



CHRIST T. TROUPIS
LICENSED IN IDAHO, OREGON,
CALIFORNIA, AND ILLINOIS

TROUPIS LAW OFFICE, P.A.

ATTORNEY AND COUNSELOR AT LAW
1299 E. IRON EAGLE, SUITE 130
P.O. BOX 2408
EAGLE, IDAHO 83616

(208) 938-5584
FAX (208) 938-5482
ctroupis@troupislaw.com

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Idaho Republican Party Rules Committee
P.O. Box 2267
Boise, Idaho 83701-2267

Re: Status of Republican Party State Offices

Dear Members of the Rules Committee:

Based upon my conversations with delegates to the 2014 State Republican Convention, I have drafted the following legal analysis with regard to the current status of the Party Chairman and other state officers.

Question: Following the action of the delegates of the 2014 State Republican Convention, what is the proper interpretation of the Rules of the Idaho Republican Party (as amended January 4, 2014) with respect to the current status of the Chairman and other party officers elected at the 2012 State Republican Convention?

Relevant Facts: Certain facts are not in dispute and may be summarized as follows:

- A. The Chairman Barry Peterson and other party officers, 1st Vice Chairman Mike Matthews, 2nd Vice Chairman Todd Hatfield, Secretary Marla Lawson, and Treasurer Chris Harriman were duly elected to their respective offices at the 2012 State Republican Convention.
- B. The Biennial Idaho State Republican Convention was convened on June 13, 2014 with U.S. Representative Raul Labrador named as Convention Chair.

- C. Some of the delegates made parliamentary maneuvers that delayed the Convention proceedings. As a result, it was time for the Convention to close before the Convention addressed the election of a new Chairman and other State Officers.
- D. In order to avoid any later confusion about the effect of Convention adjournment, the Convention Chair conferred with the Convention Parliamentarians with regard to the application of the Rules of the Idaho Republican Party and Roberts Rules of Order in this circumstance.
- E. Following that conference with the Convention Parliamentarians, the Convention Chair advised the Convention delegates that if a Motion to Adjourn the Convention passed, the then current Chairman and other Party Officers would remain in their respective offices until the next State Republican Convention in 2016.
- F. Only after explicitly stating what the impact of adjournment would be on the Officers of the Idaho Republican Party, did the Convention Chair allow the delegates to proceed with a vote to adjourn.
- G. Relying on that express statement from the Convention Chair, the Convention delegates then adjourned the 2014 Idaho State Republican Convention on June 14, 2014.

Summary of Legal Conclusions:

No Vacancy exists in the position of Idaho Republican Party Chairman or other Party Officers at this time. Accordingly, Barry Peterson, having been duly elected, remains as Chairman and the other Party Officers also remain in office.

Legal Analysis:

I.) THE EXPRESS LANGUAGE OF THE RULES REQUIRE THAT THE CHAIRMAN AND OTHER OFFICERS REMAIN IN OFFICE UNTIL A SUBSEQUENT VOTE FOR A REPLACEMENT OCCURS.

As with any legal analysis of Rules or Statutes, the process must begin with the words themselves. Accordingly we begin the analysis with those words.

The Rules of the Idaho Republican Party (Amended 1/4/14) provide in pertinent part:

Section 5: ...The Chairman of the Republican State Central Committee shall be elected by the Delegates to the State Republican Convention, convening regularly every two years.

Section 16: The two year term of office of the State Chairman shall begin immediately upon election by the Republican State Convention.

As noted, then, in *Section 5*, the Chairman was duly elected at the 2012 Idaho State Republican Convention and, as noted in *Section 16* his term of office began “immediately”. Neither *Section 5* nor *Section 16* provides, in any direct language, for the expiration of the term of office. Put differently, while both sections make reference to a “two years: or “two year term”, neither one states anything about what will happen if a later Convention fails to take a vote on Chairman (or other officers). There is no suggestion either in these provisions or any other Rule that a vacancy occurs in the office of Chairman when a later convention fails to act. Even more importantly, had these provisions been meant to so limit the Chairmanship, each could have done so with ease simply by adding explicit words that so limited the term of office.

Accordingly, no vacancy in the office of Chairman (or other Party Offices) has occurred. Just as the Convention Chair stated to the Delegates, the Chairman and other Party Officers elected in 2012 remain as those respective Officers until the next Biennial Convention in 2016.

II. THE EXPRESS INTENT OF THE RULES IS TO AVOID ANY VACANCY IN THE OFFICE CHAIRMAN.

It is certainly enough, as a legal matter, that the direct language of the Rules allow for the election of the Chairman (and other officers) and that the direct language does not create a vacancy in office when a later Republican Party Convention does not conduct a vote on those offices. Here, however, there is much more within the Rules that support that reading of the language, and it is appropriate to consider that additional information.

For example, when addressing what may happen in the event of a vacancy in the Chairmanship, *Section 6* provides as follows:

Section 6: If the office of the Chairman becomes vacant, by reason of resignation, death or otherwise, it shall be the duty of the First Vice-Chairman to convene the Republican State Central Committee within thirty (30) days for the purpose of appointing by election a new State Chairman to serve until a successor is duly elected by the next Republican State Convention. There shall be no automatic succession to the office of State Chairman.

Note, first, that the only explicit examples of vacancy are “resignation” and “death”. No mention is made of a vacancy resulting simply by a failure to take a vote. Had the drafters wanted that obvious potential to result in vacancy they could have said it, but they chose not to list that event as creating a vacancy. Absent an express provision in the Rules that states that the office of Chairman becomes vacant upon expiration of the term, there simply is no automatic vacancy.

Second, it is important that *Section 6* explicitly disfavors creating a vacancy. Indeed, unlike any other provision in the Rules addressing other matters, this provision expressly provides that, in the unlikely event that a vacancy should ever occur, it is a **duty** to act within 30 days to fill that vacancy. As such, the Rules create an unequivocal preference for the Chairmanship to be occupied at all times, and thus the words of the Rules must be read, whenever possible, as preserving the Chairmanship to continue. A vacancy is abhorred, and it

would be inconsistent and legally incorrect to interpret the Rules in such a way so as to create a vacancy when, as here, they can be read otherwise.

Third, *Section 6* explicitly and unequivocally provides that, even in the unlikely event of a vacancy, the 1st Vice-Chairman never becomes Chair. Even as he/she carries out certain functions and briefly acts as if the Chair, there is no “automatic succession” to State Party Chair. This again confirms that a vacancy is never the preferred result. The intent of the drafters of the Rules is confirmed, yet again.

The essential premise of the Rules is that there will always be a Party Chairman in office. The Rules do not contemplate, in any respect, an automatic vacancy of the Party Chairman’s office at the expiration of his term. As *Section 5* states, “[T]he Chairman of the Republican State Central Committee shall be elected by the Delegates to the State Republican Convention.” Nowhere do the Rules waive the right of the Delegates to elect the Chairman or other party officers. Each Rule must be interpreted in light of those overall objectives.

III. RULES OF ESTOPPEL AND QUASI-ESTOPPEL SUPPORT THE CONTINUATION OF THE CHAIRMANSHIP.

The rules of estoppel and quasi-estoppel are firmly established under Idaho law and are well known. A person may not change his position after causing another person to act in reliance upon it. The legal elements of each of these rules are set out below:

“The elements of equitable estoppel are as follows:

(1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not know or could not discover the truth; (3) that the false representation or concealment was made with the intent that it be relied upon; and (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.” *Ogden v. Griffith*, 149 Idaho 489, 495, 236 P.3d 1249, 1255 (2010).

"The doctrine of quasi-estoppel " prevents a party from reaping an unconscionable advantage, or from imposing an unconscionable disadvantage upon another, by changing positions." *Garner v. Bartschi*, 139 Idaho 430, 437, 80 P.3d 1031, 1038 (2003). Unlike equitable estoppel, quasi-estoppel does not require either misrepresentation by one party or the reliance by the other. *Id.* The elements of quasi-estoppel are as follows:

[Quasi-estoppel] prevents a party from asserting to another's disadvantage a right inconsistent with a position previously taken by him or her. The doctrine applies where it would be unconscionable to allow a person to maintain a position with one in which he acquiesced or of which he accepted a benefit. The act of the party against whom the estoppel is sought must have gained some advantage to himself or produced some disadvantage to another; or the person invoking the estoppel must have been induced to change his position. " (quoting *E. Idaho Agric. Credit Ass'n v. Neibaur*, 133 Idaho 402, 410, 987 P.2d 314, 322 (1999)).

Here, the Convention Chair explicitly notified the Convention delegates that, by adjourning the Convention without a vote on a new Chairman, the then existing Chairman, Mr. Peterson and other Party Officers would remain in office until the next Idaho State Republican Party Convention. The Convention Chair conferred with and obtained the opinions of the Convention Parliamentarians prior to making this statement to the delegates. The convention delegates then acted to adjourn the convention, expressly relying on the representation of the Convention Chair that the Party Chairman and other officers would remain in office. No objection was made by any delegate to the interpretation of the Convention Chair. Under the Rules, only the convention delegates have the right to elect a Party Chairman. They acted on the belief that they were exercising this right by voting to adjourn the convention. This is classic estoppel—reliance on the statements of interpretation at that time.

Moreover, those who would now seek to remove the Party Chair under a different interpretation from another Parliamentarian are particularly estopped. They stood silent during the convention knowing others would rely on the interpretation expressed by the Convention Chairperson and convention Parliamentarians. Having passed on the opportunity they were given to object, they cannot now ask for a different result.

IV. THE RULES OF CORPORATE SUCCESSION SUPPORT CONTINUATION OF THE CHAIRMANSHIP ABSENT A SUCCESSOR'S ELECTION.

Finally, in reviewing how to read language of Rules or Statutes, it is acceptable to look to other statutes to determine if the interpretation is consistent with the generally applicable rules and process. Here, the continuation of the Chairman's term of office until a successor is elected is consistent with other provisions of Idaho law. For example, in the context of corporations, both for profit and nonprofit, the Idaho Corporations Code provides:

Idaho Code §30-1-805(5) (*business corporations*)

"Despite the expiration of a director's term, the director continues to serve until his successor is elected, designated or appointed, and qualifies..."

Idaho Code § 30-3-67(4) (*nonprofit corporations*)

"Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed, and qualifies..."

V. THE RETENTION OF THE CURRENT CHAIRMAN DOES NOT CONFLICT WITH THE RNC RULES.

A concern has been expressed that even if the State Party rules authorize the Chairman to continue in office, that it may conflict with the RNC rules. There is no factual support for that concern. Rule No. 3 of the National Republican Party does not fix the term of office of a State Chairman, but only National Committeemen and Committeewomen. Moreover, with respect to the State Chairman of each state, the rule states only that:

"(b) The duly elected and acting chairman of each state Republican Party shall be a member of the Republican National Committee during his or her term in office."

Since the delegates of the State Republican Convention have voted that the Chairman and other officers continue in office until the next Convention, Chairman Peterson's term of office continues. Nothing in the RNC rules purports to limit state parties from extending the term of office of their state party officers. In fact, the RNC applies the automatic extension rule with

respect to the term of office of National Committeemen and Committeewomen. Rule No. 3

states:

Rule No. 3 (a) National committeemen and national committeewomen shall serve from the adjournment of the national convention until the adjournment of the following national convention, and until their successors shall have been elected and ratified.”

CONCLUSION

In sum, it is my legal opinion, based on the explicit words of the Rules of the Idaho Republican Party, the general purposes and consistency of those Rules, Doctrines of Estoppel and Quasi-Estoppel and general rules applicable to other statutes, that the Chairman (and other Party Officers) elected by the 2012 Idaho State Republican Convention remain in their offices at this time.

Very Truly Yours,



Christ T. Troupis