BEFORE THE BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO AS A DULY CONSTITUTED ELECTORAL BOARD

IN THE MATTER OF:	)	
	)	
Objections of BRIAN L. CROWE ("Objector") to the	)	
following petition for question of public policy:	)	
"SHALL PUBLIC FUNDS OF THE CITY OF	)	No. EB-01-QPP-1
CHICAGO BE USED TO HELP THE CHICAGO	)	
PARK DISTRICT AND ILLINOIS SPORTS	)	
FACILITIES AUTHORITY ACQUIRE AND	)	
MAINTAIN A STADIUM AND ATHLETIC FIELD	)	
WHICH WOULD BENEFIT THE CHICAGO	)	
BEARS?" (PATRICK J. QUINN, "Proponent")	)	

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 BRIAN L. CROWE ("Objector(s)") to a petition to submit the following question of public policy to the electors of the City of Chicago at an election to be conducted on February 27, 2001: "SHALL PUBLIC FUNDS OF THE CITY OF CHICAGO BE USED TO HELP THE CHICAGO PARK DISTRICT AND ILLINOIS SPORTS FACILITIES AUTHORITY ACQUIRE AND MAINTAIN A STADIUM AND ATHLETIC FIELD WHICH WOULD BENEFIT THE CHICAGO BEARS?" ("Petition"), PATRICK J. QUINN, being listed as the Principal Proponent of the Petition ("Proponent"), having convened on December 26 and on December 29, 2000, in Room 800, 69 West Washington Street, Chicago, Illinois; and, having heard and determined the Objections to the Petition in the above-entitled matter, finds that:

1. The Petition seeks to submit the following question of public policy to the electors of the City of Chicago at an election to be conducted on February 27, 2001: "SHALL PUBLIC FUNDS OF THE CITY OF CHICAGO BE USED TO HELP THE CHICAGO PARK DISTRICT AND ILLINOIS SPORTS FACILITIES AUTHORITY ACQUIRE AND MAINTAIN A STADIUM AND ATHLETIC FIELD WHICH WOULD BENEFIT THE CHICAGO BEARS?"

2. The question submitted by the Petition purports to be authorized pursuant to Section 11-68-2 of the Illinois Municipal Code (65 ILCS 5/11-68-2), which provides in part, "Whenever, in such city, not less than 100 of its electors petition the city clerk for submission to a referendum vote the proposition of acquiring and maintaining a stadium and athletic field, the proposition shall be certified by

the city clerk and submitted at an election in accordance with the general election law."

3. According to the official records of the Office of the City Clerk, of which this Electoral Board may take official notice, the Petition was filed with the City Clerk of the City of Chicago on December 11, 2000. (See also Proponent's Exhibit #3)

4. On December 15, 2000, the Objections were filed with the City Clerk of the City of Chicago.

5. On December 18, 2000, and in accordance with Section 10-8 of The Election Code (10 ILCS 5/10-8), the City Clerk of the City of Chicago transmitted to the Chairman of the Board of Election Commissioners of the City of Chicago by hand-delivery both the Objections and the Petition.

6. Pursuant to Section 10-10 of The Election Code (10 ILCS 5/10-10), 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 Proponent, by certified mail, return receipt requested, and by Sheriff's service, as provided by statute.

7. A public hearing held on these Objections commenced on December 26, 2000 at 10:00 AM, at which time the Electoral Board adopted rules of procedure and assigned this matter to Hearing Examiner John Ashenden for a preliminary hearing.

8. The Hearing Examiner conducted a preliminary hearing in this matter on December 26, 2000, at 2:00 PM, at which time both the Objector, along with his attorney, Jack Hagerty, and the Proponent appeared, having no objections to service of the Call. The Hearing Examiner set a briefing schedule and set this matter for hearing before the Electoral Board on December 29, 2000 at 10:00 AM.

JURISDICTION

9. As earlier found (infra, ¶3), the Petition was filed with the City Clerk of the City of Chicago. The Petition was filed with the City Clerk purportedly under the provisions of Section 11-68-2 of the Illinois Municipal Code, which requires that petitions seeking to submit propositions under that section be filed with the city clerk of a qualifying city.

10. Section 11-68-2, upon which the Proponent relies, provides in part that "the proposition shall be certified by the city clerk and submitted at an election in accordance with the general election law."

11. There is no dispute between the parties here (see Objector's Exhibit C and Proponent's Exhibit #6) that the City Clerk of the City of Chicago has taken the position that he will not certify the proposition contained in the Petition. Further, the Electoral Board will take notice of the fact that the Board of Election Commissioners of the City of Chicago did not receive from the City Clerk of the City of Chicago any official certification of the subject proposition prior to the December 28, 2000 deadline for filing such certification. (See 10 ILCS 5/28-5). The Clerk's December 18, 2000 transmittal to the Board of the Petition, along with the Objections, was done pursuant to Section 10-8 of The Election Code dealing with objections to public question petitions. This "transmittal" did not constitute a "certification" of the proposition under Section 28-5 of The Election Code.

12. The Objector argues that the City Clerk's refusal to certify the proposition is correct, citing *People ex rel. Giese v. Dillon*, 266 Ill. 272, 107 N.E. 583 (1914) and *North v. Hinkle*, 295 Ill.App. 3d 84, 692 N.E.2d 352 (2nd Dist. 1998). The Objector submits, however, that the City Clerk's refusal to certify the proposition has no jurisdictional impact on this Electoral Board. The Proponent, while contending that the City Clerk's refusal to certify the proposition is "extralegal," also agrees that this Electoral Board has jurisdiction over these Objections.

12. The Electoral Board does not decide, nor does it need to decide, the question whether the City Clerk's refusal to certify the proposition presented by the Petition is correct. It is enough to confer jurisdiction on an electoral board if proper objections are timely filed and transmitted to the proper electoral board. Nothing in the statutes governing objections to public question petitions expressly makes it a condition precedent to an electoral board's exercise of jurisdiction that the public question or proposition first be certified by the proper authority.

13. The Objections to the Petition herein are proper in form and they were timely filed pursuant to Sections 28-4 (10 ILCS 5/28-4) and10-8 of The Election Code. The Objections were properly and timely transmitted by the City Clerk of the City of Chicago pursuant to Section 10-8.

14. This Electoral Board is the proper board to hear these Objections and was legally constituted according to the laws of the State of Illinois. (10 ILCS 5/10-9, 5/28-4)

15. Therefore, the Electoral Board finds that it has subject matter jurisdiction over these Objections.

16. The Objector and the Proponent having appeared before the Electoral Board and not having objected to service of the Board's Call or to jurisdiction over their persons, the Electoral Board finds that it has personal jurisdiction over these parties.

MOOTNESS

17. As found earlier (infra, ¶11), the City of Clerk of the City of Chicago did not, within the time nor in the manner provided by law, certify to the Board of Election Commissioners the proposition presented by the Petition.

18. Section 16-7 of The Election Code (10 ILCS 5/16-7) provides in part that, "Whenever a public question is to be submitted to be voted upon and has been initiated *and certified* in accordance with Article 28 of this Code, the election authorities *to whom the question has been certified* shall print the question on the ballot for the proper election, and shall cause it to be submitted in the proper precincts to those electors entitled by reason of their residency to vote on such question."

19. Because the proposition presented by the Petition was not certified to the Board of Election Commissioners in the manner or within the time provided by Article 28 of The Election Code, the Board has neither the duty nor the right to print the subject proposition on the ballot for the February 27, 2001 Interim Aldermanic Elections in the City of Chicago. Therefore, regardless of whether the Petition is valid, the Board of Election Commissioners is without authority to print and submit to the voters of the City of Chicago a ballot containing the proposition presented by the Petition.

20. Notwithstanding the fact that the Board cannot lawfully print and submit to the voters a ballot containing the subject proposition, the Electoral Board is charged with the duty to take up the question whether petitions are in proper form, whether they are filed within the time and under the conditions required by law, whether petitions are valid, and whether objections should be sustained. (10 ILCS 5/10-10) Therefore, the Electoral Board must and will consider whether this Petition is valid, is in proper form, filed under the conditions required by law, and whether the Objections should be sustained. Since no objection was raised regarding whether the Petition was timely filed, no consideration will be given to that issue.

WHETHER THE SUBJECT QUESTION IS AUTHORIZED BY LAW

21. The Objections state that the subject referendum is clearly not authorized by law, contending in part that Section 11-68-2 of the Illinois Municipal Code and its predicate, Section 11-68-1, are not applicable to the proposed Soldier Field renovation, and related projects, set forth in House Bill 1284. (Verified Objector's Petition, ¶¶ 3-4). The Objector contends that these statutes expressly apply (a) to the acquisition of land, and (b) only to a city whose corporate limits coincide with the limits of the township in which the city is located.

22. The language of Section 11-68-2 of the Illinois Municipal Code expressly allows for a petition and referendum, "Whenever, *in such a city*," not less than 100

electors file a petition with the city clerk. To determine what is meant by the term "in such city" in Section 11-68-2, we look to the antecedent section in Section 11-68-1, which expressly provides that, "any city with a population of more than 30,000 whose corporate limits coincide with the limits of the township in which the city is located," may, subject to a referendum vote, "acquire and improve not to exceed 10 acres of land, within or without the city, to be set apart, held, and maintained as a stadium and athletic field for the use of the public."

23. The Objector contends that the corporate limits of the City of Chicago do not coincide, and have not coincided since the inception of the Municipal Code, with the limits of the township in which the City is located, referring to Objector's Exhibit G (Bruce R. Schulman, *Interactive Guide to the World's Columbian Exposition* (1996-2000). Rather, Objector claims that since the adoption of Section 11-68-2 in 1921, there have been either seven or eight townships within the corporate limits of the City of Chicago.

24. The Proponent contends that "Chicago is not a city which shares its boundaries with more than one township and therefore Chicago substantially complies with the purpose of 65 ILCS 5/11-68-1." (Proponent's Brief, 5) Rather, Proponent contends that the Chicago has dissolved its townships and does not elect township officials or hold annual township meetings. Proponent cites Section 5, Article VII of the 1970 Illinois Constitution for the proposition that Chicago voters are not permitted to participate in a referendum to dissolve or consolidate townships in Cook County because there are no township officers who are elected in Chicago. Proponent also argues that there is no rational basis to apply the coterminous township rule to Chicago, that such an application would unfairly discriminate against Chicago voters as opposed to neighboring voters in Evanston, Oak Park, Berwyn and Cicero (which are coterminous with township borders), and that such an application would violate equal protection guarantees of the state and federal constitutions and make the coterminous township rule constitutionally invalid. (Proponent's Brief, 5-6)

25. Despite Proponent's arguments to the contrary, there is no evidence that townships in the City of Chicago have been dissolved or otherwise have ceased to exist. Section 5 of Article VII of the 1970 Illinois Constitution provides the means by which townships may be formed, consolidated, merged, dissolved or divided; but this section does not expressly provide for the dissolution or abolition of townships within the City of Chicago. Indeed, Section 5(c) of the Transition Schedule of the 1970 Illinois Constitution provides that "Townships in existence on the effective date of this Constitution are continued until consolidated, merged, divided or dissolved in accordance with Section 5 of Article VII." It is clear from the Record of Proceedings of the 1970 Constitutional Convention that on the effective date of the 1970 Constitution, the City of Chicago had townships. Record of Proceedings, *Sixth Illinois Constitutional Convention*, at 3393 (Delegate Anderson: "Chicago does not elect township officers, but Chicago has townships.") While townships in the City of Chicago have been described as

"inactive" (Id.; see also Record of Proceedings, 3397-3399), such townships nevertheless existed at the time the 1970 Constitution became effective and, by operation of Section 5 of the Transition Schedule, they continue to exist unless and until they are consolidated, merged, divided or dissolved in accordance with Section 5 of Article VII. Proponent has presented no evidence that townships in the City of Chicago have been dissolved since the adoption of the 1970 Constitution, so presumably such townships still exist.

26. The Electoral Board will take official notice of the ordinances of the County of Cook, specifically an Ordinance and Resolution Dividing the County of Cook into Three Assessment Districts, passed December 18, 1989, which recognizes that existence of eight (8) townships located within the City of Chicago (Hyde Park, Jefferson, Lake, Lake View, North, Rogers Park, South and West). Therefore, the Electoral Board concludes that there are eight townships located within the corporate limits of the City of Chicago.

27. The plain language of Section 11-68-1 of the Illinois Municipal Code makes it applicable only to a city "whose corporate limits coincide with the limits of *the* township in which the city is located." By using the word "the" preceding the word "township," it is clear the legislature intended that the limits of the city be coterminous with the limits of a *single* township. Had the legislature intended otherwise, it could easily used other language to express its intent. As amply noted by the case cited by Objector, *County of Knox, ex rel. Masterson v. The Highlands, L.L.C.,* 188 Ill. 2d 546, 556, 723 N.E.2d 256 (1999), "The language of the statute is the best indication of the legislative intent."

28. Because the corporate limits of the City of Chicago do not coincide with the limits of a single township and because the City is not located within a single township, the Electoral Board concludes that neither Section 11-68-1 nor Section 11-68-2 of the Illinois Municipal Code apply to the City of Chicago because it does not come within the definition of a "city" under Section 11-68-1. Accordingly, the proposition presented by the Petition pursuant to Section 11-68-2 has no applicability to the City of Chicago and it has not been filed under the conditions required by law. For this reason, the Electoral Board finds that the Petition is not valid. The Objection to the Petition based on the inapplicability of Section 11-68-2 to the City of Chicago because the City does not come within the definition of a city in which such a proposition can be submitted to voters is sustained.

29. The Objector has also objected to the Petition on the grounds that Sections 11-68-1 and 11-68-2 do not apply to the facts surrounding the Soldier Field renovation as described by HB 1284 and the Memorandum of Understanding between the Chicago Bears and the Chicago Park District. Specifically, Objector argues that because Sections 11-68-1 and 11-68-2 provide for *both* the acquisition and maintenance of a stadium and athletic field, and that because the Soldier Field legislation and agreement do not provide for the acquisition of anything, then Sections 11-68-1 and 11-68-2 cannot be applied to the Soldier Field renovation

plan. If the referendum provisions of Section 11-68-2 were designed to operate as a "back door" referendum by which voters could veto the Soldier Field plan, then the Objector's argument would have considerable merit. But it appears that a referendum under Section 11-68-2, if properly worded, would not operate as a veto mechanism; rather, it would simply authorize the acquisition and maintenance of a stadium and athletic field independently of the Soldier Field renovation plan. It seems that neither the passage or defeat of such a proposition, properly worded, would serve as a legal bar to implementation of the proposed Soldier Field renovation plan.

SUBSTANTIAL EXPENDITURE OF PUBLIC FUNDS

30. The Objector has also objected to the Petition on the grounds that placing the referendum on a city ballot would require city taxpayers to absorb the substantial expense of holding an election in many wards in which no election is scheduled.

31. The only elections scheduled to be held on February 27, 2001 are to be conducted in two wards of the City of Chicago – in the 17th and 37th Wards – to fill vacancies in the office of Alderman in those wards for the remaining balance of the term. No election is presently scheduled to be conducted city wide. Thus, if an election were required to be conducted throughout the entire city for the purpose of placing the subject proposition before all of the voters of the City of Chicago, a substantial expenditure of public funds -- $2.8 million by the Board's own estimate – would be required. In forty-eight wards of the City of Chicago, the only item on the ballot would be the subject proposition.

32. Section 28-1 of The Election Code (10 ILCS 5/28-1) provides in relevant part, "No public question shall be submitted to the voters of a political subdivision at any regularly scheduled election at which such voters are not scheduled to cast votes for any candidates for nomination for, election to or retention in public office, except that if, in any existing or proposed political subdivision in which the submission of a public question at a regularly scheduled election is desired, the voters of only a portion of such existing or proposed political subdivision are not scheduled to cast votes for nomination for, election to or retention in public office at such election, but the voters in one or more other portions of such existing or proposed political subdivision are scheduled to cast votes for nomination for, election to or retention in public office at such election, the public question shall be voted upon by all the qualified voters of the entire existing or proposed political subdivision at the election." Thus, if the proposition presented by the Petition was sufficient in law and in fact, there would be no legal bar to printing and submitting to the voters of the entire City of Chicago a ballot containing the subject proposition even though no voters in forty-eight wards of the City are presently scheduled to cast votes for the nomination, election or retention of candidates. The fact that such an election would require the expenditure of substantial public funds that would not otherwise be expended does not render the Petition invalid.

FORM OF THE BALLOT

33. Finally, the Objector objects to the Petition because the form of the question presented in the Petition does not substantially comply with the form of the question required by Section 11-68-2. The Proponent responds that the wording of the proposition presented by the Petition does substantially comply with Section 11-68-2 and is clear and understandable to the average voter, citing *Hoogasian v. Regional Transportation Authority*, 317 N.E.2d 534 (1974).

34. Section 11-68-2 provides, "The proposition shall be substantially in the following form: "SHALL THE CITY OF _____ ACQUIRE AND MAINTAIN A STADIUM AND ATHLETIC FIELD?" The form of the question then provides for boxes allowing the voter to check "YES" or "NO" on the proposition.

35. Not every deviation from the form of the ballot prescribed by the applicable statute will render the ballot void. *Knappenberger v. Hughes*, 377 Ill. 126, 35 N.E.2d 317 (1941). But when a statute prescribes the form of the ballot, there must be substantial compliance with the special statutory mandate. *Smith v. Calhoun Community Unit School District,* 17 Ill.2d 328, 157 N.E.2d 59 (1959). A statute requiring that a ballot be "in substantially the following form" does not mean that the ballot needs to be an exact copy of the one in the statute, but only that the ballot should include the substance and features found in the statute. *People ex rel. Davis v. Chicago, Burlington and Quincy Railroad Co.*, 48 Ill.2d 176, 268 N.E.2d 411 (1971).

36. The Electoral Board finds that the form of the ballot presented by the Petition deviates substantially from the form of the ballot prescribed in Section 11-68-2. For example, the form of the question presented in the Petition asks voters not whether the City of Chicago should acquire and maintain a stadium and athletic – as is required by the form of the ballot prescribed in Section 11-68-2 – but rather whether City funds should be used to help the Chicago Park District and the Illinois Sports Authority, two separate and distinct governmental entities, to acquire and maintain a stadium and athletic field. The Electoral Board finds, therefore, that the form of the ballot presented by the Petition does not substantially comply with the required form of ballot prescribed by Section 11-68-2. Therefore, the Petition is invalid as a matter of law and the Objection to the form of the ballot presented by the Petition is sustained.

37. For the reasons set forth above, the Electoral Board finds the Petition is invalid and that certain of the Objections as explained above are sustained. Therefore, the question of public policy presented by the Petition should not and will not be printed on the ballot and submitted to the voters of the City of Chicago at the February 27, 2001 Interim Aldermanic Elections.

38. The Electoral Board further repeats what was found earlier (infra, ¶ 19), i.e., because the proposition presented by the Petition was not certified to the Board of

Election Commissioners in the manner or within the time provided by Article 28 of The Election Code, the Board has neither the duty nor the right to print the subject proposition on the ballot for the February 27, 2001 Interim Aldermanic Elections in the City of Chicago. Therefore, regardless of whether the Petition is valid, the Board of Election Commissioners is without authority to print and submit to the voters of the City of Chicago a ballot containing the proposition presented by the Petition.

IT IS THEREFORE ORDERED that the Objections of BRIAN L. CROWE to the Petition to submit to the electors of the City of Chicago at an election to be conducted on February 27, 2001, the question of public policy, "SHALL PUBLIC FUNDS OF THE CITY OF CHICAGO BE USED TO HELP THE CHICAGO PARK DISTRICT AND ILLINOIS SPORTS AUTHORITY ACQUIRE AND MAINTAIN A STADIUM AND ATHLETIC FIELD WHICH WOULD BENEFIT THE CHICAGO BEARS?", are hereby SUSTAINED to the extent and for the reasons as set forth above and said Petition is hereby declared INVALID and the question of public policy, "SHALL PUBLIC FUNDS OF THE CITY OF CHICAGO BE USED TO HELP THE CHICAGO PARK DISTRICT AND ILLINOIS SPORTS AUTHORITY ACQUIRE AND MAINTAIN A STADIUM AND ATHLETIC FIELD WHICH WOULD BENEFIT THE CHICAGO BEARS?", SHALL NOT be printed on the official ballot for the Interim Aldermanic Elections to be held on February 27, 2001.

Dated: Chicago, Illinois, this 29th day of December, 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.