NBCOFF-MUN

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

Objections of: LOUIS C. RAYMOND II	)	
	)	
To the Nomination	)	
Papers of: JACK J. McINERNEY	)	No.: 03-EB-MUN-1
	)	
Candidate for the office of	)	
City Treasurer of the 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 LOUIS C. RAYMOND II ("Objector") to the nomination papers ("Nomination Papers") of JACK J. McINERNEY, candidate for the office of City Treasurer 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 RODNEY W. STEWART 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 Trial Call. The following persons, among others, were present at such hearing: the

Objector, LOUIS C. RAYMOND II, by counsel; and the Candidate, JACK J. McINERNEY, by counsel.

7. The Objections allege that pursuant to State law, nomination papers for candidates for the office of Treasurer of the City of Chicago must contain the signatures of not fewer than 25,000 duly qualified and registered and legal voters of the City of Chicago. The Objections allege that the Candidate's Nomination Papers contain only a single petition sheet containing only five (5) signatures, a number far below the statutory minimum.

8. At a hearing in this matter, the Candidate acknowledged that he lacked the requisite number of valid signatures, but asked to remain as a candidate for the office sought because the 25,000 signature requirement was unconstitutional. The Candidate also filed a brief in opposition to the Objections alleging that the law is silent on the signature requirement for City Treasurer and that the Chicago Board of Election Commissioners implemented a policy requiring candidates for mayor, city treasurer and city clerk to obtain 25,000 signatures to get on the ballot.

9. The Hearing Examiner has recommended that the Board find that the Candidate lacked the requisite number of valid signatures and that his name be removed from the ballot based upon 10 ILCS 5/10-3 and upon *Lipinski v. Chicago Board of Election Commissioners,* 114 Ill.2d 95, 500 N.E.2d 39 (1986).

10. The Electoral Board, having considered the applicable law, the evidence and the arguments of the parties, and the recommended findings and conclusions of law of the Hearing Examiner, finds that:

A. In 1995, the Illinois General Assembly enacted legislation changing the method for electing the offices of Mayor, Clerk and Treasurer in the city of Chicago. Public Act 89-95, effective January 1, 1996, amended the Revised Cities and Villages Act of 1941 (65 ILCS 20/21-5, 21-12) and the Election Code (10 ILCS 5/2A-1.2(d)) to provide that instead of nominating candidates in partisan political party primary elections in February of odd-numbered years every fourth year to decide who would appear on the ensuing April general election ballot, candidates would be elected on a nonpartisan basis (i.e., without party primary elections and party labels) in the February election. However, if no candidate received a majority of the vote cast, the two candidates who received the highest number for the same office would face each other in a runoff election in April.

B. Public Act 89-95 did not provide specifically for the number of signatures required on nominating petitions.

C. Section 10-3.1 of the Illinois Election Code (10 ILCS 5/10-3.1) governs nonpartisan candidates, petitions for nomination, signature requirements and the application of Article 10 to nonpartisan candidates. Section 10-3.1 provides in part:

> Petitions for nomination of nonpartisan candidates for municipal offices where the statute creating the municipality or providing the form of government thereof, or the ordinance so providing, pursuant to Article VII of the Constitution, requires election to such office on a nonpartisan basis and does not permit political nominations *** shall be in conformity with any requirements as to contents and number of signatures of specified in such statute or ordinance.
> The provisions of this Article 10 relating to independent candidate petition requirements shall apply to nonpartisan petitions to the extent they are not inconsistent with the requirements of such other statutes or ordinances.

Section 10-3.1 further provides that:

> If signature requirements for petitions for nomination of nonpartisan candidates are not specified in the statute creating the political subdivision or the signature requirements cannot be determined under Article 10, the signature requirements for the nonpartisan candidates shall be at least 0.5% of the total number of registered voters of the political subdivision for which the nomination is made or a minimum of 25, whichever is greater.

D. For the 0.5% signature in Section 10-3.1 to apply, two conditions precedent must exist. First, the statute creating the political subdivision must not specify the signature requirements for nonpartisan candidates. Second, the signature requirements for nonpartisan candidates must not be able to be determined under Article 10. While the first condition does exist; the second does not.

E. Section 10-3.1 of the Illinois Election Code provides that the requirements for independent candidate petition requirements shall apply to nonpartisan petitions to the extent they are not inconsistent with the requirements of the statutes or ordinances creating the municipality or providing the form of government thereof. Section 10-3 of the Election Code provides that nomination of independent candidates for public office within a political subdivision may be made by nomination papers signed in the aggregate by qualified voters equaling not less than 5% nor more than 8% of the number of persons who voted at the next preceding regular election in such political subdivision which voted as a unit for the election of officers to serve the area. However, whenever the minimum signature requirement for an independent candidate petition for a political subdivision office shall exceed the minimum number of signatures for an independent candidate petition for an office to be filled by the voters of the State at large at the next preceding Statewide general election, such State-wide petition signature requirement shall be the minimum for an independent candidate for political subdivision office. The signature requirement for independent candidates for offices to be filled by voters of the State at

large is 1% of the number of voters who voted in the next preceding State-wide general election, or 25,000, whichever is less.

F. According to the official records of the Chicago Board of Election Commissioners, 623,755 persons voted in the February 23, 1999 municipal election for city-wide offices in the City of Chicago. Applying the 5% minimum signature requirement to that number yields a minimum signature requirement of 31,187. However, because this minimum signature requirement exceeds the minimum signature requirement for State-wide independent candidates, the minimum signature requirement for independent candidates in the City of Chicago is "capped" at 25,000.

G. Thus, the signature requirement for nonpartisan candidates in the City of Chicago can be determined under the provisions of Article 10. Because one of the two conditions precedent as spelled out in Section 10-3.1 for applying the 0.5% signature requirement does not exist, the 0.5% signature therefore does not apply. Instead, the signature requirements spelled out by Section 10-3 for independent candidates apply to nonpartisan candidates for city office in the City of Chicago.

H. In *Lipinski v. Chicago Board of Election Commissioners,* 114 Ill.2d 95, 500 N.E.2d 39 (1986), the Illinois Supreme Court, in ruling upon the validity of a referendum proposition asking voters to determine whether the offices of Mayor, City Treasurer and City Clerk should be elected on a nonpartisan basis similar to the scheme subsequently approved by the General Assembly in Public Act 89-95, held that because the nonpartisan referendum was silent with respect to how many signatures are needed to get on the nonpartisan ballot, the petition signature requirements of Section 10-3 of the Election Code relating to independent candidates supplied the answer regarding the number of signatures to be required on nonpartisan candidate petitions. The Court noted that because five percent of the number of persons who voted in the 1983 mayoral election [the last mayoral election preceding the Court's decision] exceeded 25,000, consequently, under the Election Code any nonpartisan candidate for mayor, treasurer or clerk of Chicago would be required to file a minimum of 25,000 signatures to have his name placed on the ballot.

I. The Board finds, therefore, that Section 10-3 of the Election Code requires that petitions for candidates for the offices of Mayor, Clerk and Treasurer in the City of Chicago must contain 25,000 signatures of qualified and registered voters in the City of Chicago.

11. The Electoral Board finds that the Candidate's Nomination Papers contain the signatures of only five (5) purportedly qualified and registered voters of the City of Chicago, far below the number required by law.

12. The Candidate has argued that the 25,000 signature requirement for City Treasurer is unconstitutional. A statute is presumed constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity. *People v. Devenny,* 199 Ill.2d

398, 400, 769 N.E.2d 942 (2002). The legislature, however, did not intend that an electoral board entertain and decide constitutional challenges. *Tobin v. Illinois State Board of Elections,* 105 F. Supp.2d 882, 886 (N.D. Ill. 2000), *aff'd*, 268 F.3d 517 (7th Cir. 2001); Phelan *v. County Officers Electoral Board*, 240 Ill.App.3d 368, 372-373, 608 N.E.2d 215, 217 (First Dist. 1992); *Wiseman v. Elward*, 5 Ill.App.3d 249, 382 N.E.2d 282, (First Dist. 1972). An administrative agency must accept as constitutional the statute over which it has jurisdiction. *Board of Education of Rich Township High School v. Brown,* 311 Ill.App.3d 478, 490, 724 N.E.2d 956, 966 (1st Dist. 2000). An administrative agency lacks the authority to invalidate a statute on constitutional grounds or even to question its validity. *Texaco-Cities Service Pipeline Company v. McGaw,* 182 Ill.2d 262, 278, 695 N.E.2d 481, 489 (1998). Therefore, the Electoral Board will presume that the 25,000 signature requirement is constitutional and will apply it here to the Candidate's Nomination Papers.

13. For the reasons stated above, the Electoral Board finds that because the Candidate's Nomination Papers fail to contain the number of signatures required by law, the Objections will be sustained. Accordingly, the Electoral Board further finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of LOUIS C. RAYMOND II to the Nomination Papers of JACK J. McINERNEY, candidate for election to the office of City Treasurer of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of JACK J. McINERNEY, candidate for election to the office of City Treasurer 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 Fourteenth 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.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-COUNTY DIVISION

Jack J. McInerney Petitioner, v. Chicago Board of Elections, and Louis Raymond, Respondents.	)	No. 03 COEL 000007

AGREED ORDER

This cause coming to be heard on Respondents' Motions to Dismiss for lack of subject matter jurisdiction. All parties being represented by counsel, it is hereby ordered that:

1. The Respondents', Chicago Board of Election Commissioners and Louis Raymond, Motions to Dismiss for lack of subject matter jurisdiction are granted, with prejudice.

2. This is a final order.

Enter:

CIRCUIT COURT OF COOK COUNTY
ENTERED
FEB 18 2003
JUDGE
MARSHA D. HAYES-1634

Michael J. Kasper
Att. No. 33837
Susanne M. Hack
Att. No. 6272335
222 N. LaSalle, Ste. 300
Chicago, IL 60602
312.704.3292
312.368.4944 (fax)

Susanne Hack

John Agnos - Atty for Board of Elections