STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

NBC

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

IN RE: Objection of: Michael Bradley)
)
To the)
Nominating Petition of: George E. Esch)
) NO: 88-EB-WD-33
)
Candidate for the Office of Ward Committeeman in)
the 14th Ward in the city of Chicago, Illinois.)

DECISION

The duly constituted Electoral Board, consisting of JAMES R. NOLAN, NIKKI M. ZOLLAR AND MICHAEL J. HAMBLET, organized by law in response to a Call issued by MICHAEL E. LAVELLE, then Chairman of said Electoral Board, for the purpose of hearing and passing upon Objections to Nominating Petitions for the Office of Ward Committeeman in the City of Chicago, having duly convened and having heard and determined the objections to the petition in the above entitled matter find 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;

5. The following persons, among others, were present at such hearings: the members of the Electoral Board, the Objector, by counsel, and the Candidate by counsel;

6. The Board finds that the findings and conclusions of the hearing officer are attached hereto and incorporated herein.

IT IS THEREFORE ORDERED that the name of George E. Esch, as candidate for election to the office of Ward Committeeman in the 14th Ward, Republican party, in the city of Chicago shall not be printed on the ballot for the Primary Election to be held on March 15, 1988.

Dated: Chicago, Illinois, this 4th day of February, 1988.

James R. Nolan.
JAMES R. NOLAN, COMMISSIONER

Nikki M. Zollar
NIKKI M. ZOLLAR, COMMISSIONER

MICHAEL J. HAMBLET, COMMISSIONER

MICHAEL BRADLEY V. GEORGE E. ESCH

HEARING OFFICER REPORT
88-EB-WD-33

George E. Esch filed his nomination papers with the Cook County Clerk on December 7, 1987. His papers, as filed, included a "Loyalty Oath", and Statement of Candidacy and fourteen (14), twenty-five (25) signature lined "Petition for Election" signature sheets.

The Statement of Candidacy, and individual Petition for Election sheets all indicate that Mr. Esch seeks position of Ward Committeeman, Republican Party, Fourteenth Ward, City of Chicago, Cook County, State of Illinois. All, additionaly, list Mr. Esch's address as 5531 South Albany Avenue, Chicago, Illinois 60629.

Michael Bradley filed an Objector's Petition with the Cook County Clerk on December 24, 1987. The Objector's Petition contained a number of allegations citing contended defects in the Candidate's filing. Some of these defects were alleged by the sheet and line, some were alleged as to the circulators of the individual "Petition for Election" sheets and some were alleged as to the Candidate and other of the documents in the Candidate's filing.

The Candidate and Objector were served with call and a copy of the Objector's Petition. Both appeared by counsel on the first day of the call. Michael Moses and Michael Abramovic appeared for the candidate, Mr. Esch. Randy Greune appeared for the Objector, Mr. Bradley. Both parties had or were provided with copies of the rules adopted by the Electoral Board for the conduct of these hearings. Candidate filed his Motion to Strike and leave was granted Objector to respond by 1-4-88, at 5:00 p.m.. The matter was continued until 1-5-88, at 12:30 p.m..

On January 5, 1988, and at the continued hearing on January 6, 1988, it appeared that the Objector filed his Answer to the Candidate's Motion to Strike and Dismiss late (filed 1-5-88, at 9:12 p.m.). Candidate filed a Motion Objecting to the Filing of the Objector's Response to the Candidate's Motion to Strike and Dismiss and Motion for the Entry of a Summary Judgement on the Pleadings on January 4, 1988, at 3:34 p.m. (this was referred to in the record repeatedly as "Candidate's 3:34 Motion"). Additionaly, the Candidate filed a Motion for Directed Verdict, Default Judgement or Summary Judgement on January 4, 1988, at 6:12 p.m. (this was referred to in the record repeatedly as "Candidate's 6:12 Motion"). Upon argument that Notice of Filing for the Candidate's 3:34 Motion was defective and in violation of Rule 15 of the Electoral Board's Rules, the 3:34 Motion was withdrawn by the Candidate. Upon argument this hearing officer denied the 6:12 Motion since it was clear that I had some discretion in setting times and issuing continuances (and since the Motion to Strike and Dismiss was unusually voluminous, it was felt the Objector should have a bit more time to respond); since I announced that even if no response was filed to the Motion to Strike and Dismiss that fact alone would not work before me to deny the Objector to argue in response to the Candidate's argument on the motion; since the Candidate could show no prejudice by the late filing and since paragraphs 2 and 3 were relating to the 3:34 Motion which had at that point been withdrawn or were directed to pleadings which had not, at the time of the 6:12 Motion filing, yet been filed (both points being moot and not germane).

Argument and evidence taken on the Motion to Strike and Dismiss showed the objector, Mr. Bradley, to be, by the preponderance of the evidence, a resident of the 14th Ward; the Election Code, Article 7,

does not require an objector to the filings of a candidate to the position of Ward Committeeman to state an interest in the Objector's Petition and neither does the Objector's Petition have to be verified (by either statute, Board Rule or Custom and Practice at the Board); the objector's prayer for relief is sufficient.

Objector withdraws paragraphs 7,8 and 9 of the Objector's Petition on January 6, 1988, without objection.

Hearing Officer observes Part 3 of Candidate's Motion to Strike and Dismiss is essentially a reply to the allegations contained in the Objector's Petition on a paragraph by paragraph basis with some argument appended.

Objector did not press for 2-611 relief contained in his Answer to Motion to Strike and Dismiss and other Relief and, therefore, no action was taken.

Objector presented testimony of Mrs. Wilma Anthony, one of the owners in joint tenancy of 5531 South Albany, Chicago, Illinois, the alleged address of the candidate. She testifies that she has been a joint owner and occupant of the property for 50 years; knows the Candidate, is well acquainted with the floor plan of her home and the people who do or have lived there; and states, without equivocation, that the Candidate does not, and has never lived at 5531 South Albany. She testified that the Candidate approached her some time ago and asked to use her address as his mailing address, offering to pay her $10.00 per month for the privilege; that she assented; that he paid her 4 sums of money, the first being a $100.00 check and the next 3 totalling $70.00 for the privilege; that there is no lease to the Candidate; that there are no utilities that have ever been paid by the Candidate for the

premises; that the only clothing of the Candidate's on the premises were clothes he brought as a customer to her for alteration in her attached store-front sewing shop; that the Candidate never kept anything of a personal nature on the premises except a bottle of insulin and syringe, she found in her refrigerator when she returned home from her vacation last Tuesday (1-4-88); that George Esch has never slept at the 5531 South Albany address except from what she hears froms others that he stayed over without her prior knowledge or consent on New Year's Eve, 1987.

Additionally, Mrs. Anthony testifies that her daughter, Sadie O'Dwyer, lives at 3025 West 37th Street, Chicago, and has lived there for over a year, not having lived with the Anthony's for about 17 years or so.

Mrs. Anthony admits that Mr. Esch did receive mail at the address and did call there frequently, but denies ever taking deliveries of any kind at 5531 South Albany. Mrs. Anthony gave additional testimony on additional fine points at issue.

Candidate called three witnesses (2 friends and the son of the candidate) who testified that they know George E. Esch and have called and seen him at 5531 South Albany. They also believe that George E. Esch resides or lives at 5531 South Albany. (-took exhibits [Candidate's, Objector's and Hearing Officer's]). Closed proofs continued hearing until 1-8-88.

On 1-8-88, the hearing officer resumed hearing on the question of residency and ordered a binder check. Continued 1-19-88, and then continued again 1-21-88 at which time the binder check results were compiled upon termination of the binder check. The binder checks results are as follows;

Number of unchallenged signatures, 154;

Number challenged signatures that were overruled and declared valid, 43;

Total valid signatures, 197;

Minimum number of signatures required, 167.

Candidate has exceeded the minimum number of signatures required to be placed on the ballot as result of signature comparison and other sheet and line rulings made in the binder check.

Candidate makes Motion to Extend Binder Check to a Conclusion; denied not necessary.

Candidate calls Request for Admissions of Fact (filed 1-13-88 and responded to by objector on 1-15-88); denied. Rehashes issues raised in the Motion to Strike and Dismissed which are not relevant.

Candidate makes Motion to Make the Record Complete (filed 1-13-88 and not responded to by Objector); denied. The Board's records are in evidence and part of this record and file, but this request is for irrevelant, immaterial items which have no probative value to any genuine issue before this hearing officer in this case.

Candidate granted leave to file Motion to Reconsider by January 22, 1988, at 3:30 p.m. Case continued until 1-22-88, at 4:00 p.m..

On 1-22-88 the matter was continued until 1-26-88.

On 1-26-88 hearing officer granted Candidate's motion to re-open proofs to permit the Candidate, himself, to appear and give live testimony. Candidate testified that he circulated his Petitions for Election on 2 days (11-7-87 and 11-14-87) accompanied by 3 other people: his son, Sadie O'Dwyer, and Joseph Bolling. Candidate testifies that at the time he resided and lived in the 14th Ward at 5531 South

Albany, to which he had his own key; that he resided there since 1985; that he stayed in an upstairs (2nd floor) bedroom; that he stayed there under an arrangement with Wilma Anthony to pay $50.00 per month for the tenancy; that he kept personal items on the premises between 11-7-87 and 11-14-87 including: changes of clothes (both work and dress), shaving equipment, insulin and syringes; that he slept there 2 to 3 times between 11-7-87 and 11-14-87; that he worked for I.D.O.T. and that as a result of required travel, he was often in hotels and motels on the road; that, additionally, at times he slept in the back room of his office at 5324 South Ashland; that he has recieved many calls at 5531 South Albany; that he has recieved mail there; that his driver's licence shows his address at 5531 South Albany, as does his voters' registration card; that Candidate still considers 5531 South Albany his domicile to and from which he can come and go without being noticed; showed checks: (1) for $100.00 for "rent"; (2) for $30.00 for "alterations" and says there was one other; that he is seperated from his wife (7 or 8 years) but visits her frequently at 105 Cedar Circle in Streamwood, Illinois; that he does not pay nor has he ever paid utilities at 5531 South Abany; that he presently stays at 5531 South Albany 2 to 3 days per week.

In response, Objector moved into evidence the Affidavit of James J. Anthony. Proofs were closed and the matter taken under advisement.

On 1-28-88, after a review of the transcripts and evidence the Hearing Officer sua sponte ordered the matter re-opened and by conference call to the attorneys re-scheduled hearings on proofs on 2-2-88, at Noon.

On 2-2-88 the parties appeared with witnesses.

The objector presented James Anthony, author of the affidavit admitted into evidence on 1-26-88. Mr. Anthony, who admits to being a voluntary witness, gave detailed testimony corroborative of his wife's testimony (see earlier notes concerning the developments of 1-5-88 and 1-6-88). Unequivocally, Mr. Anthony states that he is the other of the two joint owners of the 5531 property, owning the same with his wife, Wilma. He states that Mr. Esch does not and has not lived at 5531, that he has no clothes there, pays no rent, pays no utilities there and, to his knowledge, has only spent one night there, New Year's Eve 1987. The only arrangement he knows of with the Candidate is the arrangement his wife told him of in which Esch gave his wife some money for the use of the 5531 address as Esch's mailing address. Mr. Anthony states that he did not read all of his affidavit before signing it but had read it at the hearing in its entirety and finds all of it true "as he reads it". On cross-examination, Mr. Anthony testifies that he had seen Esch at his house on occasion, not in November of '87 but in December of '87 especially around the Christmas holidays when he recalls Esch's visits almost daily. Additionally, he testified that his daughter Sadie only occasionally slept over in his home, not in November or December of '87. He states that she worked for his wife in the sewing shop and that he often took her home in the evening after he returned home from his work.

The objector rested and, after the room was cleared, the Candidate called as his witness Sadie O'Dwyer, daughter of the Anthony's, whose testimony, in part, was contradictory of her parents testimony.

At the conclusion of Ms. O'Dwyer's testimony, both sides rested, proofs were closed again and the matter taken under advisement.

Throughout the hearings the Hearing Officers had the opportunity to and did observe the conduct and demeanor of the parties and the witnesses and did receive and did move into evidence himself, a number of items of evidence.

At the conclusion of the re-hearing and after a review of all of the evidence this Hearing Officer has concluded that the Candidate, George E. Esch, does not now and never has resided, within the meaning of the law, at 5531 S. Albany, Chicago, Illinois as he states he does on every page of his filing except the Loyalty Oath page. It is not one of the stated purposes of these hearings to characterize errors which are pointed out by Objectors as intentional deceptions or innocent misconceptions by Candidates and, therefore, this Hearing Officer makes no such inference or finding. This Hearing Officer does, however, find that the Statement of Candidacy and each and every page of the Petition for Election sheets is false in that each bears an incorrect address as the address of the candidate.

BASIS IN LAW FOR HEARING OFFICERS RECOMMENATION

Chapter 46, Section 7-8(b) states, in part:

...Each candidate for ward committeeman must be a resident of and in the ward where he seeks to be ward committeeman....

Chapter 46, Section 7-10 states, in part:

...The name of no candidate for nomination, or State central committeeman, or township committeeman, or precinct committeeman, or ward committeeman or candidate for delegate or alternate delegate to national nominating conventions, shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in this Article....

...and shall be in substantially the following form:

Statement of Candidacy

Name	Address	Office	District	Party
John Jones Belvidere, Illinois	102 Main St.	Governor	Statewide	Republican

State of Illinois)
) SS
County of .....)

I, ..., being first duly sworn, say that I reside at .... Street in the city (or village) of ... in the county of ... State of Illinois; that I am a qualified primary voter of the ... party...

A number of well known cases set forth, the controlling law on the legal requirements for residency including Stein -v- County Board of School Trustees, (1967) 85 Ill. App.2 251, 229 NE2 165 and 40 Ill.2 477, 240 NE2 668; Delk -v- Board of Election Commissioners of the City of Chicago, (1983) 112 Ill. App.3 735, 445 NE2 1232 (the Iolla McGowan case) and Miller -v- Police Board of the City of Chicago, (1983), 112 Ill. App.3 735, 445 NE2 1232.

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The holdings in these three cases are that a person's residence is his permanent abode, a person's principal dwelling place and that the criteria for establishing residence are, physical presence and an intent to remain there or an intent to return there. Delk went on to set out some of the acceptable proofs for these criteria.

Having considered all the testimony and other evidence, there could be no reasonable basis to find George Esch in anyway satisfies the residency test requirements.

As an aside, the Hearing Officer was a bit surprised that there was not more evidence presented by the objector suggesting the Objector's opinion of the Candidate's residence address -- but such is not necessary to these findings.

The effect of finding a false statement of candidacy is that the entire filing is invalidated. Delk.

It is, therefore, recommended that the name of George E. Esch be not presented on the ballot as a candidate for the position of the Republican Ward Committeeman to the 14th Ward of the City of Chicago in the 3-15-88 Election.

SAMUEL J. RUFFOLO