



Court battle looms for highway super vote

Mike Stern fights to get on ballot in November

BY BOB DUMAS
EDITOR AT LARGE

With political upstart Gerard Ahler securing the Republican nomination to run for highway superintendent and the Democrats failing to endorse a candidate for the November elections, it would seem the outcome of that contest is a fait accompli.

However, longtime Mahopac resident and Carmel Highway Department employee Michael Stern has pledged he will be in the race come hell or high water and vowed to give voters a choice.

Ahler received the GOP nod in the wake of longtime incumbent Mike Simone's surprise announcement that he would not seek re-election.

Stern then announced that he would seek to run against Ahler as an independent candidate in the fall and set out to gather enough signatures on a petition to earn a place on the general election ballot.

On May 26, Stern filed a petition with the County Board of Elections (BOE) that contained more than 1,700 signa-

tures. The following day, he was informed by email that the BOE was in receipt of his petition, but was told he would also need to file a "certificate of acceptance."

According to Kelly Primavera, the county's Republican election commissioner, a certificate of acceptance is needed when a candidate is registered with one party but wants to run on a different line. For example, if a candidate is a registered Republican but wants to run as the Conservative Party nominee, a certificate of acceptance is required.

Stern, a registered Republican, is seeking to run as an independent on a party line he has dubbed Concerned Taxpayers of Carmel.

Stern told Mahopac News that he signed the certificate of acceptance, had it notarized, and mailed it May 27, the day after submitting his petitions, in what he said was plenty of time to meet the June 2 deadline.

However, Stern said that on June 5 he was informed by the BOE that it never received the certificate and thus his petition was denied.

"It wasn't late; we never received it," Primavera said. "We looked for it in the mail every day. It never came."

But Stern said he isn't buying it and believes something sketchy is afoot.

"I sent it through the U.S. mail on May 27 and it magically disappeared," he said. "It is a convenient thing that it got lost."

Stern refused to speculate on what he thought really happened to the certificate of acceptance.

"I can't comment any further, but I sent it out properly in a timely fashion and did everything we were asked to do," he said. "This [certificate of acceptance] is just for me accepting myself on a line. No one is going to bother getting all those signatures and not want to get on a line."

Stern has since filed an Article 78 lawsuit against the county in an effort to have the BOE's ruling overturned. An Article 78 proceeding is a lawsuit used to challenge an action by the state or by local governments.

Stern's attorney, White Plains-based



Michael Stern

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—Mike Stern

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John Murtagh, an expert in election law, said the certificate of acceptance is a technicality and case law is on Stern's side.

"I've been around election law for 30 years and have even run for office myself," Murtagh said. "Election laws are written by the powers that be to keep people in office. They are designed to protect the incumbent. In [Stern's] case, the irony to me is the petitions themselves were not challenged the way they normally do. They were deemed valid."

Murtagh said under New York State law that if a party properly mails something, there is a legal presumption that it was received.

"You can't just say you didn't receive it," he said. "Case law is clear that that is not sufficient. They have to come up with something more. Election law has specific provisions for filing by mail."

Murtagh compared it to mortgage foreclosures.

"This mailing issue typically comes up with these foreclosures," he explained. "The customer says they mailed the check, but the bank says they never got it. The bank has to come up with more

than that."

The Article 78 case was scheduled to be heard earlier this month, but three Putnam judges recused themselves for various reasons and it was moved to Westchester County where it will be heard by Judge Hal Greenwald of the 9th Judicial District of the New York Supreme Court.

However, Murtagh said the county is now trying to use another technicality to block the suit, saying the case didn't get assigned to a judge quickly enough.

"[The BOE] is taking the position they don't have to address the merits of the claim because

we were untimely," Murtagh said. "But we filed well in advance and the court spent three days figuring out who the judge would be and that's not our fault. They are trying to get [the Article 78] thrown out on a technicality because over a century of case law is in Mike's favor. And not just in Mike's favor, but also the citizens of Carmel. He had more than 1,700 signatures on those petitions. If they uphold this claim [that the suit wasn't filed in time] then it will mean only two people got to vote—the two county election commissioners. The people will never get a chance to vote. My cli-

ent has given a sworn statement and is ready to put his hand on the bible and testify."

Murtagh said that if the Article 78 is denied, Stern still has time to get on the ballot via another party line or could mount a write-in campaign. Stern said that is exactly what he will do.

"I am going to fight and I'm not going to stop," he said. "It is something I've wanted to do for a long time. If they are going to play games to keep me off the ballot, the voters will have a choice even if that means a write-in candidate. I will keep on campaigning until Election Day."