NBCON-ALD

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

Objections of: ANTHONY SUTOR	)	
	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-058**
Papers of: JOE D. ACEVEDO	)	
	)	
Candidate for the office of	)	
Alderman of the Twenty-fifth 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 ANTHONY SUTOR ("Objector") to the nomination papers ("Nomination Papers") of JOE D. ACEVEDO, candidate for the office of Alderman of the Twenty-fifth 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 Thaddeus Wilson 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, ANTHONY SUTOR, *pro se*; and the Candidate, JOE D. ACEVEDO, by counsel, Michael Kasper.

7. Objector alleges that the Candidate has two "open" voter registrations. Objector claims that the Candidate is deceiving the voters of the 25th Ward and that it is against the law to have two open registrations.

8. The Candidate filed a motion to dismiss the Objector's Petition, arguing that the Objector's Petition was deficient in that it did not contain a prayer for relief, as required by Section 10-8 of the Election Code, and that the Petition failed to state a claim for which relief may be granted.

9. 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 dismissed for failing to state a claim for which relief can be granted and that the Nomination Papers be found valid.

10. 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.

11. 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.

IT IS THEREFORE ORDERED that the Objections of ANTHONY SUTOR to the Nomination Papers of JOE D. ACEVEDO, candidate for election to the office of Alderman of the Twenty-fifth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JOE D. ACEVEDO, candidate for election to the office of Alderman of the Twenty-fifth 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 26th 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.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

**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**

ANTHONY SUTOR,)
)
Objector,)
)
-VS-) Case No. 07-EB-ALD-058
)
JOE D. ACEVEDO,)
)
Candidate.)

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Hearing Examiner's Report and Recommended Decision

This matter first came before the hearing examiner on January 2, 2007. The Objector appeared pro se and the Candidate was represented by attorney Michael J. Kasper. The hearing examiner inquired into the allegations of the Objectors' Petition. Counsel for the Candidate indicated that he would be filing a motion to dismiss the Objector's Petition. A schedule was set for the filing and briefing of the motion to dismiss and a evidentiary hearing date was set in case the motion to dismiss was denied. The matter was continued to January 12, 2007 for hearing on the motion to dismiss.

I. Objections Presented.

The Objector's sole argument is that the Candidate has two open voter registrations. The

Objector requests the removal of Joe D. Acevedo from the ballot because he is deceiving the voters by having 2 open voter registrations.

II. Findings of Facts.

The Candidate's motion to dismiss asserts two grounds for dismissal - - namely, (1) the Objector failed to comply with the mandatory requirements Section 10-8 with respect to objection petitions and (2) the Objector failed to state a claim upon which relief may be granted. After finding the petition to be sufficient, the hearing examiner inquired into the petition as to whether or not it stated a claim upon which relief may be granted.

The Objector stated that he pulled the voter registrations for Joe D. Acevedo and for the address of 2147 W. 19th Street, Chicago, Illinois. The Objector stated that he did not find a registration for a Joe D. Acevedo at 2147 W. 19th Street, Chicago, Illinois but instead found an open registration for a Joseph D. Acevedo at that address. The Objector stated that he found an open registration for a Joe D. Acevedo, Jr. at 2347 W. 24th Place, Chicago, Illinois. The Objector stated that he believed that Joe D. Acevedo, Joe D. Acevedo, Jr. and Joseph D. Acevedo to be one and the same persons.

III. Findings of Law and Legal Analysis.

The Candidate urges in his motion to dismiss that the Objector's Petition is insufficient as a matter of law because the Objector failed to comply with the mandatory requirements of Section 10-8 of the Election Code - - namely, the Objector failed to state his interest in filing the objection to the Candidate's papers. Section 10-8 of the Election Code requires that the objector's petition

SHALL (a) give the objector's name and residence address; (b) state fully the nature of the objections to the certificate of nomination or nomination papers; (c) state the interest of the objector; and (d) state what relief is requested of the electoral board. 10 ILCS 5/10-8. In this case, it is the opinion of the hearing examiner that the Objector complied with the requirements of Section 10-8 and more specifically that he sufficiently stated his interest in filing the objection. The failure of the objector to state his interest in objecting to the candidate's nominating papers on the face of the objection petition violates Section 10-8 of the Election Code and renders the objector's petition void and invalid. Pochie v. Cook County Officers Electoral Board, 289 Ill. App. 3d 585 (1st Dist. 1997). See also, Ortiz v. Nikolic, 95-EB-ALD-118, CBEC January 23, 1995; Ortiz v. Vargas, 95-EB-ALD-120, CBEC, January 23, 1995; Williams v. Kenner, 91-EB-ALD-176, CBEC, January 9, 1991. This requirement is mandatory and not directory. Pochie v. Cook County Officers Electoral Board, 289 Ill. App. 3d 585 (1st Dist. 1997).

In this case, the Objector states that he is a resident of the 25th Ward, that he is the chairman of the 25th Ward Independent Democratic Organization, that he believes the Candidate is deceiving the voters by having two open voter registrations, which the Objector believes to be against the law and is a serious matter. It is the opinion of this hearing examiner that these statements are sufficient to state the Objector's interest in filing his objection to the nomination papers of the Candidate. Consequently, for the reasons stated above and on the record, the Candidate's motion to dismiss will be denied with respect to that argument.

The hearing examiner next addressed the basis for the relief requested by the Objector. The Objector made it clear that he believed the two open registrations were for the same person, despite the fact that they were for different variations of the same name. Further, the hearing examiner finds

no distinction (at least with respect to the issues presented here) between the names Joe D. Acevedo, Joe D. Acevedo, Jr. and Joseph D. Acevedo. And, since the Objector admits that both registration addresses are in the 25th Ward, there is no dispute that the Candidate did not live at an address in the Ward. The Objector did not state in his petition nor did he argue that the Candidate did not live in the Ward, nor that the Candidate did not live at the address listed in his nomination papers, nor did that the Candidate is improperly using a nickname (although briefly raised at the hearing).

The Objector presented two voter registration documents: (1) Card No. 90024FB , Joe D. Acevedo, Jr., 2147 W. 19th Street, Chicago, Illinois, DOB 4-22-53, last four SSN 3699 signed 04/12/98; and (2) Card No. 82159FL, Joseph D. Acevedo, 2147 W. 19th Street, Chicago, Illinois, DOB 04/22/53, last four SSN 3699 signed 09-27-06. The Objector did not present a registration for a Joe D. Acevedo, Jr. at 2347 W. 24th Place, Chicago, Illinois and it would not have changed the decision if he had. The Objector did not present any evidence to suggest that this Candidate lived at an address other than that listed in his nominating petitions when they were circulated.

A candidate need only be a qualified elector of the municipality. The Election Code does not require that a candidate be a voter at his place of residence. The candidate must however reside at the address listed in his nomination papers and said address must be within the ward for which he seeks office. Even if there is a law prohibiting a person from having two open registrations, the Objector has failed to show that this Candidate has two open registrations and the Objector fails to point to any part of the Election Code that would require or even allow the Board to "remove" the Candidate's name from the ballot.

An electoral board's scope of inquiry is limited to the sole issue of whether a challenged petition and papers comply with the provisions of the Election Code. Phelan v. County Officers

Electoral Board, 240 Ill. App. 3d 368, 372-73 (1st Dist. 1992). An electoral board may only exercise the powers conferred upon it by the legislature. Kozel v. State Board of Elections, 126 Ill. 2d 58 (1988). Electoral Boards are creatures of statute endowed with no power beyond what the Election Code enumerates. Reyes v. Bloomingdale Township Electoral Board, 265 Ill. App. 3d 69 (2nd Dist. 1994). An electoral board may not consider a matter that is not properly in the record and does not have authority to raise its own objections sua sponte. Delay v. Board of Election Commissioners of the City of Chicago, 312 Ill. App. 3d 206, 209 (1st Dist. 2000). The Board cannot pass upon objections not specifically raised in the four corners of the Objector's petition and the hearing examiner only addressed issues outside of the petition so as to be clear about the arguments of the pro se Objector. The Objector makes no objection to the nominating papers of the Candidate with respect to form or content. The Objector's petition seeks to address an issue outside of the scope of the Board's authority. Therefore, given the sole issue raised in the Objector's petition, the Objector has failed to state a claim upon which relief may be granted and even if he did, he has failed to prove that this particular Candidate has two open registrations. Consequently, the Candidate's motion to dismiss is granted, and to the extent the Objector's petition states a proper claim, it is overruled.

IV. Recommendation.

In light of the above factual findings and legal analysis and for the reasons stated on the record, it is the recommendation of this hearing examiner that the objections of the Objector, Anthony Sutor, be dismissed, that the nomination papers of the Candidate, Joe D. Acevedo, be declared sufficient as a matter of law and of fact, and that the name of the Candidate, Joe D.

Acevedo, appear and be printed on the ballot for election to the Office of Alderman of the 25th Ward of the City of Chicago to be voted upon at the February 27, 2007 Municipal General Election.

Thaddeus L. Wilson
Hearing Examiner

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