

**St. Regis Mohawk Tribal Court**

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<b>Ruth Bell,</b>	)	
<b>Complainant</b>	)	<b>DECISION AND ORDER</b>
	)	
<b>-V-</b>	)	<b>Case No.: 15-CIV-00001</b>
	)	
<b>St. Regis Mohawk</b>	)	
<b>Tribe Election Board,</b>	)	
<b>Respondent</b>	)	

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**Procedural History**

On January 9<sup>th</sup>, 2015 Ruth Bell on behalf of the Elders/Seniors Benefit Committee filed a complaint against the St. Regis Mohawk Election Board in St. Regis Mohawk Tribal Court.

A proof of service was filed with the St. Regis Mohawk Tribal Court on January 9<sup>th</sup>, 2015 stating that the Complaint and civil summons was served upon the respondent, the St. Regis Mohawk Election Board.

On January 30<sup>th</sup>, 2015 The SRMT General Counsel on behalf of the SRMT Election Board, filed a motion to dismiss with a memorandum of law in support with the St. Regis Mohawk Tribal Court. The Court notes that there was no proof of service accompanying the motion.

**Factual Background**

On October 21<sup>st</sup>, 2014 Ruth Bell presented a petition to the St. Regis Mohawk Tribe Election Board with 553 signatures. The SRMT Tribal Clerk determined that 503 of the signatures were valid. *See*, SRMT Election Board Letter to Ruth Bell 12/15/14. The election board determined that this met the requirement of 5% of the eligible voters. *Id.* The SRMT Election Board also found that, “we determined that although the petition met the signature requirement, it did not call for a referendum. Therefore at this time, the Election Board cannot proceed with the process to call for a referendum.” *Id.*

**Discussion**

This action comes before the St. Regis Mohawk Tribal Court from a complaint filed by Ms. Ruth Bell, on behalf of the Elders/Seniors Benefit Committee. Ms. Bell filed a complaint in SRMT Court against the St. Regis Mohawk Tribe Election Board (hereinafter SRMT Election Board) and requested that, “We therefore request that the Election Board reverse their decision and a referendum held as required.” *See*, Complaint January 9<sup>th</sup>, 2015.

In reviewing the complaint by Ms. Ruth Bell, the Court examined the St. Regis Mohawk Election and Referendum Ordinance (hereinafter SRMT Election and Referendum Ordinance),

and the St. Regis Mohawk Tribal Procedures Act<sup>1</sup>, which are the pertinent laws that relates to the issue at bar. After analyzing Ms. Ruth Bell's complaint, SRMT General Counsel's submissions, and the SRMT Election and Referendum Ordinance, the SRMT Court renders this decision and must dismiss the filed complaint.

### Valid Petition

The first issue at bar is whether or not the petition that was submitted by Ms. Ruth Bell and the Elders/Senior Benefit Committee to the SRMT Election Board was a "valid petition" under the SRMT Election and Referendum Ordinance. Upon inspection of the SRMT Election and Referendum Ordinance it states that, "Valid Petition shall mean a petition which contains the requisite number of valid signatures in order for the proposal to be set for referendum in accordance to the Tribal Procedures Act." *See*, SRMT Election and Referendum Ordinance II (8). The Court would like to highlight that in the SRMT Election and Referendum Ordinance AND in the SRMT Tribal Procedures Act, the only requirement that is needed for a petition to be considered "valid" is that it contain the required number of signatures.

In determining whether or not the petition that was submitted by Ms. Ruth Bell and the Elders/Senior Benefit Committee to the SRMT Election Board contained enough valid signatures, the Court is helped immensely by the SRMT Election Boards' own communication to Ms. Ruth Bell regarding this singular issue. In this December 15<sup>th</sup>, 2014 letter the SRMT Election Board explicitly states that, "Upon careful review and verification by the Tribal Clerk's Office, it was determined your petition contained 503 valid signatures. The required signature of 469 eligible voters; was met." *See*, December 15<sup>th</sup>, 2014 Letter to Ruth Bell from SRMT Election Board. It is clear from the very words used by the SRMT Election Board itself that Ms. Bell and the Elders/Senior Benefits Committee's petition indeed contained the required number of signatories to meet the requirement as defined in the SRMT Tribal Procedures Act as evidenced by, "In order for a referendum to be placed on the ballot for a vote, the Member must obtain the valid signatures of 5% of eligible voters." *See*, SRMT Tribal Procedures Act VI (A) (2).

The SRMT Election Board further stated however that, "We determined that although the petition met the signature requirement, it did not call for a referendum. Therefore, at this time, the Election Board cannot proceed with the process to call for a referendum." *See*, December 15<sup>th</sup>, 2014 Letter to Ruth Bell from SRMT Election Board. After inspecting Ms. Ruth Bell's complaint, reading the SRMT Election Board's letter to Ms. Bell and examining the SRMT Election and Referendum Ordinance and SRMT Tribal Procedures Act, that are applicable to this issue, the Court cannot find a reason why the SRMT Election Board stated that the petition did not call for a referendum when the ONLY requirement that is identified in either the SRMT Election and Referendum Ordinance OR the SRMT Tribal Procedures Act is that the required number of signatures accompany the petition. From the SRMT Election Board's own words, the petition presented by Ms. Ruth Bell and the Elders/Seniors Benefit Committee clearly met that solitary requirement, "Upon careful review and verification by the Tribal Clerk's Office, it was determined your petition contained 503 valid signatures. The required signature of 469 voters; was met." *See*, December 15<sup>th</sup>, 2014 Letter from SRMT Election Board to Ruth Bell.

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<sup>1</sup> Listed on the SRMT Website TCR 2013-32.

In the submissions filed by SRMT General Counsel (on behalf of the SRMT Election Board) provides, “the Election Board is given the authority to hold a referendum upon receipt of a valid petition.” *See*, January 30<sup>th</sup>, 2015 Motion to Dismiss. The Court again finds that the definition of a “valid petition” as outlined in the SRMT Tribal Procedures Act, is that it simply must meet the signatory requirements of 5% of the eligible voters of the SRMT. *See*, SRMT Tribal Procedures Act VI (A) (2). In the instant case, it is clear from the submissions that this in fact happened.

In our reading of the SRMT Election and Referendum Ordinance and the SRMT Tribal Procedures Act, we do not find any requirement that a referendum question must be presented with the petition that is submitted to the SRMT Election Board. In fact, upon our reading of the SRMT Election and Referendum Ordinance, it appears that once the petition is determined by the SRMT Tribal Clerk’s office to contain the required number of eligible voter’s signatures that it is forwarded to the SRMT Election Board and: “If the petition contains the required number of valid signatures, the Petition shall be verified and presented to the Election Board for action to call for a referendum in accordance with the petition.” *See*, SRMT Election and Referendum Ordinance XIII (M) (8) (a). We see no language in the SRMT Election and Referendum Ordinance where there is a requirement that the proposed question to be put to a referendum vote must accompany the petition.

Our reading is further supported by subsequent language used in the SRMT Election and Referendum Ordinance, “The referendum question shall be presented to the community at a minimum of three (3) public meetings to be held at the St. Regis Mohawk Tribal Community Building or another suitable location prescribed by the Board.” *See*, SRMT Election and Referendum Ordinance XIII (B). As we have stated previously, in the definition of a “valid petition” there is no mention that a question must be presented to SRMT Election Board with the submitted petition in order for a petition to considered valid, as it appears there would be at least three (3) meetings to help refine precisely what question the community would be voting upon in a referendum vote.<sup>2</sup> Likewise, there appears to be no prohibition on placing multiple questions on a referendum ballot.

Based upon the foregoing we see no requirements under the SRMT Election and Referendum Ordinance or the SRMT Tribal Procedures Act that a referendum question must be presented or accompany any “valid petition”.

#### Authorities of SRMT Election Board

In the SRMT Election and Referendum Ordinance there are numerous powers and responsibilities that are outlined in the law. The Court will address certain individual authorities that are defined in the ordinance to give coherence to the issues in this matter. *See*, SRMT Election and Referendum Ordinance IV (C) et. al. First, the Court must note that it is apparent the only powers and responsibilities delegated to the SRMT Election Board are those that are given in the SRMT Election and Referendum Ordinance.

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<sup>2</sup> In fact, the SRMT Tribal Procedures Act provides that a referendum question could include “called to adopt new laws, reject or amend existing laws, or to pose questions on issues that affect the community.” *See*, SRMT Tribal Procedures Act VI (A) (1).

One of the duties that befalls the SRMT Election Board is the power to “conduct” all Referendum votes. This is to be done in accordance with the SRMT Election and Referendum Ordinance.<sup>3</sup> The SRMT Election Board is further tasked with a number of other responsibilities which are required of it in conducting a vote or referendum in accordance with the SRMT Election and Referendum Ordinance.<sup>4</sup>

The Court further notes that, “The Election Board shall be responsible for maintaining accurate and organized records of all elections, **referendums**, petitions, appeals, and any other materials or documents related to the administration of the St. Regis Mohawk Tribe’s Election and Referendum Ordinance.” *See*, SRMT Election and Referendum Ordinance IV (C) (6).

The ordinance further states that, “The Election Board shall maintain records of decisions on which to base future decisions to ensure consistency and uniformity of the law.” *See*, SRMT Election and Referendum Ordinance IV (C) (7).

The authorities of the SRMT Election Board as it relates to a referendum must be addressed as well. As the Court has already found, the SRMT Election Board is tasked with **conducting** the actual voting procedure for a referendum in accordance with the SRMT Election and Referendum Ordinance.

The SRMT Election and Referendum Ordinance also requires of the SRMT Election Board that, “A Tribal Referendum must occur within 90 days **of receipt of a valid petition** OR the 2/3 vote of Tribal Council.” *See*, SRMT Election and Referendum Ordinance XIII (A). As the Court has already highlighted, the petition that Ms. Ruth Bell submitted to the SRMT Election Board appears to meet the requirements of a valid petition. It contained the required number of valid signatures and was validated as having the amount of signatures needed by the SRMT Tribal Clerk. Further, the SRMT Election and Referendum Ordinance provides that the SRMT Tribal Council could simply vote (2 out of 3 Chiefs) to call for a referendum ballot.

The next part to the SRMT Election Board’s responsibilities that is relevant to the issue at bar is, “The referendum question shall be presented to the community at a minimum of 3 public meetings to be held at the Saint Regis Mohawk Tribal Community Building or another suitable location prescribed by the Board.” *See*, SRMT Election and Referendum Ordinance XIII (B). This section of the ordinance supports the Court’s assertion that there is no requirement that a proposed referendum question accompany a petition when it is submitted to the SRMT Election Board. It appears that whatever the referendum question may be, must be developed at the 3 public hearings provided for in the SRMT Election and Referendum Ordinance.

It is at this point, namely once a petition has been ‘validated’ and sent to the SRMT Election Board, that the ambiguities of the SRMT Election and Referendum Ordinance become apparent. In our review of the SRMT Election and Referendum Ordinance we see no provisions with respect to two very important questions:

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<sup>3</sup> *See*, SRMT Election and Referendum Ordinance IV (C) (3).

<sup>4</sup> *See*, SRMT Election and Referendum Ordinance IV (C) (a)-(n).

1. Who must prepare and provide ANY referendum question[s] language to be discussed at the 3 public meetings; and
2. Who approves the final question[s] to be placed on the ballot for any referendum vote.

Furthermore, in our careful examination of the powers that are given to the SRMT Election Board, the Court does not find that the SRMT Election Board has the authority to deny a referendum vote for a petition that has met the requirements under the SRMT Election and Referendum Ordinance, “upon receipt of a valid petition a Tribal Referendum must occur in 90 days. *See*, SRMT Election and Referendum Ordinance XIII (A)<sup>5</sup>

### Complaint Filed With Tribal Court

In light of the foregoing unresolved issues, the Court must now address whether it is appropriate for a complaint filed against the SRMT Election Board be heard in St. Regis Mohawk Tribal Court.

We note that the SRMT Election and Referendum Ordinance does not squarely address the scenario here: when the SRMT Election Board has denied a petition for a referendum vote. What the SRMT Election and Referendum Ordinance squarely addresses are appeals and hearing procedures when Referendum or Voting RESULTS are appealed.<sup>6</sup>

Although the denial of a referendum ballot based on an SRMT Election Board decision does not appear to be specifically allowed in the SRMT Election and Referendum Ordinance, the Court’s view is that because this was a decision by the SRMT Election Board, the appeals procedure provided for in the SRMT Election Ordinance is that which applies.<sup>7</sup>

In the appeals process provided for in the SRMT Election and Referendum Ordinance it requires that, “any appeals must be in writing and addressed to the Board within 5 business days immediately following the Election or Referendum.” *See*, SRMT Election and Referendum Ordinance XIV (A) (1). Again, the instant case is not an appeal of any vote or referendum, but is an apparent appeal of a decision made by the SRMT Election Board.

We bring this up because from the record before the Court, it does not appear that the Complainant, Ms. Ruth Bell, filed an appeal to the SRMT Election Board of their decision as is provided for in the SRMT Election and Referendum Ordinance. While the Court understands there may be frustration in the process on the part of the Complainant, there are still procedures in place to appeal an SRMT Election Board decision. The Court has determined that the proper venue for

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<sup>5</sup> In fact, this section of the SRMT Election and Referendum Ordinance presents an ‘either/or’ structure. Either the petition has been validated and contains the requisite number of signatures or it does not contain the required amount of signatures and is rejected for referendum. *See*, SRMT Election and Referendum Ordinance XIII (M) (8) (a) (b).

<sup>6</sup> *See*, SRMT Election and Referendum Ordinance XIV (A) (4) (b).

<sup>7</sup> *See*, SRMT Election and Referendum Ordinance XIV (A) et. al.

an appeal of the SRMT Election Board decision denying the petition and referendum vote submitted by Ms. Ruth Bell, is to the SRMT Election Board.

Once an appeal has been made to the Election Board, the SRMT Election Board is then required under the SRMT Election and Referendum Ordinance to, "determine the course of action taken on the appeal and shall conduct a hearing for the complainant to be heard, in accordance with the procedures below." *See*, SRMT Election and Referendum Ordinance XIV (A) (2).

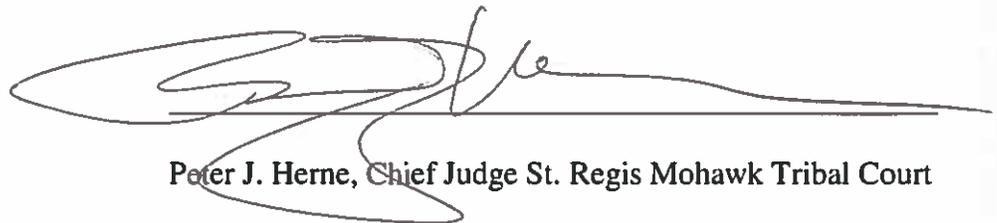
Following this "hearing", "The Election Board shall render a decision within 5 business days. All decisions made by the Election Board shall be final and **there shall be no appeals to Tribal Court.**" *See*, SRMT Election and Referendum Ordinance XIV (A) (3).

As such, the appropriate action for Ms. Ruth Bell is to appeal the SRMT Election Board's decision to the Board. The Court has also highlighted procedures that are required of the SRMT Election Board when going through the process of hearing an appeal. If the SRMT Election Board did not follow those procedures that could possibly be an issue which would be appropriate for Tribal Court to review. However, if Ms. Ruth Bell files an appeal with the SRMT Election Board, as the Court has found, that is appropriate under the SRMT Election and Referendum Ordinance. If the SRMT Election Board complies with the procedures provided for in the SRMT Election and Referendum Ordinance regarding appeals, there is nothing in the law permitting the SRMT Court to review any decision of the Election Board.

Therefore, the SRMT Court reiterates that the petition submitted by Ms. Ruth Bell to the SRMT Election Board is considered valid, and there is no requirement in the law which states a referendum question must accompany a petition which is submitted to the SRMT Election Board. Under the SRMT Election and Referendum Ordinance, the Court also finds that the appropriate venue for an appeal of an SRMT Election Board decision is with the SRMT Election Board, and that ANY SRMT Election Board Decision rendered pursuant to the SRMT Election and Referendum Ordinance is not appealable to the St. Regis Mohawk Tribal Court.

Wherefore, the Complaint filed by Ms. Ruth Bell is dismissed.

Entered by my hand this 25<sup>th</sup> day of February 2015



Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

