Sakuma v. Borja, 11 ROP 288 (Tr. Div. 2004)

TADASHI SAKUMA and PAUL UEKI,
Plaintiffs,

v.

SANTOS BORJA, in his capacity as Chairman of the Palau Election Commission, and PALAU ELECTION COMMISSION,
Defendants.

CIVIL ACTION NOS. 04-242 & 04-243

Supreme Court, Trial Division
Republic of Palau

Decided: November 10, 2004
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ARTHUR NGIRAKLSONG, Chief Justice:

Plaintiff Tadashi Sakuma (Sakuma), who was Governor of Ngaraard State at the time this lawsuit was filed, wanted to run for the House of Delegates seat from Ngaraard State in the November 2, 2004 general election. He, without resigning from the governorship, submitted his petition to run on July 30, 2004, to the defendants, the Election Commission and its Chairman, Mr. Santos Borja. Plaintiff Paul Ueki (Ueki), a member of the Koror State Legislature when this lawsuit began, wanted to run for the Senate of the Olbiil Era Kelulau (OEK) in the same general election. He, too, without resigning from his legislative post, submitted his petition on August 9, 2004, to run for the Senate.

Defendants informed Sakuma and Ueki that, pursuant to the so-called "resign-to-run" law, they both would have to resign before becoming eligible to run for a different position. If they did not resign, their petitions to run would not be valid and their names would not be on the ballots. Plaintiffs filed lawsuits contending they did not have to resign to run. The two lawsuits were consolidated, and after a hearing on September 28, 2004, the Court ordered defendants to accept plaintiffs' petitions to run for the OEK seats without first making them step down from their current positions. *Sakuma v. Borja*, 11 ROP 286 (Tr. Div. 2004).

In ruling that plaintiffs did not have to resign their current respective elected offices, this Court relied on the definition of "employee" to find that the plaintiffs were not "employees" under the statute and were therefore exempt from having to resign first before they could run.[1] Although the Court is comfortable resting its decision on the definition of the word "employee" and need not respond to the other issues raised by the parties, the Court did promise to address them in a subsequent supplemental decision. This is that supplemental decision. The Court will think twice before making a similar promise in the future!

[1]An "employee" is "[a] person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." *Black's Law Dictionary* 543 (7th ed. 1999).

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Defendants' position in this dispute is based on a statute that reads as follows:

> An *employee* of the national government covered under the National Public Service System Act, or of the state government*s*, or *their* agencies, shall not:
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> (a) use his office authority or influence for the purpose of interfering with or affecting the result of any national election; or
>
> (b) accept the nomination and become a candidate for any elective office in the national government without resigning from his job within 14 days of the filing of nomination papers making him an official candidate for any elective office in the national government.

23PNC § 1104 (emphasis added). Whenever a statute is in dispute, it is imperative to discern the intent of the statute, beginning with "the language of the statute itself." *Wenty v. ROP*, 8 ROP Intrm. 188, 189 (2000).

The statutory provision at issue applies by its terms to employees of the national government covered under the national public service system act.[2] The necessary implication then is that employees of the national government who are not under the public system act, such as contract employees and consultants, are exempt.[3] Because the statute does not make the same distinction for employees of state governments, it is reasonable to assume that the OEK meant to apply the "resign-to-run" provision to all state employees. As this Court noted in its earlier order, however, the plaintiffs are not "employees" of the state governments; they are elected officials just like the President of the Republic and members of the OEK. As such, the statute does not apply to them.

In fact, as far as this Court is aware, no elected national or state official has had to resign a current position to run for another office. Then-Vice President Kuniwo Nakamura did not resign his vice-presidency before he became a candidate for the office of the President, nor did then-Vice President Remengesau. Additionally, some members of the House of Delegates of the previous OEK, while still delegates, ran for the Senate ⊥291 without resigning first.[4]

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[2]The rational for similar laws is well-established and has withstood constitutional challenges. The Hatch Act in the United States, for example, requires public service system employees to resign before they become eligible to run for elective office. The justification is to basically keep politics out of the "employment, promotion and dismissal of Government employees" by keeping the public service employees out of political activities. *See United Fed. Workers of Am. v. Mitchell* , 56 F. Supp. 621, 627 (1944).

[3]The pronoun "their" in the statute can only refer to agencies of the state " *governments*" and not the national government. To read that pronoun to refer to an employee of an agency of the national government would nullify the specific and clear application of the "resign-to-run" provision to only an employee of the national government covered under the National Public System Act. This would not be a reasonable way to read the statute. 2A Norman J. Singer, *Statutes and Statute of Construction* § 45.12 at 81-85 (6th ed. 2000).

[4]When an official term ends at the same time the term of the new office begins, there is an argument that

All of this is not to say that the "resign-to-run" rules could never apply to elected officials of state government positions. Some states in the United States have "resign-to-run" provisions in their constitutions that apply to elected officials to ensure that officeholders do not abuse or neglect their current office because of their aspirations for a higher office. *See Clements*, 102 S. Ct. at 2841; *Fasi v. Cayetano*, 752 F. Supp. 942, 951, (D. Haw. 1990). In other words, officeholders should not use their offices as a "stepping stone" for a higher office. In the case at hand, however, neither the Koror State Constitution nor the Ngaraard State Constitution includes a "resign-to-run" provision applicable to elected officials.[5]

In conclusion, I believe the "resign-to-run" statute of the OEK does not apply to any elected official, national or state, because they are not "employees" under the statute. I also believe that restrictions on state governments' elected officeholders who may aspire for a higher office should be legislated by the concerned state government, as a matter of deference to that state, if for nothing else.

"resign-to-run" restriction on candidates is not necessary. *Clements v. Fashing* , 102 S. Ct. 2836, 2842 (1982). But how does this prevent an incumbent from neglecting or using his office as a "stepping stone" for a higher office? I often wonder how much of their senatorial duties get done when United State Senators run for the office of Vice-President and President of the United States. However, imposing restrictions, like the "resign-to-run" law, on some officeholders and not others is discretionary and may be justified on the mere fact that they are "different offices." *Id.* at 2849-50 (Stevens, J., concurring).

[5]The national constitution provides for an automatic resignation from office upon filing to run for an elective office, but it applies only to justices of the Supreme Court and judges of the National Court. Palau Const. art. X, § 8.