NBCON-ALD

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

Objections of: Marie J. Wohadlo	)
	)
	)
To the Nomination	) No.: 11-EB-ALD-089
Papers of: Leslie A. Hairston	)
	) Related Cases: 11-EB-ALD-340,
	) 11-EB-ALD-353
Candidate for the office of	)
Alderman of the 5th 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 Marie J. Wohadlo ("Objector") to the nomination papers ("Nomination Papers") of Leslie A. Hairston, candidate for the office of Alderman of the 5th 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 Kelly McCloskey Cherf 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, Marie J. Wohadlo, by attorney, Andrew Finko; the Candidate, Leslie A. Hairston, by attorney Keri-Lyn Krafthefer.

7. 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.

8. 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.

9. 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.

10. The Electoral Board further finds that the Candidate's Nomination Papers have been declared valid in Related Cases 11-EB-ALD-340 and 11-EB-ALD-353.

IT IS THEREFORE ORDERED that the Objections of Marie J. Wohadlo to the Nomination Papers of Leslie A. Hairston, candidate for election to the office of Alderman of the 5th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Leslie A. Hairston, candidate for election to the office of Alderman of the 5th 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 December 29, 2010.

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.

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

Objections of: MARIE J. WOHADLO	)	
To the Nomination Papers of: LESLIE HAIRSTON	)	No. 11-EB-ALD-089
Candidate for the office of Alderman for the 5th Ward of the City of Chicago.	)	

BOARD OF ELECTION
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HEARING EXAMINER'S REPORT AND RECOMMENDATION

This matter coming before the duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners, and before the undersigned Hearing Examiner, the Hearing Examiner hereby makes the following Report and Recommendation:

PRELIMINARY FACTS

1. The Candidate filed Nomination Papers as a Candidate for the office of Alderman for the 5th Ward for the City of Chicago. Such Nomination Papers consist of: a) Statement of Candidacy; b) Nomination Petition Sheets; c) loyalty oath; and d) receipt for Statement of Economic Interests.

2. The Objector's Petition to the Nomination Papers of the Candidate was timely filed on November 30, 2010. The Petition objects to the following alleged defects pertaining to the Candidate's Statement of Economic Interests ("Statement"): 1) it was not timely filed in connection with her candidacy for 5th Ward Alderman and receipt; and 2) it fails to identify the correct office that will be voted on at the February 22, 2011 Municipal General Election.

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 certified mail or by Sheriff's service, as provided by statute.

4. The initial hearing on these Objections was called on December 6, 2010. Keri-Lyn Krafthefer appeared on behalf of the Candidate. Andrew Finko appeared on behalf of the Objector.

5. At the initial hearing, the Candidate requested the opportunity to file a motion to strike and dismiss Objector's Petition. A briefing schedule was set pursuant to the Rules of Procedure for the Board of Election Commissioners of the City of Chicago, and the parties timely filed their briefs. The parties presented oral argument at a hearing on December 13, 2010.

Andrew Finko appeared on behalf of the Objector. Keri-Lyn Krafthefer appeared on behalf of the Candidate.

MOTION TO STRIKE

6. For her motion to strike, the Candidate, who already is an alderman for the City of Chicago, argues that she timely filed a Statement in April 2010. Under Section 10-5 of the Election Code, it is not necessary for a Candidate to file a Statement by the end of the period for filing 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 are filed." Since the Candidate filed her Statement in the same calendar year in which the Nomination Papers are filed, the Candidate requests that the timeliness objection be stricken. The Candidate also argues that her Statement complies with Section 10-5 of the Election Code, as it identifies the office as "City of Chgo-City Council," and even if the office was not adequately described, the sanction would not be removal from the ballot.

7. For her Response, the Objector argues that the Election Code requires the Candidate to file a receipt, "bound" with the rest of her Nomination Papers, and that the Candidate admits that for her candidacy, she relies upon the Statement she filed in April 2010. The Objector further argues that identifying the office as "City Council" is misleading and confusing to the public because it is a governing body for the City of Chicago for hundreds of people including, alderman, aids/assistants, Mayor, City Clerk and City Treasurer. The Statement should identify the candidacy for elected office, the office sought (i.e., 5th Ward Alderman) and the City of Chicago Municipal Office.

8. For her Reply, the Candidate argues that the Election Code does not require the receipt to be "bound" together with the Nomination Papers. The Candidate also argues that as an incumbent alderman for the City of Chicago, she was not required to file an original Statement, but only receipt of the filing that was done in the same calendar year. With regard to the description of office objection, the Candidate contends that the "City Council" description is clearly printed where the "office" or "position of employment" is to be listed and is a clear designation of both unit of local government and the office.

The Candidate's Statement of Economic Interests was Timely Filed.

9. It is undisputed that the Candidate is an incumbent alderman and that in connection with her aldermanic position, she filed her Statement in April 2010.

10. Section 10-5 of the Election Code provides:

> 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 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.

10 ILCS 5/10-5 (emphasis added).

11. Section 10-5 clearly provides for an exception for the filing of the Statement for those candidates, such as this Candidate, who already filed such a Statement in relation to the same governmental unit in the same calendar year in which the Nomination Papers were filed, *i.e.* 2010.

12. Therefore, the hearing examiner recommends that the timeliness objection be stricken.

The Candidate's Statement of Economic Interests which Identifies the office as "City of Chgo-City Council" is a Sufficient Designation for the Office Being Sought And Even if it is Not, the Sanction is Not Removal From the Ballot.

13. The Candidate lists "City of Chgo-City Council" as the local office or position of employment. (Group Exhibit A).

14. The local office or position of employment for an alderman is the City Council for the City of Chicago. *See* 65 ILCS 5/3.1-40.5 ("The city council shall consist of the mayor and aldermen."). Therefore, the description of her office or position of employment is correct and properly identifies the office being sought.

15. Even if the Board finds that the Statement fails to properly identify the office for which the person is a candidate, removal from the ballot is not a permissible sanction when the office is mistakenly or inadvertently described. *See Requena v. Cook County Officers Electoral Bd.*, 295 Ill. App. 3d 728 (1st Dist. 1998); *Lenzen v. Orozco*, 01-EB-ALD-04, CBEC, January 23, 2001.

16. Accordingly, the hearing examiner recommends that the identity of office objection be stricken and the request for relief that the Candidate be removed from the ballot be denied.

Summary of Recommendations on the Candidate's Motion to Strike and Dismiss Objector's Petition.

17. For the foregoing reasons, the hearing examiner recommends that the Candidate's motion to strike and dismiss Objector's Petition be granted and the Petition be dismissed.

CONCLUSION

18. The hearing examiner recommends the following: a) the motion to strike and dismiss the Objector's Petition be granted; b) the Objector's Petition be dismissed; and c) the name of Leslie A. Hairston be printed on the ballot for the office of Alderman for the 5th Ward of the City of Chicago for the Municipal General Election to be held on February 22, 2011.

RELATED CASES

19. There are two related cases, *i.e.*, *Herminstyne/Chalmers v. Hairston* (11-EB-ALD-340) and *Hendricks v. Hairston* (11-EB-ALD-353). In *Herminstyne/Chalmers*, one of the objectors withdrew her objections and the other objector defaulted. In *Hendricks*, the hearing examiner recommended that the Candidate's motion to strike and dismiss the Objector's Petition be granted. Therefore, in both cases, the hearing examiner recommended that the name of Leslie Hairston be printed on the ballot for the office of Alderman for the 5th Ward of the City of Chicago for the Municipal General Election to be held on February 22, 2011.

Date: December 22, 2010

Kelly McCloskey Cherf
Hearing Officer