NBCON-ALD

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

Objections of: HAZEL HAYNES	)	
	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-017**
Papers of: RICHARD L. ANDERSON	)	**(rel. 07-EB-ALD-152)**
	)	
Candidate for the office of	)	
Alderman of the Fifteenth Ward,	)	
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 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 HAZEL HAYNES ("Objector") to the nomination papers ("Nomination Papers") of RICHARD L. ANDERSON, candidate for the office of Alderman of the Fifteenth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, 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 January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner William Jones 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 Call. The following persons, among others, were present at such hearing; the Objector, HAZEL HAYNES, *pro se*; and the Candidate, RICHARD L. ANDERSON, by counsel.

7. The Objections alleged that the Candidate's Nomination Papers were not securely bound as required by Section 10-4 of the Election Code.

8. Section 10-4 provide that petition sheets shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. Section 10-4 further provides that noncompliance with its provisions "shall" invalidate the signatures on a nominating petition. Specifically, the Code states: "No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Based upon that language which imposes sanctions in the event the provisions of the Code are not complied with, coupled with the use of the word "shall," the requirements of section 10-4 are mandatory rather than directory. *Bendell v. Education Officers Electoral Board for School Dist. 148*, 338 Ill.App.3d 458, 463, 788 N.E.2d 173 (1st Dist. 2003). "Inasmuch as

section 10-4 is mandatory, compliance with its provisions must be strict rather than substantial." (*Id.*)

9. The Candidate's Nomination Papers here contained 29 nominating petition sheets, a Statement of Candidacy and a Statement of Economic Interests receipt. A photograph of the Candidate's Nomination Papers taken by Board staff and marked as Exhibit E truly and accurately depicted the nature of the Candidate's Nomination Papers at the time of filing, according to the Candidate's testimony.

10. The Hearing Examiner found that the Nomination Papers were bound by two metal clips, including one large metal paperclip. The Hearing Examiner concluded as a matter of law based upon the holding in *Bendell, supra*, that the Candidate's Nomination Papers substantially complied with Section 10-4 of the Election Code. Therefore, the Hearing Examiner recommended that the objection be overruled and that the Candidate's Nomination Papers they found valid.

11. In *Bendell*, the evidence was that candidate's 6 to 8 nominating papers were fastened together along one edge by a large paper clip and formed a single series of uniform leaves. The court concluded that candidate's nominating papers were in "book form," and, therefore, in strict compliance with the Code.

> "The uncontroverted evidence is that they were securely fastened because a member of the Board was unable to pull them apart without removing the paper clip. This is a fact-specific case. Obviously, if the record established that the nominating papers were not securely fastened or if they had consisted of 500 pages, for example, and were held together by a single, large paper clip, our decision would be different. However, given the fact that there were only 6 to 8 pages which could not be separated without removing the paper clip, and given the fact that this particular binding did not interfere with preserving the integrity of the petitions and the election process generally, plaintiff's nominating petitions strictly complied with section 10-4. For that reason, we affirm the order of the circuit court. We realize that the trial court held that plaintiff had substantially,

> not strictly, complied with section 10-4. However, we may affirm on any basis appearing in the record.

Bendell, 338 Ill.App.3d at 464.

12. In *Girot v. Keith*, 341 Ill.App.3d 902, 904, 793 N.E.2d 935, 937 (3rd Dist. 2003), reversed on other grounds, 212 Ill.2d 372, 818 N.E.2d 1232 (2004), the Third District of the Illinois Appellate Court reached a far different conclusion, stating that "The purpose of requiring candidates to securely bind and number the petitions is to prevent tampering, thereby preserving not only the integrity of the petitions submitted, but also the election process in general," citing *Jones v. Dodendorf*, 190 Ill.App.3d 557, 562, 546 N.E.2d 92 (1989). The in the court found that these provisions are mandatory, and that failing to comply with even one of them will result in the petitions' invalidation. Where petition pages were merely paper clipped together, the court found that it could not find that the paper clip was a "secure" fastener for the purposes of section 10-4 of the Code. "By its very nature, a paper clip allows the papers it 'fastens' to be pulled apart and rearranged at will, showing no sign of tampering and doing little to assure the continued integrity of the petition package submitted to the electoral official." In regard to the candidate's contention that clipping the pages together amounted to "substantial compliance" under the statute, the court noted that "Courts have found substantial compliance where a candidate attempted to follow the requirements of the statute, but inadvertently failed to meet them fully." 341 Ill.App.3d at 904-905. "There may also be substantial compliance if the purposes for the requirement are satisfied by the candidate's actions." Id. But the court found that the candidate had made no effort to securely bind the pages of his petition in a way that would prevent tampering, stating that "Fastening the pages with a paper clip could not meet the purposes of the statute's requirements." Therefore, the candidate's actions did not constitute substantial compliance with the statute.

13. The *Girot* court also rejected the candidate's argument that there was no need to fasten all of the pages together, since one page of signatures would have been sufficient to meet the requirements to be placed on the ballot. The court reasoned that because the statute prohibits any petition that has been filed from being withdrawn, altered, or added to, were the court to allow the candidate to base his candidacy on only one of the several pages he filed with the city clerk, the petition would be impermissibly altered.

14. In *Jakstas v. Koske*, 352 Ill.App.3d 861, 817 N.E.2d 200 (2nd Dist. 2004), the court held that the Election Code provision, regarding signature sheets for public question referendum petitions being bound securely and numbered consecutively, is mandatory; provision imposes requirements by using "shall" and contains an express statement voiding the petition if the requirements are not fulfilled. Only substantial compliance is needed, as to Election Code provision requiring signature sheets for public question referendum petitions to be bound securely and numbered consecutively. Public question referendum petition for village's general election did not substantially comply with Election Code's requirement that signature sheets be bound securely, where 12 of 60 pages were not bound in any manner when presented to village clerk for filing. Election Code required signature sheets for public question referendum petition for village's general election to be bound securely before petition was filed with village clerk, and thus, the requirement was not satisfied where village clerk, post-filing, put large binder clip on unbound sheets after stamping and photocopying them. Even if using paper clips is considered substantial compliance, a petition in which 20% of the pages are not bound in any manner cannot be in substantial compliance with the statute's requirement that the petition be securely bound.

15. It is the duty of a circuit court to follow the decisions of an appellate court. Decisions of an appellate court are binding precedent on all circuit courts, although not binding upon other appellate districts. When conflicts arise among appellate districts, a circuit court is bound by the decisions of the appellate court of the district in which it sits. *Aleckson v. Village of Round Lake Park*, 176 Ill.2d 82, 679 N.E.2d 1224 (1997). Absent an Illinois Supreme Court decision directly on point, a circuit court should follow the precedent of the appellate court in its district, if such precedent exists; if no precedent exists within the district, the circuit court is to follow the precedent of other districts, and may choose which precedent is most nearly correct if other districts disagree. 14 Ill. Law and Prac. Courts §85; *Hinojosa v. Joslyn Corp.*, 262 Ill. App. 3d 673, 200 Ill. Dec. 207, 635 N.E.2d 546 (1st Dist. 1994); *Jachim v. Townsley*, 249 Ill. App. 3d 878, 619 N.E.2d 1317 (2d Dist. 1993); *Sidwell v. Griggsville Community School Dist. 4*, 208 Ill. App. 3d 296, 566 N.E.2d 838 (4th Dist. 1991).

16. The Electoral Board believes that these same principles apply to administrative agencies such as electoral boards.

17. In this instance and given the facts of the case, the Electoral Board believes that it must follow the precedent of the First District of the Illinois Appellate Court in *Bendell*.

18. The Electoral Board therefore adopts the Hearing Examiner's recommended findings and conclusions of law.

19. For the reasons stated above, the Electoral Board overrules the Objection and finds that the Candidate's Nomination Papers are valid.

20. The Electoral Board has reached a similar result on similar objections in case 07-EB-ALD-152.

IT IS THEREFORE ORDERED that the Objections of HAZEL HAYNES to the Nomination Papers of RICHARD L. ANDERSON, candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of RICHARD L. ANDERSON, candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 12th day of January 2007.

Langdon D. Neal, Chairman

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.