NBCOFF-ALD

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

Objections of: Jason T. Olsen	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-070
Papers of: Nathan Benjamin Myers	)	
	)	
Candidate for the office of	)	
Alderman of the 49th 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 Jason T. Olsen ("Objector") to the nomination papers ("Nomination Papers") of Nathan Benjamin Myers, candidate for the office of Alderman of the 49th 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 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 December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Gerald B. Mullin 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 Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Jason T. Olsen, by attorney, Keri-Lyn J. Krafthefer; and the Candidate, Nathan Benjamin Myers, pro se.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate was not eligible to run for office because of his indebtedness to the City of Chicago. Specifically, the Hearing Officer found that at the time the nominating papers were filed, the Candidate was in arrears in the payment of a water bill in the amount of $51.08.

8. In the instant case, the Candidate alleged that his debts, including his water bills, were discharged in Bankruptcy. According to the Candidate, the last bill he received was incorrect in that it contained debts that accrued both before and after he filed his Bankruptcy petition and it was impossible to ascertain, what, if any amounts were due the City

9. Section 3.1-10-5(b) of the Illinois Municipal Code provides that:

> *(b) A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or*

has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.

The objector based his argument on the case of Cinkus v the Village of Stickney Municipal Officers Electoral Board, 886 N.E.2d 1011, 228 Ill. 2d 200 (2008).

In Cinkus, a candidate, John Cinkus ("Cinkus") sought to run for village trustee. After Cinkus filed his nominating papers, he received notice by way of an objection that he owed a debt to the village in the amount of $100. The objection alleged that Section 3.1-10-5(b) precluded Cinkus from running for office because he was in violation of said section. The court determined that the indebtedness resulted in the candidate being ineligible to run for office.

The Cinkus case represents a departure from prior rulings in which it was held that an outstanding debt precluded candidates from *taking* office but did not preclude them from *running* for office. Since the Cinkus case, the current state of the law is that a candidate is precluded from *running* for municipal office if, at the time he files his nominating papers, he owes a debt to the municipality in which he is running.

10. Finally, in addressing whether an "indebtedness" exists under Section 3.1-10-5(b) it is useful to ascertain what the City of Chicago considers to be an "indebtedness". Although not binding on this Electoral Board, Section 1-19-010 of the Municipal Code of the City of Chicago provides guidance. Said section defines "debt due and owing" as

"a specified sum of money owed to the city for fines, penalties, fees, interest, or other types of charges or costs imposed by this code, or administrative or judicial judgments after: (i) the period granted for payment has expired; (ii) the exhaustion of, or the failure to exhaust, judicial review procedures; or (iii) in the case of tax debt, an assessment has become final under Section 3-4-330 of this code."

10. The Candidate's witness from the City of Chicago Department of Finance, Myron N. Schreiber, testified that it was possible to determine whether amounts due on the water bill

accrued prior to or subsequent to the Candidate's Bankruptcy filings. If the Candidate had inquired, he would have been advised that $51.08 accrued after the Bankruptcy petition was filed.

10. The Hearing Officer concluded that it was not necessary to determine whether or not the debts that existed prior to the Bankruptcy filing were still considered debts or whether they were fully discharged in Bankruptcy because the evidence established that the post Bankruptcy amount of $51.08 for a water bill was due, owing and unpaid at the time the nominating papers were filed.

11. The Hearing Officer concluded that said $51.08 debt rendered the Candidate ineligible to run for office pursuant to Section 3.1-10-5(b) of the Illinois Municipal Code as interpreted by Cinkus v the Village of Stickney Municipal Officers Electoral Board, 886 N.E.2d 1011, 228 Ill. 2d 200 (2008).

12. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law.

13. The Electoral Board further finds that the Candidate did, prior to filing his Nomination Papers, file for bankruptcy in federal court in an attempt to discharge debts that included roughly $3,200 owed to the City of Chicago, but that the filing of such bankruptcy proceedings does not necessarily discharge the debtor's obligations but merely stays collection of such obligations until the bankruptcy proceedings are concluded, unless discharged. Therefore, the Electoral Board finds that the debts included in the bankruptcy proceedings were in arrearage to the City of Chicago at the time of the Candidate's filing of his Nomination Papers.

14. For the reasons stated above and for the reasons stated on the record, the Electoral Board finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of Jason T. Olsen to the Nomination Papers of Nathan Benjamin Myers, candidate for election to the office of Alderman of the 49th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Nathan Benjamin Myers, candidate for election to the office of Alderman of the 49th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2010.

Dated: Chicago, Illinois, on January 11, 2011.

Langdon D. Neal, Chairman

Marisel A. Hernández, Commissioner

DISSENTING: _____
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 5 days after service of the decision of the Electoral Board.