

**District Court of the State of Wyoming
Fourth Judicial District, Sheridan County**

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No. _____
IN THE MATTER OF THE VACANCY IN District Court Sheridan County Wyoming
THE OFFICE OF THE SHERIDAN COUNTY COMMISSIONER. CV 2023-190

151 SEP 01 2023
Rene Botten Clerk
Deputy

ORDER ESTABLISHING PROCEDURE TO FILL VACANCY ON BOARD OF COUNTY COMMISSIONERS

THIS MATTER comes before the court upon filing of a Verified Elector’s Petition for the District Court to Appoint County Commission Position (“Petition”) filed August 30, 2023, by Gail A. Symons, a qualified elector of Sheridan County, pursuant to Wyo. Stat. Ann. § 18-3-524 requesting a judge of the District Court to fill the vacancy occurring on the Board of County Commissioners of Sheridan County (“Board”), occasioned by the resignation of duly elected County Commissioner Mr. Alan Thompson on July 31, 2023. In the foregoing regard, the Court FINDS and CONCLUDES as follows:

FINDINGS OF FACT

1. Commissioner Thompson, elected to serve a term beginning in 2023 and ending in 2027, resigned effective July 31, 2023. Commissioner Thompson represented the Republican Party at the time of his resignation.
2. Thereafter, the four (4) remaining members of the Board declared a vacancy and notified in writing the Chairman of the County Central Committee of the Republican Party, the party represented by resigned Commissioner Thompson.
3. The Sheridan County Republican Party submitted a list to the remaining members of the Board of three (3) persons deemed qualified to fill the vacancy: Mr. Michael Arzy, Mr. Bryan Helferich, and Ms. Holly Jennings.
4. On August 29, 2023, the remaining members of the Board failed to fill the vacancy within the time specified in Wyo. Stat. Ann. § 18-3-542(a).
5. On August 30, 2023, Gail A. Symons, a qualified elector of Sheridan County, filed the Petition with the Clerk of District Court of the Fourth Judicial District requesting the Court fill the vacancy.

CONCLUSIONS OF LAW

6. The procedure for filling a vacancy created in the Board is established by Wyo. Stat. Ann. § 18-3-524, providing as follows:

(a) Within twenty (20) days after the office of any county commissioner becomes vacant the remaining members of the board shall declare a vacancy to exist and immediately give notice of the vacancy in writing to the chairman of the county central committee of the political party which the member whose office is vacant represented at the time of his election under W.S. 22-6-120(a)(vii), or at the time of his appointment if not elected to office. The chairman of the county central committee shall within twenty (20) days after receipt of the notice call a meeting of the county central committee. At the meeting the committee shall select three (3) persons qualified to fill the vacancy and transmit the names to the board of county commissioners. The board of county commissioners shall fill the vacancy within twenty (20) days after receiving the list from the county central committee by appointing one (1) of the persons whose names are submitted by the county central committee:

(i) If the county central committee fails to select and transmit the list of three (3) names to the board of county commissioners within twenty (20) days, the board shall fill the vacancy by the appointment of any qualified person belonging to the same political party the incumbent commissioner represented at the time of his election or appointment if not elected to office;

(ii) If the incumbent commissioner did not represent any political party at the time of his election or appointment, the board of county commissioners shall publish in a newspaper of general circulation in the county notice that within twenty (20) days after publication any qualified person may make application directly to the county commissioners for appointment to fill the vacancy. Within twenty (20) days after the application deadline the county commissioners shall fill the vacancy by appointment of one (1) person qualified from those submitting applications.

(b) *If the remaining members of the board of county commissioners fail to fill any vacancy in a board of county commissioners within the time specified in this section, any qualified elector of the county may file a petition with the clerk of the district court of the county in which the vacancy occurred requesting the judge of the district court to fill the vacancy:*

(i) *Within twenty (20) days after the petition is filed the judge shall fill the vacancy by appointing a qualified elector of the county belonging to the same political party the incumbent commissioner represented at the time of his election or appointment. If the incumbent commissioner did not represent any political party at*

the time of his election or appointment the judge may appoint any qualified person to fill the vacancy.

(c) Every person appointed county commissioner shall serve until a successor is elected at the next general election and takes office on the first Monday of the following January.

(d) For purposes of this section a person shall be considered to "represent" a political party if he was a nominee of that political party when elected to office or when appointed to fill a vacancy in office.

Wyo. Stat. Ann. § 18-3-524 (emphasis added).

7. Wyo. Stat. Ann. § 22-1-102 (a)(xxvi) defines "qualified elector" as "every citizen of the United States who is a bona fide resident of Wyoming, has registered to vote and will be at least eighteen (18) years of age on the day of the election at which he may offer to vote. No person is a qualified elector who is a currently adjudicated mentally incompetent person, or who has been convicted of a felony and his civil or voting rights have not been restored. A literacy test shall not be imposed as a condition to voting in any election."
8. The Court is mandated by statute to fill the vacancy occasioned by the resignation of Commissioner Thompson by appointing a "qualified elector of the county belonging to the same political party the incumbent commissioner represented at the time of his election or appointment" and must do so within twenty (20) days of the date of August 30, 2023, which is the close of business on September 19, 2023. Wyo. Stat. Ann. § 18-3-524(b).
9. The statute is silent on the procedure to be followed in filling the vacancy. It does not outline any criteria beyond the requirement that the Court select a "qualified elector" as defined in Wyo. Stat. Ann. § 22-1-102 (a)(xxvi). The Court observes Canon 1 of the Code of Judicial Conduct which states that "a judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." WY R CJC Rule 1. The Court is required to be apolitical.
10. Further, the Court recognizes that Mr. Michael Arzy, Mr. Bryan Helferich, and Ms. Holly Jennings were selected by the Sheridan County Republican Party Central Committee pursuant to the process set forth in Wyoming law. Of significance, these same three (3) persons were the next highest vote-getters in the primary election of 2022 behind the candidates who won the primary election. The Court takes judicial notice of the 2022 primary election results reported by the Sheridan County Election Office at https://www.sheridancountywy.gov/departments/elections/election_results_archive.php#outer-506sub-507:

Candidate	Votes
NICK SIDDLER	5,088
CHRISTI BURGESS HASWELL	4,199
ALLEN J. THOMPSON	4,068
HOLLY JENNINGS	3,245
MICHAEL R. ARZY	2,911
BRYAN HELFERICH	2,382
DENNIS FOX	2,033
JASON SZEWC	1,891

11. The Court has considered various ways in which it can satisfy its duty to make this appointment, including inviting all qualified electors to submit expressions of interest and determining a process to interview all or a portion of such persons in a very short time frame. Alternatively, the Court could limit the persons to be considered to Mr. Michael Arzy, Mr. Bryan Helferich, and Ms. Holly Jennings.
12. After giving due consideration to all the facts, the court finds it should give deference to the decision of the Sheridan County Republican Party Central Committee and the results of the most recent primary election.
13. Upon considering these matters and being fully advised in the premises, the Court has decided to interview the three (3) candidates chosen by the Sheridan County Republican Party and will make its appointment no later than the close of business on September 19, 2023.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED the following shall set forth the procedure for filling the vacancy on the Board.

1. The Court will interview Mr. Michael Arzy, Mr. Bryan Helferich, and Ms. Holly Jennings in person on Wednesday, September 13, 2023, at 9:00 a.m. Such questioning will occur in open court in the District Courtroom of Sheridan County Courthouse, Sheridan, Wyoming.
2. The Court will take notice of official records in Sheridan County and elsewhere.
3. The Court will issue a written decision on the selection of a Commissioner on or before Tuesday, September 19, 2023.

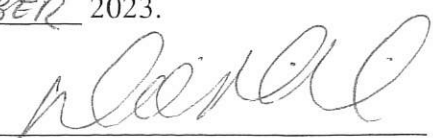
DATED this 1 day of SEPTEMBER 2023.

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.

Done this 1st day of September 2023.

Gene Botter Clerk

By.....Deputy



 DARCI A.V. PHILLIPS
 DISTRICT COURT JUDGE

Copies to:

Eda Schunk Thompson, County Clerk & Recorder, distributed September 1, 2023, at 9:08a.m.

Board of County Commissioners

Mr. Michael Arzy

Mr. Bryan Helferich

Ms. Holly Jennings

Ms. Gail A. Symons

Mr. Steve Maier

Mr. Jacob Martin