

No. SC-CV-47-18

NAVAJO NATION SUPREME COURT

Vincent H. Yazzie,
Petitioner-Appellant,

v.

Jonathan M. Nez,
Respondent-Appellee.

ORDER OF CORRECTION

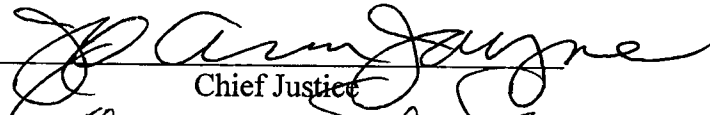
Before JAYNE, J., Chief Justice, SHIRLEY, E., Associate Justice, and THOMPSON, C., Associate Justice by Designation.

Appeal from a decision of the Office of Hearings and Appeals concerning Cause No. OHA-NEA-021-18, Chief Hearing Officer Richie Nez, presiding.


Bernadine Martin, Gallup, New Mexico, for Appellant; David Jordan, Gallup, New Mexico, for Appellee.

This matter is before the Court on its own motion for an entry of order of correction. The Court issued an Opinion in *Yazzie v. Nez* on October 24, 2018 with an incorrect docket number, or SC-CV-41-18. The correct docket matter is No. SC-CV-47-18. The Court hereby corrects the docket number on page 1 to read "No. SC-CV-47-18." No other changes to the Opinion were made. The Court reissues the Opinion dated October 24, 2018 with the corrected first page.

Dated this 25th day of October, 2018



Chief Justice



Associate Justice

TELEPHONIC APPROVAL

Associate Justice

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OPINION

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OPINION delivered by JoAnn Jayne, Chief Justice.

This case concerns the dismissal of a Statement of Grievance filed with the Office of Hearings and Appeals. The Court affirms the dismissal by the OHA. The Court explains its ruling in this opinion.

I

Appellant, Vincent H. Yazzie (“Yazzie”), filed a Statement of Grievance (“Grievance”) on September 7, 2018, asserting that Appellee, Jonathan M. Nez (“Nez”), was unqualified to run for Navajo Nation president due to his failure to report a 2002 misdemeanor Driving Under the Influence (DUI) conviction. Both Yazzie and Nez were candidates in the 2018 Navajo Nation

presidential primary election held on August 28, 2018. Nez advanced to the November 6, 2018 General election while Yazzie did not.

Yazzie filed the Grievance with the Office of Hearings and Appeals (“OHA”) on September 7, 2018, alleging that Nez violated 2 N.N.C. § 3747, Restrictions against incompatible interests or employment; 11 N.N.C. § 8, Qualifications for office; 11 N.N.C. § 21, Candidacy applications; 11 N.N.C. § 240, Removal of officials; 11 N.N.C. § 243, Petition challenges; hearings; and 11 N.N.C. § 247, Ineligibility of removed officials. Thereafter, OHA reviewed the complaint.

On September 11, 2018, OHA’s Chief Hearing Officer Richie Nez (“Chief Hearing Officer”) signed an order of “Statement of Sufficiency and Notice of Hearing.” In that order, OHA ruled that the Grievance was timely filed and facially sufficient when a hearing was set for September 26, 2018. Yazzie and Nez each filed motions prior to the hearing. Yazzie filed a motion to recuse the Chief Hearing Officer due to an “appearance of impropriety.” Yazzie alleged that his attorney represented a former OHA employee with a grievance against the Chief Hearing Officer in another matter. Nez, on the other hand, filed a motion to deem the Grievance as insufficient.

At the hearing, Yazzie alleged that both he and his attorney felt “uncomfortable” with the Chief Hearing Officer. Yazzie offered no other evidence on the recusal. In its September 27, 2018, final order, OHA denied the motion for recusal. OHA also concluded that Nez did not violate the Navajo Election Code when Nez declined to disclose the 2002 DUI conviction. In support of its decision, OHA ruled that the requirements of 11 N.N.C. § 8(A)(6) and (7) must be read in combination with 11 N.N.C. § 21(B)(3). OHA determined that the reporting requirement meant that a presidential candidate must report convictions affecting qualifications for office if

they occurred within the last five (5) years. Thus, OHA found that Nez did not have any convictions “affecting qualifications for office” in the last five (5) years.

Yazzie filed an appeal of the OHA decision on October 8, 2018. Although Yazzie states that review is proper under 11 N.N.C. § 24(G), the OHA finding provides for an appeal under 11 N.N.C. § 341.

II

We consider whether the OHA decision is supported by sufficient evidence on the record to support the dismissal of the Statement of Grievance. The issues are whether the hearing officer’s abused his discretion by failing to recuse himself, and whether the OHA erroneously applied the law when determining that 11 N.N.C. § 8(A)(6) and (7) must be read in combination with 11 N.N.C. § 21(B)(3).

III

The Supreme Court has the authority to hear appeals of the decisions of OHA out of election grievances pursuant to statute. 11 N.N.C. § 341(A)(4).

Rulings by OHA are reviewed for sufficiency of the evidence. 11 N.N.C. § 341(A)(1). However, findings based on erroneous applications of law are insufficient. *In re Grievance of Wagner*, 9 Nav. R. 114 (Nav. Sup. Ct. 2007) (citing *Matter of Appeal of Vern R. Lee*, 9 Nav. R. 61 (Nav. Sup. Ct. 2006)).

IV

Yazzie alleged that the Chief Hearing Officer should recuse himself from this case because his attorney represents a former OHA employer who has a pending case against OHA in which the Chief Hearing Officer is a material witness. This allegation alone is not sufficient to warrant a recusal. Yazzie did not ascertain the Chief Hearing Officer’s alleged prejudice or bias

at the hearing. From the record, there was no evidence offered to the OHA to support a recusal. There is no factual basis to support a ruling other than the one made by the OHA. We therefore find no abuse of discretion.

V

Findings based on erroneous applications of the law are insufficient. *In re Grievance of Wagner, supra*. Therefore, the review of the sufficiency begins with the analysis of the OHA interpretation and application of the law.

“[I]f the language [of a statute] is clear, the Court applies the meaning the Council clearly intended.” *Matter of Appeal of Vern R. Lee*, 9 Nav. R. 61, 63 n. 2 (Nav. Sup. Ct. 2006). This Court must interpret statute in a way to accomplish its purpose. *Navajo Nation v. MacDonald*, 7 Nav. R. 1, 6 (Nav. Sup. Ct., 1992). The Court reads statutes “as a whole” including the preamble to avoid taking them out of context. *In re Claim of Joe*, 7 Nav. R. 66, 67-68 (Nav. Sup. Ct. 1993). Where there is a new statute that possibly conflicts with an older statute, the Court will assess the policy behind the statutes and attempt to harmonize the statutes. *Allen v. Fort Defiance Housing Corp.*, 8 Nav. R. 759, 765 (Nav. Sup. Ct. 2005). If statutes cannot be harmonized, the older statute must yield. *Id.*, see also, *Matter of Estate of Kindle*, 9 Nav. R. 29, 32 (Nav. Sup. Ct. 2006). This Court will not interpret the statute to produce an absurd result. *McCabe v. Walters*, 5 Nav. R. 43, 45 (Nav. Ct. App. 1985).

In the present case, the OHA ruling supports these statutory interpretation principles as given by this Court. The two statutes at issue here are 11 N.N.C. § 8 (6)-(7) and 11 N.N.C. § 21(B)(3). As an initial matter, we turn to the plain language of the statute. The two statutes must be read to see if they can be independently understood.

11 N.N.C. § 8(A)(6)-(7) (2014 Pocket Part) provides:

6. Must not have been convicted of a felony within the last five years;
7. Must not have been convicted of any misdemeanor involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws;

In 2014, the Council modified the requirements of 11 N.N.C. § 21(B) (2014 Pocket Part) to read:

3. Any convictions for felonies and misdemeanors affecting qualifications for office.

Thus, the problem arises in the reading of the modified statute language in § 21. On its face there appears to be a conflict, offering two sets of rules for candidates that are, at first glance, not in harmony. In applying case law, we understand that the two statutes should be read together if possible. *Estate of Kindle, supra*. Here, we hold that the two can read together as requiring the reporting of violations affecting qualifications in 11 N.N.C. § 8. OHA looked at both statutes and read them in harmony with one another. This on its face seems appropriate and is precisely the guidance this Court has previously given.

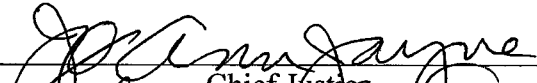
Thus, in application, presidential candidates must disclose any conviction for felonies or misdemeanors affecting qualifications for office within the last five (5) years. Reading this statement as requiring disclosure of convictions beyond the five-year limit would conflict with the clear language of the statute and the intentions of the Navajo Nation Council. Here, the conviction in question was a DUI from 2002. As a conviction that occurred more than 5 years ago, Nez was not required to disclose this conviction in his candidacy application. The OHA's

ruling that Nez did not have any convictions “affecting qualifications for office” for purposes of disclosure is supported by sufficient evidence on the record.

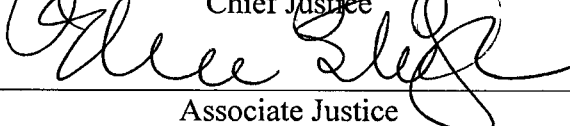
VI

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

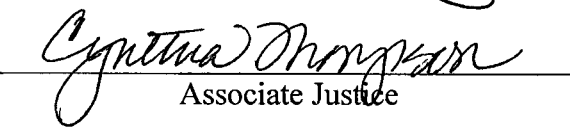
Dated this 24th day of October, 2018



Chief Justice



Associate Justice



Associate Justice