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

Objections of: IVORY D. MITCHELL, DHAFIR H. MAALIK, AND MARGIE LEONARD	)	
To the Nomination Papers of: NORMAN H. BOLDEN	)	No.: 03-EB-ALD-106
Candidate for the office of Alderman of the Fourth 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 IVORY D. MITCHELL, DHAFIR H. MAALIK, and MARGIE LEONARD ("Objectors") to the nomination papers ("Nomination Papers") of NORMAN H. BOLDEN, candidate for the office of Alderman of the Fourth 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 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 December 30, 2002 and was continued from time to time.

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

6. The Objectors and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner on the date and at the time designated in the Trial Call. The following persons, among others, were present at such hearing; the Objectors, IVORY D. MITCHELL, DHAFIR H. MAALIK, and MARGIE LEONARD, by counsel; and the Candidate, NORMAN H. BOLDEN, by counsel.

7. The objections raised five issues: (1) the Candidate's petition sheets did not contain sufficient valid signatures, referencing line by line and circulator challenges in an appendix recapitulation format: (2) a "pattern of fraud" allegation predicated upon claimed circulator misconduct, also referencing challenges in the appendix recapitulation attachment; (3) a line by line claim that certain struck out signatures were not specifically deleted on a deletion sheet, and should not be counted; (4) all the petition sheets were fatally insufficient in that the address of the Candidate failed to state the City in which the Candidate lived; and (5) the Candidate was indebted to the City of Chicago in violation of 65 ILCS 5/3.1-10-5(b) and therefore was not eligible to be a candidate for or to hold the office of Alderman of the 4th Ward of the City of Chicago. The Objectors subsequently withdrew the first three categories of objections and elected to proceed with issues four and five.

8. 65 ILCS 5/3.1-10-5(b) states in part, "A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality."

9. The Candidate testified and admitted that there is a judgment against him in favor of the City of Chicago in the amount of $8,498 plus court costs and that amount remains due and outstanding from him to the City of Chicago. Therefore, the Candidate is in arrears in the payment of an indebtedness to the municipality.

10. The Candidate argues that the decisions in *Cory v. Watts,* 99 CH 10306 (Cir. Ct. Cook Cty., 1999) and *Batson v. Shaw,* 83-EB-ALD 35 (CBEC, 1983) support his position that he cannot be disqualified from being a candidate for the office of Alderman in the 4th Ward. The Hearing Examiner concluded that the decision in the *Cory* case did not hold that the prohibition of 65 ILCS 5/3.1-10-5(b) cannot be applied to bar a candidate from the ballot because an indebtedness due to the municipality because the court held that the plaintiff did not have standing to raise the issue. The Hearing Examiner also concluded that (a) the *Batson* case provides no factual context for the decision handed down in that case, (b) that an electoral board decision is not binding authority on this body, and (c) that the case cited in *Batson – People v. Hamilton* 24 Ill.App. 609 (2nd Dist. 1887) – was not a First District Case. Besides, the Hearing Examiner concluded, *Hamilton* spoke to the issue of a "trifling sum" in the nature of a clerical error and such is not the case here where the Candidate owes $8,498. Finally, the Hearing Examiner concluded that the decision in *Pappas v. Calumet City Municipal Officers Electoral Board,* 288 Ill.App.3d 787, 701 N.E.2d 625 (1st Dist. 1997) invalidated the candidacy of a candidate predicated on 65 ILCS 5/3.1-10-5(b). For these reasons, the Hearing Examiner recommends that the

Candidate be found not qualified to be a candidate for the office of Alderman of the 4th Ward of the City of Chicago.

11. While agreeing with the Hearing Examiner with regard to the applicability of the *Cory* case, the Electoral Board respectfully disagrees with the Hearing Examiner on the applicability of the *Batson* case, the *Hamilton* case and the *Pappas* case and respectfully declines to accept his recommended conclusion of law on this issue.

12. As regards the *Pappas* case, while it did state that 65 ILCS 5/3.1-10-5(b) barred a candidate from being a candidate for elective municipal office, its holding was based on a different provision of this statute as it pertained to conviction for a felony or other infamous crime. *Pappas* had nothing to do with a candidate who was indebted to the municipality. Therefore, *Pappas* is distinguishable from the facts presented here.

13. As regards *Hamilton,* while it may be a Second District case, it is the only Appellate Court or Supreme Court decision on point and is, therefore, binding on all inferior courts and tribunals throughout the State of Illinois. See, *State Farm Fire and Casualty Company v. Yapejian*, 152 Ill.2d 533, 605 N.E.2d 539 (1992). Moreover, the Hearing Examiner has misconstrued *Hamilton* in that the comments regarding "trifling amounts" due and clerical errors were directed to another defendant in the case and not to Hamilton. As to Hamilton, the court ruled that the disqualification based on arrearages of indebtedness to the municipality is as to the office and not the election and that the payment of the indebtedness before assuming the office met the requirement of the law. This is how this Electoral Board has previously ruled on this issue and how it ruled in the *Batson* case. Therefore, the Electoral Board finds that it is bound by the holding in *People v. Hamilton* and that the Candidate is not disqualified from the ballot even though being indebted to the City of Chicago. This portion of the Objections is overruled.

14. As regards the issue of the Candidate's address as it appears on his Nomination Papers, the Hearing Examiner found that on all 136 of the Candidate's nominating petition sheets the Candidate stated his address at the top of each sheet as "4318 S. Berkeley, 60653." The city of residence is not mentioned. The Hearing Examiner also found that the address box in the Candidate's Statement of Candidacy also recited the Candidate's address as 4318 S. Berkeley, 60653." The Candidate put on evidence by stipulation and unrebutted testimony that the number "60653" contained in the residence box was a Zip Code which only referred to an address located in the 4th Ward of the city of Chicago and that mail addressed in such a fashion would in all probability arrive at the address.

15. Section 10-4 of the Election Code (10 ILCS 5/10-4) provides in part that petitions for nomination shall contain above the space for signatures "an appropriate heading, giving the information as to name of candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid, and the heading of each sheet shall be the same."

16. The Candidate argues, correctly, that this Electoral Board held in *Tintor v. Ortiz*, 95-EB-ALD-077 (CBEC, 1995) that the candidate there substantially complied with Section 10-4 when the petition sheet headings listed only the street number and name but failed to list the name of the city of residence. Here, the Candidate's full residence address, including his city of residence, can found in other places within the Candidate's nomination papers. His city of residence appears in the circulator's affidavit at the bottom of approximately 54 petition sheets that the Candidate circulated, as well as on the Candidate's Statement of Candidacy. There was no evidence presented that any of the voters who signed the Candidate's nominating petition sheets were confused about his residency. Thus, the Electoral Board finds that the Candidate substantially complied with the requirement in Section 10-4 that the candidate's residence address be stated in the heading of the Candidate's nominating petition sheets.

17. The Electoral Board finds that the failure of the Candidate to include his city of residence in the heading on each of his nominating petition sheets is not fatal and does not invalidate the petition sheets. Therefore, the Electoral Board overrules this part of the Objections.

18. The Electoral Board finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of IVORY D. MITCHELL, DHAFIR H. MAALIK, AND MARGIE LEONARD to the Nomination Papers of NORMAN H. BOLDEN, candidate for election to the office of Alderman of the Fourth Ward of the City of Chicago are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of NORMAN H. BOLDEN, candidate for election to the office of Alderman of the Fourth 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 Thirty-first day of January, 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.