline.

In 1989, the Council made a decision that the Navajo Nation would be split into three (3) branches. *Office of Navajo Nation President & Vice-President v. Navajo Nation Council*, 9 Nav. R. 325 (Nav. Sup. Ct. 2010), *opinion supplemented on denial of reconsideration*, 9 Nav. R. 372, (Nav. Sup. Ct., 2010)). The Council envisioned that there would be a shared leadership wherein each governmental branch would perform their function in a “proper way for the public good.” *Id.* at 335. It further reasoned that “separation of functions is a concept that is so deeply-rooted in Navajo culture that it is accepted without question. It is essential to maintaining balance and harmony.” *Tuba City Judicial District of the Navajo Nation v. Sloan*, 8 Nav. R. 159, 167 (Nav. Sup. Ct. 2001). Moreover, this concept is embedded in Fundamental Law which is the premise for “our principles of separation of powers and checks and balances.” *Id.* It is from this framework that we conceptualize the role of the Branch and conclude that we neither make law nor legislate from the bench.

VI

We leave *Todacheene*, 9 Nav. R. 380, for another day because the appeal before us does not meet the requirements to reach the substance of *Todacheene*. Although in appeal, the matter was addressed by the parties, the issue on this appeal was technical and not substantive—Our review is limited by statute and case law.

In *Todacheene*, this court interpreted a statute to mean that there was a prohibition on a president serving for more than two consecutive terms. *Id.* In *Todacheene*, the Court stated that the people are the ultimate driving force of change, and we maintain that the will of the people is foremost in the form of our government. *Id.* *Todacheene* described the necessity of the People’s voice in changes in the shape of our government. *Id.*, 385 (describing “Title II Amendments of 1989 which can be amended or repealed only by the People.” (internal citations omitted)). Today, the statute remains unchanged from 2010 when this Court decided the case.

We continue to interpret the promises of the Council in Title 2 as deferring to “the People to make further changes to government, particularly in regard to important doctrines of sound government—separation of powers, checks and balances, accountability to the People, and service of the anticorruption principle.” *In Re Seanez*, 9 Nav. R. 433, 436 (Nav. Sup. Ct. 2010) (citing *Office of Navajo Nation President & Vice-President v. Navajo Nation Council*, *supra*).

The Navajo Nation is driven by its People and guided by principles that predate our adoption of any statute. No matter the decisions of this Court or the statutes passed by the Council, *Diné bi beénahaz’áanii* inevitably controls the terms and time that a *naat’áanii* may serve.


Had a case properly addressed the issue, or had this matter been properly before the Court, the results may have been different. In the present case, however, we were presented with

a limited review of whether OHA abused its discretion in determining sufficiency of the statement filed, thus we do not reach *Todacheene*.

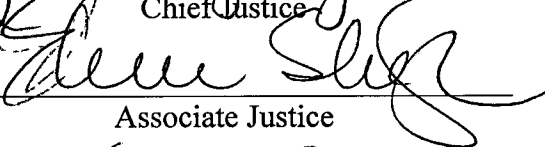
VII

For the foregoing reasons, we affirm the dismissal by the Office of Hearings and Appeals.

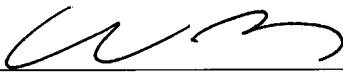
Dated this 10th day of October, 2018



Chief Justice



Associate Justice



Associate Justice