BCCON-ALD

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

Objections of: John Tuttle	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-122
Papers of: Matt Reichel	)	
	)	
Candidate for the office of	)	
Alderman of the 47th 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 John Tuttle ("Objector") to the nomination papers ("Nomination Papers") of Matt Reichel, candidate for the office of Alderman of the 47th 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 was held on these Objections commencing on December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Mario Correa for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, John Tuttle, by attorney, James P. Nally; and the Candidate, Matt Reichel, by attorney, Andrew Finko.

7. The Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative were present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 185.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 510.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 263.

D. The remaining number of signatures deemed valid as a result of the records examination total 247.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 47thWard of the City of Chicago.

14. Neither party filed a motion pursuant to Rule 8 of the Rules of Procedure objecting to the Board's clerk's findings during the records examination.

15. The Hearing Officer also recommends overruling objections alleging that the Candidate is in arrears in the payment of a tax or other indebtedness to the City of Chicago.

16. The Hearing Officer has tendered to the Electoral Board his 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.

17. 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.

18. 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 John Tuttle to the Nomination Papers of Matt Reichel, candidate for election to the office of Alderman of the 47th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of MATT REICHEL, candidate for election to the office of Alderman of the 47th 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 11, 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 BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO

In Matter of	)	
	)	
MATT REICHEL,	)	
Candidate,	)	
	)	No. 11-EB-ALD-122
and	)	
	)	
JOHN TUTTLE,	)	
Objector.	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 21 A 11:52

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

I, hearing officer, MARIO CORREA ("Hearing Officer") hereby state and recommend that the Board of Election DENY the objection of JOHN TUTTLE (the "Objector") to the nominating papers of MATT REICHEL (the "Candidate") for the following reasons and based on the following evidence:

1. On December 6, 2010, the hearing was first called. The parties both appeared through their respective attorneys. The Nominating Papers, Objectors Petition, Service, and Appearances were entered into the record without objection. The Candidate asked for leave to file a Motion to Strike, and a briefing schedule was entered with a hearing on December 9, 2010.

2. On December 9, 2010, the same parties appeared. At issue in the Motion to Strike was the allegation in the Objector's Petition that the Candidate failed to pay ticket number 7002663435 at the time of filing his Nominating Papers. The Motion to Strike alleged that (a) the Objector failed to attach an exhibit A to his Objector's Petition and (b) that ticket number 7002663435 was in the process of being contested. In support of the contest, there was an exhibit attached to the Motion to Strike indicating it was a screen shot of a CTMS – Ticket

Primary Detail and on that screen shot was a stamp indicating the ticket was being contested as well as a handwritten note indicating that the ticket had been mailed to the wrong address.

3. The Hearing Officer found that the Objector's Petition provided sufficient detail in the body of its Objector's Petition to apprise the Candidate the debt at issue. Accordingly, the failure to attach Exhibit A was harmless. With respect to the matter that the Candidate had no debt, the Hearing Officer found that there was a significant disagreement as to the facts alleged in support of the Motion to Strike. The Hearing Officer therefore denied the Motion to Strike on the grounds that there were facts in dispute. Duplicate subpoenas were given to the parties that directed the Chicago Department of Revenue to provide all information concerning ticket violation number 7002663435.

4. On December 15, 2010, a hearing was conducted concerning whether the Candidate had a debt on the date of filing his Nomination Papers. The Objector presented his case-in-chief which consisted of a screen shot of a CTMS – Ticket Primary Detail along with a certification from the Chicago Department of Revenue. Said exhibit was entered without objection as Objector's Exhibit 1. A review of Objector's Exhibit 1 shows the violation was for a "red light violation" with the last notice date of September 10, 2010, a notice type of "final", and an amount due of $244.

5. The Candidate's defense turns on the fact that the debt listed in Objector's Exhibit 1 was not an enforceable debt since the Candidate was never served a copy of the ticket that generated the indebtedness. The Candidate was able to establish that after the date the Nominating Papers were filed, the City of Chicago ("City") vacated the underlying ticket for failure to send the ticket to the proper address.

6. In support of his defense, the Candidate entered four exhibits and the testimony of John A. Clark, an assistant corporate counsel, for the City. The Candidate's exhibits can be summarized as follows: (1) screen shot of Yahoo email from Chris Haynes, (2) letter dated December 13, 2010, from Chris Haynes along with certified record of "Ticket-Primary Detail" screen shot, (3) memorandum of indebtedness dated 12/14/2010 from Chris Haynes indicating no debt was due, and (4) consisting of five pages including two "Ticket-Primary Detail" screen shots. All exhibits were received without objection.

7. John A. Clark testified under oath that he was assistant corporate counsel with the Department of Law of the City of Chicago and that he represented the City in contested hearings. Transcript p.10 ln.12-18. Mr. Clark used Candidate's Exhibit 4 and compared the two Ticket-Primary Details – one showing an amount due of $244 (same document as Objector's Exhibit 1) and the other showing an amount due of $100. Transcript p.13 ln.19–22. Mr. Clark explained that the change of the amount due from $244 to $100 was a result of the City learning that it had issued the ticket to the wrong address. Transcript p.14 ln.2 thru p.15 ln.6. The City records showed that the Candidate owed $244 up until December 10, 2010. Transcript p.16 ln.4–8 and also p.22 ln.2–12. On December 10, 2010, is when the City took corrective action and reissued the ticket for $100. Transcript p.15 ln.7–17. Accordingly, it is currently the City's position it made an error when it initially mailed the ticket to the Candidate since it had the wrong address and it corrected the error on December 10, 2010. Transcript p.16 ln.4-17.

8. There was no significant dispute as to the facts. On May 17, 2010, the City cited the Candidate with a violation for $100; the ticket was mailed to the wrong address; the City found the Candidate guilty of fines and penalties; immediately prior to the Candidate filing its Nominating Papers the fines and accrued penalties arising from said violation totaled $244. On

December 10, 2010, the City changed its position since it discovered that notice of the violation was sent to the wrong address. On that date, the City of Chicago effectively vacated the ticket, reissued a new ticket, and therefore there was no debt due and owing on December 10, 2010.

9. The issue of law can be presented as follows:

Whether an alleged debt to a municipality arising from a traffic violation that exists on the date a candidate files his nominating papers disqualifies the candidate under Section 3.1-10-5 of the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)) even if the alleged debt is later vacated by the municipality due to the failure to give the candidate proper notice of the violation.

10. Section 3.1-10-5 of the Illinois Municipal Code provides that "a person is not eligible for municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality..." 65 ILCS 5/3.1-10-5(b).

11. The Illinois Municipal Code does not define "arrears" or "indebtedness due". Accordingly, those terms will be given their plain and ordinary meaning. The Illinois Supreme court has defined a debt as follows:

> A "debt" is defined in general terms as a specified sum of money owed by one person to another, including the obligation of the debtor to pay, and the right of the creditor to enforce payment. (Black's Law Dictionary 363 (5th ed. 1979).) "Indebtedness" is the "state of being in debt," without regard to the debtor's ability to pay the debt. (Black's Law Dictionary 691 (5th ed. 1979).) "[I]n a broad sense and in common understanding," the term "indebtedness" may mean "anything that is due and owing." (Black's Law Dictionary 691 (5th ed. 1979).)
>
> People v. Datcom Systems Corp., 146 Ill.2d.1, 16 (1991).

12. Explicit in the definition of debt, as adopted by the Illinois Supreme Court, is "the right of the creditor to enforce payment." Put another way, if a creditor has no right to enforce the payment, then no debt in fact exists. The Hearing Officer concludes that in order for a debt

to be in arrears under Section 1-10-5 of the Illinois Municipal Code it must be an enforceable debt.

13. The Objector made the argument that one needs to address all outstanding debts, whether enforceable or not, prior to running for office in order to comply with Section 1-10-5. To interpret Section 1-10-5 as the Objector proposes would mean that candidates could be removed from the ballot for unenforceable debts. In fact, as is the case here, a candidate could be removed from office for a debt he is not even notified of. This is an extra-ordinary interpretation of the word "debt", and if the legislature intended for all alleged obligations whether enforceable or not, to be addressed prior to running for office, it should have expressly stated that in the statute.

14. Here, the City of Chicago vacated the judgment of liability it rendered in the underlying case because no notice was sent to the Candidate. Thus, the creditor, in the underlying violation, namely the City of Chicago, conceded that the debt at issue was not legally enforceable, and the City took corrective action. Accordingly, the Hearing Officer finds that the $244 due to the City of Chicago was not a debt in arrears as contemplated by Section 1-10-5 of the Illinois Municipal Code.

15. In support of its case, the Candidate argues that by vacating its original violation, the determination should proceed as if the violation had never been issued. It is the general rule that "a judgment that is vacated is void. It is entirely destroyed. The vacatur restores to the status quo ante, as though the trial judgment had never been entered" People v. Eidel, 319 Ill.App.3d 496(2nd Dist., 2001). However, there are instances when an adjudicating body can consider the underlying facts even in a matter that is vacated when rendering its opinion. See generally Applegate v. Illinois Dep't of Transportation, 335 Ill.App.3d 1056 (4th Dist, 2003)

was presented in support of this proposition. Second, even if one assumes that the Candidate provided the wrong address, and that doing so is a violation of the Illinois Vehicle Code, does that violation then render ticket number 7002663435 enforceable? There was no evidence presented that it does. The Hearing Officer finds that the City's Department of Revenue, the party in charge of enforcing the violation at issue, was in the best position to determine the enforceability of the ticket and they found the violation was not enforceable. Nothing was presented to tarnish or otherwise disturb this finding.

20. The only remaining issue, other than the debt issue above, was whether the Candidate had a sufficient number of signatures. The Board completed its record examination of the Candidate's signatures and found that the Candidate filed 510 signatures of which 342 were objected to leaving 168 signatures not objected to. Of the 342 objections, 79 objections were overruled. The 168 un-objected to signatures plus the 79 overruled objections leaves 247 valid signatures. The minimum signature requirement was 185. Therefore, the Candidate had a sufficient number signatures. On the status date of December 20, 2010, the parties indicated that they would not be filing Rule 8 motions and therefore the Hearing Officer closed all proceedings in this matter.

As a result of the foregoing, the Hearing Officers recommends that the Board DENY the objection of JOHN TUTTLE to the nominating papers of MATT REICHEL.

Respectfully Submitted,

Mario Correa, Esq.
Hearing Officer