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

Objections of: Leola Chambers	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-104
Papers of: Michael Finney	)	
	)	Related Case: 11-EB-ALD-053
Candidate for the office of	)	
Alderman of the 15th 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 Leola Chambers ("Objector") to the nomination papers ("Nomination Papers") of Michael Finney, candidate for the office of Alderman of the 15th 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 Travis Richardson 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, Leola Chambers, by attorneys Sally H. Saltzberg and Michael Kreloff; and the Candidate, Michael Finney, pro se.

7. The Objector alleges that on the signature pages of the Candidate's nominating petitions, the Candidate provided a false place of residence in that the Candidate listed only a post office box as his place of residence. (Verified Objector's Petition, ¶2) She further alleges that the Candidate's petitions are deficient as a matter of law, and the Candidate is ineligible to seek office as Alderman of the 15th Ward of the City of Chicago because of the Candidate's failure to inform the voters as to his place of residency. (Verified Objector's Petition, ¶3)

8. The Hearing Officer found that in the heading of each of the Candidate's petition sheets he listed "P.O. BOX 368387 CHICAGO, ILLINOIS 60636" in the box titled, "Address". No street number or name for the Candidate's place of residence is printed on the petition form.

9. The Candidate claims to reside at 5954 S. Wolcott, Chicago, Illinois 60636, and he has submitted a certified copy of his voter registration card showing him to be registered to

vote at the Wolcott Street address, from which he has voted since 2000 and most recently in the February 2, 2010 primary election.

10. The Candidate argues that simply listing a P.O Box number is sufficient because (a) it did not lead to voter confusion because the Candidate verbally informed petition signers of his residential address and it was not reasonable that anyone would believe he actually lived at a post office box address; and (b) he relied on the Board of Election Commissioners' *2011 Election Information Pamphlet & Calendar* ("*Pamphlet*") that mentions only that the candidate's "address" must be included in the heading of each petition sheet and that a post office box number is acceptable because the Pamphlet does not specify the type of address.

11. The Hearing Officer further found that section 10-4 of the Election Code (10 ILCS 5/10-4) provides in relevant part:

> "All petitions for nomination under this Article 10 for candidates for public office in the State, shall in addition to other requirements provided by law, be as follows: Such petitions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, an appropriate heading, given the information as to the name of candidate or candidates in whose behalf such petition is signed; the office; the party; *place of residence*; and such other information or wording as required to make same valid, in the heading of each sheet shall be the same." (Italics added)

The Hearing officer found that the Board's *Pamphlet* referred specifically to section 10-4 of the Election Code for information. See, *Pamphlet*, at page 5.

12. Section 10-5 of the Election Code (10 ILCS 5/10-5) provides that "All petitions for nomination shall, besides containing the names of candidates, specify as to each: *** 3. *The*

place of residence of any such candidate or candidates with the street and number thereof, if any."

13. The Objector cites to the case of the *Zapolsky v. Cook County Officers Electoral Board*, 296 Ill.App.3d 731, 734, 695 N.E.2d 1329 (1988). In *Zapolsky*, the court emphasized the importance of errors found on candidate's petition sheets where voters' signatures were affixed, as opposed to defects in a statement of candidacy. *Zapolsky* concerned a heading on the nominating petition sheets that failed to set forth the office sought in a clear and unambiguous way. The court explained, "The apparent purpose of the nominating petitions signed by voters is to expand the informed participation of members of the respective parties and their primary election. Nominating petitions should be free from a 'basis for confusion' as to the office for which there filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate same vacancy." The court in *Zapolsky* found that because the candidate failed to accurately identify the office sought on his nominating petition sheets, those sheets were not free from a "basis for confusion" as to the office for which they were filed. The court, therefore, struck the candidate's nomination papers.

14. Here, signatories to the Candidate's nominating petition sheets had a right to know the Candidate's place of residence as required both by Section 10-4 and Section 10-5 of the Election Code. The statute is very specific in requiring that the candidate's nominating petition sheets contain the "place of residence," including the street and number thereof. The P.O. Box information supplied by the Candidate's nominating petition sheets did not adequately informed the signatories to such petition sheets as to the Candidate's true place of residence as required by law. The Candidate claims he "verbally" informed each and every signer of his

petition of his true place of residence. Even if true, that does not satisfy the statutory requirement that his place of residence, including his street number and name, be *printed* on his nominating petition sheets.

15. The Candidate cites the case of *Merz v. Volderbing*, 94 Ill.App.3d 1111, 419 N.E.2d 628 (First Dist., 1981), for the proposition that he was entitled to rely on information in the Board's *Pamphlet* and that the Board should effectively be estopped from invaliding his nomination papers for errors based on such reliance. But *Merz* is distinguishable from the present case because the *Merz* court was dealing with a statute that was concededly vague, ambiguous and open to more than one reasonable interpretation, stating that "... it would be a great injustice to penalize any candidate for failure to understand a provision in the Election Code which we ourselves have had considerable difficulty in interpreting." *Merz*, 94 Ill.App.3d at 1117. Here, the statutory requirements in Sections 10-4 and 10-5 were perfectly clear that the Candidate had a duty to print his place of residence, including street and number on his nominating petitions sheets, not a post office box number. There is no ambiguity in statute. And even if one were to accept the Candidate's argument that the Pamphlet's reference to requiring the candidate's address is misleading or erroneous interpretation of the statute, courts are reluctant to find the State estopped from enforcing its laws. *Vestrup v Du Page County Election Com'n*, 335 Ill.App.3d 156, 166-167, 779 N.E.2d 376, 38 (Second Dist., 2002). This reluctance is "motivated by the concern that doing so 'may impair the functioning of the State in the discharge of its government functions, and that valuable public interests may be jeopardized or lost by the negligence, mistakes or inattention of public officials.' " Id. Estoppel is applied against the State only to prevent fraud and injustice. Id. As in *Vestrup*, the Candidate here chose to rely upon information in an administrative agency's publication – here, the Board' *Pamphlet* – after being

forewarned in the Preface that the publication that it was intended as a guide, that it was not a legal document, that readers of the document were strongly encouraged to seek competent legal advice concerning their rights and obligations as voters and candidates and that the reader should not rely solely on the contents of the *Pamphlet*. The *Pamphlet* further warned that to the extent that the information in such document conflicted with any statute or case law decisions the State of Illinois or of the United States, such statute or case law decision supersedes the Pamphlet. As the court in *Vestrup* explained, following *Merz* "would be a concession that an administrative agency's mistaken interpretation of a state statute can preclude a court from enforcing that statute. Essentially, Vestrup would have us give an interpretative error the force of law and precedence over the law as enacted by the elected lawmakers of the State of Illinois. This is entirely unacceptable, especially because that interpretative error would cost the voters of representative districts in Illinois their opportunity to nominate the candidates of their choice." Id. Therefore, to accept the Candidate's estoppel argument here would defeat the very clear purpose of the statute in requiring that the petitions contain in the heading the Candidates' place of residence.

16. The Hearing Officer found that the *Pamphlet* to which the Candidate refers and upon which he allegedly relied, includes in the "Preface" the following admonition: "You are strongly encouraged to seek competent legal advice concerning your rights and obligations as a voter or as a candidate for public office and you should not rely solely on the contents of this publication. This publication is intended as a guide and not as a legal document. For specific requirements, please refer to the Illinois Election Code (10 ILCS 5/1-1 et seq.) and the Illinois Revised Cities and Villages Act (65 ILCS 20/1-1 et seq.)." The Hearing Officer concluded that

the Candidate should not have ignored this notice from the *Pamphlet's* Preface and relied solely on the information contained in the *Pamphlet.*

17. The Hearing Officer found that the Candidate failed to include his place of residence in the heading of his petitions, including instead only his post office box address, and that his petitions were, therefore, defective and invalid.

18. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers were invalid.

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

20. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are invalid.

21. The Electoral Board further finds that in related case 11–EB–ALD–053 the objector was defaulted and said objections were dismissed.

IT IS THEREFORE ORDERED that the Objections of Leola Chambers to the Nomination Papers of Michael Finney, candidate for election to the office of Alderman of the 15th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Michael Finney, candidate for election to the office of Alderman of the 15th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2010.

Dated: Chicago, Illinois, on January 21, 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.