BCCON-ALD

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

Objections of: JOHN SOMERVILLE	)	
	)	
To the Nomination	)	
Papers of: JOSEPH L. KENNEDY	)	No.: 03-EB-ALD-043
	)	
Candidate for the office of	)	
Alderman of the Nineteenth 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, 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 JOHN SOMERVILLE ("Objector") to the nomination papers ("Nomination Papers") of JOSEPH L. KENNEDY, candidate for the office of Alderman of the Nineteenth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 25, 2003, having convened on December 30, 2002, at 10:00 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 was held on these Objections commencing on December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner LYNNE R. OSTFELD 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, JOHN SOMERVILLE, pro se; and the Candidate, JOSEPH L. KENNEDY, by counsel.

7. The Hearing Examiner 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 Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

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

10. The Objector or his duly authorized representatives was 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 Electoral Board has considered all evidence and arguments tendered by the parties and the Hearing Examiner's report of recommended findings and conclusions of law.

13. The records examination results indicate that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 240;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 270;

    c. The number of signatures deemed invalid because of objections sustained total 46;

    d. The remaining number of signatures deemed valid total 224.

14. The Candidate requested a master file examination which was conducted on January 24, 2003. One additional signature was deemed valid, which brought the Candidate's total number of valid signatures to 225. The Candidate was still below the requisite statutory minimum number of 240 valid signatures.

15. On January 31, 2003, the Hearing Examiner conducted a hearing in this matter. The Candidate's attorney represented to the Hearing Examiner that he had his clerk file a Rule

8 motion with the Board on January 24, 2003. However, there was no Rule 8 motion from the Candidate in the Electoral Board's file. The Candidate's attorney could not at that time produce a time-stamped copy of his Rule 8 motion. Nevertheless, the Hearing Examiner proceeded to hear evidence regarding the Candidate's rehabilitation of signatures on his petition subject to the Candidate's attorney producing a copy of the Candidate's Rule 8 motion. At the hearing, the Candidate presented affidavits from 25 voters, with copies of their signatures cards provided by the Board, purporting to prove that these voters had signed the Candidate's petitions and that the signatures were genuine. The Objector did not object to the admission of these affidavits, but did object to a finding that the signatures were genuine as to 13 of the signatures. The Hearing Examiner received the evidence but reserved a ruling on the remaining 13 signatures until she learned if a proper and timely Rule 8 motion had been filed.

16. Later on the afternoon of January 31, 2003 the Candidate's attorney provided a copy of his Rule 8 motion with a statement that his clerk had filed it with the Board on January 24, 2003. There was no time or date stamp on the copy filed with the Board on January 31. The Hearing Examiner then found that the Rule 8 motion was not properly made because there was no showing that it was timely filed with the Board or timely served upon the Objector. In fact, the Objector claimed that he had never received a copy of the January 24, 2003 filing. The Hearing Examiner found that because the Rule 8 motion was not properly filed, the evidence at the January 31, 2003 hearing could not be considered to support the Candidate's candidacy and found that the Candidate had fewer that the required 240 signatures.

17. The Candidate filed a request to address the Board pursuant to Rule 20 of the Electoral Board's rules of procedure. At the hearing, the Candidate's attorney persisted in his claim that he had timely filed a Rule 8 motion with the Board on January 24, 2003. The Electoral Board found that the Candidate's attorney had indeed filed a Rule 8 motion with the Board on January 24, 2003. The Electoral Board also reviewed the 13 affidavits that the Hearing Examiner had reserved ruling upon and found that the 13 affidavits did support a finding that the signatures in issue were genuine and valid.

18. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination and the master file examination and a review of the affidavits and evidence presented by the Candidate 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 Nineteenth Ward of the City of Chicago.

19. The Electoral Board finds, therefore, that the Objector's Petition is sustained in part and overruled in part as more fully indicated in the results of the records examination.

20. For the reasons stated above, the Electoral Board finds that the Nomination Papers of JOSEPH L. KENNEDY are valid.

IT IS THEREFORE ORDERED that the Objections of JOHN SOMERVILLE to the Nomination Papers of JOSEPH L. KENNEDY, candidate for election to the office of Alderman of the Nineteenth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JOSEPH L. KENNEDY, candidate for election to the office of Alderman of the Nineteenth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

Dated: Chicago, Illinois, this Seventh day of February, 2003.

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.