

**IN THE FLORIDA STATE
UNIVERSITY SUPREME COURT**

SUPERVISOR OF ELECTIONS

Appellant,

v.

THE TORCH PARTY,

Appellee.

Published:

SUMMARY

The Court examined this case on appeal. The Appellant, the Supervisor of Elections, has asked the court to find whether the Elections Commission abused its power by failing to find a violation against the Torch Party under the Student Body Statute 714.3(B)(2).

We hold the Elections Commission did not abuse its discretion and therefore, the decision is affirmed.

BACKGROUND

As stated by the Office of Elections, the facts of this case are the following:

On October 21, 2013, the Elections Commission met to discuss an alleged violation filed by the Office of Elections against the Torch Party, which stated the Torch Party failed to submit their complete Final Expense Statement by the deadline, Friday October 18th at 12 p.m. Furthermore, it alleged they were missing their Contribution Statement, as well as receipts validating the use of multiple cash withdrawals from the party account. Since Mr. Henmy, the Torch Party Chairperson, used his personal account as the party account, he provided bank statements to the Office of Elections to show the use of funding for campaign expenses. The Office of Elections claims, however, he did not provide documentation or receipts validating

what was purchased with the cash withdrawals.

The Office of Elections maintains that Mr. Henmy was given fair warning in regards to the complications that could arise when personal bank accounts are used as party bank accounts simultaneously. Furthermore, he was instructed to keep all receipts for purchases regardless of their nature or purpose. The Office of Elections has conceded that while using a personal bank account to store party treasuries is not against the Student Body Statutes, it warned The Torch Party that it would need to provide much more concrete evidence of expenditures than would have otherwise been necessary had there been a separate account for the party treasuries. This conflict arose when Mr. Henmy submitted a bank statement listing two unidentified ATM withdrawals for which there is no attached receipt verifying the money was used on personal expenses and not campaign materials.

Mr. Henmy stated that he spent the disputed funds on “the cover at a club and could not obtain a receipt” (according to the Petitioner’s brief). The Office of Elections is arguing that they cannot verify what he purchased with the funds obtained during those two documented cash withdrawals made on Oct 15th, one for \$22 and the other for \$23.25. The Office of Elections contends that the nature of the joint account, they need documentation in the way of a receipt to validate all cash expenses.

STANDARD OF REVIEW

“Absent an abuse of discretion, fraud, lack of notice, or lack of an opportunity to be heard, this Court reviews only the record and questions of fact under an abuse of discretion standard while questions of law are examined de novo.” Impact Party v. Elections Commission, No. 97-111 (FSUUSC 1997) and Wood & James

v. Elections Commission, No.99-01
(FSUUSCC 1999).

OPINION

CANNON, J., writes the opinion for the Court,

The Court has been asked to determine first whether or not the Elections Commissions followed the procedure laid out by the statute, we review this question of law de novo. The Supervisor of Elections identified a deficiency in the Torch party's campaign expense report in accordance of 703 K. The Supervisor of Election submitted to the Elections Commission that the Torch expense statement was incomplete and therefore a violation. While it is within the discretion of the Supervisor of Elections to declare an expense statement incomplete (Statute 703.K) and to require additional documentation to supplement the discrepancies, the Elections Commission is also granted the power to use any evidence presented to the Commission to make a finding that no violation has in fact occurred [Statute 702.2(G)]. The Elections Commission, in their inquiry of both parties found that Torch Party presented sufficient evidence that the cash withdrawals were for personal expenses and that the affidavit was sufficient to determine that those personal expenses were of the fair market value of the withdrawals.

The inquiry of the Court now turns to whether or not the factual findings by the Elections Commission, that the cash withdrawals were personal expenses, was an abuse of discretion. An abuse of discretion exists when the record establishes that the trial court could have reasonably reached only one decision, yet reached another. The burden of proving an abuse of discretion is on the *party assailing the trial court's ruling or action*. The appellant failed to reach this burden in the brief and in the oral argument and therefore this court has no evidence for

determining that the Elections Commission abused their discretion.

It is important to note that the court is not determining that the evidence presented below was sufficient to satisfy the Election Commissions findings, rather this court needed evidence of abuse of discretion from the Elections Commission to overrule their factual inquiry. This burden was placed on Appellant and was not met.

CONCLUSION

For the aforementioned reasons, the FSU Student Supreme Court AFFIRMS the decision of the Election Commission.

It is so ordered this 25th day of October 2013 in Tallahassee, Florida.

ROZANSKI, J. in concurring in the judgment,

I agree with the decision of this court. It is important for the parties to recognize the distinction between questions of fact and questions of law, and their respective burdens. Further, it may be best to create a statute to prevent personal expenditures from being comingled with campaign funds to prevent future issues in elections.

***Justice Wechsler did not participate in this decision*