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-094
Papers of: Glenn Ross	)	
	)	Related Cases: 11-EB-ALD-146,
	)	11-EB-ALD-364
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 Glenn Ross, 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, Glenn Ross, by attorney, Jameika W. Mangum.

7. Objector alleges, among other things, that the Candidate has not timely filed a Statement of Financial Interest with the City of Chicago Board of Ethics pursuant to section 2-164-0-50 of the Municipal Code of the City of Chicago ("City of Chicago Campaign Financing Ordinance"). Section 2-164-0-50 of the Municipal Code provides as follows:

> Every person who qualifies as a candidate shall thereby become a "reporting individual" for purposes of Chapter 2-156 of this code, and shall file a statement of financial interests, in the form prescribed by the Board of Ethics pursuant to said chapter, within five days after qualifying as a candidate. The provisions of Chapter 2-156 relating to time, place and manner of filing statements, delivering notices and receipts shall apply to statements of candidates. (Prior Code §26.3-5)

Section 2-164-060 of the Municipal Code provides as follows:

> No elected official shall be allowed to take the oath of office, continue in office or receive compensation from the City unless he has filed the statement of financial interest required by Section 2-164-050 and Chapter 2-156 of this code. (Prior Code §26.3-6)

8. Objector argues that because the Candidate failed to timely file a statement of financial interest, the Candidate cannot take the oath of office if elected and is, therefore, ineligible for elective municipal office in the City of Chicago.

9. Furthermore, Objector argues that, because Section 10-5 of the Illinois Election Code (10 ILCS 5/10-5) requires each candidate for office swear of affirm under oath that he or she is legally qualified to hold such office, the Candidate's Statement of Candidacy claiming that the Candidate is qualified for the office sought is false.

10. Objector's argument is based upon the Illinois Supreme Court's decision in 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 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) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5) precluded Cinkus from running for office because he was in violation of said section. Sec. 3.1-10-5(b) 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.

Cinkus then paid or attempted to pay the debt with the village. The electoral board removed Cinkus from the ballot and the matter ultimately went to the Illinois Supreme Court wherein the Court addressed the question of whether a violation of the Illinois Municipal Code's arrearage prohibition, read in conjunction with the statement of candidacy provisions of Section 10-5 of the Election Code, bars a candidate from the ballot. The Supreme Court determined that

> ...reading these two statutes together, the disqualifications provided by section 3.1 - 10 - 5 (b) of the Illinois Municipal Code renders a candidate ineligible to run for

office if not remedied by the time the candidate files his or her nomination papers. 886 N. E. 2d 1023.

The import of *Cinkus* is that it was the first case to hold that an arrearage to a village not only precludes a person from taking office, but it also precludes a person from running for office.

11. The question presented to this Electoral Board is whether the City of Chicago Campaign Financing Ordinance imposes eligibility restrictions on candidates running for elective municipal office in the City of Chicago and, if so, whether they are enforceable by electoral boards by virtue of the case of *Cinkus v the Village of Stickney Municipal Officers Electoral Board*, 886 N.E.2d 1011, 228 Ill. 2d 200 (2008).

12. While the *Cinkus* is clear that eligibility restrictions contained in the Illinois Municipal Code may bar a person's candidacy, the City of Chicago's Campaign Financing Ordinance has no similar effect.

13. It is argued that Section 21-35 of Article 20 of the Illinois Municipal Code (otherwise knows as the "Revised Cities and Villages Act") (65 ILCS 20/21-35) allows the Chicago City Council to enact eligibility requirements for elective municipal office in the City of Chicago. Section 21-35 provides that "all laws in force in the city of Chicago governing elections for municipal offices or applicable thereto and not inconsistent with the provisions of this article, shall apply to and govern all elections held under the terms of this article." Municipal ordinances, the argument goes, are intended to be included in the above cited phrase "all laws in force ...." It is also argued that Section 21-22 of Article 21 of the Illinois Municipal Code similarly empowers the City Council to enact eligibility requirements for its elected officers by providing in part, "All elections for aldermen 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) Objector would read into these statutes the authority of

municipalities to enact, by municipal ordinance, additional eligibility requirements for election to an office created by state statute. However, no case has ever held that these provisions referring to "all laws in force" were intended to include municipal ordinances. More likely, this section is an outgrowth of Sections 3.1-5-5 ("This Article 3.1 applies to all officers elected or appointed under this Article and Articles 4 and 5, unless provided otherwise.") and 3.1-10-10 (" The general election law applies to the scheduling, manner of conducting, voting at, and contesting of municipal elections.") of the Illinois Municipal Code (65 ILCS 5/3.1-5-5 and 65 ILCS 5/3.1-10-10). The "general election law" referred to in Section 3.1-10-10 of the Illinois Municipal Code of course means the "general election law" found in the Illinois Election Code. See, Section 1-1 of the Election Code (10 ILCS 5/1-1) ("This Act is the general election law of Illinois and any reference in any other Act to 'the general election law' or the 'the general election law of this State' is a reference to this Act, as now or hereafter amended."). The Election Code and Article 3.1 of the Illinois Municipal Code are the laws that govern elections in the City of Chicago, except where they are inconsistent with the express provisions of Article 21 of the Illinois Municipal Code. See, e.g., *Robinson v. Jones*, 186 Ill.App.3d 82, 542 N.E.2d 127 (First Dist. 1989); *United Citizens v. Coalition*, 125 Ill.2d 332, 531 N.E.2d 802 (1988) (reconciling the Election Code and the Illinois Municipal Code). Except for cases addressing the exercise of home rule powers through referendum, not a single election case has been cited for the proposition that a municipality can, through ordinance, create ballot access barriers for candidates seeking elective municipal office.

14. Illinois courts have held, for instance, that where the Constitution undertakes to prescribe qualifications for office, its declaration is conclusive of the whole matter. *Thies v. State Bd. of Elections,* 124 Ill.2d 317, 325, 529 N.E.2d 565, 569 (1988). The legislature is without

authority to change or add to the qualifications unless the Constitution gives it the power. *Cusack v. Howlett* (1969), 44 Ill.2d 233, 242-43, 254 N.E.2d 506. The same principle, it seems, applies to offices created by the legislature. Where an office is created by statute, it is wholly within the power of the Legislature creating it. For example, the length of term and mode of appointment may be altered at pleasure by the legislature, and the office may be abolished altogether. *People ex rel. Hoyne v. McCormick*, 261 Ill. 413, 421, 103 N.E. 1053, 1057 (1913).

15. While a municipality may provide for its officer, their manner of selection and terms of office, they may do so only acting through home rule power, subject to referendum.

16. The Illinois Attorney General has taken up this question in various opinions, the most relevant being Attorney General Opinion 00-003 dated March 7, 2000. In that opinion, Attorney General Jim Ryan was faced with the question of whether a home rule municipality has the authority to lengthen the statutory durational residency requirement for candidates running in the municipality. The Attorney General first looked to article VII, section 6 of the Illinois Constitution of 1970 which provides in pertinent part:

> (f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provide by law...A home rule municipality shall have the power to provide its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law.

The Attorney General determined that the durational residency requirement of municipal officers is a provision relating to the manner of selection of those officers, for purposes of article VII, section 6 of the Constitution, and that the establishment of qualifications for public office is a key component of the manner in which elected officers are selected. Accordingly, the Attorney General determined that:

> the statutory qualifications for office established by statute may be altered by a referendum adopted in a home rule municipality pursuant to article VII, section 6 of the Constitution." (page 5) Emphasis added.

Attorney General Lisa Madigan had the opportunity to address a similar issue. In Attorney General Opinion 05-007 dated September 7, 2005, Attorney General Madigan took up the question of whether home rule municipalities may, by referendum, implement election systems, such as cumulative voting or instant run-off voting, that are not specifically authorized by the Election Code or the Illinois Municipal Code. She determined that

> "pursuant to article VII, section of the Illinois Constitution of 1970, a home rule municipality had such authority subject to referendum approval, to adopt procedures for selecting municipal officers that differ from those set forth in either the Election Code or the Municipal Code." (page 1) Emphasis added.

Attorney General Madigan further recognized that

> [a]lthough they have been granted extensive powers with respect to their local government and affairs (Ill. Const.1970, art. VII, Sec.(a), home rule municipalities may change their manner of selection of officers only: (1) as provided by statute; or (2) as approved by a referendum. See *Leck v Michaelson*, 111 Ill .2d 523, 528 (1986); *Clarke v Village of Arlington Heights*, 57 Ill. 2d 50, 54 (1974).

Attorneys General Ryan and Madigan have made clear that (a) a home rule unit's change in the qualifications for office is a change in the manner of selection of officers and that (b) such a change must be accomplished by referendum.

17. Applying these Attorneys General opinions and the cases they cite to the instant question of whether a violation of the City of Chicago Financing Ordinance affects a candidate's eligibility to be on the ballot for elective municipal office, the answer is that such a violation cannot act as a bar to the ballot.

18. The City of Chicago Financing Ordinance clearly seeks to change the qualifications for office of candidates running for municipal office in the City of Chicago.

However, the ordinance was not approved by a referendum as required by Article VII, sec. 6 of the Illinois Constitution. Absent a referendum, the City is without authority to enact binding changes to the selection of its officers.

19. Because the ordinance was not enacted via referendum, it is not necessary to reach the question of whether this Electoral Board has jurisdiction to address violations of the City of Chicago Financing Ordinance. However, even if such a question was now before the Electoral Board, it is clear from Section 2-164-170(a) of the Chicago Municipal Code that jurisdiction rests with the City of Chicago Board of Ethics, not with this Electoral Board. Section 2-164-170(a) of the ordinance provides, as follows:

> 2-164-170 Powers and Duties of Board in Regard to Campaign Financing Ordinance. In addition to the other powers and duties conferred on it by this Code, the Board of Ethics shall have the following powers and duties:
>
> (a) To initiate and to receive complaints of violations of any of the provisions of this chapter and to investigate and act upon such complaints as provided by this chapter; provided, however, that the Board shall have no authority to investigate any complaint alleging a violation of any provision of this ordinance or alleging other misconduct by an alderman. If the Board receives a complaint alleging a violation or other misconduct by an alderman, the Board shall, within two days after receipt thereof, transmit such complaint to the standing committee of the City Council having jurisdiction over such complaints.

As the foregoing provision indicates, the Board of Ethics – not the Board of Election Commissioners – has the power and duty over violations of *any provisions of this chapter* with the exception of violations involving incumbent alderman. It is significant to note that the provision carves out a jurisdictional exception for alderman but not for candidates. Accordingly, it must be concluded that the Board of Ethics would be the proper entity to address a candidate's failure to comply with the Ordinance.

20. Therefore, while the ordinance may attempt to impose eligibility restrictions on candidates, the ordinance is not enforceable by an electoral board by means of removing

candidates from the ballot. The powers of electoral boards are only those prescribed by the legislature. *Kozel v. State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988). This Electoral Board has long held that it does not have authority to invalidate nomination papers for an alleged failure to comply with the City of Chicago's municipal ordinance requiring the filing of statements of financial interests. See, e.g. *Bednarz v. Doherty*, 91-EB-ALD-53, CBEC, January 16, 1991; *Bocanegra v. Sanchez*, 07-EB-ALD-107, CBEC, January 9, 2007. While *Cinkus* stands for the proposition that eligibility requirements imposed by the Illinois Municipal Code may act as a bar to ballot access, there is no authority for the proposition that a municipality may enact additional eligibility requirements of its own (at least not in the absence of home rule power exercised and approved by referendum) to bar candidates from the ballot.

21. For these reasons, the Electoral Board overrules the objection based upon any alleged failure of the Candidate to timely file a Statement of Financial Interests required by municipal ordinance of the City of Chicago.

22. 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.

23. 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.

24. 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. The Electoral Board also found the Candidate's Nomination Papers valid in Related Cases 11-EB-ALD-146 and 11-EB-ALD-364.

IT IS THEREFORE ORDERED that the Objections of Marie J. Wohadlo to the Nomination Papers of Glenn Ross, 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 Glenn Ross, 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: GLENN ROSS	)	No. 11-EB-ALD-094
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 signatures are not genuine. In addition, the Objector argues that there may be a pattern of fraud because the notarial application of the seal of Sandra Love appears in virtually the same location on most of the sheets. The Objector further contends that the Nomination Papers are not in compliance with the Election Code for the following reasons: a) the Statement of Candidacy omits the city, state and zip code of the Candidate in the uppermost box on the right hand side; b) the notary did not complete the portion regarding the state and/or county in which the document was signed; c) the statement of candidacy identifies the date of the election as being 2012 and not 2011; and d) the petition sheets are defective because each sheet references the signers as

being "qualified voters of the City of Chicago" and not voters of the 5th Ward of Chicago. 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 was indebted to the City of Chicago on the date of filing and therefore not qualified for the office sought.

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. Mr. Finko appeared on behalf of the Objector. Ms. Magnum appeared on behalf of the Candidate.

5. At the 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. The Candidate's motion to strike and dismiss was personally served on the Objector at the initial hearing. No response was filed by the Objector.

6. A hearing on the Candidate's motion to strike and dismiss Objector's Petition was set for December 13, 2010. Ms. Magnum appeared on behalf of the Candidate. Mr. Finko appeared on behalf of the Objector. At the hearing, the hearing examiner deferred making a recommendation on the Candidate's motion to strike.

MOTION TO STRIKE

7. For his motion to strike and dismiss, the Candidate argues the following: a) that the partial address objection should be stricken because the Statement of Candidacy clearly includes the Candidate's city, state and zip code; b) that the notary seal objection (missing state and/or county) should be stricken since the "state of Illinois" is included within the seal; c) that the Candidate's error in referring to 2012 rather than 2011 in the Statement of Candidacy does not invalidate the petition because the correct date is reflected on the petition pages; d) that the objection that the petition sheets reference qualified voters of the City of Chicago and not qualified voters of the 5th Ward is insignificant since the petition pages provide with specificity that the Candidate is seeking to run for the 5th Aldermanic Ward Office; e) that the Candidate has filed her Statement of Economic Interests; f) that the Objector has failed to proffer any evidence of indebtedness and the indebtedness objection should be stricken; and g) that a review of the notarial application of the seal of Sandra Love shows that her stamps are proper.

8. The Objector did not file a response, but both parties provided oral argument on the motion to strike and dismiss.

The Candidate's Statement of Candidacy Complies with the Election Code.

9. **Missing address information on Statement of Candidacy.** All that is missing in the box on the right hand corner of the Statement of Candidacy is the zip code. However, the body of the Statement of Candidacy includes the Candidate's full address, including the zip code. In addition, the Candidate's full address, including his zip code, is included on all of the petition papers. The Statement of Candidacy complies with the Election Code. *See Crosby v. Sweargengen*, 91-EB-ALD-154, CBEC, January 30, 1991 (the Candidate's address was missing on his Statement of Candidacy, but when the nomination papers were read as a whole, the address appeared on each of his petition sheets and therefore no inconsistency or conflict existed on the Statement of Candidacy).

10. **Incorrect Year for Election.** The Statement of Candidacy does mistakenly refer to the election as being in 2012. However, the petition pages all correctly refer to an election to be held February 22, 2011. The Candidate's error in referring to 2012 and not 2011 on his Statement of Candidacy does not invalidate his Nomination Papers. *See Robinson v. Colvin*, 07-EB-ALD-098, CBEC, January 23, 2007.

11. For the foregoing reasons, the hearing examiner recommends that the objections pertaining to the Statement of Candidacy be stricken (Petition at para. 6(a) and 6(c)).

The Notary Seal on the Petition Pages is Sufficient.

12. The notary seal on each of the petition pages indicates that the notary is a "Notary Public-State of Illinois." The Election Code requires that the circulator's statement at the bottom of each nominating petition sheet be "sworn to before some officer authorized to administer oaths in this State." 10 ILCS 5/7-10; 10 ILCS 5/10-4. The Objector fails to provide any support for the argument that failure to include the county on a notary stamp is a basis for invalidating the Nominating Papers.

13. Therefore, the hearing examiner recommends that the objection regarding the failure to include the state/county on the notary stamp should be stricken (Petition at para. 6(b)).

The Heading on the Petition Sheets Identifying the Signers as Qualified Voters of the City of Chicago is Sufficient.

14. The headings of the Candidate's petition sheets state that the signers are "qualified voters in the City of Chicago." The Objector argues that the petition sheets should be invalidated because the heading should state: "qualified voters of the 5th Ward of Chicago."

15. Section 10-4 of the Election Code sets forth the requirements for the heading of a petition sheet. Section 10-4 does not require the statement on the heading of the petition sheet to identify the signers as being duly registered voters of the political subdivision. Section 10-4 only requires that the circulator's affidavit acknowledge that to the best of the circulator's belief, the signers were duly registered voters of the political subdivision. *Williams v. Partlow*, 07-EB-ALD-024, CBEC, January 23, 2007; *Wilson v. Kato*, 99-EB-ALD-148, CBEC, January 29, 1999.

16. The heading on the Candidate's petition sheets identifying the signers as "qualified voters in the City of Chicago" is sufficient. Moreover, the circulator's affidavit which states that "to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the political division in which the candidate is seeking elective office" is also sufficient.

17. Therefore, the hearing examiner recommends that the objection regarding the hearing on the petition sheet be stricken (Petition at para. 6(d)).

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.

18. In her petition, the Objector relies upon the City of Chicago Campaign Financing Ordinance and the Illinois Supreme Court case of *Cinkus v. Village of Stickney Municipal Electoral Board*, 228 Ill. 2d 200 (2008), for the argument that the Candidate's Statement of Candidacy is false because she is not duly qualified for the office she is seeking because she has not timely filed a Statement of Financial Interests with the City of Chicago Board of Ethics

19. 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 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-ALD20, 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.

20. 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 . . . ."

21. The Objector seems to argue that in the instant case, the Board similarly must determine whether the Candidate has complied with another section of the Illinois Municipal Code which includes the following provision: **"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 para. 11 of the Petition). In her petition, the Objector emphasizes the foregoing provision apparently for the argument that the City of Chicago Campaign Financing Ordinance is a provision of law "in force and operative in the City of Chicago for such elections."

22. However, the City of Chicago Campaign Financing Ordinance is not a provision of law "for such elections." Instead, the ordinance 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.

23. 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.

24. Therefore, the hearing examiner recommends that the objection regarding the Statement of Financial Interests should be stricken (Petition at para. 8-13).

The Indebtedness Issues and Sandra Love Notary Seal Issues Can Not Be Resolved on the Candidate's Motion to Strike and Dismiss.

25. As the indebtedness issue (Petition at para. 14) and the issue concerning notarization by Sandra Love (Petition at para. 19) are factual issues, the Hearing Examiner recommends that for those two objections, the motion to strike and dismiss be denied.

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

26. For the foregoing reasons, the hearing examiner recommends that the motion to strike be granted in part and denied in part and that paragraphs 6-13 be stricken.

RECORDS EXAMINATION

27. The Records Examination commenced on December 13, 2010. On December 13, 2010, Charles Holiday of the Board issued a memorandum which states: "This case was remanded to me for a record examination. Candidate Glenn Ross, candidate for Alderman in the 5th Ward, filed 752 signatures. Of these signatures, there was no objection to 217 signatures. The minimum signature requirement is 181. Therefore it is not necessary to conduct a record examination in this case."

CIRCULATOR AND NOTARY OBJECTIONS

28. The Objector's Petition also included an objection to the genuineness of the circulators signatures on 18 petition sheets, which if sustained, could result in a need to have a records examination as the total number of circulator objections and line by line signer objections may bring the Candidate below the required minimum. Therefore, an evidentiary hearing on the circulator issue was set for December 16, 2010.

29. Prior to the evidentiary hearing and also at the evidentiary hearing, the Objector requested that the City of Chicago's handwriting expert compare the signatures on the petition pages to the voter registration cards. This request was denied by the Hearing Examiner as "the objector must bear the burden of proving by operation of law and by a preponderance of the relevant and admissible evidence ('the burden of proof') that the objections are true and the candidate's nomination papers [are] invalid." Rule 8(b) of the Rules of Procedure for the Board of Election Commissioners of the City of Chicago.

30. At the evidentiary hearing, the Objector did not introduce any documents into evidence. The only evidence that the Objector introduced at the evidentiary hearing was the testimony of the Objector herself who testified that she reviewed the circulator's signatures that are identified by petition sheet number in paragraph 18 of her Petition and compared those signatures to the circulators' voter registration information in the public database and found the circulators' signatures not to be genuine. The Objector also testified that based on her art degree and the research that she has conducted on the internet regarding singatures, she considers herself having experience in handwriting analysis.

31. On cross examination by the Candidate, the Objector admitted that she was not aware of the dates that the subject signatures were placed into the database and that other than her research on the internet, the Objector has never taken any course on handwriting analysis nor has she testified as an expert in any cases.

32. The Candidate did not introduce any evidence into the record.

33. Both parties, through their counsel, presented a closing argument with regard to the circulator issue. The Objector argued that she had met her burden of proof and, because the Candidate did not submit any evidence refuting the Objector's evidence, the objections regarding the circulators should be sustained. The Candidate argued that the Objector did not meet her burden of proof and that the circulators objections should be overruled.

34. I do not believe the Objector has met her burden of proof in showing by a preponderance of the evidence that the subject circulators' signatures are not genuine. No documentary evidence (*i.e.*, voter registration cards, affidavits) was submitted into evidence. Moreover, the testimony of the Objector, who is not an handwriting expert (nor was she tendered as such) and who offered little more than what has already been alleged in the verified Petition, is insufficient for purposes of meeting the Objector's burden on proving that the circulators' signatures are insufficient.

35. Therefore, the hearing examiner recommends that the objections regarding the circulators be overruled (Petition at para. 18).

36. At the December 16, 2010 hearing, the parties were asked if there was a need for an evidentiary hearing on any other objections.

37. Counsel for both parties represented that an evidentiary hearing was not needed on any other objections and that the indebtedness issue could be resolved on a motion for summary judgment.

38. Therefore, with regard to the Sandra Love notary objection that there may be a pattern of fraud because her seal appears in the same place on each petition page and could be copies, I have reviewed the original petition pages and find that there is no pattern of fraud and that the stamps are originals and not copies. Therefore, the hearing examiner recommends that the Sandra Love notary objection be overruled (Petition at para. 19).

THE OBJECTOR'S MOTION FOR SUMMARY JUDGMENT ON THE INDEBTEDNESS OBJECTION

39. In the Objector's motion for summary judgment, the Objector relies upon Group Exhibit A, which includes the Candidate's Statement of Candidacy dated November 21, 2010, and an Exhibit H, which is a facsimile from the Candidate's counsel which is a payment confirmation that as of November 22, 2010 at 7:51 a.m., the Candidate paid the following tickets: a) a red light violation issued on March 19, 2010 in the amount of $227.28; b) an expired plate or temporary registration violation issued on October 21, 2010 in the amount of $50.00; and c) a red light violation issued on October 26, 2010, in the amount of $100.00.

40. The Objector argues that under *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200 (2008), the Candidate's Statement of Candidacy was false when it was signed because as of November 21, 2010, the date he signed the Statement of Candidacy, he had not paid his indebtedness to the City of Chicago in violation of 65 ILCS 5/3.1-10-5 (b), which states that "[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 . . .", as is evidenced by the payment confirmation (Exhibit H) which shows that the Candidate paid his tickets on November 22, 2010.

41. In response, the Candidate argues that in *Cinkus*, the Supreme Court held that the disqualifications provided by Section 3.1-10-5(b) of the Illinois Municipal Code render a candidate ineligible to run for office if not remedied by the time the candidate files his nomination papers – not when he signs his Statement of Candidacy.

42. I find the Candidate's analysis of *Cinkus* to be correct. The payment confirmation shows that the Candidate's tickets were paid on November 22, 2010 at 7:50 a.m. The Nomination Papers were filed on November 22, 2010 at 3:40 p.m. Therefore, the Candidate's alleged indebtedness was remedied prior to the filing of the Candidate's Nomination Papers, and therefore, the Candidate is not in violation of Section 3.1-10-5(b) of the Illinois Municipal Code.

43. It is also noteworthy that the Objector's petition alleges that the Candidate was indebted to the City of Chicago on the date of filing and not the date he signed the Statement of Candidacy.

44. For the foregoing reasons, the hearing examiner recommends that the Objector's motion for summary judgment be denied. The hearing examiner further recommends that the indebtedness objection (Petition at para. 14) be overruled.

CONCLUSION

45. For the foregoing reasons, the hearing examiner recommends the following:

a. The Candidate's motion to strike and dismiss be granted in part and that paragraphs 6-13 of the Objector's petition be stricken;

b. The objections regarding the circulators' signatures (Petition at para. 18) be overruled;

c. The objection regarding the notarizations of Sandra Love (Petition at para. 19) be overruled;

d. There were no objections to 217 signatures and, since the minimum signature requirement is 181, the Candidate has sufficient signatures;

e. The Objector's motion for summary judgment is denied and the objection regarding indebtedness (Petition at para. 14) be overruled; and

f. The name of Glenn Ross 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

46. There are two related cases, *i.e.*, *Brummit v. Ross* (11-EB-ALD-146) and *Meekey v. Ross* (11-EB-ALD-364). In *Brummit v. Ross*, the Objector withdrew her objections. In *Meekey v. Ross*, the objector defaulted and in any event, the hearing examiner recommended that the Candidate's motion to strike and dismiss the objector's petition for lack of standing be granted. Therefore, in both cases, the hearing examiner, recommend that the name of Glen Ross 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