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

Objections of: Kathleen Tompkins	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-163
Papers of: "Jim" James M. Osborne	)	
	)	
Candidate for the office of	)	
Alderman of the 38th 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 Kathleen Tompkins ("Objector") to the nomination papers ("Nomination Papers") of "Jim" James M. Osborne, candidate for the office of Alderman of the 38th Ward in 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 Linda R. Crane 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 Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Kathleen Tompkins, by attorney, James P. Nally; and the Candidate, "Jim" James M. Osborne, pro se.

7. The Candidate filed a Motion to Strike and Dismiss in which he alleged that the Objector did not have standing to file the Objector's Petition because he was not a registered voter at the address in the Objector's Petition. The issue with respect to the Objector's address involved a typographical error of one digit of the address. Rather than setting forth the correct address of 5327 W. Warner, the Objections contained the address of 5927 W. Warner.

8. The Hearing Officer found that the inclusion of one incorrect digit in the Objector's address was not a sufficient basis to strike the Objector's Petition and denied the Motion to Strike and Dismiss on this basis.

9. The Candidate's Motion to Strike and Dismiss also alleged that the Candidate had not been a registered voter at the 5327 W. Warner address since 1995 because that was the last entry concerning voting history on the Objector's registration card. (Objector's Ex. 1, page 2). However, the testimony of Board employee Charles Holiday established that the voting history

after 1995 would not be contained on the card because the Board went to a digital system thereafter. Further, the certification of Lance Gough, Executive Director of the Chicago Board of Election Commissioners established that the Objector was a registered voter at 5327 W. Warner on December 6, 2010. (Objector's Ex. 1). Therefore, the Hearing Officer denied the Motion to Strike and Dismiss on this basis as well.

10. The Objections allege that the Candidate's Nomination Papers are defective because the Candidate failed to file a receipt evidencing the filing of a Statement of Economic Interests as required by law.

11. The Hearing Officer found that notwithstanding what the Board's intake sheet indicated, the evidence established that no Statement of Economic Interests was filed by the Candidate with the Office of the Cook County Clerk and no receipt was filed with the Nomination Papers.

12. Article XIII, Section 2 of the Illinois Constitution provides that the General Assembly by law may impose a requirement upon candidates for, or holders of, offices in units of local government and school districts to file a verified statement of their economic interests. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office.

13. Section 10-5 of the Election Code (10 ILCS 5/10-5) provides that nomination papers are not valid if the candidate fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. If the nomination papers

of the candidate and the statement of economic interests of the candidate are not required to be filed with the same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed.

14. The Illinois Governmental Ethics Act requires that persons who are candidates for nomination or election to office in a unit of local government to file their statements of economic interests with the county clerk of the county in which the principal office of the unit of local government is located. (5 ILCS 420/4A-101(g), 4A-106) Therefore, candidates for nomination or election to office in the City of Chicago are required to file their statements of economic interests with the Cook County Clerk.

15. Because statements of economic interests of candidates for nomination or election to the office of Alderman in the City of Chicago are required to be filed with the Cook County Clerk and the nomination papers of those candidates are required to be filed with the Chicago Board of Election Commissioners, a candidate for the office of Alderman in the City of Chicago is required by Section 10-5 of The Election Code to file with the Chicago Board of Election Commissioners a receipt from the Cook County Clerk showing the date on which the candidate's statement of economic interests was filed. Such receipt was required to be filed with the Chicago Board of Election Commissioners not later than the last day on which nomination papers were permitted to be filed.

16. The Electoral Board finds that the Candidate failed to file with the Chicago Board of Election Commissioners not later than the last day allowed by law to file nomination papers a

receipt from the Cook County Clerk showing the date on which the Candidate's statement of economic interests was filed.

17. The Electoral Board finds that the failure to file with the Chicago Board of Election Commissioners a receipt showing that the Candidate filed a statement of economic interests with the Cook County Clerk invalidates the Candidate's Nomination Papers. *Kellogg v. Cook County Illinois Officers Electoral Board*, 347 Ill.App.3d 666, 807 N.E.2d 1161 (First Dist. 2004); *Bolger v. Electoral Board of City of McHenry,* 210 Ill.App.3d 958, 569 N.E.2d 628 (Second Dist. 1991); *Mobley v. Beard*, CBEC, 95-EB-MUN-7 (January 23, 1995); *Geiren v. Norris*, CBEC, 95-EB-ALD-44 (January 17, 1995); *Jackson v. Washington*, CBEC, 95-EB-ALD-85 (January 23, 1995); *Williams v. Brown*, CBEC, 95-EB-ALD-131 (January 27, 1995); *Robinson v. Nalls*, CBEC, 95-EB-ALD-181, (January 28, 1995).

18. The Objector's Petition also contained allegations that required a records examination and 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.

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

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

21. The Objector and/or her duly authorized representative was present during the examination of the registration records.

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

23. 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 147;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 257;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 116;

D. The remaining number of signatures deemed valid as a result of the records examination total 141.

24. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the 38th Ward of the City of Chicago.

20. No motions were filed by either party pursuant to Rule 8 of the Board's Rules of Procedure.

21. 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 contained only 141 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the 38th Ward of the City of Chicago, and

that the Candidate's Nomination Papers should be found invalid. The Hearing Officer's report also recommended that the Nomination Papers should be found invalid because the Candidate failed to file a Receipt for the filing of the Statement of Economic Interests.

22. 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.

23. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions, that the Candidate failed to file a receipt for the filing of his Statement of Economic Interests and that the Nomination Papers of "Jim" James M. Osborne are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of Kathleen Tompkins to the Nomination Papers of "Jim" James M. Osborne, candidate for election to the office of Alderman of the 38th Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of "Jim" James M. Osborne, candidate for election to the office of Alderman of the 38th 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, 2011.

Dated: Chicago, Illinois, on January 13, 2011.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel 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.