NBCON-RGA

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD

Objections of: KEITH HARRIS	)
	)
To the Nomination	)
Papers of: BRIAN KENNER	)
	) No. 02-EB-RGA-13
Candidate for the office of Representative in the	)
General Assembly, 6th Representative District,	)
Democratic Party	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Theresa M. Petrone and Richard A. Cowen, 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 KEITH HARRIS ("Objector") to the nomination papers ("Nomination Papers") of BRIAN KENNER, candidate for the office of Representative in the General Assembly for the 6th Representative District, Democratic Party ("Candidate"), having convened on January 8, 2002, 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 Objectors 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 8, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Frank A. Tedesso 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 members of the Electoral Board, the Objector, KEITH HARRIS, *pro se*; and the Candidate, BRIAN KENNER, by counsel.

7. The Objector's sole objection is that the Candidate is not a resident at the address shown on the Nomination Papers as required by Article IV, Section 2(c) of the Illinois Constitution and thus the Candidate's Statement of Candidacy is false and perjurious.

8. At a hearing in this matter on January 23, 2002, the Hearing Examiner heard testimony and considered evidence presented by the Objector and the Candidate. For the reasons set forth in the Hearing Examiner's Recommended Decision, which is hereby adopted by the Electoral Board and is incorporated by reference herein, the Hearing Examiner found that the Candidate does reside at 727 East 60th Place, Apt. 1603, as stated in his Statement of Candidacy and other Nomination Papers. Therefore, the Hearing Examiner recommends that the objections to the Candidate's Nomination Papers will be overruled.

9. The Electoral Board finds that, based upon the preponderance of the evidence presented, the Objector has failed to prove that the Candidate does not resides at the address shown in his Statement of Candidacy or that the Candidate's Statement of Candidacy is false and perjurious. Therefore, the Electoral Board finds that the Objections are overruled and that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of KEITH HARRIS to the Nomination papers of BRIAN KENNER, candidate for nomination to the office of Representative in the General Assembly for the 6th Representative District, Democratic Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of BRIAN KENNER, candidate for nomination to the office of Representative in the General Assembly for the 6th Representative District, Democratic Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 19, 2002.

Dated: Chicago, Illinois, this 31st day of January, 2002.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 6TH REPRESENTATIVE DISTRICT, COOK COUNTY, ILLINOIS

KEITH HARRIS,	)	
Petitioner – Objector,	)	
	)	
v.	)	**02-EB-RGA-13**
	)	
BRIAN KENNER,	)	
Respondent – Candidate.	)	

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BOARD OF ELECTIONS

HEARING EXAMINER'S RECOMMENDED DECISION

The Respondent – Candidate, BRIAN KENNER, filed Nomination Papers for nomination to the Office of Representative in the General Assembly, 6th Representative District, Illinois, Democratic Party, to be voted upon at the General Primary Election to be held on March 19, 2002. The Petitioner – Objector, KEITH HARRIS, filed a petition objecting to the Nomination Papers of the Candidate on the grounds that the Candidate does not reside at the address shown on the Nomination Papers and that the Nomination Paper's are invalid in their entirety.

On January 8, 2002 this mater appeared on the initial trial call. The hearing examiner granted the Candidate leave to file a Motion to Strike and granted the Objector's request for the issuance of certain subpoena. The matter was then continued until January 17, 2002 for hearing on Candidate's Motion to Strike and scheduling of any further hearings.

Candidate did not file a Motion to Strike and appeared with substitute counsel on January 17, 2002. The Hearing Examiner denied the Candidate's request for additional time to file a Motion to Strike; approved the request of the Objector for a subpoena for

Candidate, Brian Kenner and continued the matter for an evidentiary hearing on January 23, 2002 at 12:00p.m.

On January 23, 2002 this matter came before the Hearing Examiner for an evidentiary hearing on Objector's Petition. The Objector appeared pro se and the Candidate appeared in person and by counsel. The Objector requested a continuance on the grounds that Com Ed and People's Energy did not comply with the subpoena that he served upon them. The Candidate objected to the continuance on grounds that the Rules of Procedure do not allow such a continuance and that the subpoena in question did not contain an affidavit of service. The Hearing Examiner denied the Objector's request for a continuance and an evidentiary hearing was held.

Petitioner – Objector called LaTonya James. Ms. James testified that she is the property management supervisor of the Wood Lawn Apartments, a 370 + unit complex, which includes the address of 727 E. 60th Street. She testified that management does not have a lease agreement with the Candidate, but has a written lease agreement with Howard Kenner, the Candidate's brother. Ms. James testified that the prior management company had consented to allow Brian Kenner to reside with his brother Howard, and that the current management company grandfathered the consent. Ms. James produced a lease agreement in the name of Howard Kenner (Objector's Exhibit 1) and a letter from Howard Kenner that she received January 16, 2002 (Objector's Exhibit 2) which were received into evidence. Ms. James stated that she could not testify how many times she has seen Brian Kenner or Howard Kenner on the property and that she has never actually met Howard Kenner. Ms. James explained that she has no actual hands on contact with the tenants, and that her knowledge regarding the residence of

Brian Kenner and Howard Kenner was restricted to that found in the documents. Ms. James further testified that it is common practice for management to allow tenants to have someone reside with them and not require the additional resident sign the lease. Ms. James further testified that the management's consent is often provided orally and not in writing.

Objector also called the Candidate Brian Kenner as a witness. Brian Kenner testified on direct examination that he moved in with his brother, Howard Kenner, approximately 2 ½ years ago due to a separation with his wife. That Howard Kenner and himself reside at 727 E. 60th Street, Apt 1603, Chicago, Illinois, and the apartment is a one-bedroom apartment with a convertible couch in the living room. The Candidate testified that he is employed by the City of Chicago and has been so employed for 21 years. Brian Kenner further stated that he had hoped to reconcile with his wife and has children.

The Objector then sought to introduce Objector's Exhibit 3, which Objector represented to be Secretary of State motor vehicle registration records. The Candidate objected on the grounds that the document was not certified and unreliable. The objection was sustained due to the document not being certified and the document containing no indication that the Illinois Secretary of State generated the document.

The Candidate testified further on direct that he drives a Ford owned by he and his wife and that the vehicle is registered to his wife's residence at 10903 S. Hale, Chicago, Illinois. The Candidate was then requested to produce his Illinois Driver's License (Objector's Exhibit 4) which reveals the 10903 S. Hale address. The Candidate testified that upon his initial marital separation he thought it would not be necessary to

change the address on his license and that his failure to change the address is an oversight.

On cross-examination, Brian Kenner testified that he is married 21 years and has two children, a son and a daughter. He is currently separated from his wife, and he is seeking election to the office of Representative in the General Assembly for the 6th Representative District. Mr. Kenner further testified that he resides at 727 E. 60th Street with his brother Howard Kenner; he is registered to vote from that address for 2 years, and he has voted from that address. Mr. Kenner testified that he sleeps on a convertible sofa, and that he has moved his clothing, reading material and other personal belongings into the residence. Brian Kenner further stated that his brother is a State Representative and is gone 6 months a year attending to his duties in Springfield. He stated that he sees his brother, Howard, a few times during the week when the legislature is in session and sees his brother, Howard Kenner, daily when he is in Chicago. Mr. Kenner testified that his brother also attends Harvard University and goes there on his off time. Brian Kenner further testified that he pays his brother $150 a month rent, takes care of the apartment and that his children and wife do not reside at the 727 E. 60th address.

The Candidate then testified that he separated from his wife in August or September of 1999. That he is an ordained minister and did not speak with many about his separation due to concerns about how others in his congregation and workplace would react to his separation. The Candidate also believed his advancement at the workplace would be hindered by news of his separation. He testified that originally when he moved he thought he and his wife would work things out and he would return home, but that within months he realized the separation is permanent and his home is with his brother.

On re-direct examination the Candidate testified that he did change his voter registration records from 10903 S. Hale to 727 E. 60th Street and that he did not change his address with the Secretary of State or his employer. On re-cross, the Candidate testified that his name still appears on the title to the home at 10903 S. Hale and that his Wife and children are beneficiaries of the house. The Petitioner – Objector then rested.

The Respondent – Candidate called Howard Kenner as a witness. Howard Kenner testified that he has resided with his brother at 72 7 E. 60th for the past 2 ½ years, and that he opened his home to his brother after his brother's separation from his wife. Howard Kenner testified that he is a Representative in the General Assembly and that he is gone a great percentage of the time, approximately 6 to 7 months a year attending to his duties in Springfield. Howard Kenner further testified that in addition to his duties as a State Representative that his classes at Harvard University also keep him away from home a considerable time. He testified that his brother pays rent and is responsible for cleaning and keeping the plants watered. He further stated that Brian keeps his personal belongings in the closet and storage area in the apartment.

On cross-examination, Howard Kenner testified that his brother works for the City of Chicago. He was then asked how much money his brother made; the Candidate objected as to relevance and the Hearing Examiner sustained the objection. The Petitioner- Objector then advised he had no further questions and the witness was excused.

In his case in rebuttal, the Objector moved for admission of Exhibit 5, which consists of Board Records and the Hearing Examiner admitted Exhibit 5. The Hearing Examiner then heard argument.

After considering the evidence presented at the hearing including live witness testimony and Objector's Exhibit 1,2,4 and 5, and the arguments of the parties, the Hearing Examiner makes the following recommended findings of facts and recommended decision to the Board:

1. That the Candidate separated from his wife in August or September of 1999.

2. That the Candidate moved to 727 E. 60th Street in August or September of 1999.

3. That the Candidate resides at 727 E. 60th Street with his brother, Howard Kenner.

4. That the Candidate sleeps at 727 E. 60th Street and has moved his personal belongings and effects to said address, the Candidate pays his brother rent and is responsible for regular upkeep of the residence.

5. That the Objector's Exhibit 5 provide that the Candidate is registered to vote at 727 E. 60th Place.

6. That § 10 ILCS 5/3-2 (a) provides in pertinent part as follows: " a permanent abode is necessary to constitute a residence within the meaning of Section 3-1." *10 ILCS 5/3-2.*

7. That "two elements are necessary to create a residence: physical presence and intent to remain there as a permanent home." *Walsh v. County Officers Electoral Board of Cook County, et al., 267 Ill.App.3d 972, 976, 642 N.E.2d 843, 845 (1st Dist. 1994).*

8. That the Candidate has been physically present at the address on his Nomination Papers in excess of two-years as required by Article IV, Section 2(c) of the Illinois Constitution.

9. That based on the testimony of the witnesses and the other evidence presented at the hearing, the Candidate has demonstrated intent to remain at the address contained in the Nomination Papers.

10. That the Candidate resides at 727 E. 60th Place, Apartment 1603 as stated in his Statement of Candidacy and other Nomination Papers.

11. That the Objections of Petitioner, Keith Harris, to the Nomination Papers of Candidate, Brian Kenner, are overruled.

12. That it is recommended that Brian Kenner's name be placed on the ballot for nomination to the Office of Representative in the General Assembly, 6th Representative District, Illinois, Democratic Party, to be voted upon at the General Primary Election to be held on March 19, 2002.

Hearing Examiner, Frank A. Tedesso