NBCON-WC

**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 MARCH 21, 2000 GENERAL PRIMARY ELECTION FOR STATE SENATOR, REPRESENTATIVE IN THE GENERAL ASSEMBLY AND WARD COMMITTEEMAN IN THE CITY OF CHICAGO**

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| Objections of: THOMAS CORCORAN | ) |
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| To the Nomination | ) |
| Papers of: SUSAN L. KELSEY | ) |
| | ) No. 00-EB-WC-011 |
| Candidate for the office of Ward Committeeman for | ) |
| the 39th Ward of the City of Chicago, Republican | ) |
| Party | ) |

## 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 ("Objections") of THOMAS CORCORAN ("Objector") to the nomination papers ("Nomination Papers") of SUSAN L. KELSEY, candidate for election to the office of Ward Committeeman for the 39th Ward of the City of Chicago, Republican Party ("Candidate"), having convened on January 10, 2000, at 9:00 a.m., in Room 800, 69 West Washington Street, 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 held on these Objections commenced on January 10, 2000 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner RODNEY STEWART for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing: the Objector, THOMAS CORCORAN, by counsel; and the Candidate, SUSAN L. KELSEY, by counsel.

7. Paragraph G of the Objector's Petition alleges that one of the circulators of the Candidate's nominating petition sheets, Robert Musacchio, "did not appear before notary."

8. Testimony from the Candidate, the circulator and a notary, Graciela Valadez, clearly demonstrated that the circulator, Robert Musacchio, did personally appear before the notary. However, with respect to one petition sheet, Mr. Musacchio signed the petition sheet as the circulator outside the presence of the notary. As to that sheet, however, the circulator did appear before the notary and the notary required the circulator to write his name on a separate sheet of paper in her presence in order to compare it with the signature contained on the petition sheet and the notary required proof of identification. The Hearing Examiner concluded from this testimony that the circulator "validated" the petition in the presence of the notary and that this was sufficient under the law.

9. Section 7-10 of The Election Code (10 ILCS 5/7-10) states that at the bottom of each petition sheet shall be added a statement signed by the circulator of said sheet certifying that the signatures on that sheet were signed in his presence and that they are genuine and further that the signers were qualified voters of the political division for which the candidate is being nominated. Section 7-10 further provides that, "Such statement shall be sworn to before some officer authorized to administer oaths in this State."

10. In *Williams v. Butler*, 35 Ill.App.3d 532, 341 N.E.2d 394 (4th Dist. 1976), the court held that "the statutory requirement that circulators of petitions sign a statement before an officer authorized to administer oaths to the effect that they circulated the petition and that the signatures were signed in their presence and are genuine to be a substantial and valid requirement that relates to the integrity of the political process." 341 N.E.2d at 397-398.

11. Section 2 of the Oaths and Affirmation Act (5 ILCS 255/2) provides that notaries public may administer all oaths of office and all other oaths authorized or required of any officer of other person.

12. Section 3 of the Oaths and Affirmation Act provide for the form for administering oaths, to wit: "The person swearing shall, with his hand uplifted, swear by the ever-living God, and shall not be compelled to lay the hand on or kiss the gospels." However, the failure to require a signatory of a petition to raise his or her hand while signing the petition does not violate the requirement that the petition be signed under oath. *People ex rel. City of Leland Grove v. City of Springfield,* 193 Ill.App.3d 1022, 550 N.E.2d 731 (4th Dist. 1990). A sufficient oath is administered to a circulator of a petition though circulators did not raise their right hand as provided by statute where each circulator signed affidavit in presence of notary, and, when asked, affirmed truth of its contents. *In re Rice*, 35 Ill.App.2d 79, 181 N.E.2d 742 (4th Dist. 1962). "Oath" is a conscious calling on individual to subscribe to truth, and strict compliance with wording of statute dealing with administration of oath is not necessary. *Ibid.* "Oath" is appeal by person to God to witness the truth of what he declares, and in its broadest sense it includes any form of attestation by which party signifies that he is bound in conscience to act truthfully. *Ibid.*

13. In *Cox v. Stern*, 170 Ill. 442, 48 N.E. 906 (1897), the court held that the jurat of the notary is not the affidavit, nor, strictly speaking, any part of it. Rather, the jurat is simply evidence of the fact that the affidavit was properly sworn to by the affiant. The court also noted that in Illinois, affidavits are not void because the clerk or officer failed to affix his signature to the jurat.

13. In the present case, the Hearing Examiner concluded that the circulator "validated" the contents of the circulator's affidavit before the notary public.

14. The Electoral Board adopts the findings and conclusions of the Hearing Examiner and finds that the circulator of the petition in question was properly sworn to and notarized.

15. The Objector's petition also alleges that eleven pages of the Candidate's nominating petitions are invalid because the signature of the circulator as contained on some of the petitions does not match that found on the registration record containing the signature of the circulator. However, the circulator's unrefuted testimony revealed that both the signature on the binder card and the signatures on the petition were his. The Objector produced no evidence to suggest otherwise. Based upon the evidence adduced, the Hearing Examiner has recommended that the eleven pages of the Candidate's nominating petitions be declared valid.

16. The Electoral Board adopts the recommended findings and conclusions of the Hearing Examiner regarding the validity of the circulator's signature on these eleven sheets and finds that they are valid. The Objector's objections in this regard are overruled.

17. Finally, the Objector alleges that the dates contained within the notary areas of the Candidate's Statement of Candidacy and the petitions contain wrong dates. The evidence reveals that the Candidate wrote and dated the petitions as December 17, 1999. The notary public testified that next to her name she wrote the date "12/20/99" and that this was the actual date that she notarized the documents.

18. Whether the date is December 17, 1999 or 12/20/99, there is no evidence to show that the petitions were circulated prior to the 90 days preceding the last day to file the petitions. Therefore, the Objector's objections based on the "wrong" dates is overruled.

19. For the reasons stated above, the Electoral Board finds that Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of THOMAS CORCORAN to the Nomination Papers of SUSAN L. KELSEY, candidate for election to the office of Ward Committeeman for the 39th Ward of the City of Chicago, Republican Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of SUSAN L. KELSEY, candidate for election to the office of Ward Committeeman for the 39th Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 21, 2000.

Dated: Chicago, Illinois, this 4th day of February, 2000.

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.**