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

Objections of: LOUISE TATUM	)
	)
To the Nomination	)
Papers of: JESSE J. EVANS	)
	) No. 04-EB-WC-33
Candidate for the office of	)
Ward Committeeman for the 21st Ward of the City of	)
Chicago, 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 LOUISE TATUM ("Objector") to the nomination papers ("Nomination Papers") of JESSE J. EVANS, candidate for election to the office of Ward Committeeman for the 21st Ward of the City of Chicago, Democratic 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 PETER S. FARACI 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, LOUISE TATUM, by her attorney; and the Candidate, JESSE J. EVANS, by his attorney.

7. The Candidate filed a motion to strike and dismiss the Objections to the extent that they alleged that the Candidate was not qualified for the office of Ward Committeeman of the 21st Ward because he had been convicted of a felony and that he was disqualified by virtue of Section 29-15 of the Election Code (10 ILCS 5/29-15) and Section 3.1-10-5 of the Illinois Municipal Code (65 ILCS 5/3.1-10-5).

8. Section 29-15 of the Election Code (10 ILCS 5/29-15) states that, "Any person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended, shall thereafter be prohibited from holding any office of honor, trust, or profit, unless such person is again restored to such rights by the terms of a pardon for the offense, or otherwise according to law."

9. The Electoral Board finds that even if Section 29-15 of the Election Code did apply to the office of ward committeeman, the case of *Coles v. Ryan*, 91 Ill.App.3d 382, 414 N.E.2d 932 (2nd Dist. 1980), is controlling and Section 29-15 cannot constitutionally be applied to bar persons from holding or seeking to hold legislatively created offices, such as ward committeeman. Moreover, there is no allegation or evidence tending to show that the Candidate's right to hold office was not otherwise restored according to law.

10. The Electoral Board finds, therefore, that Section 29-15 of the Election Code cannot be applied to bar the Candidate from being a candidate for the office of Ward Committeeman for the 5th Ward, Republican Party, due to his prior convictions.

11. The Electoral Board finds that Section 3.1-10-5-5(b) of the Illinois Municipal Code would likewise not apply to the Candidate's candidacy because that section, by its own terms, applies only to "elective municipal office." The position of ward committeeman is not an elective *municipal* office. See, for example, *People v. Brady*, 223 Ill.App. 95 (First Dist. 1921), which held that a "public office" is one of a public nature involving the exercise of a governmental function or some portion of the sovereignty of the state. *Brady* also held that "They [committeeman] in no way represent the State or any political division thereof, and cannot be classified as belonging to either the legislative, executive or judicial departments of the State. They represent only a political party. *** Such committees are not, therefore, officers of the State, but are the representatives of voluntary associations." Therefore, political committeemen are not public officers. Accord, see *People v. Litsinger*, 223 Ill.App.103, (1921) (the position of

ward committeeman of a political party is not an "office" the title to which can be tried by an information in the nature of a quo warranto); *Kell v. Kramer*, 328 Ill. 512, 160 N.E. 60 (1928) (political party committeemen are not public officers required to give bond or take oath, but represent, and are accountable only to, members of political parties); *McCarthy v. Streit*, 182 Ill.App.3d 1026, 538 N.E.2d 873 (1st Dist. 1989) (township committeemen are not public officers and are only accountable to the members of the political parties, citing *Kramer*). Therefore, neither the Municipal Code nor the case law decided concerning operation of Section 3.1-10-5-5(b) (see, e.g., *Pappas v. Calumet City Municipal Officers Electoral Board,* 681 N.E.2d 589 (1st Dist. 1997)) apply to prevent the Candidate from holding the position of ward committeeman. Even assuming that Section 3.1-10-5(b) did apply to the position of ward committeeman, the circuit court in *Medrano v. Chicago Electoral Board*, 02 CH 1978 (Cir.Ct. Cook Cty. 2002) found that the statute cannot be constitutionally applied.

12. Therefore, the Electoral Board overrules the Objections to the extent that they seek to disqualify the Candidate for a prior felony conviction.

13. The Candidate also filed a motion to strike and dismiss the Objector's petition on the grounds that the Objector's petition allegedly was not properly verified before a notary public. However, Section 10-8 does not require specifically that the objector's petition be signed or verified. *Powell v. Lang*, 95-EB-ALD-183, CBEC, (January 28, 1995). Therefore, the Electoral Board denies the Candidate's motion to strike and dismiss the Objector's petition on the grounds that it was not properly verified.

14. 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.

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

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

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

18. 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.

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

20. The results of the records examination reflect that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 1,061;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,346;

    c. The number of signatures deemed invalid because of objections sustained total 371;

    d. The remaining number of signatures deemed valid total 975.

21. Following the records examination, the Candidate requested an evidentiary hearing to present 58 affidavits purportedly of persons who signed his petition. However, because the Candidate was 86 signatures short of the statutory minimum signature requirement, the Hearing Examiner declined to conduct an evidentiary inasmuch as even if all 58 affidavits resulted in the restoration of valid signatures, the Candidate still would not have a sufficient number of valid signatures.

22. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is fewer than 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 21st Ward of the City of Chicago, Democratic Party.

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

24. For the reasons stated above, the Electoral Board finds that the Nomination Papers of JESSE J. EVANS are not valid.

IT IS THEREFORE ORDERED that the Objections of LOUISE TATUM to the Nomination Papers of JESSE J. EVANS, candidate for election to the office of Ward Committeeman for the 21st Ward of the City of Chicago, Democratic Party, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of JESSE J. EVANS, candidate for election to the office of Ward Committeeman for the 21st Ward of the City of Chicago, Democratic Party, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 12th day of February, 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.