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

Objections of: Timonty J. Raddatz and Gerald J Holst, Jr.	)	
To the Nomination Papers of: John Garrido	)	No.: 11-EB-ALD-036
	)	Related Case: 11-EB-ALD-143
Candidate for the office of Alderman of the 45th 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, Richard A. Cowen, and Marisel A. Hernandez, 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 Timonty J. Raddatz and Gerald J Holst, Jr. ("Objectors") to the nomination papers ("Nomination Papers") of John Garrido, candidate for the office of Alderman of the 45th Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, at 9:00 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 Objectors 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 December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Lynne R. Ostfeld for further hearings and proceedings.

6. The Objectors and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, Timonty J. Raddatz and Gerald J Holst, Jr., by attorney, Thomas A. Jaconetty; the Candidate, John Garrido, by attorney, Russ Stewart.

7. The Objectors allege that the Candidate's Nomination Papers are invalid in that the receipt for the filing of his Statement of Economic Interests filed with his Nomination Papers was for the position of Chicago Police Department and not in relation to his candidacy for Alderman.

8. The Hearing Officer found that the cases of *Requena v Cook County Officers Electoral Board*, 295 Ill. App. 3d 728, 692 N.E.2d 1217 (1st Dist. 1998) and *Cardona v Board of Election Commissioners of the City of Chicago*, 346 Ill. App. 3d 342, 805 N.E.2d 360 (1st Dist. 2004) control in the instant case. In *Requena,* the Court held that provisions imposing disqualification of candidate must be construed strictly in favor of eligibility. In *Cardona*, the Court determined that "nothing ...prescribes that a receipt must contain a specific description of the office the candidate is seeking."

9. The Hearing Officer further found that the Candidate timely filed his Statement of Economic Interests and, as in *Delgado v Popielarz*, 99-EB-ALD-128, the Statement of Economic Interests was filed in relation to the same unit of government. Therefore, the Hearing Officer found no violation of Section 10-5 of the Election Code. 10 ILCS 5/10-5.

10. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

11. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

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

13. The Electoral Board further finds that additional objections were filed against the Candidate's Nomination Papers in Related Case 11-EB-ALD-143 and that said objections were withdrawn.

IT IS THEREFORE ORDERED that the Objections of Timonty J. Raddatz and Gerald J Holst, Jr., to the Nomination Papers of John Garrido, candidate for election to the office of Alderman of the 45th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of John Garrido, candidate for

election to the office of Alderman of the 45th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on January 18, 2011.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel A. Hernandez, 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 5 days after service of the decision of the Electoral Board.

Objections of: **TIMOTHY J. RADDATZ** and, **GERALD J. HOLST, JR.** Petitioner-Objector,	)	
To the Nomination Papers of: **JOHN GARRIDO,**	)	No. **11-EB-ALD-036**
Candidate for the Office of **Alderman of the 45th Ward** in the City of Chicago	)	Lynne R. Ostfeld Hearing Officer

BOARD OF ELECTION COMMISSIONERS
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RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners (CBOE) on objections of Timothy J. Raddatz and Gerald J. Holst ("Objectors") to the nomination papers of John Garrido ("Candidate"), and the Candidate having filed a Motion to Strike, Lynne R. Ostfeld, Esq., Hearing Officer, finds and recommends as follows:

Background

1. The hearing was begun on December 6, 2010. In attendance at the hearing were the Objectors, through their attorney Thomas J. Jaconetty, and the Candidate, through his attorney, Russ Stewart

2. The Objectors requested that John Garrido's name not be printed on the ballot for election to the office of Alderman of the 45th Ward, City of Chicago, based on the allegation that the Candidate did not file a Statement of Economic Interest (SOEI) specifying the office being sought but a SOEI and Receipt referencing the office then held, which was with the Chicago Police Department. They allege that this does not meet the requirements of 10 ILCS 5/10-5.

3. A briefing schedule was set.

4. The Candidate filed his Motion to Strike on December 8, 2010. He stated that he is exempted from filing a second Statement of Financial Interest if he has timely filed a similar statement with the same governmental unit in the same calendar year, and that he has done that. 10 ILCS 5/10-5. Attached as Exhibit A to his Motion to Strike was his 2010 Statement of Financial Interests filed with the City of Chicago Board of Ethics on April 20, 2010, due to his position with the Chicago Police Department, and the Receipt of Statement of Financial Interests. These show that the SOEI was being filed for the Candidate's work for the Chicago Police. He argues that this meets the exception in 10-5 because the Chicago Police Department and Alderman, 45 Ward, City of Chicago, are both within the same unit of government, i.e., the City of Chicago.

5. The Objectors filed their Objector's Response to Motion to Strike on December 9, 2010. In it they state that they "disagree that the candidate falls within the exception claimed in the balance of

the Candidate's Motion." (paragraph 4). They do not explain why they disagree that the candidate falls within the exception. They rest on their arguments made in their initial Verified Objector's Petition and argue that the current situation is controlled by the decision in *Purnell v. Municipal Officers Electoral Board for the City of Chicago*, 275 Ill. App. 3d 1038 (1st Dist. 1995).

6. The Candidate filed his reply on December 13, 2010. In it, he argued that a candidate need not file a SOEI if he has already filed one with the same unit of government during the same calendar year. He filed nomination papers for election as Alderman in the City of Chicago and he had previously filed his SOEI as an employee of the Police Department of the City of Chicago. Both of these entities are the same governmental unit. He argues that the instant case is controlled by the decisions in *Requena v. Cook Co. Officers Electoral Board*, 295 Ill. App. 3d 728 (1st Dist. 1998) and *Delgado v. Popielarz*, 99-EB-ALD-128.

7. Hearing was held on December 15, 2010. The parties argued orally essentially as they had argued in their written briefs.

Findings of Fact and Conclusions of Law

8. To summarize the argument, the dispute concerns an interpretation of 10 ILCS 5/10-5 and whether the phrase "in relation to his candidacy" means that the Candidate at all times in his SOEI must specify the office for which he is a candidate or if a designation of the office is only required when the SOEI is an original filing, for purposes of the candidacy.

9. The law in question states in pertinent part:

> (10 ILCS 5/10-5) (from Ch. 46, par. 10-5)
> Sec. 10-5. All petitions for nomination shall, besides containing the names of candidates, specify as to each:
> 3. ... and has filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, ...
> 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.
> (Source: P.A. 84-551.) (emphasis added).

10. The undisputed facts are that the Candidate filed a Statement of Economic Interests with the Chicago Board of Ethics, on April 20, 2010, for his work as a policeman with the Chicago Police

Department. The reference in the SOEI was to his employment and there was no reference to a candidacy for Alderman. He filed the receipt with his nominating papers for the position of Alderman, 45th Ward.

11. The parties look to essentially two main cases and several minor ones to support their positions. In *Purnell*, cited by the Objectors, a candidate filed his nominating papers for the office of alderman and attached a receipt showing that he had previously filed a statement of economic interests with the Cook County Clerk. His receipt and the SOEI, which the receipt supported, designated the office or position of employment as "Police Officer - City of Chicago". The court found that he had not needed to file the SOEI for his employment, because he was too low on the salary schedule. It also found that the candidate filed it five months late. The SOEI did not mention his candidacy for alderman. The court held that the SOEI filed was defective for his employment with the Police Department because it was late. If used as an original filing for his candidacy, it was defective because no reference was made to the office for which he was running. *Purnell v. Municipal Officers Electoral Board for the City of Chicago*, 275 Ill. App. 3d 1038 (1st Dist. 1995). Effectively, the SOEI could only be treated as an "original" filing for the candidacy because it was void for the police employment.

12. The Candidate looks primarily to *Delgado* to support his argument that he has satisfied his obligation. In this case, the candidate was a Sergeant in the Chicago Police Department and had timely filed his SOEI. He had identified the office or position, which was Sergeant Chicago Police Department. This department is an agency of the City of Chicago, which is the same unit of government for which the candidate had filed nomination papers as Alderman. This Board concluded that the candidate had properly identified the office for which the statement was filed and he had complied with Section 10-5 of the Election Code. *Delgado v. Popielarz*, 99-EB-ALD-128. His SOEI did not reference the office for which he was a candidate and did not need to because it was a valid SOEI for his employment and he fell within the exception of 10 ILCS 5/10-5.

13. The Objectors argue that *Purnell* is controlling and that this Electoral Board ignored appellate authority when it issued its decision in *Delgado*. The Objectors argue that the SOEI must always refer to the office sought because the phrase "in relation to his candidacy is used three times, in 10 ILCS 5/7-10, 7-12(8) and 10-5. The Objectors further argue, without support, that the Candidate's SOEI is an "original" filing and has misstated the office by listing City of Chicago Police as opposed to Alderman 45th Ward.

14. The difference in the two cases is based on the timeliness of the respective candidates filing their SOEI. It is presumed that the candidate in *Purnell* would have had a valid SOEI to be used for his candidacy had he timely filed it in connection with his police work. The facts in *Purnell* are not on point with the instant case while the facts in *Delgado* are. The Candidate in the instant case is a police officer who used the Receipt for his previously filed SOEI with his nominating papers. His

SOEI had been timely filed, unlike the candidate in *Purnell*. The Candidate falls within the exception in 10-5 and did not need to file a new SOEI.

15. Pursuant to 10-5, the Candidate correctly identified the office for which he filed the SOEI. There are no inaccuracies. Even if he had made any, this Board has previously held that the weight of authority increasingly supports the candidate who timely files an SOEI with his nomination papers rather than penalizing him for inaccuracies in the filing. *Haynes v. Mallory*, 07 -EB-ALD-021.

16. Appellate authority subsequent to *Purnell* also supports a liberalization of the requirement to reference the office being sought. In *Requena v. Cook Co. Officers Electoral Board*, 295 Ill. App. 3d 728, 692 N.E.2d 1217 (1st Dist. 1998), the court held that "provisions imposing disqualification of candidates must be construed strictly in favor of eligibility." at 734. Even more recently, the Appellate Court for the First District held that "nothing in articles 7 or 8 prescribes that a receipt must contain a specific description of the office the candidate is seeking." *Cardona v. Board of Election Commissioners of the City of Chicago*, 346 Ill. App. 3d 342, 805 N.E.2d 360 (1st Dist. 2004). It upheld the Board's decision when it stated, "...we agree with the Board that nothing in the Election Code requires the Receipt filed with the nominating petitions identify the office the candidate is seeking. *Id.* at 805 N.E.2d 362.

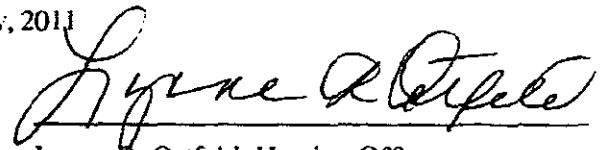
17. After reviewing the parties' cited case law and other relevant cases, and trying to pinpoint their legal arguments, only to determine that they were not applying the law as they should, the Hearing Officer finds that the CBOE did not ignore appellate authority, because the facts in the two cases are different. For that same reason, the decision in *Delado* controls and the decision in *Purnell* does not. There is no basis to hold that the Candidate's SOEI was an original filing, which would require him to name the office for which he is a candidate, at least prior to *Cardona*. He meets the exception. His SOEI satisfied the requirements of 10 ILCS 5/10-5.

18. The Hearing Office recommends that this Board OVERRULE the objections filed by Timothy J. Raddatz and Gerald J. Holst.

19. The Hearing Officer recommends that this Board find that the Nomination Papers of JOHN GARRIDO be declared to be VALID for the reasons stated above.

20. The Hearing Officer recommends that this Board order that the name of JOHN GARRIDO BE printed on the ballot for the Aldermanic Election, 45th Ward, City of Chicago, to be held on February 22, 2011, for the reasons stated above.

Dated: Chicago, Illinois, this 10th day of January, 2011



Lynne R. Ostfeld, Hearing Officer