NBCON-ALD

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

Objections of: ROBERT W. YOUNG	)	
	)	
To the Nomination	)	
Papers of: WILLIE MAY	)	No.: 03-EB-ALD-145
	)	
Candidate for the office of	)	
Alderman of the Second 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 ROBERT W. YOUNG ("Objector") to the nomination papers ("Nomination Papers") of WILLIE MAY, candidate for the office of Alderman of the Second 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 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 JOAN T. AGNEW 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, ROBERT W. YOUNG, by counsel, the Candidate, WILLIE MAY, pro se.

7. The Objector alleges that the Candidate has not resided in the Second Ward for at least two years prior to the date of the election.

8. The Hearing Examiner found that the Candidate resided at 1633 W. Madison Street, which is the address listed on his nomination papers. The Candidate changed his voter registration to that address on December 5, 2002. He has had a lease at this address since January 2000, and utility service in his name at that address since the Summer 2001. Prior to living at 1633 W. Madison, the Candidate claimed to live at 4724 W. Monroe, which is not in the 2nd Ward. Prior to December 5, 2002, the candidate was registered to vote at the Monroe Street address and in fact voted from that address at the November 5, 2002 election, even though he now claims that he resides on Madison Street.

9. The Hearing Examiner recommended that the Candidate be placed on the ballot because he satisfies the 1-year residency requirement in the City of Chicago. Based on the facts as accepted by the Hearing Examiner, it would appear that the candidate would also satisfy a 2-year or a 1-year residency requirement in the Ward because the candidate did, in fact, reside at the Madison Street address since 2000.

10 The Objector argues that by voting from the Monroe Street address, the Candidate claimed the Monroe Street address as his legal address and not Madison Street as he now claims.

11. The Electoral Board adopts the Hearing Examiner's recommended finding regarding the Candidate's durational residence. The Electoral Board further finds that even if the Objector had demonstrated by a preponderance of the evidence that the Candidate had not satisfied the 2-year residency in the Ward requirement imposed by 65 ILCS 20/21-14(a), that statute should not be applied to bar the Candidate from the ballot on that basis. In *Manuel Flores v. Chicago Board of Election Commissioners*, 02 CH 22176 (Cir. Ct Cook Cty., January 31, 2003), the Circuit Court of Cook County held that "65 ILCS 20/21-14(a) is unconstitutional insofar as it requires candidates for election to the office of Alderman of the City of Chicago to reside in the Ward in which they seek election for more than one year prior to the date of the election."

12. The Electoral Board finds that the reasoning in *Flores* is persuasive, if not binding, authority that the 65 ILCS 20/21-14(a) cannot be constitutionally applied to bar candidates from the ballot who cannot comply with the 2-year durational residency requirement in that statute. The question becomes, what, if any, durational residency requirement can be constitutionally applied to candidates for Alderman of the City of Chicago in the absence of 65 ILCS 20/21-14(a).

13. In Illinois, an unconstitutional statute is void *ab initio*. *People v. Manuel*, 94 Ill.2d 242, 446 N.E.2d 240 (1983). The effect of enacting an unconstitutional amendment to a

statute is to leave the law in force as it was before the adoption of the amendment. *People v. Gersch,* 135 Ill.2d 384, 390, 553 N.E.2d 281, 283 (1990).

14. The law in force prior to enactment of 65 ILCS 20/21-14(a) did not require that a candidate for Alderman be a resident of the ward in which he or she sought election prior to the date of the election. Rather, the only residency requirement for Alderman was that they reside in the municipality at least one year next preceding the election. 65 ILCS 5/3.1-10-5(c).

15. For the reasons stated above, the Board finds that the Candidate satisfied the 1-year residency requirement in the City of Chicago and that he would have satisfied the 2-year residency requirement in the Ward, assuming such requirement could have been applied. The Electoral Board finds, therefore, that the Candidate's Nomination Papers are valid and that the Objections are overruled.

IT IS THEREFORE ORDERED that the Objections of ROBERT W. YOUNG to the Nomination Papers of WILLIE MAY, candidate for election to the office of Alderman of the Second Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of WILLIE MAY, candidate for election to the office of Alderman of the Second 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.