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-090
Papers of: Anne Marie Miles	)	
	)	Related Cases: 11-EB-ALD-074
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 Anne Marie Miles, 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, Anne Marie Miles, by attorney, Richard K. Means.

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 objections in Related Case 11-EB-ALD-074 were withdrawn and there are no other pending objections.

IT IS THEREFORE ORDERED that the Objections of Marie J. Wohadlo to the Nomination Papers of Anne Marie Miles, 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 Anne Marie Miles, 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 January 3, 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.

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: ANNE MARIE MILES	)	No. 11-EB-ALD-090
Candidate for the office of Alderman for the 5th Ward of the City of Chicago.	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 21 A 8 12

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. In the Petition, the Objector alleges the petition pages contain: a) the names of persons who are not registered; b) petition signer signatures which are not genuine; c) the names of person in the wrong ward; d) missing or incomplete addresses for signers; e) names of persons who signed more than one time; f) missing signatures from a circulator; g) circulator's signature which is not genuine; h) missing circulator's address; i) circulator does not reside at the stated address; j) missing notary signature or seal; k) incomplete date of circulation; l) sheet is not notarized; m) circulator is not 18 years old; and n) pattern of fraud. Attached to the Objector's Petition is an Appendix-Recapitulation. The Objector also argues that specific circulator and notary signatures are not genuine. The Objector further contends that the Candidate failed to file together with her nominating papers the appropriate Statement of Economic Interests or a receipt for the same. The Objector also argues that the Candidate's nomination papers are invalid because she failed to file a Statement of Financial Interests with the City of Chicago Board of Ethics, as required by the Chicago Municipal Code and the Illinois Revised Cities and Villages Act of 1941. Finally, the Objector contends that the Candidate failed to file uniform and securely bound nominating papers as the Nomination Papers were "clipped" and three of the pages include a signature above the first signature line and two of the three pages include 16 and not 15 signatures.

10. Therefore, the hearing examiner recommends that the objection regarding the receipt of the Statement of Economic Interests should be stricken.

11. The record (Group Exhibit A) indicates that the Candidate timely filed her receipt for the Statement of Economic Interests on November 22, 2010.

The Board Does Not Have the Authority to Invalidate Nomination Papers for an Alleged Failure to Comply with the City of Chicago's Ethics Ordinance.

12. In her Petition, the Objector argues that the Candidate's Statement of Candidacy is false because she is not duly qualified for the office sought because she did not file her Statement of Financial Interests with the Chicago Board of Ethics, as required by Chicago's Campaign Financing Ordinance, and therefore, her Nomination Papers are invalid.

13. The Chicago Board of Elections has repeatedly found that it does not have authority to invalidate Nomination Papers for an alleged failure to comply with the City of Chicago's Ethics Ordinance. *Bocanegra v. Sanchez*, 07-EB-ALD-107, CBEC, January 9, 2007; *Jones v. Monroe*, 07-EB-ALD-143, CBEC, January 16, 2007; *Smith v. Sherman*, 95-EB-ALD-20, CBEC, January 23, 1995; *Whitehead v. Massie*, 91-EB-ALD-43, CBEC, February 4, 1991; *Bednarz v. Doherty*, 91-EB-ALD-53, CBEC, January 16, 1991.

14. In her Response to the motion to strike, the Objector argues that the foregoing cases precede the *Cinkus* decision which Objector contends "lends guidance on the enforcement of this provision, which was not available to prior Electoral Boards reviewing this issue." (Response at para. 20).

15. In *Cinkus*, the issue was whether a Candidate who was in arrearage of a debt owed to the municipality was eligible to run for office because the Candidate was in violation of the Municipal Code. Section 3.1-10-5(b) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)) provides: "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 . . . ."

16. In her Petition and Response, the Objector seems to argue that in the instant case, the Board similarly must determine whether the Candidate has complied with other sections of the Illinois Municipal Code, which include the following provisions for the nomination by petition of alderman of any ward: **"All elections for alderman shall be in accordance with the provisions of law in force and operative in the City of Chicago for such elections at the time the elections are held,"** (65 ILCS 20/21-22) (emphasis added by Objector in her Petition at para. 19) and "All petitions and procedure with respect thereto, shall conform in other respects to the provisions of the **election and ballot laws then in force in the city of Chicago** concerning the nomination of independent candidates for public office by petition." (65 ILCS 20/21-28) (emphasis added by Objector in her Response at para. 16). In her Petition and Response, the Objector emphasizes the foregoing provision apparently for the argument that the Chicago Campaign Financing Ordinance is a provision of law "for such elections" and an "election and ballot law in force in the city of Chicago."

17. However, the Chicago Campaign Financing Ordinance is not a provision of law "for such elections" nor is it an "election and ballot law." Rather, it is an ethics law administered by the Chicago Board of Ethics for the purposes of ensuring that City officials and employees avoid conflicts of interests.

18. I do not believe that the *Cinkus* decision affects the long standing principle that the Board does not have the authority to invalidate Nomination Papers for an alleged failure to comply with the City of Chicago Ethics Ordinance. Indeed, the *Cinkus* court did not address any issues regarding an electoral board's authority in this regard.

19. Therefore, the hearing examiner recommends that the objection regarding the Statement of Financial Interests should be stricken.

The Candidate's Nomination Papers are Securely Bound and Uniform in Compliance with 10 ILCS 5/10-4.

20. The Objector seems to argue that the Candidate's Nomination Papers should be invalidated because: a) they were "clipped", and b) on three (3) of the petition pages, there was a signature above line one resulting in 16 signatures to a page instead of 15 signatures, as on the other petition pages.

21. The Board has repeatedly found a Candidate to have substantially complied with 10 ILCS 5/10-4 when the Nomination Papers are "clipped" together. *Haynes v. Anderson*, 07-EB-ALD-017, CBEC, January 12, 2007; *Haynes v. Pritchett*, 07-EB-ALD-20, CBEC, January 16, 2007.

22. In addition, the Objector has failed to cite to any cases in which the Board rejected petition pages or Nomination Papers in their entirety because there are more signatures than line numbers.

23. Accordingly, the hearing examiner recommends that the Objector's clipped and uniformity objection be stricken.

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

24. For the foregoing reasons, the hearing examiner recommends that the Candidate's motion to strike and dismiss portion of the Objector's Petition be granted and that paragraphs 6-20 of the petition be stricken.

RECORDS EXAMINATION

25. On December 6, 2010, the hearing examiner signed a records examination directive.

26. On December 10, 2010, Charles Holiday issued a memorandum which suspended the records examination upon finding that continuing the record examination will only put the Candidate further over the minimum. The petition summary report indicates that there are 608 signatures and 320 signature objections which, even if sustained, would leave the Candidate with 288 signatures.

OBJECTOR'S RULE 7 MOTION (a/k/a former "Rule 8" Motion)

27. On December 11, 2010, the Objector filed a "Rule 7 Motion (a/k/a former "Rule 8" Motion)."

28. The Rule 7 Motion alleges that there exists a pattern of fraud in connection with the Election Commission results in that many signature rulings which were overruled should have been sustained and that the records examination was improperly stopped. For her relief, the Objector requests, *inter alia*, that a new records examination be scheduled.

29. Although there may have been some confusion at the records examination, the records indicate that there are 608 signatures and 320 signature objections. If all of the signature objections are sustained, there remain 288 signatures which is 107 greater than the required minimum.

30. Therefore, the hearing examiner recommends that the Objector's Rule 7 Motion be denied.

CIRCULATOR AND NOTARY OBJECTIONS

31. The above analysis does not take into account the circulator and notary objections for petition pages 9, 10, 14, 15, 23, 24, 33 and 37.

32. Assuming that the circulator and notary objections are sustained, the total number of signatures that would be stricken for the noted pages, less signatures to which there was an objection (and counted in the above analysis), would be 52.

33. Therefore, if all of the Objector's signature objections are sustained (*i.e.*, the line by line objections on the Appendix-Recapitulation as well as the circulator and notary objections), there remains 236 signatures which is 55 signatures above the minimum.

34. At the hearing on December 14, 2010, the Objector withdrew all of her signature objections (Petition at para. 21-26).

CONCLUSION

35. The Objector has withdrawn the signature objections set forth in paragraphs 21-26 of the Petition. The hearing examiner recommends the following: a) the motion to strike be granted and the remaining objections set forth in paragraphs 6-20 of the Objector's Petition be stricken; b) the Objector's Rule 7 motion be denied; and c) the name of Anne Marie Miles 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 CASE

36. There is one related case, *i.e.*, *Brummit v. Miles* (11-EB-ALD-074). In that case, the Objector withdrew her objections. Therefore, I recommend that the name of Anne Marie Miles 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 20, 2010

Kelly McCloskey Cherf
Hearing Officer