NBC-ALD

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

BEFORE THE ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PETITIONS FOR THE OFFICES OF: ALDERMAN AND WARD COMMITTEEMAN

IN RE: Objection of)
)
JUAN A. VELAZQUEZ)
To the Nominating Petition of)
)
JUAN M. SOLIZ) NO. 86-EB-ALD - 31
Candidate for the Office of Alderman,)
25th ward in the City of)
Chicago, Illinois)

D E C I S I O N

The duly constituted Electoral Board, consisting of MICHAEL E. LAVELLE, JAMES R. NOLAN and CORNEAL A. DAVIS, organized by law in response to a Call issued by MICHAEL E. LAVELLE, Chairman of said Electoral Board, for the purpose of hearing and passing upon Objections to Nominating Petitions for the Offices of Alderman and Ward Committeeman, having convened on Janaury 27, 1986 at 9:30 a.m. in Room 1707, Richard J. Daley Center, Chicago, Cook County, Illinois; and having heard and determined the objections to the petition in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;

2. Objections to the nominating petition of the candidate herein were duly filed;

3. A Call to the hearing on said objections was duly issued and was served upon the members of the Electoral Board, the objector and the candidate by mail and by personal service as provided by statute;

4. A public hearing was held on these objections commencing on January 27, 1986;

5. The following persons, among others, were present at such hearings: the members of the Electoral Board, the objector, ~~pro se (or)~~ by counsel; and the candidate, ~~pro se (or)~~ by counsel;

6 ~~Objections having been withdrawn (or)~~

~~The candidate agreeing that his name not be printed on the ballot to avoid a hearing on the objections (or)~~

The Board overrules the objections and incorporates the decision of the Hearing Examiner as the decision of the Board.

IT IS THEREFORE ORDERED that the name of JUAN M. SOLIZ, candidate for the Office of Alderman, for the 25th ward, City of Chicago, Illinois, shall ~~(or) not~~ be printed on the ballot at the Special Election held on March 18, 1986.

Dated at Chicago, Illinois, this 13th day of February, 1986.

Chairman

Member

Member

JUAN A. VELAZQUEZ)
)
v.)
) NO. 86-EB-ALD-31
JUAN M. SOLIZ)

I. INTRODUCTION

This is an objection to the petition of Juan M. Soliz as a candidate for election to the office of Alderman of the 25th Ward of the City of Chicago in the special election to be held on March 18, 1986. The objectors request that the electoral board remove Soliz' name from the aldermanic ballot because he is simultaneously running for Representative in the General Assembly, 20th Representative District, an office which (according to the objectors) is incompatible with that of alderman.

On December 30, 1985, the federal district court in Ketchum v. City Council entered an order calling for a special aldermanic election to be held March 18, 1986 in the 25th ward among six other wards.

On or about January 16, 1986, the candidate was certified as a candidate for nomination in the Democratic Primary for Representative in the General Assembly, 20th Representative District.

On January 17, 1986, the candidate filed his petition of candidacy for alderman in the 25th ward in the special aldermanic election.

II. APPLICABLE STATUTES

Section 7-12(9) of the Election Code states in pertinent part that:

If petitions for nomination have been filed for the same person for two or more offices so that the same person could not serve in more than one of such offices if elected, that person must withdraw as a candidate for all but one of such offices within the five days following the last day for petition filing. If he fails to withdraw as a candidate for all but one of such offices within such time his name shall not be cetified, nor printed on the primary ballot, for any office.

Section 10-7 of the Election Code provides, in pertinent part:

If the name of the same person has been presented as a candidate for two or more offices which are incompatible so the same person could not serve in more than one of such offices, if elected, that person must withdraw as a candidate

for all but one of such offices within the five days following the last day for petition filing. If he fails to withdraw as a candidate for all but one of such offices within such time, his name shall not be certified, nor printed on the ballot for any office.

Section 10-10 of the Election Code provides in pertinent part:

The Electoral Board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law.

III. ISSUES PRESENTED

The issues presented are :(1) Whether the electoral board has jurisdiction to determine questions of incompatibility; (2) if the electoral board has jurisdiction, whether the statutory prohibitions against filing for incompatible offices are applicable in the instant case; and (3) if the electoral board has jurisdiction and if the statutory prohibition against filing for incompatible offices are applicable in the instant case, whether the offices of alderman and state representative, in fact, are incompatible?

For the reasons indicated below, I recommend to the Board that the objections be dismissed based upon the resolution of the first two issues. The third issue need not be resolved by the Board.

IV. DOES THE ELECTORAL BOARD HAVE JURISDICTION?

Neither party has cited any case providing guidance as to whether the electoral board has jurisdiction to decide questions of alleged incompatibility. The objectors argue that the statutory phrase within Section 10-10 "...within the conditions required by law" means the "condition" is the prohibition against the filing of petitions for dual candidacies (objectors' reply memorandum, p.14). Such an expansive interpretation of "condition" is neither supported by logic nor by electoral board tradition.

Section 10-10 requires the electoral board to take up the question of whether or not nomination papers "...are in proper form and whether or not they were filed within the time and under the conditions required by law."

The objectors are not challenging the validity of the candidate's aldermanic petition, but rather are seeking to disqualify him from ballot placement for failure to withdraw as an aldermanic candidate aafter having filed for "two incompatible offices" (objectors' petition pp 6-7). As such,

the objectors are challenging the failure of the candidate to withdraw his candidacy; which, in my opinion, can not logically constitute a condition of filing.

Moreover, electoral boards have historically been invloved with challenges to a candidate's nomination papers (statement of candidacy, petition sheets) or statement of economic interest - not to a candidate's failure to withdraw one or more candidacies or petitions. For a failure to withdraw, if challenged, inplicitly argues for the validity of the filed petitions - a position invariably taken by the candidate rather than the objector, as in the instant case.

For the above reasons, I am inclined to recommend to the electoral board that it lacks jurisdiction over the issues raised in the objectors' petition. However, since the Chicago Board of Elections is charged with printing the ballot for aldermanic office and as a hearing officer acting on behalf of the Board, even in its electoral board capacity, I have had the benefit of memoranda, oral argument, and filed affidavits I would recommend that the Board resolve the issue of whether the statutory prohibitions against filing for incompatible offices are applicable in the instant matter. Given the immediacy of the March 18th special elections and the almost certainty of judicial review of the instant case, I recommend that the Chicago Board resolve the issues below.

V. ASSUMING THE ELECTORAL BOARD HAS JURISDICTION OVER THE QUESTION OF FILING FOR INCOMPATIBLE OFFICES, ARE THE STATUTORY PROHIBITIONS AGAINST FILING FOR INCOMPATIBLE OFFICES APPLICABLE TO THE INSTANT MATTER?

Sections 7-12(9) and 8-9(3) of the Election Code by their terms apply to (1) "petitions for nominations"; (2) withdrawal as a candidate within five days following the last day for petition filing; and (3) the sanction of not being printed on the "primary ballot" for said failure to withdraw for all but one of the incompatible offices.

Sections 7-12(9) and 8-9(3) do not apply to the candidate in three separate but important ways. First of all, the candidate has filed only one petition of nomination (for nomination as a Democrat for the office of Representative in the General Assembly); secondly, it was physically impossible for the candidate to withdraw one of two petitions within five days following the last day for petition filing since there were two separate and distinct filing periods relating to different elections (State Representative - December 9-16, 1985' Alderman - January 10-17, 1986); and thirdly, the aldermanic office does not appear on a primary ballot.

Section 10-7 by its terms, applies (1) when the name of

the same person has been presented for two or more offices; (2) withdrawal as a candidate within five days following the last day for petition filing; and (3) the sanction of not being printed on the ballot for any office.

Furthermore, Section 10-7 also does not apply in the instant case. First, the candidate's name has not been presented for two or more offices but rather for only one office - aldermanic and for one nomination as a state representative. Secondly, since there is only one office, it follows that the candidate can't be required to withdraw from all of but one of such offices and, of course, the sanction of not being printed on the ballot would not be applicable.

For the above reasons, Sections 7-12(9), 8-9(3), and 10-7 of the Election Code are inapplicable to the facts of the instant case. The objectors would have the electoral board overlook the differences between Article 7, Article 8 and Article 10 candidacies and further disregard differences between a primary election and a special nonpartisan election. However, in the absence of any precedent supporting objectors' position, I recommend that the objections be overruled and the Board direct that the candidate's name shall be printed on the March 18, 1986 special aldermanic election ballot.

Arthur R. Waddy

ARTHUR R. WADDY
Hearing Officer

February 13, 1986