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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-021**
Papers of: SANDRA L. MALLORY	)	**(rel. 07-EB-ALD-151)**
	)	
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 SANDRA L. MALLORY, 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 Joseph Morris 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, by counsel, Michael Kreloff and Dan Johnson-Weinberger; and the Candidate, SANDRA L. MALLORY, by counsel, Robert Anderson.

7. The Objector alleges that the Candidate's description of the office to which she seeks election on her Statement of Economic Interest and the receipt therefore is improper and that as a result the Candidate's Nomination Papers are invalid.

8. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be stricken and dismissed and that the Nomination Papers be found valid.

9. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and

Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

10. For the reasons stated above, the Electoral Board dismisses the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

11. The Electoral Board further finds that there is another objection to the Candidate's Nomination Papers in case 07-EB-ALD-151 in which the Electoral Board has overruled the objections and found the Candidate's Nomination Papers valid.

IT IS THEREFORE ORDERED that the Objections of HAZEL HAYNES, to the Nomination Papers of SANDRA L. MALLORY, candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of SANDRA L. MALLORY, 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 16th 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.

BEFORE
THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 27, 2007, MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER, AND ALDERMAN
IN THE CITY OF CHICAGO

HAZEL HAYNES,	)	
	)	
Objector,	)	
	)	No. 07-EB-ALD-021
vs.	)	
	)	Hearing Examiner Morris
SANDRA L. MALLORY,	)	
	)	
Candidate.	)	

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REPORT OF THE HEARING EXAMINER

To the Board of Election Commissioners of the City of Chicago:

Hearing Examiner JOSEPH A. MORRIS reports as follows:

1. This matter came before the Hearing Examiner, pursuant to notice, for initial hearing on January 2, 2007. The Objector was present by counsel, Michael Kreloff and Daniel Johnson-Weinberger. The Candidate was present by counsel, Robert L. Anderson, and in her proper person. No issue was raised as to sufficiency or timeliness of notice of the objection or of the hearing. Both parties filed written appearances.

2. Without objection, the Candidate's nomination papers for the office of Alderman of the 15th Ward of the City of Chicago were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; the returns of service of process by the Sheriff of Cook County, Illinois, and written waivers were admitted into the record as Group Exhibit C; and the parties' written appearances were admitted into the record

as Group Exhibit D.

3. Each party stated that she was in possession of the Rules of the Electoral Board. Counsel for the Candidate stated that she intended to file a motion to strike and dismiss the objection. A filing, briefing, and hearing schedule was established for the motion to strike and dismiss, under which such a motion was to be filed by the Candidate on or before January 3, 2007, at 5:00 p.m.; a response, if any, was to be filed by the Objector on or before January 4, 2007, at 5:00 pm.; a reply, if any was to be filed by the Candidate on or before January 5, 2007, at 5:00 p.m.; and a hearing on the motion was set for January 8, 2007. The parties agreed that there was no issue as the number or sufficiency of petition signatures, and that no records examination was required.

4. The Candidate filed a timely motion to strike and dismiss. The Objector filed a timely response. A hearing was held on January 8, 2007, at which the Objector was present by counsel and the Candidate was present by counsel and in her proper person.

5. The parties stipulated that the Candidate filed a statement of economic interests with the County Clerk of Cook County; that in that statement she listed the office she seeks merely as "City of Chicago 15th Ward" rather than as "Alderman of the 15th Ward of the City of Chicago"; that a receipt was given by the County Clerk upon the filing of her statement; and that the receipt similarly listed the office sought as "City of Chicago 15th Ward" rather than as "Alderman of the 15th Ward of the City of Chicago." The parties agreed that the only issue presented in the case is whether or not these descriptions of the office are so insufficient as to constitute a failure to file a statement of economic interests in connection with her candidacy, and thus to invalidate her nomination papers.

6. The parties agreed that the question presented in the case is purely a question of law and that there are no questions of fact which must be decided.

7. Accordingly, the parties waived an evidentiary hearing and any further written arguments. The parties made oral statements. The record was closed and the matter was submitted for decision by the Electoral Board.

8. The record shows that the Candidate filed her statement of economic interests with the County Clerk of Cook County on September 13, 2006. (*See* Exhibit to Verified Objector's Petition, which is a certified copy, issued by the County Clerk on December 22, 2006, of the statement of economic interests as filed in his office.) The form includes a line on which the person making the disclosures is instructed to "LIST EACH OFFICE OR POSITION OF EMPLOYMENT FOR WHICH THIS STATEMENT IS FILED". On that line the Candidate wrote, "City of Chicago 15th Ward". A receipt for the statement of economic interests was issued by the County Clerk and was filed by the Candidate with her nomination papers. That receipt similarly identifies the office in connection with which it was filed as "City of Chicago 15th Ward".

9. Section 4A-104 of the Illinois Governmental Ethics Act, 5 ILCS § 420/4A-104, provides, in pertinent part, as follows:

> The statement of economic interests required by this Article to be filed with the county clerk shall be filled in by typewriting or hand printing, shall be verified, dated, and signed by the person making the statement and shall contain substantially the following:
>
> STATEMENT OF ECONOMIC INTERESTS
> (TYPE OR HAND PRINT)
>
> .....
> (Name)
>
> .....
> (each office or position of employment for which this statement is filed).

10. Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5, provides, in pertinent part, as follows:

> Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. If the nomination papers of any candidate and the statement of economic interest of that candidate are not required to be filed with the same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed.

11. The Objector contends that, in light of these statutes, the Candidate has failed to state accurately the office for which her statement of economic interests was filed, and that, accordingly, her nomination papers must be held invalid. The Objector relies primarily for authority upon the decision of the Illinois Appellate Court for the First District in *Jones v. Municipal Officers Electoral Board*, 112 Ill.App.3d 926, 446 N.E.2d 256 (1st Dist. 1983). In that case an aldermanic candidate described the office sought exactly as did the Candidate in the instant case, by listing on his statement of economic interests the number of his ward, but omitting the title of alderman. The *Jones* court held that merely stating the district or jurisdiction, rather than including, as well, the title of the office within the jurisdiction, was inadequate compliance with the law. The requirement was mandatory, the court ruled, and the omission was fatal to the candidacy.

12. The Candidate, in her motion to strike and dismiss, counters that the holding in Jones was effectively, if silently, overruled in *Requena v. Cook County Officers Electoral Board*, 295 Ill.App.3d 728, 692 N.E.2d 1217 (1st Dist. 1998). In *Requena*, a judicial candidate appealed from an order of the Circuit Court of Cook County affirming the county electoral board's decision to

remove her name from the ballot because she did not properly state, on her statement of economic interests, the office that she sought. She had failed to specify which of the 23 judgeships in the county she was running for; instead she wrote in merely "Circuit Court of Cook County" on the relevant line of the statement. The Appellate Court conceded that the phrase, "Circuit Court of Cook County", did not fully indicate what office the plaintiff was seeking. The court, however, disagreed that because of this "inadvertent" mistake that the plaintiff's name must be removed from the ballot. Rather, the *Requena* court invoked the decision of the Illinois Supreme Court in *Welch v. Johnson*, 147 Ill. 2d 40, 588 N.E.2d 1119 (1992), in which that court held 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, where the lack of truthfulness, correctness, or completeness is not willful. The *Requena* court also concluded that the sanctions provided in connection with filings (or failures to file) statements of economic interests are quite limited. The Illinois Governmental Ethics Act punishes those who willfully file false statements. The Election Code provides only that nomination papers are invalid when a candidate fails to file a statement of economic interests at all; if such a statement is filed, then the nomination papers are not to be invalidated on that ground alone, and if the statement of economic interests turns out to be false, untruthful, inaccurate, or incomplete, then redress is to be had in another forum. Because the General Assembly clearly established sanctions for failure to file a statement (invalidation of nomination papers) and for willfully filing a false statement (fines and imprisonment), and did not impose any sanctions for filing an incorrect or incomplete statement, the court reasoned that the General Assembly did not intend any sanction — or at least not an electoral sanction — for an incorrect or incomplete filing. The *Requena* court, therefore, reversed the decision of the trial court and held for the candidate.

13. The Objector, in her response to the motion to strike and dismiss, replies that "[t]his case concerns the interplay between *Jones* ... and *Requena*". She advises: "The Electoral Board now has a choice to make. It can agree with the Candidate that, although it never said so, the *Requena* decision was an unspoken overruling of Jones." She urges upon the Board, however, what she regards as a preferable view, that "*Jones* and *Requena* can be read in harmony — that while a partial or inadequate office designation can be forgiven (*Requena*), a total failure to mention the office in the Statement renders it void (*Jones* ...), and also renders the candidacy void."

14. Without any clarifying or substantive changes in the legislative texts of the Illinois Governmental Ethics Act or the Illinois Election Code, the trend of decisions is unambiguously away from the result in *Jones* and, as the decision in *Welch v. Johnson*, *supra*, makes clear, that trend has reached our State's Supreme Court. In fact, seven years before *Jones* appeared, the Supreme Court had decided *Lewis v. Dunne*, 63 Ill.2d 48, 344 N.E.2d 443 (1976), a case in which a candidate for judicial office failed to make a proper designation on his statement of candidacy of the specific vacant judgeship to which he aspired. The Supreme Court there refused to invalidate a candidacy where the failure to give a complete identification of the office sought occurred in the very nomination papers themselves. How likely, then, is the Supreme Court to sanction the invalidation of a candidacy where the error occurs in a collateral filing with respect to which the relevant statute commands only that the filing be made, not necessarily that it be made perfectly? The result in *Welch v. Johnson* was foreseeable.

15. The trend of decisions has continued in cases such as *Crudup v. Sims*, 292 Ill. App. 3d 1075, 686 N.E.2d 714 (1st Dist. 1997) (where the issues are sharpened in a lively debate between the majority opinion by Justice Hourihane and a concurrence by Justice Hoffman); in *Requena*; and

in what may be the "topper", *Cardona v. Board of Election Commissioners*, 346 Ill.App.3d 342, 805 N.E.2d 360 (1st Dist. 2004), in which the court held that the demands of the Election Code were satisfied when the receipt for the candidate's statement of economic interests identified his filing capacity as — precisely, exactly, and simply — "candidate". The candidate in *Cardona* was seeking the nomination of the Democratic Party for the office of State Representative for the 39th Representative District of Illinois. The receipt for his statement of economic interests mentioned none of that. It described him merely as "candidate". (The statement of the candidate in *Cardona* was filed, and his receipt issued by, the Secretary of State under Section 4A-103 of the Illinois Governmental Ethics Act rather than with and by the county clerk under Section 4A-104, and the relevant provision of the Election Code was Section 7-10 rather than Section 5-10; but the relevant statutory texts were essentially identical to, and the legal issues were otherwise the same as, those involved in the case at bar, save that this case involves both statement and receipt and *Cardona* appeared to involve the receipt alone.)

15. In analyzing the law applicable to this case, it is helpful to pause for a moment to recall what is *not* at issue here. This is not a case involving a complete failure to file a statement of economic interests; *see Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409 (1972). It is not a case about a failure to file a receipt; *see Powell v. East St. Louis Electoral Board*, 337 Ill.App.3d 334, 785 N.E.2d 1014 (5th Dist. 2003). It is not a case about filing the statement late; *see Miceli v. Lavelle*, 114 Ill. App. 3d 311, 448 N.E.2d 989 (1983). Nor is it a case concerning the authority of an electoral board to adjudicate a challenge to the accuracy of a candidate's statement of economic interests; *see Troutman v. Keys*, 156 Ill. App. 3d 247, 509 N.E.2d 453 (1987). It is purely about the sufficiency of the description of an office in papers filed in connection with, but distinct from,

nomination papers in an era when the latitude that the courts will accord to office descriptions, even in nomination papers themselves, is perceptibly growing.

16. This Board has already recognized as much; consider the case of *Delgado v. Popielarz*, 99-EB-ALD-128, CBEC (Feb. 2, 1999), in which the Board upheld the nomination papers of a police officer filing for alderman who identified himself in his statement of economic interests as "Sergeant Chicago Police Department" without mentioning his aldermanic candidacy.

17. The weight of authority holds that a candidate has met his relevant obligations under Section 10-5 of the Election Code when he seasonably lodges a statement of economic interests and he submits the receipt for that filing when he makes a timely filing of his nomination papers. A failure of accuracy or completeness in identifying in the statement or on the receipt the office that he seeks will be deemed inadvertent; the substantive implications of his statement of economic interests and of any willful errors or omissions in it will be considered in other fora. The task of an electoral board in this context is essentially ministerial: Are the candidate's nomination papers accompanied by a receipt showing a timely filing of his statement of economic interests? If so, then the job of the electoral board with respect to the statement of economic interests is done, and any debate about the statement itself must shift elsewhere.

Recommended Findings, Conclusions, and Decision

18. On the bases of a facial examination of the nomination papers, of the Objector's Petition and attachments, of the statements and stipulations of the parties, and of all other proceedings held herein, the Hearing Examiner recommends that the Electoral Board enter the following finding of fact:

The nomination papers filed by the Candidate were accompanied by a receipt showing that the Candidate made a timely filing with the County Clerk of Cook County of a statement of economic interests, and both the statement and the receipt described the filing as made in connection with the office of "City of Chicago 15th Ward".

19. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) The nomination papers filed by the Candidate substantially comply with the requirements of law pertaining to the filing of a receipt showing the timely filing, in connection with her candidacy, of a statement of economic interests.

(b) The Objector's Petition is not well founded, and the relief sought therein should not be granted.

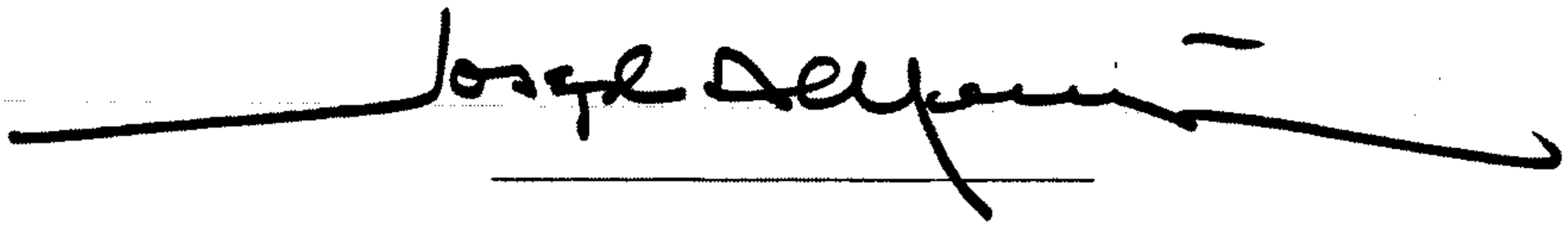
(c) The Candidate's motion to strike and dismiss the Objector's Petition is well founded, and should be granted.

20. The Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Sandra L. Mallory shall appear and shall be printed on the ballot for election to the office of Alderman of the 15th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 27, 2007.

Dated: January 13, 2007.

Respectfully submitted,



JOSEPH A. MORRIS
Hearing Examiner