

**RST SUPREME COURT OF
APPEALS**

1998

**CA 98-01
CHARGING ELK, Edd v. MARSHALL, Linda, RST
ELECTION BOARD & WILSON, Norman**

ROSEBUD SIOUX TRIBE)
ROSEBUD SIOUX TRIBE ELECTION BOARD)
ROSEBUD, SOUTH DAKOTA)

*Election Bd
decision and
Order*

*
IN THE MATTER OF THE *
CONTEST OF THE ANTELOPE *
COMMUNITY SPECIAL ELECTION * MEMORANDUM DECISION
AND * AND ORDER
CONCERNING EDD CHARGING ELK SR*
CONTESTANT *

The above entitled matter having been brought on by Edd Charging Elk, Sr. filed August 10, 1998, and the Election Board having considered upon receipt of the contest of election at a Special Meeting on August 11, 1998 at 4:00pm. The Rosebud Sioux Tribe Election Board Members present were Linda Marshall, Chairperson, Patricia Swift Hawk, Vice Chairperson, Julie Peneaux, Secretary, Juanita Pacheco, member, and Norman Keeler, member. A quorum was present. The RST Election Board received a challenge and the fee of \$50.00 was paid. The Board considered the grounds of the summary of the challenge. The challenge argued that the Rosebud Sioux Tribal Court, Honorable Jane Colhoff, asked the Rosebud Sioux Tribal Council to intervene and settle the matter.

The RST Election Board reviewed the Order of the Court and the rational of the court was the Rosebud Sioux Tribal Council determines legal residency requirements for public office.

Ordinance No. 86-10, Section 403. The RST Election Board also determines that the Tribal Election Ordinance authorizes the Election Board to challenge the eligibility of any candidate for tribal office. Election Ordinance No. 86-10, Section 404. The RST Election Board has the authority to accept challenges to election results and upon receipt of a contest of election, the RST Election Board shall determine whether the grounds presented warrant a hearing. Election Ordinance No. 86-10, Section 802 (A) and (B). The RST Election Ordinance also provides that "Any decision by the Board on a contest of election shall be final." Election Ordinance 86-10, Section 802 (F).

It is therefore the conclusion, that the RST Council has delegated the authority to regulate the manner of making nominations, holding office, supervising elections, and challenging the eligibility of candidates pursuant to its authority in the RST Constitution and Bylaws. RST Election Ordinance No. 86-10, Section 200 - Filing for office. It is also the conclusion of the RST Election Board that RST Council has given the RST Election Board the final decision making authority resolving election contests. RST Election Ordinance No. 86-10, Section 802 (F). The RST Election Ordinance does not provide for appeal to the RST Council. It is the conclusion of the RST Election Board that RST Council has delegated the final decision-making authority to the RST Election Board by the

However, the rationale of the court failed to cite any tribal law, ordinance or constitutional provision supporting the court's legal reasoning.

The RST Election Board first looked to the Rosebud Sioux Tribal Constitution and Bylaws which states in Article III, section 8, "The Rosebud Sioux Tribal Council shall be the sole judge of the Constitutional qualifications of its own members". The Constitution and Bylaws, Article IV, Section 1, Enumerated Powers of the Rosebud Sioux Tribal Council; Subsection (s) states, "The Council of the Rosebud Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and attached bylaws. . . to regulate the manner of making nominations and holding elections for tribal office." The RST Constitution and Bylaws Article IV; Section 1; Subsection (u) further enumerates the power of the Rosebud Sioux Tribal Council, "to delegate to subordinate boards or tribal officials, to the several communities, or to cooperative associations which are open to all members of the Tribe any of the foregoing powers reserving the right to review any action taken by virtue of such delegated power."

The RST Election Board has been delegated the general supervision of tribal elections by RST Council. RST Election

enactment of RST Election Ordinance No. 86-10. The election contestant has not argued the constitutionality of RST Election Ordinance No. 86-10. Furthermore, the RST Election Board has no authority to rule on the constitutionality of the RST Election Ordinance. The Order of the Court dated August 04, 1998, also did not address the Constitutionality of the RST Election Ordinance. Furthermore, the Court did not reach the merits of the cause of action filed by Edd Charging Elk, Sr. The Court dismissed the suit without prejudice as premature.

It is therefore the decision of the election board that the contestant's challenge based upon the Order of Dismissal dated August 04, 1998, in the matter of Edd Charging Elk vs. Linda Marshall, Chairperson, RST Election Board, and Norman G. Wilson, President, Rosebud Sioux Tribe does not provide sufficient and valid grounds to warrant a hearing. The Court's statement that it "finds that it would be in the best interest of justice and fairness for the Rosebud Sioux Tribal Council to address the qualifications issue" is merely a suggestion. It does not constitute a ruling on the merits of the case and is a misstatement of Tribal Law in the regulation and supervision of Tribal elections.

Therefore, the contest challenging the results of the Special Election for Antelope Community Representative is denied.

ROSEBUD SIOUX TRIBE)
ROSEBUD, SOUTH DAKOTA)

IN CIVIL COURT

EDD CHARGING ELK,)
PLAINTIFF)
V.)
LINDA MARSHALL, CHAIRPERSON)
RST ELECTION BOARD,)
AND)
NORMAN G. WILSON, PRESIDENT)
ROSEBUD SIOUX TRIBE)

DKT: 98-194

CA 98-01
NOTICE OF APPEAL
AND DESIGNATION
OF RECORD

PLEASE TAKE NOTICE THAT on this the ___ day of August, 1998, the Plaintiff, Edd Charging Elk, hereby files this NOTICE OF APPEAL in the above-referenced action with the Rosebud Sioux Tribal Court pursuant to the Rules for Supreme Court for the Rosebud Sioux Tribe.

This appeal is taken of the Order issued by the Honorable Jane R. Colhoff, Special Judge, on the 3rd day of August, 1998, upon the Defendant's Motion for a Temporary Restraining Order in the above referenced action. The Notice of Entry of Order was entered on the 4th day of August, 1998.

This Notice of Appeal is timely filed within the 30 days required under Rule 3. Notice of Appeal and Bond, of the Rules for Appeals to the Supreme Court of the Rosebud Sioux Tribe. Enclosed with the Notice filed with the Court of Appeals is a check for the required bond.

Pursuant to Rule 6, Contents of Notice of Appeal, the following information is hereby provided:

1. The party taking the appeal is the Plaintiff, Edd Charging Elk, on his own behalf.
2. This appeal is taken from the Order issued by the Honorable Jane R. Colhoff, Special Judge, on the 3rd day of August, 1998, upon the Defendant's Motion for a Temporary Restraining Order in the above referenced action. The Notice of Entry of Order was entered on the 4th day of August, 1998.

BACKGROUND:

Said Order denied the Plaintiff's Motion for Temporary Restraining Order to enjoin the Special Antelope Community Election August 10, 1998, finding that:

The Rosebud Tribal Court found Mr. Charging Elk's challenge to the election process to be somehow "premature" pending a determination by the Tribal Council on the issue of his meeting the residency requirements to run for office. The Court's Order holds that only a determination by the Tribal Council, whether for or against Mr. Charging Elk's having met the residency requirements, would give him standing at that time to bring a judiciable issue before the Court.

The Plaintiff asserts that, under the express provisions of the Rosebud Sioux Tribal Election Code, he has always had bona fide standing to challenge the Election Board's decision to remove his name from the ballot as an ineligible candidate due to his temporary residency Rosebud. Under the equal protection and due process guarantees of the Rosebud Sioux Tribal Constitution, United States Constitution and applicable tribal and federal law, Plaintiff has standing to seek judicial relief.

Plaintiff asserts here that he has been denied his right to stand for elective tribal office by Court's Order dismissing his request for a TRO for the Special Election, was removed from the ballot, and thus has suffered irreparable harm to his fundamental rights and to his opportunity to be elected to Tribal office..

No determination of the residency requirements by the Tribal Council is necessary in this case, -- only faithful adherence to, and equal application of, the existing provisions and procedures of the Tribal Election Code by the Election Board, and proper interpretation and enforcement of Tribal statutory law by the Court with regard to the residency requirements and eligibility of candidates, as proscribed by the Tribal Election Code.

The Tribal Election Board has violated the Plaintiff's rights in several ways:

First, it has failed to follow its own "Challenging of the Candidates" procedures as provided in the Tribal Election Code at Section 404 C, by "receiving" an inappropriate challenge to the Plaintiff's residency, without the required filing of a sworn statement setting forth the grounds for ineligibility, or providing for proper notification and an opportunity for a hearing. Section 404 of the Rosebud Sioux Tribe Ordinance No.86-10, entitled the "Tribal Election Code" provides for the procedure by which a candidate for tribal office can be challenged:

"C. Any qualified voter has a right to challenge the eligibility of a candidate by filing with the Board a sworn statement setting forth the grounds for ineligibility, within one week after a list of tentative candidates is made public. Upon receipt of such a challenge, the Board shall determined whether the grounds presented provide evidence to warrant a hearing to be held before notifying the candidate and challenger by certified mail, enclose the sworn statement, set a hearing date for both to be heard, and give public notice."

"the Plaintiff, Edd Charging Elk, has not shown that he will suffer irreparable harm if the Antelope Community Election is held as scheduled on August 6, 1998, in as much as Mr. Charging Elk has no standing at this time to challenge the election."

Further, the Court incorrectly found that:

"However, prior to the election and the decision of the Tribal Council regarding qualification for the contested office, no judiciable issue exists.

Subsequently, the Rosebud Sioux Tribe Election Board, in its Memorandum Decision and Order, dated August 14, 1998, has denied the Plaintiff any right to a hearing since the Court's Order of Dismissal entered on August 4, 1998 "does not provide sufficient and valid grounds to warrant a hearing." Furthermore, the Rosebud Sioux Tribal Council met on August 14, 1998, in regular session, and the matter of this case was presented to them. The Tribal Council "did not take any action on this issue." Plaintiff maintains that he had proper standing and that the issue was judiciable by application of the present statutory law already enacted by Tribal Council, and that no further Council action was or is necessary.

3. The names and addresses of other parties include: Linda Marshall, Chairperson, Rosebud Sioux Tribe Election Board, P.O. Box 430, Rosebud, South Dakota 57570, and Norman G. Wilson, President, Rosebud Sioux Tribe, P.O. Box 430, Rosebud, South Dakota 57570

4. A brief statement of issues being appealed:

The Plaintiff respectfully asserts that the both Order issued by the Honorable Jane R. Colhoff, Special Judge, on the 3rd day of August, 1998, and the subsequent Memorandum Decision and Order of the Rosebud Sioux Tribal Election Board, contain errors of fact and conclusions of law which are the subject of this appeal in violation of his civil rights and due process rights under the laws of the Rosebud Sioux Tribe and applicable federal civil rights and election rights laws, regarding:

A) the Plaintiff's standing to challenge the decisions of the Tribal Election Board under the existing provisions of the Rosebud Sioux Tribe Election Code;

B) the Plaintiff's right to run for elective Tribal office; and

C) the Plaintiff's right to judicial relief from the Tribal Court.

Plaintiff received no copy of such challenge or sworn statement, nor is there one in the Court record.

Second, if the Tribal Election Board's own challenge was proper, from whatever source, under Section 404, A or B, the Tribal Election Board has singled out this candidate, from several other who may be similarly situated, for removal from the ballot based upon his temporarily residing in Rosebud, despite the explicit exception provided for such residency under Section 201 A, 5, entitled Eligibility for Office. Section 201, A, 5, provides that:

"Any enrolled tribal member shall be eligible to seek and hold office if such candidate ... (5) has been absent, by reason of tribal employment or tribal office, from the community of his/her candidacy and residency in Rosebud Community, but has otherwise established residency for office.

Third, the Tribal Election Board failed to fairly apply the exception provided under Section 201, A, 5 to the case of the Plaintiff.

The issues before the Tribal Court were and are judiciable, and the Plaintiff had and has proper standing to bring them. This appeal is brought to address the violations of Plaintiff's above stated rights and includes, but is not limited to, the following errors of fact and conclusions of law:

1. That the Order of the Court erroneously found and concluded that the Plaintiff lacked standing at the time of his filing for a TRO in his action challenging the Antelope Community Special Election for Tribal Council Representative.
2. That the Order of the Court, along with the Memorandum Decision and Order of the Election Board and its original action removing his name from the ballot, erroneously ignored the relevant facts of this case and the provisions of the Rosebud Sioux Tribal Election Code which defines the residency requirements for Tribal Council Representatives at Section 101, B, 12, noting the requirement for "Living in a particular community on the Reservation with the intent to make it a fixed or permanent home, (and) being bodily present there for the required length of time in order to vote or be a candidate for office..."
3. That the Order of the Court, along with the Memorandum Decision and Order of the Election Board and original action, have erroneously ignored facts indicating the Plaintiff's long history in the Antelope Community, his continuous efforts in seeking housing in the community, his participation in Antelope Community activities, his never requesting to relinquish his membership in the Antelope Community, and his continuous voting in elections in and at the Antelope Community;

4. That the Order of the Court, along with the Memorandum Decision and Order and the Election Board's original action, have erroneously ignored the facts surrounding the Plaintiff's temporary residence in Rosebud as part of his Tribal employment and holding office with the Tribal Land Enterprise, as meeting the express legal exception under Eligibility for Office, Section 201, A, 5.

5. That the Order of the Court, along with the Memorandum Decision and Order and the Election Board's original action, have violated the Plaintiff's constitutional and fundamental rights of due process and equal protection in the fair application of Tribal statutory provisions and procedures by the denial of right to seek elective office, by the singling out of the Plaintiff's name for removal from the ballot in violation of the express procedures for "Challenging of Candidate" in Section 404, A-I, and for failure to extend to the Plaintiff the equal and fair protection and benefit of the Tribe's statutory law, including the express exception provided in "Eligibility for Office" in Section 201, A, 5.

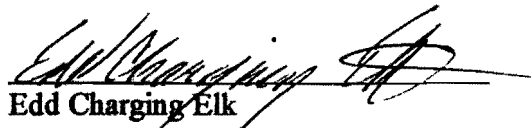
Under Rule 7, Designation of Record, the following information is included in the Record for this Appeal:

1. Ordinance No. 86-10 of the Rosebud Sioux Tribe, as amended March 10, 1993.
2. Letter of Edd Charging Elk to Norman Wilson, President RST, July 24, 1998, with attachments:
 - RST Election Board minutes of September 5, 1997.
 - Letter of Howard Valendra, TLE Executive Director, July 22, 1998
 - Memorandum to Land and Natural Resources Committee, June 18, 1997.
 - Minutes of TLE Board of Directors Meeting, May 5, 1998.
 - Letter of Councilmembers Farmer, Madearis & Lamoureaux to Linda Marshall and Election Board, July 21, 1998.
 - Letter of Antelope Officers Wright and McLean to Linda Marshall and Election Board, July 21, 1998.
 - Notice of Installation On Waiting List - Sunrise Apts., July 1, 1997.
 - Letter of Ken Ladeaux, Chairman of Rosebud Community, to RST Election Board, July 21, 1998.
3. Certification of Advancement To the General Election, August 28, 1997.
4. Order of the Rosebud Tribal Court, entered on August 4, 1998.
5. Memorandum Decision and Order of the Tribal Election Board, August 14, 1998.
6. Letter of Gerri Night Pipe, RST Secretary to Edd Charging Elk, August 18, 1998.

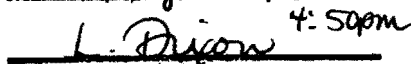
The foregoing constitutes the Notice of Appeal required by the Rules for Supreme Court of the Rosebud Sioux Tribe.

FILED Dated this ^{JH} 24 day of August, 1998.
In the

ROSEBUD SIOUX TRIBAL COURT OF APPEALS


Edd Charging Elk
P.O. Box 1297
Mission, SD 57555

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-entitled action by this Court on the 24th day of Aug., 1998.


L. Dixon
Clerk of Courts
4:50pm

4. That the Order of the Court, along with the Memorandum Decision and Order and the Election Board's original action, have erroneously ignored the facts surrounding the Plaintiff's temporary residence in Rosebud as part of his Tribal employment and holding office with the Tribal Land Enterprise, as meeting the express legal exception under Eligibility for Office, Section 201, A, 5.

5. That the Order of the Court, along with the Memorandum Decision and Order and the Election Board's original action, have violated the Plaintiff's constitutional and fundamental rights of due process and equal protection in the fair application of Tribal statutory provisions and procedures by the denial of right to seek elective office, by the singling out of the Plaintiff's name for removal from the ballot in violation of the express procedures for "Challenging of Candidate" in Section 404, A-I, and for failure to extend to the Plaintiff the equal and fair protection and benefit of the Tribe's statutory law, including the express exception provided in "Eligibility for Office" in Section 201, A, 5.

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6. Letter of Gerri Night Pipe, RST Secretary to Edd Charging Elk, August 18, 1998.

The foregoing constitutes the Notice of Appeal required by the Rules for Supreme Court of the Rosebud Sioux Tribe.

FILED Dated this ²⁴ day of August, 1998.
In the

ROSEBUD SIOUX TRIBAL COURT OF APPEALS

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-entitled action by this Court on the 24th day of Aug, 1998.

L. Dixon
Clerk of Courts

Edd Charging Elk
Edd Charging Elk
P.O. Box 1297
Mission, SD 57555

ROSEBUD SIOUX TRIBE)
ROSEBUD, SOUTH DAKOTA)

IN CIVIL COURT

EDD CHARGING ELK,)
PLAINTIFF)
V.)
LINDA MARSHALL, CHAIRPERSON)
RST ELECTION BOARD,)
AND)
NORMAN G. WILSON, PRESIDENT)
ROSEBUD SIOUX TRIBE)

DKT: 98-194

CA 98-01
CERTIFICATE OF
SERVICE AND
NOTICE OF APPEAL

TO THE DEFENDANTS:

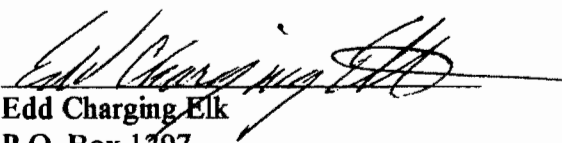
Linda Marshall, Chairperson
Rosebud Sioux Tribe Election Board
P.O. Box 430
Rosebud, South Dakota 57570

and

Norman G. Wilson, President
Rosebud Sioux Tribe
P.O. Box 430
Rosebud, South Dakota 57570

TAKE NOTICE THAT the Plaintiff, Edd Charging Elk, has filed a NOTICE OF APPEAL and DESIGNATION OF RECORD in the above-referenced action with the Rosebud Sioux Tribal Court pursuant to the Rules for Rosebud Supreme Court for the Rosebud Sioux Tribe, and has served the same upon the defendants.

Dated this 24th day of August, 1998.


Edd Charging Elk
P.O. Box 1797
Mission, SD 57555

ROSEBUD SIOUX TRIBE)
ROSEBUD SIOUX TRIBE ELECTION BOARD)
ROSEBUD, SOUTH DAKOTA)

*
IN THE MATTER OF THE *
CONTEST OF THE ANTELOPE *
COMMUNITY SPECIAL ELECTION * MEMORANDUM DECISION
AND * AND ORDER
CONCERNING EDD CHARGING ELK SR*
CONTESTANT *
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The above entitled matter having been brought on by Edd Charging Elk, Sr. filed August 10, 1998, and the Election Board having considered upon receipt of the contest of election at a Special Meeting on August 11, 1998 at 4:00pm. The Rosebud Sioux Tribe Election Board Members present were Linda Marshall, Chairperson, Patricia Swift Hawk, Vice Chairperson, Julie Peneaux, Secretary, Juanita Pacheco, member, and Norman Keeler, member. A quorum was present. The RST Election Board received a challenge and the fee of \$50.00 was paid. The Board considered the grounds of the summary of the challenge. The challenge argued that the Rosebud Sioux Tribal Court, Honorable Jane Colhoff, asked the Rosebud Sioux Tribal Council to intervene and settle the matter.

The RST Election Board reviewed the Order of the Court and the rationale of the court was the Rosebud Sioux Tribal Council determines legal residency requirements for public office.

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION)SS
ROSEBUD, SOUTH DAKOTA)

IN TRIBAL COURT

EDD CHARGING ELK,
Plaintiff,

CIV 98-194

vs.

LINDA MARSHALL, Chairperson
RST Election Board, and

ORDER

NORMAN G. WILSON, President
Rosebud Sioux Triba.

This matter having come before the Court on the 3rd day of August, 1998, pursuant to the Plaintiff's, Edd Charging Elk, Motion for Temporary Restraining Order; and this Court having before it all of the files and records herein; now, therefore:

The Court finds that the Plaintiff, Edd Charging Elk, has not shown that he will suffer irreparable harm if the Antelope Community Election is held as scheduled on August 6, 1998, in as much as Mr. Charging Elk has no standing at this time to challenge the election.

The Court finds that this matter is appropriately before the Rosebud Sioux Tribal Council for a determination of the legal residency requirements for candidates for public office from the Antelope Community. If the Tribal Council determines that Mr. Charging Elk did indeed meet the residency requirement prior to the election, Mr. Charging Elk will have standing at that time to challenge the election results and the seating of the winner of such election.

If the Tribal Council determines Mr. Charging Elk did not meet the residency requirements or other legal qualifications for public office, Mr. Charging Elk will have standing at that time to ask the Tribal Court to determine the validity of the decision of the Tribal Council. The Court would at that time be presented with a judiciable issue. However, prior to the election and the decision of the Tribal Council regarding qualification for the contested office, no judiciable issue exists.

The Court finds that Mr. Charging Elk's Petition for a Temporary Restraining Order is premature and such Petition is hereby DISMISSED without prejudice.

The Court further finds that it would be in the best interests of justice and fairness for the Rosebud Sioux Tribal Council to address the qualifications issue as expeditiously as

possible and hereby holds in abeyance any statute of limitations for challenging a tribal election which may be set forth in the Rosebud Sioux Tribal Law and Order Code.

SO BE IT ORDERED this 3RD day of AUGUST, 1998.

BY THE COURT:

Jane E. Colhoff
Jane E. Colhoff
Special Judge

ATTEST:

Lina R. Anville
Lina R. Anville
Clerk of Courts

(SEAL)

STATE OF SOUTH DAKOTA
ROSEBUD SIOUX TRIBAL COURT
ROSEBUD RESERVATION

I HEREBY CERTIFY THAT I HAVE CAREFULLY EXAMINED THE WITHIN DOCUMENT AND COMPARED THE SAME WITH THE ORIGINAL NOW ON FILE AND OF RECORD IN THIS OFFICE AND THAT IT IS A TRUE AND CORRECT COPY OF THE SAME AND THAT THE ABOVE IS A CORRECT COPY OF THE FILING THEREON. DATED THIS 4 DAY OF Aug, 1998.

Lina R. Anville
Lina R. Anville
CLERK
ROSEBUD SIOUX TRIBAL COURT

