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

Objections of: ROSE MCDANIEL AND KENNETH HARRIS	)	
To the Nomination Papers of: SYLVESTER E. BAKER JR	)	No.: 03-EB-ALD-150
Candidate for the office of Alderman of the Sixth 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 ROSE MCDANIEL and KENNETH HARRIS ("Objectors") to the nomination papers ("Nomination Papers") of SYLVESTER E. BAKER JR, candidate for the office of Alderman of the Sixth 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 JOHN R. ASHENDEN 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, ROSE MCDANIEL and KENNETH HARRIS, by counsel; and the Candidate, SYLVESTER E. BAKER JR., by counsel.

7. The Objectors' allege that the Candidate's statement of economic interests does not comply with the Illinois Governmental Ethics Act in that it does not disclose the appropriate office sought in connection with his candidacy for Alderman.

8. The Electoral Board finds that the Candidate filed with his Nomination Papers a receipt for a statement of economic interests date-stamped by "David Orr County Clerk" on March 6, 2002. The two printed lines above the part of the receipt form asking the filer to "List each office or position of employment for which this statement is filed" are blank, but below those two lines is pre-printed the text "2002-000841 Cook County."

9. In his "Answer to Objector's Petition" the Candidate argues that under the Illinois Governmental Ethics Act separate filings for multiple local offices or positions of employment are not required. The Candidate argues that his filing of a statement of economic interests on March 6, 2002 in relation to his employment with Cook County obviates the requirement of the filing of a different statement since separate filings for multiple local offices are not required.

10. In their "Motion for Summary Judgment" the Objectors counter that while the Candidate admits that the statement of economic interests he filed with his Nomination Papers was filed on March 6, 2002, such filing did not obviate the necessity for him to file a subsequent statement for purposes of his candidacy for Alderman of the Sixth Ward. They further argue that the Candidate's statement is insufficient because it does not contain any reference to the office sought here, i.e., Alderman of the Sixth Ward of the City of Chicago, citing *Jones v. Municipal Officers Electoral Board,* 112 Ill.App.3d 926 (1983).

11. The Hearing Examiner recommends that the Objectors' Motion for Summary Judgment be granted and that the Candidate's Nomination Papers be found invalid. The Hearing Examiner found that the unit of government titled "Cook County" as listed on the Candidate's receipt is not the same unit of government for which the Candidate is seeking election, i.e., the City of Chicago.

12. Section 10-5 of the Election Code (10 ILCS 5/10-5) provides that nomination papers are not valid if the candidate fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers "unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed."

13. If the Candidate had merely erroneously identified, or not identified at all, the office for which he is a candidate, removal from the ballot would not be the appropriate sanction. See *Requena v. Cook County Officers Electoral Board,* 295 Ill.App.3d 728, 692 N.E.2d 1217 (1st Dist. 1998), citing *Welsh v. Johnson,* 147 Ill.2d 40, 588 N.E.2d 1119 (1992). However, both *Requena* and *Welsh* state that the sanction of removal from the ballot can be imposed under Section 10-5 of the Election Code "where there is a complete failure to file such a statement." *Requena,* 295 Ill.App.3d at 733; *Welsh,* 147 Ill.2d at 53-54.

17. In *Welsh,* the Court said that under Section 10-5 of the Code "nomination papers are invalid if a candidate fails to file a statement of economic interests 'by the end of the period for filing of nomination papers unless he has filed [such a statement] in relation to the same governmental unit during the same calendar year as the year in which the nomination papers are filed'." 147 Ill.2d at 53. The Court further said:

> "That this provision refers to a complete failure to file a statement of economic interests and not merely the filing of an inadvertently untrue, incorrect or incomplete statement is made clear by sections 4A-105 and 4A-107 of the Ethics Act. *** Reading section 10-5 of the Code in light of sections 4A-104 and 4A-107 of the Ethics Act, it is clear that the failure to file referred to means a complete failure to file any economic statement within the time prescribed for doing so rather than the filing of an economic statement which is untrue, incorrect or incomplete due to inadvertence or innocent mistake."

18. Under Section 10-5 of the Code, a candidate then has two choices: (1) file a statement of economic interests in relation to one's candidacy, or (2) file a statement of economic interest in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. Failure to file either statement constitutes a complete failure to file a statement under Section 10-5 and thus invalidates the candidate's nomination papers.

19. In *Miceli v. Lavelle*, 114 Ill.App.3d 311, 317, 448 N.E.2d 989 (1st Dist. 1983), the court held that "there exists no authority supporting the proposition that one statement of economic interest may be filed in relation to two units of government" and the court rejected such proposition. In *Miceli,* the candidate filed nomination papers seeking election as Alderman in the city of Chicago. The candidate had earlier in the same year filed a statement of economic interests in relation to his employment with the Chicago Board of Education. It was conceded that the Board of Education and the City of Chicago were not the same governmental unit. The court rejected the candidate's contention that his earlier filed statement of economic interests filed with the Board of Election was filed in relation to the City of Chicago and invalidated the candidate's nomination papers. *Miceli* has not been overruled.

20. Here, the Candidate filed a statement of economic interests in March 2002 in relation to "Cook County." He is seeking election to the office of Alderman of the City of Chicago.

The City of Chicago and the Cook County are not the same governmental unit. See *Troutman v. Keys,* 156 Ill.App.3d 247, 254, 509 N.E.2d 453 (1st Dist. 1987) for a discussion of definition of units of local government.

21. Because the Candidate did not file a statement of economic interests (a) in relation to candidacy for Alderman in the City of Chicago, or (b) in relation to the City of Chicago within the same calendar year as he filed his Nomination Papers, he has failed completely to file a statement of economic interests as required under Section 10-5 of the Election Code. Therefore, his Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of ROSE MCDANIEL and KENNETH HARRIS to the Nomination Papers of SYLVESTER E. BAKER JR, candidate for election to the office of Alderman of the Sixth Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of SYLVESTER E. BAKER JR, candidate for election to the office of Alderman of the Sixth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

Dated: Chicago, Illinois, this Twenty-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.