NBCON-RGA

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

Objections of: FELIX CARDONA, JR.	)
	)
To the Nomination	)
Papers of: PEDRO DE JESUS, JR.	)
	) No. 04-EB-RGA-17
Candidate for the office of Representative of the 39th	)
Representative District, State of Illinois Democratic	)
Party	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election 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 FELIX CARDONA, JR. to the nomination papers ("Nomination Papers") of PEDRO DE JESUS, JR., candidate for the nomination of the Democratic Party to the office of Representative in the General Assembly for the 39th Representative District, State of Illinois ("Candidate"), having convened on January 5, 2004, at 2:00 p.m., in the City Council Chambers, 121 North LaSalle Street, 2nd Floor, 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 January 5, 2004 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Casandra B. Watson for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, FELIX CARDONA, JR., by his attorney; and the Candidate, PEDRO DE JESUS, JR., by his attorney.

7. The Objector's petition raises several objections. However, the only objection which the Objector presses is contained in paragraph 3 of the Objector's petition attacking the legal sufficiency of the receipt for the Candidate's Statement of Economic Interest filed pursuant to the Illinois Governmental Ethics Act. There is no dispute that a receipt was filed and that it was filed timely; the only attack is upon the contents of the receipt.

8. The Candidate's receipt for his Statement of Economic Interests shows that it was filed with the office of the Secretary of State on December 8, 2003. The receipt, which was appended to the Candidate's Nomination Papers when such documents were filed with the Cook County Clerk and a copy of which is attached to this decision, consists of a letter from the Index Department of the Office of the Secretary of State, dated December 8, 2003, and addressed to the Candidate at his mailing address. The letter states as follows: "Please accept this receipt as acknowledgment that our office has received and filed your Statement of Economic Interests pursuant to the Illinois Governmental Ethics Act. Your statement was filed on December 8, 2003 for the following office: Candidate." The receipt contains no other reference to or description of the office, position or unit of government for which the Statement was filed.

9. The Objector's petition alleges that because the receipt contains no designation of any position, district, unit of government or particular elective office sought, it is not in compliance with the statutes, citing, among other cases, *Jones v. Municipal Officers Electoral Board*, 112 Ill.App.3d 926, 446 N.E.2d 256 (1st Dist. 1983).

10. Article 8 of the Election Code, which governs the nomination of all candidates for members of the General Assembly by all established political parties (see 10 ILCS 5/8-1), requires that candidates for the office of Representative in the General Assembly file a statement of candidacy stating that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act. (10 ILCS 5/8-8)

11. The Illinois Governmental Ethics Act requires that persons who are candidates for nomination or election to the General Assembly file their statements of economic interest with the Secretary of State. (5 ILCS 420/4A-101(a), 4A-106).

12. Neither the Illinois Governmental Ethics Act nor the Election Code prescribes the contents of the receipt to be issued by the receiving officer upon the filing of a statement of economic interests.

13. In a case involving the filing of a false and/or incomplete statement of economic interests, the Illinois Supreme Court has said that, "A reading of the plain language of these statutes convinces us that removal from the ballot is not a permissible sanction for the filing of a statement of economic interests which is not true, correct and complete when filed with the appropriate officer merely due to inadvertence on the part of the person filing the statement." *Welch v. Johnson,* 147 Ill.2d 40, 51, 588 N.E.2d 1119, 1124 (1992). As the court observed, "In the last analysis, we are not unmindful that the provisions of the Election Code are designed to protect the integrity of the electoral process. [citations] Ultimately, however, we believe that access to a place on the ballot is a substantial right not lightly to be denied," citing *Williams v. Butler* (1976), 35 Ill.App.3d 532, 536, 341 N.E.2d 394. *Welsh,* 147 Ill.2d 40, 56, 588 N.E.2d 1119, 1126.

In *Crudup v. Sims,* 292 Ill.App.3d 1075, 686 N.E.2d 714 (1997), the court extended the holding of *Welch,* holding that a candidate's name cannot be ordered off the ballot even where the candidate has *willfully* filed a false statement of economic interests, as the General Assembly had not provided for such a sanction.

However, neither *Welsh* nor *Crudup* involved the filing of a false and/or an incomplete *receipt* for a statement of economic interest.

14. The Electoral Board finds that the factual allegations in the present case are more akin to two other cases involving the alleged failure to sufficiently and accurately identify the office sought on the candidate's statement of economic interests. In *Jones v. Municipal Officers Electoral Board,* 112 Ill.App.3d 926, 446 N.E.2d 256 (1st Dist. 1983), a case relied upon here by the Objector, a candidate for an aldermanic election filed a statement of economic interests which failed to designate the office for which the statement was filed beyond the words "3rd Ward." The appellate court found the candidate's statement in violation of the Election Code. In doing so, the court noted that section 4A-104 of the Ethics Act, in directory terms, requires candidates to reveal the office to which they seek election. Reading that provision together with section 10-5 of the Election Code, the court found that the latter, in mandatory terms, required a candidate to file a statement of economic interests "in relation to his candidacy," or, in other words, a statement including the designation of the office sought by the candidate. The court concluded that removal from the ballot was the only possible remedy for the taint upon the nomination process caused by the candidate's direct violation of the Election Code.

15. In *Requena v. Cook County Officers Electoral Bd.*, 295 Ill.App.3d 728, 692 N.E.2d 1217 (1st Dist.), the candidate filed nomination papers for a circuit court judicial vacancy primary, including a receipt for the statement of economic interest filed with the Secretary of State. The candidate stated on the statement and corresponding receipt that she was filing for the office of "Circuit Court of Cook County." The electoral board found that the candidate did not adequately

designate the office she sought on her statement of economic interests, as she failed to specify which of the 23 judgeships on the circuit court of Cook County she sought. In overruling the electoral board decision, the *Requena* court noted its disagreement with the holding in *Jones*, stating, "we differ from the *Jones* court as to what sanction is appropriate for such an error in a statement of economic interests." *Requena*, 295 Ill.App.3d 728,*732. "In light of more recent case law on the subject of sanctions, we find that the sanction in *Jones,* removal from the ballot, is not appropriate in the present situation," citing *Welch v. Johnson.* Id.

Examining the provisions of the Election Code providing that nomination papers are invalid if the candidate fails to file a statement of economic interests as required in the Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers, the *Requena* court concluded that this section refers to and is applicable only where there is a complete failure to file such a statement, and does not refer to the filing of a statement that is untrue, incorrect or incomplete. Examining also the civil and criminal penalties of the Ethics Act, the court concluded that a reading of the plain language of these statutes indicates that removal from the ballot is not a permissible sanction for the filing of a statement of economic interest that is not true, correct and complete when filed with the appropriate officer due to inadvertence or mistake on the part of the person filing the statement. "The existence of an implied sanction of removal from the ballot has been expressly rejected by the courts in *Welch* and *Crudup,* and it is inconsistent with the plain language of the statutes and the basic principles of statutory construction. *** We will not impose a sanction of disqualification for an inadvertent mistake such as the one in the present case without a clear indication from the General Assembly that this is the appropriate penalty." *Requena*, 295 Ill.App.3d at 733.

16. Under the rationale articulated in the *Welsh*, *Crudup* and *Requena* cases, the Electoral Board cannot impose a sanction of disqualification from the ballot when a candidate fails to accurately describe on his or her statement of economic interest the office for which he is a candidate. The Electoral Board finds that the same logic applies here to the Candidate's receipt for his Statement of Economic Interests.

17. Moreover, the Electoral Board is reluctant to disqualify the Candidate from the ballot when he merely used and relied upon the receipt prepared and provided by the Illinois Secretary of State, the State agency responsible for issuing such receipts.

18. Objector argues that the Candidate must strictly comply with the statute and that "substantial compliance" with the statute is not enough, citing the *Jones* case above, as well as *Powell v. East St. Louis Electoral Bd.*, 337 Ill.App.3d 334, 785 N.E.2d 1014 (5th Dist. 2003) and *DeFabio v. Gummersheimer*, 192 Ill.2d 63, 733 N.E.2d 1241 (2000). However, it cannot be said that a receipt that does not identify the office, position or unit of government for which the statement relates

fails to strictly comply with the statute when the statute itself does not require that the receipt contain such information. The Candidate's receipt reflects that his statement was filed as a "Candidate." There is no evidence that the Candidate's receipt fails to strictly comply with the statute.

19. For the reasons above, the Electoral Board finds that the Objections are overruled and that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED, that the Objections of FELIX CARDONA, JR. to the Nomination papers of PEDRO DE JESUS, JR., candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 39th Representative District, State of Illinois are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of PEDRO DE JESUS, JR., candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 39th Representative District, State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 20th day of January, 2004.

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.

2003

OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

December 8, 2003

PEDRO DE JESUS, JR.
2513 NORTH WASHTENAW
CHICAGO, ILLINOIS 60647

Dear Sir or Madam:

Please accept this receipt as acknowledgment that our office has received and filed your Statement of Economic Interests pursuant to the Illinois Governmental Ethics Act. Your statement was filed on December 8, 2003 for the following office:

CANDIDATE

Index Department
Public Records
111 East Monroe
Springfield, Illinois 62756

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

SECOND DIVISION
FEBRUARY 26, 2004

No. 1-04-0255

FELIX CARDONA, JR., Petitioner-Appellant, v. BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, et al., Respondents-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 04 COEL 000003 The Honorable Marsha D. Hayes, Judge Presiding.

JUSTICE GARCIA delivered the opinion of the Court:

Pedro De Jesus, Jr. (Candidate) filed nomination papers with the Illinois State Board of Elections for nomination of the Democratic Party to the office of representative in the General Assembly for the 39th Representative District. The Candidate filed a statement of economic interest (Statement) with the Secretary of State. The Secretary of State generated a receipt for the Statement (Receipt), which the Candidate filed with his nomination papers. In salient part, the Receipt states, "Your statement was filed on December 8, 2003 for the following office: CANDIDATE[.]" Felix Cardona, Jr. (Objector) filed an objection with the Board of Election Commissioners of the City of Chicago (Board) alleging that the Candidate's name should not be printed on the ballot for the March 16, 2004 primary election because the

Receipt filed with the Board did not identify the office he is seeking. The Board overruled the objection and the circuit court affirmed the Board's order.

ANALYSIS

The Board is charged with "the formalities of ascertaining whether a receipt for filing a statement of economic interests has been filed together with the nominating papers" (Troutman v. Keys, 156 Ill. App. 3d 247, 252, 509 N.E.2d 453 (1987)), and therefore, we will give deference to its interpretation of the provisions of the Election Code. See Bonaguro v. County Officers Electoral Board, 158 Ill. 2d 391, 398, 634 N.E.2d 712 (1994). Because this case involves an examination of the legal effect of a given set of facts--whether the information contained in the Receipt filed by the Candidate complies with the requirements of the Election Code--the Board's determination is best considered a mixed question of fact and law. For mixed questions of fact and law, our Supreme Court has held that a clearly erroneous standard of review applies. See City of Belvidere v. Illinois State Labor Relations Board, 181 Ill. 2d 191, 205, 692 N.E.2d 295 (1998). Accordingly, we will not reverse the Board's decision unless it is clearly erroneous. Belvidere, 181 Ill. 2d at 205.

This case hinges on the content of the Receipt filed with the Board. The parties do not dispute that a Statement was timely filed or that the Candidate filed a Receipt with the proper office. The Objector contends that the Candidate was

required to identify the office he is seeking on the Receipt and that the appropriate sanction for this alleged error is the removal of the Candidate's name from the March 16, 2004 primary election ballot.

In interpreting the Election Code in ruling on the objection, the Board found: "Neither the Illinois Governmental Ethics Act nor the Election Code prescribes the contents of the receipt to be issued by the receiving officer upon the filing of a statement of economic interests." The Board also noted its reluctance "to disqualify the Candidate from the ballot when he merely used and relied upon the receipt prepared and provided by the Illinois Secretary of State, the State agency responsible for issuing such receipts." The Board further noted, "it cannot be said that a receipt that does not identify the office, position or unit of government for which the statement relates fails to strictly comply with the statute when the statute itself does not require that the receipt contain such information."

Under the plain language of the Election Code, "[t]he nomination of all candidates for members of the General Assembly by all political parties *** shall be made in the manner provided in this article 8 and not otherwise." 10 ILCS 5/8-1 (West 2002). Section 8-8 provides the specific format for a petition for nomination to the General Assembly: the candidate's petition shall state, "[the candidate] has filed a statement of economic interests as required by the Illinois Governmental Ethics Act [5

ILCS 420/1-101 et seq. (West 2002)]." 10 ILCS 5/8-8 (West 2002). Although it appears the Board implicitly accepted the Objector's position that a receipt of the filing of the statement of economic interest is required to be filed with "the Candidate's Nomination Papers when such documents were filed with the Cook County Clerk[,]" the Candidate contends otherwise. The Candidate states in his brief: "There is no language in Section 8-8 that requires a candidate [for the General Assembly] to file a [statement of economic interest] receipt...." Because we decide this case on the narrower issue of the sufficiency of the receipt actually filed, we need not resolve whether article 8 requires the filing of a receipt in this case.[1]

The Objector claims that 10 ILCS 5/7-12 (West 2002) is applicable in this case and requires the candidate to file a receipt. Even if article 7 applies to the nomination of members for the General Assembly, as the Election Board found, nothing in article 7 prescribes the contents for a receipt to be valid. 10 ILCS 5/7-1 et seq. (West 2002). More to the point, nothing in articles 7 or 8 prescribes that a receipt must contain a specific description of the office the candidate is seeking. 10 ILCS 5/7-1 et seq; 5/8-1 et seq (West 2002).

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[1] But see section 17-1 of article 8 pertaining to vacancies. ("The resolution to fill the vacancy shall be accompanied by a Statement of Candidacy, *** and a receipt indicating such nominee has filed a statement of economic interests as required by the Illinois Governmental Ethics Act.") 10 ILCS 5/8-17.1(4) (West 2002).

The Objector cites to a number of cases in an attempt to support his contention that the office must be included on the Receipt. However, not one of the cases cited deals with sufficiency of the contents of the Receipt. In Jones v. Municipal Officers Electoral Board, 112 Ill. App. 3d 926, 446 N.E.2d 256 (1983), the issue was whether the candidate sufficiently identified the office sought in his statement of economic interest; in Welch v. Johnson, 147 Ill. 2d 40, 588 N.E.2d 1119 (1992), the issue was the appropriate sanction for filing an inadvertently untrue, inaccurate, or incomplete statement of economic interest; in Crudup v. Sims, 292 Ill. App. 3d 1075, 686 N.E.2d 714 (1997), the issue was whether a candidate could be removed from the ballot for filing an allegedly false statement of economic interest; in Requena v. Cook County Officers Electoral Board, 295 Ill. App. 3d 728, 733-34, 692 N.E.2d 1217 (1998), the issue was the appropriate sanction for failing to adequately identify the office sought on the candidate's statement of economic interest; in Miceli v. Lavelle, 114 Ill. App. 3d 311, 316, 448 N.E.2d 989 (1983), the issue was whether the failure to file the statement of economic interest within the time period provided in the Election Code was fatal to the candidate; in Troutman, 156 Ill. App. 3d at 252-53, the issue was whether the election board had jurisdiction to adjudicate a challenge to the accuracy of the candidate's statement of

economic interest or whether the circuit court had original jurisdiction.

The two cases that deal directly with the receipt for the statement of economic interest have no bearing on the facts in the instant case. In Powell v. East St. Louis Electoral Board, 337 Ill. App. 3d 334, 337-38, 785 N.E.2d 1014 (2003), the issue was whether the absence of a time-stamped date on the receipt of filing of the statement of economic interest was fatal to the candidates; in Bolger v. Electoral Board of the City of McHenry, 210 Ill. App. 3d 958, 960-61, 569 N.E.2d 628 (1991), the issue was whether the failure to file the receipt of filing of the statement of economic interest with the appropriate office was fatal to the candidate.

At oral argument, the Objector claimed that Bryant v. Cook County Electoral Board, 195 Ill. App. 3d 556, 553 N.E.2d 25 (1990), decided a receipt issue and supported his position. Despite the Objector's contention, Bryant is of no more support to the Objector than the other cases he cited. In Bryant, the issue was the adequacy of the description of the political office the candidate was seeking as set forth in the candidate's statement of economic interest. Bryant, 195 Ill. App. 3d at 559. In Bryant, we never addressed the adequacy of the receipt filed with the nominating petitions, as we have here.

CONCLUSION

For all of the foregoing reasons, we agree with the Board that nothing in the Election Code requires the Receipt filed with the nominating petitions identify the office the candidate is seeking. We, therefore, affirm the Board's order.

Affirmed.

WOLFSON, P.J., and CAHILL, J., concur.

APPEAL TO THE ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY
NO. 1-04-0255

FELIX CARDONA, JR.,	)	On Motion for Direct Appeal
Petitioner-Appellant,	)	Appeal to the Circuit Court
v.	)	of Cook County, County Department
	)	County Division
BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO,	)	
Respondents-Appellees.	)	Honorable Marsha D. Hayes
	)	Judge Presiding
	)	No. 04 COEL 000003

O R D E R

This cause coming on to be heard on the Petitioner-Appellant's Motion for Expedited Appeal, the court being advised in the premises;

IT IS HEREBY ORDERED:

1. The Motion for Expedited Appeal is granted/~~denied~~;

2. ~~If granted,~~ The Petitioner-Appellant's brief is due on or before February 6, 2004. Appellee's response brief is due 2/13/04 ~~within seven (7) days after the filing of the Appellant's Brief, thereafter~~ with Appellant waiving the filing of a Reply Brief;

3. Appellant is granted/~~denied~~ the right to file a short record as an appendix to the Brief ~~with the entire Record to be filed by February 6, 2004, or as soon as the Clerk of the Court prepares same.~~

4. The Motion to enjoin the printing or distribution of the referendum ballots until further Order of this Court is ~~granted~~/denied.

5. The request for oral argument on an expedited basis is taken under consideration.

Warren D Wilson
JUSTICE

ORDER ENTERED

FEB – 4 2003

APPELLATE COURT, FIRST DISTRICT

JUSTICE

JUSTICE

Thomas A. Jaconetty
33 N. LaSalle, Suite 2500
Chicago, Illinois 60602
312/853-0266

Entered: _____

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ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Cardona

Petitioner, Objector

v.

Board of Election Comm, et al

Respondent, Candidate

No. 04 CO EL 03

ORDER

This cause coming on to be heard on the Pet for Judicial Review, all parties present and the Court hearing argument:

It is ORDERED as follows:

1. The decision of the Electoral Board is affirmed
2. The Board of Election Commissioners shall not send out ballots in this race is stayed for 7 days.
3. This is a final and appealable order.

Atty. No.: 11356

Name: Thomas A. Jacoretty

Atty. for: Petitioner-Objector

Address: 33 No LaSalle #2500

City/State/Zip: Chgo IL

Telephone: 312-853-0266

ENTER:

ENTERED

FEB 03 2004

JUDGE

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS