NBCON-RGA

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

Objections of: ANTHONY SUTOR JR.	)
	)
To the Nomination	)
Papers of: EDWARD J. ACEVEDO	)
	) No. 06-EB-RGA-04
Candidate for the office of Representative of the 2nd	)
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 ANTHONY SUTOR JR. ("Objector") to the nomination papers ("Nomination Papers") of EDWARD J. ACEVEDO, candidate for the nomination of the Democratic Party to the office of Representative in the General Assembly for the 2nd Representative District, State of Illinois ("Candidate"), having convened on January 3, 2006, at 10:00 a.m., in the Conference Room, Eighth Floor, 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 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 3, 2006 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner William P. Jones 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, ANTHONY SUTOR JR., by his attorney; and the Candidate, EDWARD J. ACEVEDO, by his attorneys.

7. The Candidate filed a Motion to Strike and Dismiss the Objector's petition, the Objector filed this response to said motion and the Candidate file his reply memorandum in support of his Motion to Strike.

8. Paragraph 2 of the Objections alleges that, "Certain Petition sheets were 'Round Tabled', other Petition sheets are signed by non-registered voters, and other Petition sheets were signed by voters outside the Second Representative District of the State of Illinois." The Hearing Examiner granted the Candidate's Motion to Strike and Dismiss paragraph 2 of the Objector's Petition in that it wholly fails to comply with the requirement of Section 10-8 of the Election Code that provides in relevant part that the objector's petition "shall state fully the nature of the objections to the... nomination pages...." 10 ILCS 5/10-8. In support thereof, the Hearing Examiner cites *Pochie v. Cook County Officers Electoral Board*, 289 Ill.App.3d 585, 682 N.E.2d 258 (1st Dist. 1997) and *Ligas Martinez*, 95-EB-ALD-134 (January 17, 1995). The Hearing Examiner concluded that paragraph 2 of the Objector's Petition does not fully apprise the Candidate of the source or sources of any alleged defects whereby the Candidate could affirmatively defend against these objections.

9. Paragraph 1 of the Objections alleges that, "the Statement of Candidacy signed by Edward J. Acevedo under oath states that he resides and is a registered voter at 2243 South Oakley, Chicago, IL. However, Mr. Acevedo actually resides at 2347 West 24th Place, Chicago, IL. Further, according to the State Board of Elections Mr. Acevedo is not registered to vote at 2243 South Oakley, Chicago, IL, instead he is registered to vote from 2347 West 24th Place, Chicago, IL. Mr. Acevedo committed outright perjury on the document."

10. The Hearing Examiner granted the Candidate's Motion to Strike and Dismiss paragraph 1 of the Objector's Petition, concluding that under the holding in *Henderson vs. Miller*, 228 Ill.App.3d 260, 592 N.E.2d 570 (First Dist. 1992), the form of the statement of candidacy prescribed by Section 7-10 of the Election Code does not require that a candidate be registered to vote at the residence address stated on his/her statement of candidacy so long as the candidate is registered to vote at some address within the district in which he seeks to be nominated or elected.

11. This matter originally came before the Electoral Board on January 13, 2006 to consider the January 11, 2006 report and recommendations of the Hearing Examiner. The Electoral Board agreed with the Hearing Examiner's findings and

conclusions of law with regard to the matters considered and ruled upon by the Hearing Examiner, except that the Electoral Board found that the Hearing Examiner may have overlooked, but certainly did not rule upon, the allegation in paragraph 1 of the Objector's Petition alleging that the Candidate did not, in fact, reside at 2243 South Oakley, Chicago, Illinois, and as stated on the Candidate's Statement of Candidacy. Accordingly, the Electoral Board remanded the case back to the Hearing Examiner on January 13, 2006 for further proceedings on the sole objection whether the Candidate does, in fact, reside at 2243 South Oakley, Chicago, Illinois as stated on the Candidate's Statement of Candidacy, or whether such statement is false.

12. On January 16, 2006, the Hearing Examiner reconvened proceedings in this matter. The Objector requested the issuance of five subpoenas relative to the sole issue of residency of the Candidate. Two of the subpoenas were to be issued and served upon individuals seeking their personal appearance and live testimony. Three subpoenas were issued to telephone, electric, and natural gas utility companies seeking their records only. On January 17, 2006 Objector sought and was given leave to issue and serve a sixth subpoena, to be served upon the City of Chicago Police Department. On January 18, 2006 Objector filed his "Amended Subpoena Information" seeking to correct the addresses of the two individuals whose personal appearance was sought.

13. On January 20, 2006, the Hearing Examiner conducted an evidentiary hearing on the sole factual issue of whether the Candidate resides at 2243 South Oakley, Chicago, Illinois. At this hearing, the following evidence was presented:

A. The Objector called four witnesses in his case-in-chief, including the Candidate who was examined as an adverse witness. Two of the four witnesses were individuals who testified concerning a 24-hour continuous surveillance that they jointly conducted of the building located at 2243 South Oakley, Chicago, Illinois from the period beginning December 7, 2005 through January 19, 2006. In summary, these two witnesses testified that they never observed the Candidate at 2243 South Oakley during the period of their surveillance. The fourth witness called by the Objector was an attorney who testified regarding his observations when he was at the Oakley Boulevard address on only one night, January 16, 2006 for about 7-8 minutes. He too testified that he did not observe the Candidate at the Oakley Boulevard address. The Objector identified and introduced three documents or which were admitted into evidence.

B. The Candidate also testified in his own case, along with the landlord of the building at 2243 South Oakley. In summary, the Candidate testified that he has resided at 2243 South Oakley for about 2 years. His testimony was supported by the testimony of his landlord at that address. The Candidate also introduced in evidence a copy of a written lease for the property located at 2243 South Oakley Boulevard, along with copies of

canceled rent checks from June 1, 2004 through December 1, 2005, utility bills and various financial records addressed to him and received at 2243 South Oakley Boulevard, Chicago, Illinois.

C. A full synopsis of the testimony and evidence presented by both the Objector and the Candidate is contained in the Hearing Examiner's findings of fact and recommendations dated January 25, 2006, which is in the Electoral Board's official file in this matter.

14. At the conclusion of the January 20, 2006 hearing, the Objector moved for a continuance of the hearing because no response to the subpoenas for business records of the utilities and the Chicago Police Department had been received and the two individuals who had been unable to appear. Over the Candidate's objection, the Hearing Examiner continued the hearing to January 24, 2006. At the January 24, 2006, the Objector stated that he would not be calling the two individuals whose personal testimony had been subpoenaed. Objector further stated that there still had been no response to the subpoenas for business records and asked for a further continuance. The Hearing Examiner denied the request for a continuance of the evidentiary hearing, the proofs were closed and the parties delivered their closing statements.

15. Based upon the testimony of the witnesses and the documentary evidence presented by the parties, the Hearing Examiner found that the Objector failed to meet his burden of proving by a preponderance of the evidence that the Candidate did not reside at 2243 South Oakley, Chicago, Illinois. Therefore, the Hearing Examiner found that the Candidate's residence address in December 2005 was, and has been since March, 2004, the 2243 South Oakley address and that the Candidate's Statement of Candidacy and his petitions for nomination are true and correct.

16. The Hearing Examiner has recommended:

A. That the Electoral Board find that the Candidate resides at 2243 South Oakley, Chicago, Illinois;

B. That the Electoral Board find that the Candidate's Statement of Candidacy and Nomination Papers which states the address of 2243 South Oakley, Chicago, Illinois, is true and correct;

C. That the Electoral Board overrule any remaining objections in the Objector's petition;

D. That the Candidate's name be placed on the ballot for nomination for the office of Representative in the General Assembly, 2nd Representative District of the State of Illinois.

17. The Electoral Board hereby adopts the Hearing Examiner's findings and conclusions of law, overrules the Objections and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of ANTHONY SUTOR JR. to the Nomination papers of EDWARD J. ACEVEDO, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 2nd Representative District, State of Illinois are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of EDWARD J. ACEVEDO, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 2nd Representative District, State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 21, 2006.

Dated: Chicago, Illinois, this 30th day of January, 2006.

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.