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

Objections of: Richard E. Bolin	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-138
Papers of: Dwayne Belle	)	
	)	Related Case: 11-EB-ALD-234
Candidate for the office of	)	
Alderman of the 21st 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 Richard E. Bolin ("Objector") to the nomination papers ("Nomination Papers") of Dwayne Belle, candidate for the office of Alderman of the 21st 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 Gerald B. Mullin 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, Richard E. Bolin, by attorney, James P. Nally; and the Candidate, Dwayne Belle, pro se.

7. The sole issue presented in the Objector's Petition was whether the Candidate was ineligible to be a candidate for municipal office because at the time he filed Nomination Papers he was in arrears on the payment of an indebtedness to the City of Chicago.

8. The Hearing Officer conducted an evidentiary hearing in which the Objector established that the Candidate owed fines on two traffic tickets, one issued on 10/23/2008 and the other issued on 6/6/09. These tickets were due and outstanding at the time the Candidate filed his Nomination Papers.

9. Section 3.1-10-5(b) of the Illinois Municipal Code 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.

The objector based his argument on 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 ("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) precluded Cinkus from running for office because he was in violation of said section. The court determined that the indebtedness resulted in the candidate being ineligible to run for office.

The Cinkus case represents a departure from prior rulings in which it was held that an outstanding debt precluded candidates from *taking* office but did not preclude them from *running* for office. Since the Cinkus case, the current state of the law is that a candidate is precluded from *running* for municipal office if, at the time he files his nominating papers, he owes a debt to the municipality in which he is running.

Finally, in addressing whether an "indebtedness" exists under Section 3.1-10-5(b) it is useful to ascertain what the City of Chicago considers to be an "indebtedness". Although not binding on this Electoral Board, Section 1-19-010 of the Municipal Code of the City of Chicago provides guidance. Said section defines "debt due and owing" as

> "a specified sum of money owed to the city for fines, penalties, fees, interest, or other types of charges or costs imposed by this code, or administrative or judicial judgments after: (i) the period granted for payment has expired; (ii) the exhaustion of, or the failure to exhaust, judicial review procedures; or
> (iii) in the case of tax debt, an assessment has become final under Section 3-4-330 of this code."

10. 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 outstanding indebtedness rendered him ineligible to run for office pursuant to Section 3.1-10-5(b) of the Illinois Municipal Code.

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

12. The Electoral Board also finds that the Candidate's Nomination Papers were found to be invalid in Related Case 11-EB-ALD-234.

IT IS THEREFORE ORDERED that the Objections of Richard E. Bolin to the Nomination Papers of Dwayne Belle, candidate for election to the office of Alderman of the 21st Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Dwayne Belle, candidate for election to the office of Alderman of the 21st 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 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.