



# New Jersey Libertarian Party

Open Government Advocacy Project

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February 13, 2009

Hon. David E. Krell, P.J.M.C.

P.O. Box 668

Woodbury, NJ 08096

*(via regular mail and fax to 856-853-3497)*

RE: State v. Baytops

Westville Municipal Court, Summons No. S-2007-000537

Dear Judge Krell:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project. While the Project's main goal is to increase governmental transparency, particularly through civil enforcement of the Open Public Records Act and Meetings Act, we also seek to ensure that laws intended to hold dishonest or errant public officials accountable are observed and enforced.

We write to you in your capacity as Presiding Judge of the Municipal Courts for the Cumberland, Gloucester and Salem Vicinage. We would like your opinion as to whether the Westville Municipal Court properly discharged its duties under the forfeiture of office statute, N.J.S.A. 2C:51-2(a), in the captioned matter. If you find that the Westville Municipal Court did not properly discharge its statutory duties, we request that you direct that court to make a determination now on the question of whether the defendant in the captioned matter—Tami Baytops--forfeited of her position on the Penns Grove Borough Council.

The relevant facts are as follows. On August 27, 2007, Baytops, who then sat and now sits on the Penns Grove Borough Council, was charged with "electioneering" at the Penns Grove polls on June 5, 2007. The matter was transferred to Westville Municipal Court where, after a trial on November 28, 2007, Baytops was convicted of violating N.J.S.A. 19:34-15<sup>1</sup> and fined \$200 plus appropriate court costs.

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<sup>1</sup> N.J.S.A. 19:34-15 states: "Electioneering within or about polling place.

If a person shall distribute or display any circular or printed matter or offer any suggestion or solicit any support for any candidate, party or public question within the polling place or room or within a distance of one hundred feet of the outside entrance to such polling place or room, he shall be guilty of a disorderly persons offense."

At the time of the conviction, Westville Municipal Prosecutor Charles A. Fiore, Esq. wasn't "comfortable . . . in making a recommendation that Ms. Baytops be removed from office." Rather, he felt that the decision as to whether the conviction warranted forfeiture of Ms. Baytops' office "should be considered by the Penns Grove Borough Municipality." See, December 9, 2007 letter from Prosecutor Fiore to Penns Grove Borough Solicitor Benjamin Telsey, attached. Similarly, the Hon. Thomas M. North, J.M.C., who presided over Baytops' trial, felt that the Salem County Prosecutor's office should determine whether Baytops should be forced to resign her office. See, March 3, 2008 letter from Judge North to the Salem County Prosecutor's Office, attached.


The Westville Municipal Court was required to rule on the question of Baytops' forfeiture "immediately upon" Baytops' conviction unless a stay of forfeiture was requested. N.J.S.A. 2C:51-2(b)(1). Nothing in the records suggests that a stay was requested or granted, so it was not appropriate for the Municipal Court to escape its statutory duty and leave the decision of whether to seek Baytops' forfeiture to the Salem County Prosecutor's Office or the Borough of Penns Grove.

I am cognizant of N.J.S.A. 2C:51-2(g) which permits the County Prosecutor or Attorney General to apply for forfeiture when "the issue of forfeiture is not raised in a court . . . at the time of a finding of guilt," but it is incongruent for the statute to a) expressly require forfeiture of an official who is convicted of a disqualifying offense, but then to b) allow the court to punt the politically difficult forfeiture question to the county prosecutor whenever it is disinclined to make the decision itself. Such a construction would allow an intolerable practice where courts could turn a willful blind eye toward the forfeiture question knowing full well that the county prosecutor or attorney general will probably lack the political will, interest or resources or to apply for forfeiture.

In State v. Ercolano, 335 N.J.Super. 236 (App. Div. 2000), the Appellate Division stated that "viewing N.J.S.A. 2C:51-2 as a whole, it is clear that the Legislature intended a forfeiture of public employment upon conviction for a qualifying offense to be mandatory, regardless of whether forfeiture is ordered at the time of conviction or at some later date." Thus it appears that the Westville Court's handling of Baytops' forfeiture question (i.e. declining to rule on the forfeiture question and instead forwarding it to other officials who also decline to rule on the question) works directly against the Legislature's purpose in enacting the statute.

Thank you for your attention to this matter, I appreciate your time and look forward to receiving your response.

Respectfully,



John Paff

cc. Westville Municipal Court (via fax only to 856-456-1040)  
John T. Lenahan, Salem County Prosecutor (via email to [jlenahan@salemcountynj.gov](mailto:jlenahan@salemcountynj.gov))  
(both with attachments)

C: m+c  
file

*Charles A. Fiore*

*Attorney at Law*

34 South Main Street  
P.O. Box 525

Williamstown, New Jersey 08094

e-mail address: cflore@monroetownshipnj.org

**Charles A. Fiore**  
Member of  
NJ and PA Bars

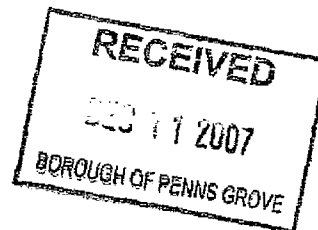
Telephone: (856) 875-1166  
Fax: (856) 875-1412

Atlantic County Office  
105 N. White Horse Pike  
Hammonton, NJ 08037

Please reply to:  
Williamstown Office

December 9, 2007

Benjamin Telsey, Solicitor  
107 West Broadway  
Salem, NJ 08079



Re: **State of New Jersey v. Tami Baytops**  
**Violation: N.J.S.A. 19:34-15**

Dear Mr. Telsey:

Please be advised that this office served in the capacity of Municipal Prosecutor for the Borough of Westville. This matter was recently transferred to the Westville Borough Municipal Court for adjudication by the Honorable Thomas North.

Please note that a Trial took place on November 28, 2007 with respect to the outstanding charges against Ms. Baytops. She was charged with two counts of violations of N.J.S.A. 19:34-15. Based upon my review of the facts, I indicated that both charges could be merged and dealt with as one count.

Be that as it may, a Trial occurred with respect to this matter and testimony was provided on behalf of the State. Upon Judge North considering the testimony of the State's five witnesses as well as the testimony of Ms. Baytops, he entered a guilty plea against Ms. Baytops. The Court imposed a fine of \$200.00 plus Court costs.

Pursuant to N.J.S.A. 2C:51-2a(1), an individual who holds a public office shall be removed for a position for a disorderly persons offense. The determination as to whether or not removal should take place in my opinion should be considered by the Penns Grove Borough Municipality. I am not comfortable, nor was I comfortable at the time of Trial, in making a recommendation that Ms. Baytops should be removed from office. I believe that any action decided should be taken by the Borough of Penn Grove.

Benjamin Telsey, Solicitor  
December 9, 2007  
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Upon receipt and review of this correspondence, should you have any questions or would like to discuss same, please feel free to contact me.

Very truly yours,



Charles A. Fiore

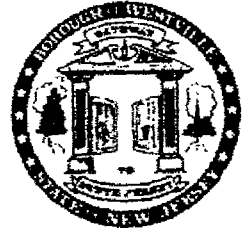
CAF/dt

cc: Mayor John A. Washington  
Members of Council  
Sharon R. Williams, Township Clerk  
John T. Lenahan, Salem County Prosecutor



MUNICIPAL COURT  
**BOROUGH OF WESTVILLE**  
"Gateway to South Jersey"

114 Crown Point Road · Westville, New Jersey 08093  
Telephone: (856) 456-0066 · Fax: (856) 456-1040



HON. THOMAS M. NORTH  
Municipal Court Judge

March 3, 2008

KAREN J. CALIVA  
Municipal Court Administrator

Salem County Prosecutor's Office  
Attn: Thomas DeSimone, Esquire  
87 Market Street, PO Box 462  
Salem, NJ 08079

**RE: State v. Tammi Baytops**  
**Summons No. S-2007-000537**  
**Offense: N.J.S.A. 19:34-15**  
**Location of Offense: Penn Grove Boro**

Dear Mr. DeSimone:

As you may know, I am the Judge of the Municipal Court in the Borough of Westville. This matter was transferred to the Borough by the Division Office last year. The defendant was convicted on the second count of that Complaint at trial on November 28<sup>th</sup>, 2007.

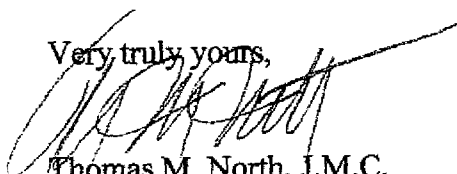
I understand the matter is under review by Salem County Prosecutor's Office, on behalf of State, pursuant to *N.J.S.A. 2C:51-2(g)* as to whether an application will be made for forfeiture of public office held by the defendant, Tammi Baytops.

Enclosed is a letter from Mr. Ken James, recently received by the Court Clerk. The letter requests a forfeiture of office under the Statute.

Be advised that no Order of Forfeiture was made or requested at trial, and no such application for same is either pending or contemplated in the Municipal Court. I note that the application, if it is made, may be made directly to, and determined by, the Superior Court under *N.J.S.A. 2C:51-2(g)*.

A copy of this letter, and the enclosure, is provided to the defendant, Tammi Baytops, as well as to Mr. James.

Very truly yours,

  
Thomas M. North, J.M.C.

TMN/trt

Enclosure

Cc: Karen Caliva, Clerk, Borough of Westville Municipal Court  
Ken James, 35 Maple Avenue, Penns Grove, NJ 08069  
Tammi Baytops, 260 S. Broad Street, Penns Grove, NJ 08069