NBCON-ALD

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

Objections of: Auhzha Wright	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-100
Papers of: George E. Davis	)	
	)	Related Case: 11-EB-ALD-099
Candidate for the office of	)	
Alderman of the 20th 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 Auhzha Wright ("Objector") to the nomination papers ("Nomination Papers") of George E. Davis, candidate for the office of Alderman of the 20th 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 Casandra B. Watson 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, Auhzha Wright, by attorney, Andrew Finko; the Candidate, George E. Davis, pro se.

7. The Objector alleges that the nominating papers are invalid because his Statement of Candidacy does not reference the ward in which her is running.

8. The Electoral Board finds that the nominating papers, when read in conjunction with the petition sheets, adequately identifies the office sought.

9. The Objector further alleges that the nominating papers are invalid in that the Statement of Candidacy identifies the candidate as George Davis and the petition sheets identify the candidate as George E. Davis and nowhere do the nominating papers identify the candidate by his real name, George E. Davis, Jr.

10. The Electoral Board finds that the Objector failed to establish that there was any voter confusion regarding the candidate's name.

11. Objector also alleges 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)

12. 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.

13. Furthermore, Objector argues that, because Section 10-5 of the Illinois Election Code (10 ILCS 5/10-5) requires each candidate for office to swear or 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.

14. 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.

15. 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).

16. While *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.

17. 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.

18. 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).

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. The Objector further alleges that the nominating papers are invalid because the Statement of Candidacy identifies the candidate as a qualified Primary voter of the Democratic party and asks that his name be printed on the Democratic Primary ballot.

25. The words "Democratic Party" did not appear on the candidate's petition sheets petitions. Aldermanic candidates are nonpartisan and no political party affiliation is allowed on the ballot. (65 20/21-32) Because the words "Democratic Party" were not on the candidate's petition sheets when they were presented to the voters for signature, there was no misleading or incorrect information concerning party affiliation presented to the voters when signing the candidate's petition sheets. There is no evidence that the voters were confused about the candidate's stated or unstated political affiliations. Under these facts, there is not enough to invalidate the candidate's statement of candidacy simply because it contained extraneous information concerning the candidate's political party affiliation were none was required. *Dix v. Terry*, 03-EB-ALD-071, CBEC, January 31, 2003.

26. 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.

27. 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.

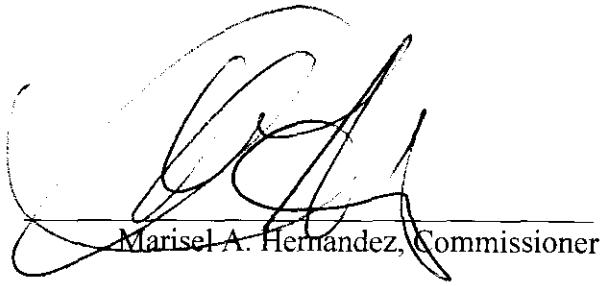
28. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Auhzha Wright to the Nomination Papers of George E. Davis, candidate for election to the office of Alderman of the 20th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of George E. Davis, candidate for election to the office of Alderman of the 20th 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 7, 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR THE FEBRUARY 22, 2011
MUNICIPAL GENERAL ELECTION IN THE CITY OF CHICAGO

BOARD OF ELECTION
POLLS & PLACES
2010 DEC 28 P 1:50

Objections of:	)	
AUHZHA WRIGHT,	)	
	)	
To the Nomination Papers of:	)	
GEORGE E. DAVIS	)	NO: **11-EB-ALD-100**
	)	
Candidate for the Office of Alderman	)	**Casandra B. Watson**
in the 20th Ward, City of Chicago	)	**Hearing Examiner**
Municipal General Election, February 22, 2011	)	

HEARING EXAMINER'S FINDINGS AND RECOMMENDATIONS

This matter having come before the Chicago Board of Election Commissioners ("CBEC") on the verified objections of Auhzha Wright ("objector") to the Nomination Papers of George E. Davis ("candidate"), Casandra B. Watson, Esq., Hearing Examiner.

1. The objector requested that the name of George E. Davis, not be printed on the ballot for the Municipal General Election, to be held on February 22, 2011, based upon the failure of the candidate's statement of candidacy to identify the office sought; failure of the candidate's oath on the statement of candidacy to identify the office sought; failure of the candidate to use his full name on each and every document filed as nomination papers; improper reference to Democratic party on candidate's statement of candidacy; cancellation of candidate's voter registration on January 13, 2008; and failure of candidate to file his Statement of Financial Interests with the Chicago Board Of Ethics, pursuant to the ruling in *Cinkus.*

2. This matter initially coming on to be heard on December 6, 2010, the candidate appearing Pro Se, and the objector appearing through Attorney Navdeep Jhat, on behalf of Attorney Andrew Finko; the candidate stating that he intended to file preliminary motions to strike and dismiss the objector's petition, this matter was continued to Friday, December 10, 2010.

3. Thereafter, the following motions were filed:

Candidate's Motion to Dismiss
Objector's Response to Motion to Strike (with attachments)
Candidate's Rebuttal-Motion to Dismiss (with attachments)

4. On December 10, 2010, the candidate appeared Pro Se, and the objector appeared through Attorney Andrew Finko. This matter was continued to December 17, 2010 for hearing on the candidate's Motion to Dismiss.

5. On December 17, 2010, the candidate appeared Pro Se, and the objector appeared through Attorney Andrew Finko. Both parties proceeded with argument on the motions.

FINDINGS AND RECOMMENDED DECISION ON MOTION TO STRIKE

The Candidate's Motion to Strike was predicated upon the findings in various Chicago Board of Election cases contained within his preliminary motions, where this Board had ruled in favor of candidates, finding "substantial compliance", on the same issues raised by the objector.

The Candidate's Motion to Dismiss was GRANTED, BEGINNING at paragraph 6 as follows:

6A. It is provided in Section 7-10, 8-8, and 10-5 of the Illinois Election Code, "that nominating petitions shall include a statement of candidacy, as a part thereof". Further, "the failure to properly designate the office the candidate is seeking on the statement of candidacy DOES NOT render his nomination papers invalid, if it can be determined by looking at the nominating petitions for which office the candidate is filing". In this case, the petition sheets of the candidate clearly identify the office of Alderman, 20th Ward. I find substantial compliance by the candidate, the objection is stricken and dismissed.

6b. I find that omission of the ward from the statement of candidacy is not fatally defective, in that each petition sheet of the candidate clearly identifies the office of Alderman, 20th Ward. I find substantial compliance by the candidate, the objection is stricken and dismissed.

6c. Sections 7-10.2, 7-17, 8-8.1, 10-5.1, and 16-3(e) of the Illinois Election Code provide for the use of the candidate's given name or name, initial or initials, or a combination thereof. I find substantial compliance by the candidate, the objection is stricken and dismissed.

6d. I find that the candidate's statement of candidacy that incorrectly references Democratic Party DOES NOT invalidate his nomination papers. "The words 'Democratic Party' did not appear on his nominating petitions...when they were presented to the voters for signature, and there was no misleading or incorrect information concerning party affiliation presented to the voters."

Dix v. Terry, 03-EB-ALD-071, CBEC, January 31, 2003,; accord, *Moses v. Austin,* 07-EB-ALD-004, CBEC, January 23, 2007; *Anderson v. Ward,* 07-EB-ALD-034, January 25, 2007. The objection is stricken and dismissed.

6e. The Illinois Municipal Code at Section 65 ILCS 5/3.1-10-5 sets forth the qualifications for elective municipal office, and this provision does not require that a candidate be a registered voter. The section makes no reference whatsoever as to voter or voter registration of a candidate. The objection is stricken and dismissed.

7. As to the allegation of the objector that the cumulative effect of all of the foregoing deficiencies are likely to lead to confusion...and taken together should render the candidate's nominating papers invalid; this hearing examiner finds no merit in such contention. In each and every preceding instance, the objection has been stricken and dismissed. This objection is stricken and dismissed.

8. As to the objector's objection based upon the failure of the candidate to file a Statement of Financial Interests with the Chicago Board of Ethics, this Electoral Board does not have the authority to invalidate nomination papers for an alleged failure to comply with the City of Chicago's Ethics Ordinance. The objection is stricken and dismissed.

Motions to strike and dismiss having been granted to each and every one of the objector's objections, and there being no further objections of record:

RECOMMENDED DECISION

It is the recommendation of this hearing examiner that the name of George E. Davis BE PRINTED on the ballot for the February 22, 2011 Municipal General Election for the City of Chicago.

Dated: Chicago, Illinois, this 27th day of December, 2010

Respectfully Submitted By:

Casandra B. Watson, Hearing Examiner