

## MIDDLETOWN

## Vacancy board will take another shot at opening

*The township must try again to appoint a supervisor, a county judge ordered.*

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Middletown must hold another vacancy board meeting to appoint a township supervisor, Bucks County Judge Robert Mellon ordered after a lengthy hearing in Doylestown on Tuesday.

Mellon said the meeting must be convened no later than the end of Tuesday, Dec. 2. His order came after he ruled an April 29 vacancy board meeting null and void because it violated the state's open meetings, or Sunshine Law. The most notable violation was that public comment came after the vote to appoint Democrat Kathy Heuer and not before as the law requires, Mellon said.

The vacancy board consists of Democratic supervisors Robert McMonagle and Chuck Thompson, Republican board members George Leonhauser and Jasper Caro and vacancy board chairman Bill Cosen, a Democrat. They appointed Heuer to replace Lisa Pflaumer by a 3-2 vote, with Caro and Leonhauser voting against.

After that April 29 vote, Middletown attorney and former Congressman Mike Fitzpatrick, a Republican, filed suits on behalf of several township residents and Caro and Leonhauser alleging Sunshine Law violations. Almost all the plaintiffs are Republicans, but Fitzpatrick denied any political motivation by him or his clients.

Cosen had called another vacancy board meeting for May 9 to correct possible violations from the April 29 meeting, but Fitzpatrick obtained an injunction from Mellon that the judge said "stopped the clock" until the matter could be heard in court. Fitzpatrick claimed notice of the May 9 meeting was not properly posted in the township building, but Mellon ruled otherwise Tuesday and his order "starts the clock again" and clears the way for another vacancy board meeting where, presumably, Heuer will be appointed again since it's the same board that appointed her on April 29.

Middletown has spent \$61,000 so far defending the actions, according to McMonagle. That angered Thompson because he said Heuer will just be reappointed again sometime before Wednesday and, in the meantime, thousands of taxpayer dollars have been wasted.

"I'm sick about the expense to taxpayers, especially in these economic times," Thompson said. "We wanted to call another meeting because we knew there were mistakes made at the April 29 meeting, but they stopped us. That just tells me this whole thing was politically motivated."

Fitzpatrick handled the cases at no charge, and McMonagle questioned the former congressman's motives.

"It's a frivolous action propounded by Fitzpatrick to steal the solicitorship in our township," McMonagle said.

Fitzpatrick didn't comment directly on that allegation, but defended his motives for taking the case. He felt the matter of appointing a new supervisor should now be handled by the court but said he was generally pleased with Mellon's ruling that ordered another vacancy board meeting.

"These petitioners won the case," said Fitzpatrick. "The relief was not what they asked for, but they still won. I agreed to represent citizens of Middletown who believed that their constitutional rights to be notified of meetings and have an opportunity to be heard at those meetings were violated. The court agreed that multiple and significant violations of the Sunshine Law occurred. The judge is giving them the chance to get it right this time, and my clients hope they do."

Caro defended the expenditure of taxpayer funds on the actions.

"I'm just trying to uphold the law and they violated the Sunshine Act," he said. "What else can you do when someone violates the law and they won't correct it? What else can you do but turn to the court? In the long run, it will be cheap because from now on, everyone will adhere

to the law."

Tom Gallagher, one of the plaintiffs in the suits brought by Fitzpatrick, had similar comments.

"What price do you put on justice?" he said.

Another issue that got extensive play at Tuesday's hearing was why Heuer signed and had notarized an oath of office before the April 29 meeting. She also took a verbal oath before township solicitor Mike Savona after the vote to appoint her.

Township employee Joseph Klitzner, a notary public, said he had gone up to witness Heuer's signature on the oath after the April 29 vote and notarize it, only to discover there was already a signed and notarized oath.

Heuer said she signed the oath before notary Susan Altman about 15 minutes before the April 29 meeting at an auto tags business in Penndel.

"Robert (McMonagle) called and told me to meet him there before the meeting," Heuer explained during her testimony Tuesday. "He said if I was appointed, the signed oath would already be there and if I wasn't, we could just throw it away."

Klitzner declined to comment when approached outside of court.

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