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: RICHARD BARNETT and DAVID RHODES | ) | |
| To the Nomination Papers of: JESSE L. MILLER | ) | No.: 99-EB-ALD-189 |
| Candidate for the office of Alderman of the 24th 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 RICHARD BARNETT and DAVID RHODES to the nomination papers ("Nomination Papers") of JESSE L. MILLER, candidate for the office of Alderman of the 24th Ward 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 Objectors 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(s), RICHARD BARNETT and DAVID RHODES, by counsel; and the Candidate JESSE L. MILLER, by non-attorney Chauncey Stroud. Mr. Stroud later withdrew and the Candidate then became represented by counsel.

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

7. Paragraphs E through I of the Objectors' Petition allege that certain signatures on the Candidate's nominating petition are invalid due to allegations that the signers of the petition are not registered at the address shown on the petition, the signatures are not genuine, the signer resides outside the district, the signer's address is missing or incomplete or that the signer's signature is printed and not written.

8. 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.

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

10. The Candidate or his duly authorized representative was present during the examination of the registration records at all times.

11. The Objectors or their duly authorized representatives were present during the examination of the registration records at all times.

12. 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.

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

14. 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 155;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 837;

    c. The number of signatures deemed invalid because of objections sustained total 512;

d. The remaining number of signatures deemed valid total 325.

15. The Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination 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 24th Ward of the City of Chicago.

16 The Board finds, therefore, that paragraphs E through I of the Objectors' Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

17. Paragraph J of the Objectors' Petition alleges that certain petition sheets are signed by a circulator who is not a registered voter at the address shown on the affidavit and that every signature on those sheets are invalid. Specifically, this allegation was made against James C. Williams as the purported circulator of sheets 6, 7, 21, 22, 37, and 38.

18. Paragraphs L and M of the Objectors' Petition allege that certain sheets of the Candidate's nominating petition demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet is invalid. Specifically, the Objectors allege that the sheets circulated by Negale Jackson, James C. Williams and Gwen Ginns are invalid.

19. The Objectors presented their case in chief before the Hearing Examiner in support of the allegations, after which the Candidate presented a motion for a directed finding. The Hearing Examiner found that the Objectors did present a prima facie case as to the allegations raised against Negale Jackson and Gwen Ginns, but that they failed to present a prima facie case as to the allegations pertaining to James C. Williams. Because in the opinion of the Hearing Examiner the Objectors did not present a prima facie case pertaining to the sheets circulated by Williams and because the Candidate would still have a sufficient number of valid signatures on his nominating petition even if the objections pertaining to Jackson and Ginns were sustained, the Hearing Examiner granted the Candidate's motion for a directed finding. The Candidate rested and did not present any evidence.

20. The Electoral Board finds that sheets 6, 7, 21, 22, 37, and 38 were signed by James C. Williams as the circulator of said sheets. Williams' circulator affidavit stated that he resided at 1837 S. Millard, Chicago, Illinois and that he was a registered voter of the 24th Ward at all times he circulated the petition sheets. The address of 1837 S. Millard is within the boundaries of the 24th Ward. The sheets purportedly circulated by Williams contain a total of 115 signatures, of which only 60 signatures were found valid after a records examination.

21. The Electoral Board finds that James C. Williams became registered to vote at 1109 S. Troy, Chicago, Illinois on August 9, 1991. The Board finds that the address of 1109 S. Troy is within the boundaries of the 24th Ward.

22. The Board finds that James C. Williams changed his address on his voter registration to 1837 S. Millard, the address that he listed in his circulator's affidavit at the bottom of each petition sheet he circulated, on December 29, 1998, which is after the period during which he circulated those sheets. The petition sheets indicate that they were signed by Williams either on December 5 or December 12, 1998. Therefore, at the time that Williams circulated the 6 sheets in question, he was not registered to vote at 1837 S. Millard.

23. Although apparently it was not raised by the parties before the Hearing Examiner, the Electoral Board finds that on December 21, 1997, Williams' registration status changed from "A", or "Active", to "I", or "Inactive." This is evidenced by an exhibit introduced in the record by the Objectors, but there is no evidence in the record to indicate why or how this change occurred.

24. The Electoral Board finds that in *Lucas v. Lakin*, 175 Ill.2d 166, 676 N.E.2d 637 (1997), the Illinois Supreme Court held that in the absence of a clear legislative statement to the contrary, the Election Code does not require that the address in the circulator's affidavit on a nominating petition be identical to the address where the circulator is registered to vote. In *Lukas*, however, there was no dispute that the circulator was registered to vote at some address in the political subdivision or district at the time the sheets were circulated.

25. The Electoral Board finds that it is not clear under either Federal or State law whether a person whose registration is "Inactive" is eligible to sign or circulate a nominating petition. Neither body of law expressly prohibits a person whose registration is "Inactive" from circulating a nominating petition.

26. The Electoral Board finds that the State Board of Elections' rules implementing the National Voter Registration Act of 1993 define an "Inactive Voter" as a person who, having once submitted a Voter Registration Application subsequently acknowledged by the election authority *** has not responded to a notice to confirm his or her address, *but whose authority to vote has not yet been canceled.*" (italics added) Illinois Administrative Code, Ch I. Sec. 216.20. The State Board of Elections "Voter Registration Guide," at page 23, states that "Inactive registrations may be thought of as *suspect* registrations." (italics added) Neither the rules nor the guide published by the State Board of Elections expressly prohibit a person whose registration is "Inactive" from circulating nominating petitions. Neither the rules nor the guide published by the State Board of Elections suggest that a person's registration is canceled or otherwise void simply because it has become "Inactive." Indeed, the State Board of Elections definition of "Inactive" voter indicates that the registration, and the right to vote, "has not yet been canceled." At worst, an "Inactive" registration is "suspect."

27. The Electoral Board finds that in the absence of a clear legislative enactment to the contrary, a circulator whose registration is deemed "Inactive" may, under *Lucas v. Lakin*, circulate nominating petition as long as the circulator has not moved to an address outside of the political subdivision or district in which the candidate is seeking nomination or election. Therefore, the petition sheets circulated by James C. Williams are not invalid in their entirety and the Electoral Board overrules paragraph J of the Objectors' Petition.

28. Paragraph N of the Objectors' Petition alleges that certain petition signers for the Candidate had previously signed nominating petition for Michael D. Chandler, another candidate for the office of Alderman of the 24th Ward.

29. Section 10-3 prohibits a person from signing more than one nominating petition for the same office.

30. The Electoral Board finds that were 22 signatures on the Candidate's nominating petition from persons who had previously signed the nominating petitions of another candidate for the same office. The Electoral Board finds that pursuant to Section 10-3 of the Election Code, these 22 signatures are invalid and paragraph N of the Objectors' Petition is sustained. As a result, the Candidate would have 303 valid signatures on his nominating petition.

31. The Electoral Board finds that even assuming that the objections pertaining to the sheets circulated by Negale Jackson and Gwen Ginn as alleged in paragraph N and M of the Objectors' Petition were sustained, only 117 signatures would be invalidated and the Candidate would still have 186 valid signatures on his nominating petition, or 31 more than the minimum signature requirement of 155.

32. For the reasons stated above, the Board finds that the Nomination Papers of JESSE L. MILLER are valid.

IT IS THEREFORE ORDERED that the Objections of RICHARD BARNETT and DAVID RHODES to the Nomination Papers of JESSE L. MILLER, candidate for election to the office of Alderman of the 24th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JESSE L. MILLER, candidate for election to the office of Alderman of the 24th 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 Second day of February, 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.**