HOUSE RESOLUTION 41

By Odom

A RESOLUTION to create an ad hoc committee to receive and review the complaint filed by Rishi K. Sexena with respect to the thirty-fourth representative district.

WHEREAS, a complaint has been filed by Mr. Rishi K. Sexena against Representative Donna Rowland; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED SIXTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, that the Speaker appoint an ad hoc committee to receive and review the complaint filed by Mr. Rishi K. Sexena against Representative Donna Rowland. Such committee shall be composed of six (6) members of which three (3) shall represent each party. The speaker shall designate one (1) member as chair.

BE IT FURTHER RESOLVED, That the committee receive and thoroughly review the evidence pertaining to the complaint filed by Mr. Sexena and that the ad hoc committee expeditiously report its findings and recommendations to the full House of Representatives.

BE IT FURTHER RESOLVED, That the committee is authorized to exercise such powers and authorities granted in Tennessee Code Annotated, Title 3, chapters 3 and 4, and to operate under the rules of the House of Representatives and to adopt such other rules as may be necessary to complete its duties in a fair and responsible manner.

BE IT FURTHER RESOLVED, That the committee shall have the authority to allow the complaint to be withdrawn from the House of Representatives.

BE IT FURTHER RESOLVED, That the recommended action of the committee shall become the action of the House of Representatives upon approval by a majority of the members.
BE IT FURTHER RESOLVED, That upon filing its report to the House of Representatives, the committee shall cease to exist.
BACKGROUND

On Tuesday, November 4, 2008, Thirty-Fourth State Representative District incumbent Donna Rowland (R) defeated Dr. Rishi Saxena (D) by a certified vote of 24,664 to 13,004 - a margin of 11,660 votes in favor of Representative Rowland. On November 14, 2008, Dr. Saxena filed a letter of complaint with the Chief Clerk of the House of Representatives alleging qualification and certain election irregularities. Under the provisions of Article II, Section 11 of the Tennessee Constitution, the House of Representatives is the sole and exclusive authority in determining the qualifications and election of its members once assembled. On Tuesday, January 13, 2009, Donna Rowland was seated provisionally as the State Representative for the Thirty-Fourth District (part of Rutherford County) pending action of the House of Representatives to resolve the complaint filed by Rishi Saxena. On Monday, March 16, 2009, the House of Representatives of the One Hundred Sixth General Assembly adopted House Resolution 41 creating an ad hoc committee to receive and thoroughly review the evidence pertaining to the complaint filed by Dr. Saxena with respect to the Thirty-Fourth District. Speaker Kent Williams appointed the following members to the District 34 Ad Hoc Committee: Representative Janis Sontany, chair; Representative Karen Camper; Representative Susan Lynn; Representative Steve McManus; House Republican Leader Jason Mumpower; and, House Democratic Leader Gary Odom.

The District 34 Ad Hoc Committee held an organizational meeting on Wednesday, March 23, 2009, when it adopted a schedule for the Committee’s proceedings, with expressed agreement by Dr. Saxena and Representative Rowland. Representative Donna Rowland was represented at the organizational meeting, and throughout the proceedings of the Ad Hoc Committee, by attorneys John Ryder and Ashley Martin. Dr. Saxena chose to represent himself throughout the course of the proceedings and at various times allowed his employee, Kathy Adams, to act on his behalf. All briefs and other documentation were timely filed with the Committee pursuant to the adopted schedule. On Wednesday, April 15, 2009, a preliminary hearing was held when a request to dismiss the complaint on behalf of Representative Rowland and other issues were entertained. At that hearing, the Committee deferred action on the request to dismiss until the hearing date and unanimously voted to authorize the issuance of three subpoenas for witnesses, to be served contingent on committee staff’s inability to secure their voluntary attendance. No subpoenas were served.

On Monday, April 20, 2009, the hearing on the complaint was held. After opening statements, Dr. Saxena presented his case-in-chief calling Ms. Kathy Adams and himself as his only witnesses. After comprehensive cross examination by Mr. Ryder and Ms. Martin as well as thorough questions from the Committee members, Dr. Saxena rested his case. Representative Odom then moved the complaint be dismissed and that a report be drafted making certain findings and recommendations as herein provided. The motion was seconded by Representative Mumpower. Representative Mumpower moved to amend the motion to include a finding that the complaint was frivolous in nature. The motion was seconded by Representative Odom and carried upon a vote of 6-0. Representative McManus moved to
amend the Representative Odom's motion to include a finding that the complaint was malicious in nature. The motion was seconded by Representative Mumpower but failed upon a vote of 3-3. The Committee then adopted the amended motion to dismiss by a vote of 6-0.

At no time prior to dismissing the complaint did the District 34 Ad Hoc Committee in any way deny or restrict the right of Dr. Rishi Saxena, counsel for Representative Rowland or any other person, to be fairly and fully heard. On no occasion prior to dismissing the complaint did the committee refuse or fail to receive and consider all testimony and documentary evidence presented or submitted by Dr. Saxena, counsel for Representative Rowland or any other person. Adequate public notice of all meetings was provided. All three meetings of the committee were open to the public and were held in Legislative Plaza Room 30. Video streaming was available for all meetings and is archived on the web site of the House of Representatives for the One Hundred Sixth General Assembly. In addition, all meetings were recorded by the Tennessee State Library and Archives.

COMPLAINANT'S ALLEGATIONS

Dr. Rishi Saxena complains to the House of Representatives that Representative Donna Rowland's residence inside the Thirty-Fourth District was for "namesake" only and that certain voting irregularities occurred in his election against Representative Rowland. Specifically, Dr. Saxena complains of 568 votes which represents the difference between the number of voters on a "not voted list" the doctor received and the number of voters who voted on election day and that Representative Rowland received a significant increase in the total number of votes cast in her favor in this election as compared with her November 2006 election.

DOCUMENTS SUBMITTED & TESTIMONY RECEIVED

During the course of its proceedings, the committee received briefs, response briefs, witness lists and exhibit lists from each party. Copies of all exhibits were filed with the committee. On the hearing day, a second copy of Representative Rowland's driver license and an article from The Daily News Journal of Murfreesboro titled "Opponent: Rowland lives out of district" were distributed to the Committee. These documents, and an electronic copy of the three hearings held on this matter, are included in a copy of the committee notebook which is being collectively filed as Appendix I of this report.

FINDINGS

Based upon its review and evaluation of all oral and written evidence presented or submitted to the committee by Dr. Saxena and counsel for Representative Rowland, the Committee unanimously makes the following findings:

1. Rep. Rowland is a resident of District 34; her residence was, and is, 237 Faldo Dr., Murfreesboro TN, 37128.

2. Dr. Saxena failed to present a sufficient quantum of proof to indicate either:
(A) That the number of illegal ballots cast, if any, equaled or exceeded the
difference between the two candidates, or

(B) That fraud or illegality so permeated the conduct of this election as to render
it incurably uncertain.

3. Dr. Saxena's complaint, being based on deficient reasoning and evidence, was
frivolous in nature.

RECOMMENDATIONS

Based on the Committee's findings, the Committee unanimously makes the following
recommendations to the House of Representatives of the One Hundred Sixth General
Assembly:

1. That the complaint filed by Rishi K. Saxena with respect to the thirty-fourth
representative district be dismissed.

2. That Representative Donna Rowland's "provisional" status be lifted.

3. That Representative Rowland be seated as all other members of the House of
Representatives of the 106th General Assembly are seated.
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

Donna ROWLAND
v.
Rishi K. SAXENA, M.D.

No. M2010-00640-COA-R3-CV.
| Nov. 19, 2010 Session.

West KeySummary

I Election Law

Costs

Chancery court did not have jurisdiction to entertain an action solely to recover counsel fees and costs incurred in an election contest for a seat in the Tennessee House of Representatives. Tennessee law governing election contests vested exclusive jurisdiction to decide contests for the office of state representative to the legislature. Therefore, the court was without jurisdiction to decide issues arising from an action concerning election contestation. West's T.C.A. §§ 2–17–103, 2–17–115.

Cases that cite this headnote

Appeal from the Chancery Court for Rutherford County, No. 09–0718CV; Larry B. Stanley, Jr., Chancellor.

Attorneys and Law Firms

John L. Ryder and Ashley Austin Martin, Memphis, Tennessee, for the appellant, Donna Rowland.

Paul W. Ambrosius and W. Justin Adams, Nashville, Tennessee, for the appellee, Rishi K. Saxena, M.D.

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

OPINION

RICHARD H. DINKINS, J.

*1 State representative appeals dismissal of her suit to recover attorney fees incurred as a result of her former opponent's contest of the election. The trial court held that the Tennessee Constitution and statutes governing election contests vest exclusive jurisdiction to decide contests for the office of state representative, and that, consequently, the court was without jurisdiction to determine the issue of costs and fees awardable under the statute. We hold that the chancery court correctly determined that it was without jurisdiction to decide issues arising under § 2–17–115.

In this case we are called upon to determine whether Tenn.Code Ann. § 2–17–115 allows a chancery court to entertain an action solely to recover counsel fees and costs incurred in an election contest for a seat in the Tennessee House of Representatives.

I. Introduction

The facts relevant to this appeal are not disputed. Rishi Saxena ran against Donna Rowland for election to the Tennessee House of Representatives for the 34th District, located in Rutherford County. On November 4, 2008 Rep. Rowland defeated Dr. Saxena by a margin of 11,650 votes, and the election was certified by the Secretary of State.

On November 14, 2008, Dr. Saxena sent a letter to the Chief Clerk of the House of Representatives, challenging the validity of the election result. Specifically, Dr. Saxena charged that Rep. Rowland was not a qualified voter of District 34 because she lived in another district. Dr. Saxena also noted what he characterized as irregularities in information and voter list disks provided by the Rutherford County Election Commission. Rep. Rowland responded by sending a letter to House Speaker Jimmy Naifeh, in which she included her voter registration card, utilities statement, and lease agreement, all of which she asserted verified her residency in the 34th District. 1
On January 13, 2009, Rep. Rowland was provisionally seated as Representative for the 34th House District, pending action by the House to resolve the election challenge. On March 16 a committee of the House of Representatives was formed to hear the contest and make a report to the entire House; the hearing was held April 20. After Dr. Saxena presented his case-in-chief, the committee members voted unanimously to recommend to the House of Representatives that the challenge be dismissed. An amendment to include a finding that the complaint was frivolous was adopted unanimously; a second proposed amendment to find that the complaint was "malicious in nature" failed. The findings of the committee in its report were:

1. Rep. Rowland is a resident of District 34; her residence was, and is, 237 Faldo Dr., Murfreesboro, TN 37128.

2. Dr. Saxena failed to present a sufficient quantum of proof to indicate either:

(A) That the number of illegal ballots cast, if any, equaled or exceeded the difference between the two candidates, or

(B) That fraud or illegality so permeated the conduct of this election as to render it uncurably uncertain.

*2 3. Dr. Saxena's complaint, being based on deficient reasoning and evidence, was frivolous in nature.

The committee's recommendations to the House of Representatives were:

1. That the complaint filed by Rishi K. Saxena with respect to the thirty-fourth representative district be dismissed.

2. That Representative Donna Rowland's "provisional" status be lifted.

3. That Representative Rowland be seated as all other members of the House of Representatives of the 106th General Assembly are seated.

On April 27, the House of Representatives voted to approve the committee report.

On May 18, 2009, Rep. Rowland filed suit against Dr. Saxena in Rutherford County Chancery Court seeking an award of attorney fees, asserting Tenn.Code Ann. § 2–17–115 2 as the jurisdictional basis therefor. Dr. Saxena filed a Tenn. R. Civ. P. 12.02 motion to dismiss, contending that the court lacked subject matter jurisdiction; that the complaint failed to state a claim upon which relief could be granted; that sole jurisdiction over Rep. Rowland's claims was vested in the Tennessee House of Representatives under Tenn.Code Ann. § 2–17–102; and that the claims were barred by the First Amendment to the United States Constitution and Art. 1, § 19 of the Tennessee Constitution. Rep. Rowland filed a motion for summary judgment, supported by her affidavit, exhibits from the proceeding in the House of Representatives, and a statement of undisputed material facts.

The court granted Dr. Saxena's motion to dismiss, holding that Art. 2, § 11 of the Tennessee Constitution and Tenn.Code Ann. § 2–17–102 conferred sole jurisdiction on the General Assembly to decide election contests in the State House and State Senate, and that the body deciding the election contest should decide the issue of attorney's fees. The court reasoned that Tenn.Code Ann. § 2–17–115 did not create an independent cause of action for attorney's fees and, consequently, it did not have jurisdiction to determine the issue.

Rep. Rowland appeals, contending that the Chancery Court has subject matter jurisdiction and requesting that the case be remanded for a determination of the amount of fees to be awarded. Dr. Saxena raises two additional issues if we determine that the Chancery Court has jurisdiction of Rep. Rowland's complaint: (1) whether the House of Representatives' failure to award Rep. Rowland her fees is res judicata on the court's ability to consider her request for fees; and (2) whether the complaint and this appeal present a non-justiciable political question entrusted to the House of Representatives.

II. Standard of Review
The trial court determined, as a matter of law, that it did not have subject matter jurisdiction of the request for fees because the action arose out of an election contest for which our constitution and statutes vest exclusive jurisdiction in the House of Representatives. 3 Construction of a statute is a question of law which we review de novo, without a presumption of correctness of the trial court's findings. Barge v. Sadler, 70 S.W.3d 683, 686 (Tenn.2002); Hill v. City of Germantown, 31 S.W.3d 234, 237 (Tenn.2000); Gleave v. Checker Cab

III. Discussion

*3 The primary rule of statutory construction is “to ascertain and give effect to the intention and purpose of the legislature.” LensCrafters, Inc. v. Sundquist, 33 S.W.3d 772, 777 (Tenn.2000) (citing Worrell v. Kroger, 545 S.W.2d 736 (Tenn.1977). To determine legislative intent, we must look to the natural and ordinary meaning of the language used in the statute itself and examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. State v. Fleming, 19 S.W.3d 195, 197 (Tenn.2000); Cohen v. Cohen, 937 S.W.2d 823, 828 (Tenn.1996); Exxonmobil, 246 S.W.3d at 35; T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC, 93 S.W.3d 861, 867 (Tenn.Ct.App.2002). The statute should be read “without any forced or subtle construction which would extend or limit its meaning.” Nat'l Gas Distributors, Inc. v. State, 804 S.W.2d 66, 67 (Tenn.1991). As our Supreme Court has said, “[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.” State v. Turner, 913 S.W.2d 158, 160 (Tenn.1995).

When construing statutes that are part of a statutory scheme, we are also directed to look to the context of the particular provision. Our Supreme Court has made the following observation:

When statutory provisions are, as in this case, enacted as part of a larger Act, “we examine the entire Act with a view to arrive at the true intention of each section and the effect to be given, if possible, to the entire Act and every section thereof. Where different sections are apparently in conflict we must harmonize them, if practicable, and lean in favor of a construction which will render every word operative.”

Hill, 31 S.W.3d at 238 (quoting Bible & Godwin Constr. Co. v. Faener Corp., 504 S.W.2d 370, 371 (Tenn.1974)).


4 Tenn.Code Ann. § 2–17–103 vests contests for the election of presidential and vice-presidential electors in the “presidential electors tribunal,” composed of the governor, secretary of state, and attorney general and reporter. Tenn.Code Ann. §§ 2–17–104 commits contests of primary elections to the political party of the candidate. Tenn.Code Ann. §§ 2–17–105–110 set out procedures to be applied and evidence to be received in an election contest. Tenn.Code Ann. §§ 2–17–111–115 pertain to powers and responsibilities given the court or other tribunal which is deciding the contest. Tenn.Code Ann. § 2–17–117 details the circumstances under which the “court, primary board, legislative body or tribunal having jurisdiction of an election contest” may order a recount and the manner by which the recount is to be conducted.

*4 In its entirety, Chapter 17 limits the jurisdiction of chancery court to hear and decide issues in election contests that are not specifically committed to other tribunals ("otherwise expressly provided") in the chapter. There is nothing in the chapter to indicate that the tribunal which has been designated in the statute to hear and decide the contest—here, the House of Representatives—does not have the authority and responsibility to resolve all matters involved in the contest, including making an award of fees pursuant to Tenn.Code Ann. § 2–17–115. Such authority and responsibility is consistent with the unique ability of the tribunal hearing the contest to make the prerequisite finding that the contest or appeal was maliciously or frivolously prosecuted in order to award fees.

The report of the committee hearing Dr. Saxena’s challenge did not recommend an award of fees and, indeed, made no mention of Rep. Rowland’s request to the committee that fees be awarded. The only references in the record to Rep. Rowland’s request are in the brief she filed in the House of Representatives and in the affidavit she filed in support of her motion for summary judgment wherein she states:

19. At the hearing on Defendant Saxena’s election contest, through my attorney, I requested the
Committee order Defendant Saxena to reimburse me for my attorney fees, pursuant to TCA § 2–17–102. Doug Himes, attorney for the Committee advised that he had reviewed the statutes, the Tennessee Constitution and conferred with the Attorney General's office regarding the issue of attorney fees. Based upon the comments of Mr. Himes, the committee found that they did not have the authority to award statutory attorney fees.

We fail to discern the basis of the determination that the committee did not have authority to consider Rep. Rowland's request for attorney fees and to include such recommendation as it felt appropriate in its report to the entire House of Representatives. As noted previously, the Tennessee Constitution vests exclusive jurisdiction to determine the qualification of members of the House of Representatives in the House. Tenn.Code Ann. §§ 2–17–101–117 are statutes that guide the conduct of election contests in whatever tribunal the contest is being conducted. Just as, for example, the Legislature has determined in § 2–17–109 that poll books, voter lists and ballot applications can be used as evidence in an election contest in whatever tribunal the contest is held, the Legislature determined in Tenn.Code Ann. § 2–17–115 that attorneys fees and costs can be awarded by that tribunal. Thus, while § 2–17–115 does not create a separate cause of action to recover fees, it does constitute the statutory basis upon which the tribunal makes such an award.

Dr. Saxena contends that, if this court determines that the chancery court has subject matter jurisdiction, then the decision of the House of Representatives not to award Rep. Rowland fees is res judicata and precludes this court from considering the request. In light of our finding that the House of Representatives has the authority to consider Rep. Rowland's request, this issue is moot. There is no res judicata effect to the House's action and Rep. Rowland is free to renew her request.

Our resolution of this case on statutory grounds renders unnecessary our consideration of the constitutional questions presented. See Owens v. State, 908 S.W.2d 923, 926 (Tenn.1995) ("... under Tennessee law, courts do not decide constitutional questions unless resolution is absolutely necessary for determination of the case and the rights of the parties.")

IV. Conclusion
For the foregoing reasons, the judgment of the Chancery Court is AFFIRMED.

All Citations
Not Reported in S.W.3d, 2011 WL 345827

Footnotes
1 At the time Rep. Rowland filed her qualifying petition for the 2008 election, she resided at 5858 Franklin Road in Murfreesboro. In June 2008, following her divorce, she moved to 237 Faldo Drive in Murfreesboro.
2 Tenn.Code Ann. § 2–17–115 provides: Costs and a reasonable attorney's fee shall be assessed against the contestant or the appellant if the contest or the appeal is maliciously or frivolously prosecuted.
3 The court heard Dr. Saxena's motion to dismiss and Rep. Rowland's motion for summary judgment at the same time; the order dismissing the case recited that the court considered "statements of counsel, the memoranda of laws submitted and the entire case record as a whole." In ruling on the motion to dismiss, the court was obliged to take the allegations of the complaint as true. See Pursell v. First Am. Nat'l Bank, 937 S.W.2d 838, 840 (Tenn.1996); see also Trau–Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 696–97 (Tenn.2002). In support of her motion for summary judgment Rep. Rowland filed a Statement of Undisputed Material Facts; Dr. Saxena responded by stating that the factual allegations contained in the Statement were undisputed for purposes of ruling on the motion. Neither party asserts on appeal that there is any issue of fact for trial or that the trial court's determination of the facts is in any way deficient or erroneous.
This statute implements Art. II, § 11 of the Tennessee Constitution, which provides that the house of representatives is "judge [ ] of the qualifications and election of its members."

We have reviewed what is represented in the record to be the transcript of the committee's discussion with Mr. Himes wherein he states in conclusory fashion: "Tenn.Code Ann. 2-17-115 applies to judicial, judicially contested elections in chancery and appellate courts. It does not apply to the General Assembly. It does not grant committees of the General Assembly authority to award attorney's fees."

The chancery court would have jurisdiction in the event it became necessary to file suit to collect the award as in any other action to collect a debt.

Res judicata is a claim preclusion doctrine. Massengill v. Scott, 738 S.W.2d 629, 631 (Tenn.1987). In order for the doctrine to apply, the prior judgment must have been final and concluded the rights of the parties on the merits. Richardson v. Tenn. Bd. of Dentistry, 913 S.W.2d 446, 459 (Tenn.1995).
STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 5, 2012

Opinion No. 12-30

House Election Contest

QUESTION

If an election contest is decided in a previous General Assembly, may a subsequent General Assembly renew or reexamine the election contest, including for the purpose of considering a request for an award of costs and attorney’s fees?

OPINION

In accordance with the plain language of Article II, § 11, of the Tennessee Constitution, the power to judge the qualification and elections of members of a particular General Assembly is vested solely in each House of that General Assembly. Consequently, a succeeding General Assembly has no authority to judge the qualifications and election of the members of a prior General Assembly and, therefore, would have no authority to renew or reexamine an election contest arising out of the election of a member of a prior General Assembly.

ANALYSIS

Per the opinion request, in the November 2008 General Election, Dr. Rishi Saxena and Representative Donna Rowland were candidates for the office of Tennessee House of Representatives for the 34th District. Representative Rowland defeated Dr. Saxena by a margin of 11,650 votes, and the election results were subsequently certified. Dr. Saxena timely filed an election contest asserting that Representative Rowland was not a qualified voter of District 34 because she lived in another district. In light of the election contest, Representative Rowland was provisionally seated as Representative for the 34th House District on January 13, 2009.

Pursuant to House Resolution 41 of the 106th General Assembly, the District 34 Ad Hoc Committee was created to hear the election contest initiated by Dr. Saxena. The Committee was charged with receiving and thoroughly reviewing evidence pertaining to Dr. Saxena’s complaint and to report its findings and recommendations to the full House of Representatives. House Resolution 41 specifically authorized the Committee “to exercise such powers and authorities granted in Tennessee Code Annotated, Title 3, chapters 3 and 4, and to operate under the rules of the House of Representatives and to adopt such other rules as may be necessary to complete its duties in a fair and responsible manner.” H.R. 0041, 106th Gen. Assembly (Tenn. 2009).
A hearing on Dr. Saxena’s complaint was held by the Committee on April 20, 2009. Upon the conclusion of Dr. Saxena’s case-in-chief, the Committee members voted unanimously to recommend to the House of Representatives that the contest be dismissed. The Committee subsequently filed its report and recommendation with the House in which it recommended that:

1. The complaint filed by Rishi K. Saxena with respect to the thirty-fourth representative district be dismissed;

2. Representative Donna Rowland’s “provisional” status be lifted; and

3. Representative Rowland be seated as all other members of the House of Representatives of the 106th General Assembly are seated.

The report and recommendation of the Ad Hoc Committee was adopted by the House of Representatives on April 27, 2009, by a vote of 97-0. While the Committee’s report and recommendation did make a finding that Dr. Saxena’s claim “was frivolous in nature,” it did not recommend any award of costs and attorney’s fees to Representative Rowland, nor did it reserve the issue of an award of costs and attorney’s fees for future reconsideration. In accordance with the terms of House Resolution 41, upon submission of the committee’s report and recommendation the District 34 Ad Hoc Committee ceased to exist.

On May 18, 2009, Representative Rowland filed suit against Dr. Saxena in Rutherford County Chancery Court seeking an award of attorney’s fees based upon the provisions of Tenn. Code Ann. § 2-17-115 and the findings of the District 34 Ad Hoc Committee that Dr. Saxena’s complaint “was frivolous in nature.” The Chancery Court found, however, that pursuant to Art. 2, § 11 of the Tennessee Constitution sole jurisdiction was vested in the General Assembly to decide election contests in the State House and Senate and that Tenn. Code Ann. § 2-17-115 did not create an independent cause of action for attorney’s fees. Accordingly, the Chancery Court dismissed the Complaint for lack of jurisdiction. See Rowland v. Saxena, No. M2010-00640-COA-R3-CV, 2011 WL 345827 (Tenn. Ct. App. Jan. 31, 2011).

Representative Rowland appealed the dismissal of her case and on appeal, the Court of Appeals stated that it was called upon to “determine whether Tenn. Code Ann. § 2-17-115 allows a Chancery Court to entertain an action solely to recover counsel fees and costs incurred in an election contest for a seat in the Tennessee House of Representatives.” Id. at *1. The Court of Appeals affirmed the Chancery Court’s ruling that Tenn. Code Ann. § 2-17-115 does not create a separate cause of action to recover attorney’s fees, although it did note in dicta that the statute “constitutes the statutory basis upon which the tribunal makes such an award.” Id. at *4.

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1 Indeed the issue of whether to award attorney’s fees and costs was raised in the course of this proceeding, and the Committee was advised it lacked authority “to award statutory attorney fees.” Rowland v. Saxena, No. M2010-00640-COA-R3-CV, 2011 WL 34582), at *3 (Tenn. Ct. App. Jan. 31, 2011). Thus presumably the Committee made a conscious decision not to award fees and costs based on this advice.

2 Nonetheless any reexamination of a contested election would have to be conducted in accordance with the Rules of Order adopted at the beginning of each General Assembly, given Article II, § 12 of the Tennessee Constitution
In the interim, Representative Rowland did not seek re-election as Representative of House District 34 in the November 2010 general election and thus her term has expired. The term of the 106th General Assembly also expired as of the date of the November 2010 general election.

The question presented is whether the current General Assembly (107th General Assembly) could renew or reexamine this election contest, including for the purpose of considering a request for an award of costs and attorney’s fees by former Representative Rowland. The determination of the answer to this question begins with an analysis of Article II, § 11 of the Tennessee Constitution, which vests each House of the General Assembly with the authority to judge the qualifications and elections of its members. The constitutional provision provides in pertinent part as follows:

The Senate and House of Representatives, when assembled, shall each choose a speaker and its other officers; be judges of the qualifications and election of its members; and sit upon its own adjournment from day to day . . . .

Tenn. Const. art. II, § 11. This section of the Constitution has been construed as vesting sole and exclusive authority in the House and Senate to judge the qualifications and election of their respective members after each legislative body is constituted as of the day of the November general election. State ex rel. Ezzell v. Shumate, 172 Tenn. 451, 459-60, 113 S.W.2d 381, 384-85 (1938); Gates v. Long, 172 Tenn. 471, 474, 113 S.W.2d 388, 389 (1938); Comer v. Ashe, 514 S.W.2d 730, 741 (Tenn. 1974). Pursuant to Article II, § 11, the General Assembly has enacted Tenn. Code Ann. § 2-17-102, which provides that “contests for the office of Senator in the General Assembly are decided by the Senate, and contests for the office of Representative in the General Assembly are decided in the House of Representatives.”

While there is no Tennessee case law addressing the question of whether a subsequent General Assembly can reexamine an election contest filed in a prior General Assembly, this Office concludes that the question is controlled by the plain language of Article II, § 11 of the Tennessee Constitution. In accordance with the express language of Article II, § 11, the authority of the House and Senate to judge the “qualifications and election of its members” attaches to the House and Senate “. . . when assembled . . .” (emphasis added). In Comer v. Ashe, the Supreme Court noted the significance of the phrase “when assembled,” as used in Article II, § 11, and observed that “[t]his Article shows on its face that it is operative only when the General Assembly is in session.” Comer v. Ashe, 514 S.W.2d at 733. Thus, once assembled, the House and Senate may, without question, take appropriate action relative to election contests involving their respective members. However, it is equally clear that the power to judge the qualification and elections of members of a particular General Assembly is vested solely in each House of that General Assembly. Thus, the House of Representatives of the 106th General Assembly was vested solely with the power to judge the qualifications and election of its members. Consequently, the 107th General Assembly has no authority to judge the qualifications and provides that each house has the authority to establish the rules of its own proceedings. In this case, no rule of the House of the 106th General Assembly appears to have existed authorizing the award of attorney’s fees or costs in an election contest before that body.
election of the members of the 106th General Assembly and, therefore, would have no authority to renew or reexamine an election contest arising out of the election of a member of the 106th General Assembly.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

JANET M. KLEINFELTER
Deputy Attorney General

Requested by:

The Honorable Steve McManus
State Representative
Suite 20 Legislative Plaza
Nashville, TN 37243
MEMORANDUM

TO: The Honorable Beth Harwell, Speaker House of Representatives

FROM: Senator Bill Ketron, Chairman Representative Curtis Johnson, Vice-Chairman

DATE: April 18, 2012

SUBJECT: Attorney’s Fees Determination in the Donna Rowland [now Barrett]/ Rishi K. Saxena Election Contest

This matter came before the Fiscal Review Committee on April 16, 2012, upon the written request of Representative Steve McManus, who was a member of the 106th General Assembly District 34 Ad Hoc Committee. On April 20, 2009, the District 34 Ad Hoc Committee heard an election contest initiated against Representative Donna Rowland [now Barrett] by her opponent Dr. Rishi K. Saxena. Following a hearing, the Ad Hoc Committee determined that Dr. Saxena failed to present a sufficient quantum of proof to prevail and that the complaint was “frivolous in nature.” Upon the Ad Hoc Committee’s recommendation, the complaint was dismissed. Former Representative Rowland made a request to the Ad Hoc Committee for attorney’s fees. Based on the advice of legal counsel, the Ad Hoc Committee concluded it did not have the authority to award statutory attorney fees.
Former Representative Rowland brought an action in the Rutherford County Chancery Court seeking attorney’s fees. The Chancery Court determined it had no jurisdiction to determine the issue of attorney’s fees and found that the issue rested with the General Assembly. The findings of the Chancery Court were affirmed by the Tennessee Court of Appeals which concluded that Tennessee Code Annotated § 2-17-115 does not create a separate cause of action to recover fees, it does constitute the statutory basis upon which the tribunal [General Assembly] makes such an award.

Former Representative Rowland renewed her request for attorneys fees based on these findings. Current Representative McManus brought the matter to the Fiscal Review Committee for the Committee’s recommendations regarding the attorney’s fees.

At the April 16, 2012 Fiscal Review Committee Meeting, Mrs. Barrett submitted the pleadings and findings of the Rutherford County Chancery Court and the Tennessee Court of Criminal Appeals along with a detailed statement for attorney’s fees. The Committee also reviewed Tennessee Code Annotated § 2-17-115 which provides that “[c]osts and a reasonable attorney’s fee shall be assessed against the contestant . . . if the contest . . . is maliciously or frivolously prosecuted.” Tenn. Code Ann. § 2-17-116 (emphasis added).

Having reviewed the findings of the Chancery and Appellate Courts, the Fiscal Review Committee concurs with the Ad Hoc Committee’s finding that this was a frivolous lawsuit as defined within Tennessee Code Annotated § 2-17-115. The Committee makes a positive recommendation to the House of Representatives concerning Mrs. Barrett’s renewed request for attorney’s fees, and finds attorney’s fees totaling $61,413.71 should be assessed against the contestant, Dr. Saxena, and that this award is a reasonable and acceptable amount based on the Committee’s review of the attorney fee statement. As recommended by the Committee, a copy of this recommendation along with the attachments has been sent to the opposing party, Dr. Saxena.

Attachments
2010 Annual Year End Supplemental (2012) for DONNA ROWLAND submitted on 01/30/2013

Beginning Balance

BEGINNING BALANCE $2,370.88

Receipts

Monetary Contributions, Unitemized $0.00

Monetary Contributions, Itemized

<table>
<thead>
<tr>
<th>Contributor</th>
<th>C/P</th>
<th>Rec'd For</th>
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<td>SAXENA, RISHI</td>
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<td>General</td>
<td>11/28/2012</td>
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TOTAL CONTRIBUTIONS $25,000.00
(Other than adjustments, loans, and interest)

Contribution Adjustments $0.00

Loans Received $0.00

Interest Received This Reporting Period $0.00

TOTAL RECEIPTS $25,000.00

Disbursements

Expenditures, Unitemized $0.00

Expenditures, Itemized


5/6/2019
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<td>BENNETT &amp; SCARLETT</td>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Obligation Payments</td>
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**TOTAL EXPENDITURES** (other than adjustments) $20,000.00

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**TOTAL DISBURSEMENTS** $20,000.00

**Ending Balance**

**ENDING BALANCE** $7,370.88

**Outstanding Loans**

**OUTSTANDING LOAN BALANCE** $0.00

**In-Kind Contributions**

*In-Kind Contributions are not included in the report ending balance.*

<table>
<thead>
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TOTAL IN-KIND CONTRIBUTIONS $0.00

Obligations
Obligations are not included in the report ending balance.

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<tr>
<td>Obligations, Outstanding from Previous Reports</td>
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TOTAL OBLIGATIONS OUTSTANDING $0.00
TENNESSEE HOUSE OF REPRESENTATIVES

108TH GENERAL ASSEMBLY

PERMANENT RULES OF ORDER

BETH HARWELL, SPEAKER

SELECT COMMITTEE ON RULES
Steve McDaniel, Chair; David Alexander, Karen Camper, Glen Casada, JoAnne Favors, Craig Fitzhugh, Matthew Hill, Curtis Johnson, Jon Lundberg, Gerald McCormick, Charles Sargent, Michael Turner and Mark White.
81. ELECTION CONTESTS. Each election contest in the House of Representatives shall be initiated by complaint timely received within five (5) days after certification of the election and shall proceed with the introduction of a resolution creating an ad hoc committee to be appointed by the Speaker composed of three (3) members of the majority party and three (3) members of the minority party. The Speaker shall designate one (1) member chair. An ad hoc committee may, as part of its findings and recommendations, recommend the award of reasonable costs and attorney fees against a contestant if the committee determines that the contest was maliciously or frivolously prosecuted. All issues raised in an election contest shall be resolved during the General Assembly in which the contest is initiated and no issue shall be heard after such General Assembly adjourns sine die. An ad hoc committee shall timely report its findings and recommendations to the full House of Representatives. Upon approval by a majority of the members of the House, such findings and recommendations shall become the final action of the House of Representatives.

82. ETHICS CODE FOR THE HOUSE OF REPRESENTATIVES.

Article I.
Findings and Purpose

The House of Representatives finds that it is essential in the conduct of the public business that representatives hold the respect and confidence of the people. Representatives should avoid conduct that even appears to violate the trust that the people have placed in them. To ensure and preserve public confidence, representatives should have the benefit of specific standards to guide their conduct. Article II, Section 11, of the Constitution of Tennessee grants to the House of Representatives the power to judge the qualifications of its members. It is the purpose of this code to establish standards of conduct for the representatives, to authorize the House Ethics Committee to consider alleged violations of this code, and to authorize the House Ethics Committee to render advisory opinions to the representatives. This code is in addition to and separate from standards of conduct that may be required under state or federal law.

Article II.
Ethical Standards

SECTION 1.

(a) In order to maintain the integrity and reputation of the House of Representatives, the following conduct is a violation of this Ethics Code:

(1) Actions that destroy a representative’s independence of judgment as a legislator;

(2) Actions that are an abuse of the representative’s official position, including, but not limited to, placing undue influence upon any state department, agency, court or governmental subdivision;

(3) Actions that are a personal interest in conflict with the proper discharge of the representative’s duties in accordance with the provisions of Sections 2 and 3 of this Article;