BCCON-ALD

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 23, 1999 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER AND ALDERMAN
IN THE CITY OF CHICAGO**

Objections of: ERIC P. MCKENNIE	)	
	)	
To the Nomination	)	
Papers of: JOHNNY JOHNSON	)	No.: 99-EB-ALD-177
	)	
Candidate for the office of	)	
Alderman of the 37th Ward,	)	
City of Chicago		

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Theresa M. Petrone, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objection") of ERIC P. MCKENNIE to nomination papers ("Nomination Papers") of JOHNNY JOHNSON, candidate for the office of Alderman of the 37th for the City of Chicago ("Candidate"), having convened on December 28, 1998, at 9:00 a.m., in the City Council Chambers, City Hall, Chicago, Illinois; and having heard and determined the Objections to the Nomination Papers in the above-entitled matter finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.

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

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing was held on these Objections commencing on December 28, 1998 and was continued from time to time.

5. The following persons, among others, were present at such hearing: the members of the Electoral Board, the Objector, ERIC P. MCKENNIE, by counsel; and the Candidate JOHNNY JOHNSON, pro se.

6. The Electoral Board assigned this matter to Hearing Examiner GREGORY GINEX for further hearings and proceedings.

7. The Electoral Board ordered that an examination of the registration records be conducted by its clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Electoral Board directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate was present during the examination of the registration records at all times.

10. The Objector or his duly authorized representatives were present during the examination of the registration records at all times.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Board's file in this case and is available upon request of a party.

12. The Board has considered all evidence and arguments tendered by the parties.

13. The Board finds that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 176;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 604;

    c. The number of signatures deemed invalid because of objections sustained total 347;

    d. The remaining number of signatures deemed valid total 257;

14. The Board finds that the number of valid signatures appearing on the Candidate's nominating petition exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 37th Ward of the City of Chicago.

15. The Board finds, therefore, that paragraph(s) 2-20 of the Objector's Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

16. Paragraph 14 of the Objectors petition alleges that sheets 8 and 23-26 of the Candidate's nominating petitions are not correctly notarized as required by law.

17. Paragraph 21 of the Objectors petition alleges that the Candidate's statement of candidacy is invalid as it is not correctly notarized as required by law.

18. Section 10-4 of the Election Code (10 ILCS 5/10-4) states in part the bottom of each petition sheet must contain an affidavit by the circulator that "shall be sworn to before some officer authorized to administer oaths in this State.

19. Sheet 8 of the Candidate's pre-printed nominating petition form contains a space or line for the signature of the person notarizing the document and, in fact, the signature of the notary does not appear on this sheet of the Candidate's nominating petition. However, there is line on the document stating that the document is "Subscribed and sworn to before me by [Johnny Johnson] who is to me personally known, this [19th is hand printed in this space] day of [November is hand printed in this space] A.D. 1998." Below this line is affixed in black ink the "'Official Seal' of Cherita Logan, Notary Public, State of Illinois, My Commission Expires 12/14/01."

20. Sheets 23-26 of the Candidate's pre-printed nominating petition form contain a space or line for the signature of the person notarizing the document and, in fact, the signature of the notary, Cherita Logan, does appear on sheets 23-26 of the Candidate's nominating petitions. There is line on the document stating that the document is "Subscribed and sworn to before me by [Johnny Johnson] who is to me personally known, this [29th is hand printed in this space] day of [November is hand printed in this space] A.D. 1998." Below this line is affixed in black ink the "'Official Seal' of Cherita Logan, Notary Public, State of Illinois, My Commission Expires 12/14/01."

21. The Electoral Board finds that on sheet 8 of the Candidate's nominating petitions, the Candidate's name is inserted in the jurat on the circulator's affidavit and that the notary did not sign this petition sheet. The Electoral Board finds that on sheets 23-26 of the Candidate's nominating petitions, the Candidate's name is inserted in the jurat on the circulator's affidavit and that the notary did sign the petition sheets.

22. Section 10-5 of the Election Code (10 ILCS 5/10-5) provides in part that the Statement of Candidacy "shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgments of deeds in this State."

23. The Candidate's pre-printed Statement of Candidacy form does not contain a space or line for the signature of the person notarizing the document and, in fact, the signature of the notary does not appear on the Candidate's Statement of Candidacy. However, there is

line on the document stating that the document is "Subscribed and sworn to before me by [Johnny Johnson] who is to me personally known, this [29th is hand printed in this space] day of [November is hand printed in this space] A.D. 1998." Below this line is affixed in black ink the "'Official Seal' of Cherita Logan, Notary Public, State of Illinois, My Commission Expires 12/14/01."

24. The Electoral Board finds that the notary did not sign the Candidate's Statement of Candidacy.

25. The Electoral Board finds that Section 6-103 of the Illinois Notary Public Act (5 ILCS 312/6-103) requires that "a notarial act must be evidenced by a certificate signed and dated by the notary public."

26. The Electoral Board also finds that Section 3-102 of the Illinois Notary Public Act (5 ILCS 312/3-102) requires that "at the time of notarization, a notary public shall officially sign every notary certificate and affix the rubber stamp clearly and legibly using blank ink, so that it is capable of photographic reproduction."

27. The Board finds that the Candidate, JOHNNY JOHNSON, inserted his name in the jurat on sheets 8 and 23-26 of his nominating petitions and on his Statement of Candidacy instead of the name of the notary. The Board finds that courts generally view a jurat as merely that part of an affidavit where the officer certifies that it was sworn before him. It is not the affidavit. Rather, the jurat is simply evidence of the fact that the affidavit was properly sworn to by the affiant. Accordingly, where an affiant is otherwise identified, courts overlook mere clerical errors such as naming the wrong person in the jurat, or even omitting from the jurat the affiant's name entirely. *Cintuc, Inc. v. Kozubowski,* 230 Ill.App.3d 969, 596 N.E.2d 101 (First Dist. 1992).

28. The Hearing Examiner in this cause found that the failure of the notary to sign the notary certificate on the Candidate's statement of candidacy and on page 8 of the Candidate's nominating petitions invalidated those documents. Therefore, the Hearing Examiner recommended, therefore, that the Candidate's Nomination Papers be declared invalid.

29. The Electoral Board declines to follow the Hearing Examiner's recommendations on the issued of the failure of the notary to sign the notary certificate. Instead, the Electoral Board finds that the Candidate appeared before the notary when he subscribed and swore to his statement of candidacy and to page 8 of the nominating petitions, as required by Sections 10-4 and 10-5 of the Election Code, and that notary's affixation of her rubber stamp containing her official seal without her signature on the notary certificate substantially complies with the requirements of Section 10-5 of the Election Code.

30. For the reasons stated above, the Board finds that the Nomination Papers of JOHNNY JOHNSON are valid.

IT IS THEREFORE ORDERED, that the Objections of ERIC P. MCKENNIE to the Nomination Papers of JOHNNY JOHNSON, candidate for election to the office of Alderman of the 37th Ward of the City of Chicago are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JOHNNY JOHNSON, candidate for election to the office of Alderman of the 37th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election for Mayor, City Clerk, City Treasurer and Alderman to be held on February 23, 1999.

Dated: Chicago, Illinois, this Twenty-Second day of January, 1999.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Theresa M. Petrone, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 10 days after the decision of the Electoral Board.