STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

NBC

ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
THE OFFICES OF MAYOR, CITY CLERK,
CITY TREASURER AND ALDERMAN FOR THE
CITY OF CHICAGO FOR THE FEBRUARY 28, 1995
ALDERMANIC AND MUNICIPAL PRIMARY ELECTIONS.

Objection of: Raymondo Rosales and John R. Hartenstein	)	
To the	)	
Nomination Papers of: Tom Hendrix	)	No.: 95-EB-ALD-055
Candidate for the Office of Alderman of the 1st Ward.	)	

DECISION

The duly constituted Electoral Board, consisting of MICHAEL J. HAMBLET, ARNETTE R. HUBBARD, and RICHARD A. COWEN, organized by law in response to a Call issued by MICHAEL J. HAMBLET, Chairman of said Electoral Board, for the purpose of hearing and passing upon Objections to Nomination Papers of Candidates for the Offices of Mayor, City Clerk, City Treasurer and Alderman for the City of Chicago, having convened on January 3 1995, at 1:00 p.m., in having heard and determined the Objections to the Nomination Papers 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 Nomination Papers of the Candidate herein were duly filed;

3. A Call to the hearing on said Objections was duly issued and 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 3, 1995;

5. The following persons, among others, were present at such

hearing: the members of the Electoral Board, the Objectors by counsel, and the Candidate by counsel;

6. The Board finds that on December 14, 1983, the Candidate was convicted in the United States District Court for the Northern District of Illinois (Docket No. 83 CR 421-2) for the offenses of knowingly, willfully and unlawfully attempting to use physical force with intent to cause another person to withhold testimony from an official proceeding; arrange for the murder of another person; and conspire to injure, oppress, threaten and intimidate another person in the free exercise and enjoyment of the right and privilege secured to him by the Constitution and laws of the United States, all in violation of Title 18, United States Code, Sections 1512(a)(2)(A) and (3), 1503 and 241. As a result of said conviction, the Candidate was sentenced to four years imprisonment and five years of probation, such sentences to run consecutively.

7. There is uncontroverted testimony by Candidate that the sentences imposed have been fully served and completed.

8. The Board finds that the Illinois Municipal Code was amended by Public Act 87-1119, effective May 13,1993, to recodify Article 3 of the Code and that new Section 3.1-10-5 of the Municipal Code (65 ILCS 5/3.1-10-5) now provides, *inter alia*, "that a person is not eligible for an elective municipal office if that person *** has been convicted in any court located in the United States of any infamous crime, bribery, perjury or other felony. Prior to enactment of P.A.87-1119, Section 3-4-15 of the Municipal Code provided, *inter alia*, that in order to be qualified for the office of Alderman, a person "must not have been convicted in Illinois state court of malfeasance in office, bribery or other corrupt crimes".

9. Thus, the terms of new Section 3.1-10-5 of the Municipal Code would appear to bar the Candidate, who was convicted of a felony in a court located in the United States, from being eligible for the office of Alderman in the City of Chicago.

10. The Board further finds, however, that there is another statute, Section 25-19 of the Elections Code (10 ILCS 5/29-15), which also governs the eligibility of persons convicted of infamous crimes to hold public office. Sections 29-15 of the Election Code provides that:

> Any person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended, shall thereafter be prohibited from holding any office of honor, trust, or profit, unless such person is again restored to such

rights by the terms of a person for the offense or otherwise according to law.

11. Thus, although Section 29-15 prohibits persons convicted of infamous crimes from holding public office, it further provides that a person convicted of an infamous crime may be again restored the right to hold public office by the terms of a pardon for the offense or otherwise according to law.

12. In making decisions and determinations, administrative agencies have authority to construe statutory provisions. See, Illinois Federation of Teachers v. Board of Trustees, Teachers' Retirement System, 191 Ill.App.3d 769, 548 N.E.2d 64. It is often necessary in construing a statute to consider provisions of other statutes relating to the same subject for the purpose of determining legislative intent. Schumann v. Fleming, 261 Ill.App.3d 1062, 63 N.E.2d 336 (Ill.App. 2 Dist. 1994). When several statutes relate to the same subject, they are presumed to be governed by one spirit and a single policy, and the entire statutory scheme should be considered in *pari materia* in a fashion which renders the statutes consistent, useful and logical. Snyder v. Olmstead, 261 Ill.App.3d 986, 634 N.E.2d 756 (Ill.App.3 Dist). If apparent conflict does exist, the statutes should be construed harmoniously, if reasonably possible. Stone v. Department of Employment Security, 151 Ill.2d 257, 602 N.E.2d 808.

13. It has been held that the Election Code and the Municipal Code are to be considered in *pari materia* when construing the provisions of these codes. United Citizens of Chicago & Illinois v. Coalition To Let The People Decide in 1989, 125 Ill.2d 332, 531 N.E.2d 802.

14. Where there is an alleged conflict between two legislative enactments, there is a duty to construe those statutes in a manner which avoids inconsistency and gives effect to both enactments, where such a construction is reasonably possible. Lily Lake Road Defenders v. County of McHenry, 156 Ill.2d 1, 619 N.E.2d 137.

15. With these principles in mind, the Board finds that Section 29-15 of the Election Code and Section 3.1-10-5 of the Municipal Code can be construed in a manner which renders the statutes consistent, useful and logical. Both statutes provide that persons convicted of certain offenses are not eligible to hold public office. The Election Code provision would apply to any public office, while the Municipal Code provision is limited to elective municipal office. Section 3.1-10-5 of the Municipal Code arguably is more expansive than Section 29-15 in enumerating the types of offenses the conviction for which would lead to disqualification (Section

29-15 would disqualify for "infamous crimes", whereas Section 3.1-10-5 would disqualify not only "infamous crimes", but also for "bribery, perjury, or other felony"). In this instance, the Candidate would be prohibited from holding the office of Alderman under either statute since the crimes for which he was convicted were "infamous" under either statute. See, People ex rel. City of Kankakee v. Morris, 126 Ill.App.3d 722, 467 N.E.2d 589 (Ill.App. 3 Dist.1984) ("a felony is infamous when it is inconsistent with commonly accepted principles of honesty and decency, or involves moral turpitude").

16. Section 29-15 of the Election further provides, however, that a person disqualified from holding any public office may again be restored such right "by the terms of a pardon for the offense or otherwise according to law". While Section 3.1-10-5 serves to bar from elective municipal office persons convicted of certain offenses, there is nothing in that section which suggests that the legislature intended such prohibition to be permanent or that the legislature intended to repeal or limit, either expressly or impliedly, the provisions of Section 29-15 allowing for the restoration of the right to hold office under conditions provided by law.

17. The legislature's adoption of Section 3.1-10-5 of the Municipal Code as enacted in P.A. 87-1119 was simply for the purpose of recodifying portions of the Municipal Code and not for enacting new or different laws. See, P.A. 87-1119, Section 1; see also, Senate Transcript, 18-19, June 17, 1992, and Senate Transcript, 18, June 25, 1992. There is no indication that the legislature intended to repeal previously existing law.

18. Therefore, Section 29-15 of the Election Code and Section 3.1-10-5 of the Municipal Code can be construed harmoniously to give effect to both enactments.

19. The Board finds that a person convicted of an offense which serves to disqualify such person from holding office under either Section 3.1-10-5 or Section 29-15, or both, may again be restored such right by the terms of a pardon for the offense or otherwise according to law.

20. There is no evidence in this case that the Candidate has received a pardon for his offenses. Therefore, it is necessary to determine whether his right to hold public office is subject to restoration as "otherwise according to law".

21. Section 5-5-5(b) of the Unified Code of Corrections (730 ILCS 5/5-5-5(b)) provides that "a person convicted of a felony shall be ineligible to hold an office created by the Constitution of this State until the completion of his

sentence". Thus, eligibility to hold an office created by the constitution is restored by operation of Section 5-5-5(b) on completion of one's sentence. However, by its terms, Section 5-5-5(b) applies only to eligibility to hold an office created by the Constitution and not to offices created by the legislature. See, Coles v. Ryan, 91 Ill.App.3d 382, 414 N.E.2d 932 (Ill.App. 2 Dist. 1980). The office of alderman is not one created by the Constitution (see, People ex rel. City of Kankakee v. Morris, 126 Ill.App.3d 722, 467 N.E.2d 589 (Ill.App. 3 Dist. 1984). Therefore, by its express terms, Section 5-5-5(b) does not provide the Candidate in this case the right to restore his eligibility to hold the office of Alderman.

22. The Board further finds, however, that the Illinois Appellate Court, Second District, held in Coles v. Ryan, *supra,* that the statutory distinction drawn between persons convicted of an infamous crime who seek to hold an office created by the legislature (such as Alderman) and those convicted of an infamous crime who seek to hold a constitutionally created office is irrational and violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Under Coles v. Ryan, therefore, a person may be restored to his or her right to hold public office upon completion of his or her sentence.

23. It is a well-known principal of law that the rules of decision established by judicial decisions of state courts are "laws" as well as those prescribed by statute. West v. American Telephone & Telegraph Co., 311 U.S. 223, 61 S.Ct. 179. Moreover, a decision of any State appellate court, though not binding on other appellate districts, is binding on all circuit courts throughout the State. State Farm Fire and Casualty Company v. Yapejian, 152 Ill.2d 533, 605 N.E.2d 539 (1992). Therefore, the decision in Coles v. Ryan is the "law" in this state.

24. The Board finds that a person may again be restored to his or her right to hold public office under Section 29-15 of the Election Code as "otherwise provided by law" as decided in Coles v. Ryan. Therefore, the Board concludes and finds that the Candidate in this case, by virtue of the completion of his sentence for the offenses committed, has been restored his right to hold the office of Alderman if elected.

25. Accordingly, the Board overrules paragraph 1 of the Verified Objector's Petition alleging that the Candidate is not eligible to hold the office of Alderman of the 1st Ward of the City of Chicago for the reason that the Candidate has been convicted of a felony in a court located in the United States.

26. The Board also overrules paragraph 2 of the Verified Objector's Petition alleging that the Candidate's Statement of Candidacy is false and perjurious in that such statement falsely states that the Candidate is "legally qualified to hold such office" when the Candidate is not, in fact, qualified to hold such office. Since the Board has found that Candidate is not rendered ineligible because of his felony conviction because his right to hold office has been restored, the Candidate's statement that he is "legally qualified to hold such office" is not rendered false by virtue of his conviction.

27. Paragraphs 3 through 7 of the Verified Objector's Petition attack the sufficiency of individual petition sheets. Counsel for the Objectors conceded during the hearing that the allegations of paragraphs 3 through 7 of the Verified Objector's Petition, even if taken as true, would not by themselves be sufficient to invalidate the Candidate's Nomination Papers.

28. Paragraph 8 of the Verified Objector's Petition alleges that the objections set forth in paragraphs 3 through 7 of the Objector's Petition evidence a pattern of fraud, false swearing and disregard of the Election to such a degree that the Candidate's nominating petition should be stricken in its entirety. Objectors' counsel specifically made reference to the allegations in paragraph 6 alleging that the candidate signed three petition sheets as the circulator of said sheets when it is alleged that, in fact, said sheets were circulated by someone else. At a hearing to consider the allegations in paragraphs 3 through 8 of the Objectors' Petition, the Objectors told the Hearing Examiner that they would offer no evidence in support of these allegations.

29. The Board finds that the presumption in cases charging fraud is that all persons are honest. Fraud is not presumed; rather, it must be proved by clear and convincing evidence. Cintuc, Inc. v. Kozubowski, 230 Ill.App.3d 969, 596 N.E.2d 101 (First District 1992) The Board further finds that the Objectors, having been given an opportunity to present evidence, failed to do so. In addition, the Objectors failed to offer any argument at the hearing as to why the Board should sustain these allegations. Therefore, the Board finds that the objections in paragraphs 3 through 8 of the Objectors' Petition are overruled.

30. In the absence of any valid objections thereto, the Board finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED, that the Objections of Raymondo Rosales and John R. Hartenstein to the Nomination Papers of Tom Hendrix, Candidate for election to the office of Alderman of the 1st Ward, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Tom Hendrix, Candidate for election to the office of Alderman of the 1st Ward, SHALL be printed on the ballot for the Aldermanic Election to be held on February 28, 1995.

Dated: Chicago, Illinois, this 25 day of January, 1995.

Michael J. Hamblet

MICHAEL J. HAMBLET, Chairman

Richard A. Cowen

RICHARD A. COWEN, Commissioner

Commissioner Hubbard dissents from the findings and conclusions as to the allegations in paragraph 1 of the Objectors' Petition and concurs with the conclusions overruling paragraphs 2 through 8 of the Objectors' Petition.

Arnette R Hubbard

ARNETTE R. HUBBARD, Commissioner