BCCON-WC

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

Objections of: MALVINA R. HAZARD	)
	)
To the Nomination	)
Papers of: DANNY CARBOL	)
	) No. 04-EB-WC-22
Candidate for the office of Ward Committeeman for	) [rel. 04-EB-WC-23]
the 19th Ward of the City of Chicago, Republican	)
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 MALVINA R. HAZARD ("Objector") to the nomination papers ("Nomination Papers") of DANNY CARBOL, candidate for election to the office of Ward Committeeman for the 19th Ward of the City of Chicago, Republican Party ("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 BARBARA GOODMAN 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, MALVINA R. HAZARD, by her attorney; and the Candidate, DANNY CARBOL, by his attorney.

7. The Hearing Examiner ordered that an examination of the registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the records examination.

9. The Candidate or his duly authorized representative(s) was present during the examination of the registration records.

10. The Objector or her duly authorized representative(s) was present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

12. The Electoral Board has considered all evidence and arguments tendered by the parties.

13. The Electoral Board finds that, following the records examination:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 512;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 590;

    c. The number of signatures deemed invalid because of objections sustained total 84;

    d. The remaining number of signatures deemed valid total 506;

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is below the minimum number of valid signatures required by law to be placed

upon the official ballot as a candidate for election to the office of Ward Committeeman for the 19th Ward of the City of Chicago, Republican Party.

15. At an evidentiary hearing conducted in this matter, the Candidate submitted eighteen documents, each entitled "Affidavit." The "Affidavits" were not notarized but rather contained a certification under Section 1-109 of the Code of Civil Procedure. Objector objected to the receipt of the Affidavits into evidence as they were not notarized and, as such, were not affidavits. Objector noted that these documents violated Rule 8 that states that "properly executed" affidavits would be considered. The Objector further argued that these documents violated the general rule in election law favoring notarized documents. The Hearing Examiner found that the documents cannot be used as affidavits; therefore, they were not considered for the truth of the information provided therein. Rather, the Hearing Examiner found that the documents could be used as handwriting exemplars and where a sufficient link could be established between the signature on the petition and the signature or signatures on the "Affidavit" and the registration record, the conclusion could be drawn that the signatures were the genuine signatures of the registered voters who purported to have signed the petition. In those instances, the clerks' finding was changed from "sustained" to "overruled." The Hearing Examiner ruled that by the end of the evidentiary hearing, the Candidate had thus rehabilitated 13 signatures, leaving the Candidate with 519 valid signatures, 7 more than the minimum requirement. Accordingly, the Hearing Examiner has recommended that the Objector's petition be overruled and that the Candidate's nominating papers be deemed valid.

16. Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109) generally allows pleadings, affidavits, or other documents to be filed in any court of the State of Illinois to be verified by certification in lieu of an affidavit. The certification language is prescribed by statute as follows: "Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true." The statute provides that "any pleading, affidavit or other document certified in accordance with this section may be used in the same manner and with the same force and effect as those subscribed and sworn to under oath." Any person who makes a false statement in any pleading, affidavit or other document certified by such person in accordance with this Section is guilty of a Class 3 felony. This is equivalent to the penalty for perjury for making false statements under oath in an affidavit. See, e.g., *People v. McClain*, 128 Ill.2d 500, 539 N.E.2d 1247 (1989) (document certified pursuant to Section 1-109 of the Code of Civil Procedure was the equivalent of swearing under oath and clearly subjects the person executing the verification to penalties for perjury).

17. Because a verification by certification under Section 1-109 subjects the person making it to the same penalties for making a false statement as if made on an

affidavit under oath, the Electoral Board finds that such certifications properly executed may be accepted in lieu of a sworn affidavit for purposes of electoral board proceedings. Accordingly, the Hearing Examiner in this case could have accepted and admitted such certified documents in evidence and considered them as evidence.

18. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination and evidentiary hearing exceeds the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 19th Ward of the City of Chicago, Republican Party.

19. The Electoral Board finds, therefore, that of the Objector's Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

20. For the reasons stated above, the Electoral Board finds that the Nomination Papers of DANNY CARBOL are valid.

21. The Electoral Board further finds that there is another set of objections filed against the Candidate's Nomination Papers in case number 04-EB-WC-23 but that the objections in that case have been overruled and the Candidate's Nomination Papers have been declared valid.

IT IS THEREFORE ORDERED that the Objections of MALVINA R. HAZARD to the Nomination Papers of DANNY CARBOL, candidate for election to the office of Ward Committeeman for the 19th Ward of the City of Chicago, Republican Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of DANNY CARBOL, candidate for election to the office of Ward Committeeman for the 19th Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 30th day of January 2004.

Theresa M. Petrone, Commissioner

Richard A. Cowen, Commissioner

CONCURRING: I concur with the result reached by my other two Commissioners but I respectfully dissent with the findings in paragraphs 16 and 17 above as I do not believe that such verifications by certification should be accepted in lieu of sworn affidavits in all instances.

Langdon D. Neal, Chairman

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.