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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-165
Papers of: Helen A. Alex	)	
	)	Related Cases: 11-EB-ALD-289,
	)	11-EB-ALD-290
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 Helen A. Alex, 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, Helen A. Alex, pro se.

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 her duly authorized representative was present during the examination of the registration records.

10. The Objector and/or her duly authorized representative was 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 Electoral 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 147;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 448;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 185;

D. The remaining number of signatures deemed valid as a result of the records examination total 263

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was more 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.

14. The Hearing Officer conducted further hearings in relation to two additional issues. First, the Hearing Officer conducted a hearing on the Candidate's Motion to Strike and Dismiss the Objector's Petition wherein the Candidate alleged that the Objector did not reside at the address stated in the Objector's Petition and, therefore, the Objector did not have standing to bring the objection. The Objector responded by arguing that the Objector's correct residence address is 5327 W. Warner and that although the Objector's Petition contains the address 5927 W. Warner, the inclusion of one wrong number in the address constitutes a scrivener's error and an insufficient basis to strike the Objector's Petition.

15. The Hearing Officer concluded that the Motion to Strike and Dismiss should be denied.

16. The Electoral Board finds that the inclusion of one incorrect digit in the Objector's address is not a sufficient basis to strike the Objector's Petition and that the Hearing Officer correctly denied the Candidate's Motion to Strike and Dismiss. *Morton v State Officers Electoral Board*, 311 Ill. App. 982, 726 N.E. 2d 201 (4th Dist. 2000); *Ryan v Landek*, 159 Ill. App. 3d (1987).

17. The Hearing Officer also conducted a hearing on the Objector's allegation that the candidate was not eligible to run for office as a result of her being indebted to the City of Chicago on the payment of outstanding traffic tickets. The evidence established that as of the date the Candidate filed her nominating papers, there was an unpaid traffic ticket in the amount of $136.37 and that said ticket was not paid until the week of December 13, 2010, after the date the nominating papers were filed.

18. The Hearing Officer concluded that the candidate's indebtedness to the City of Chicago rendered her ineligible as a candidate for the office of Alderman.

19. 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 her 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.

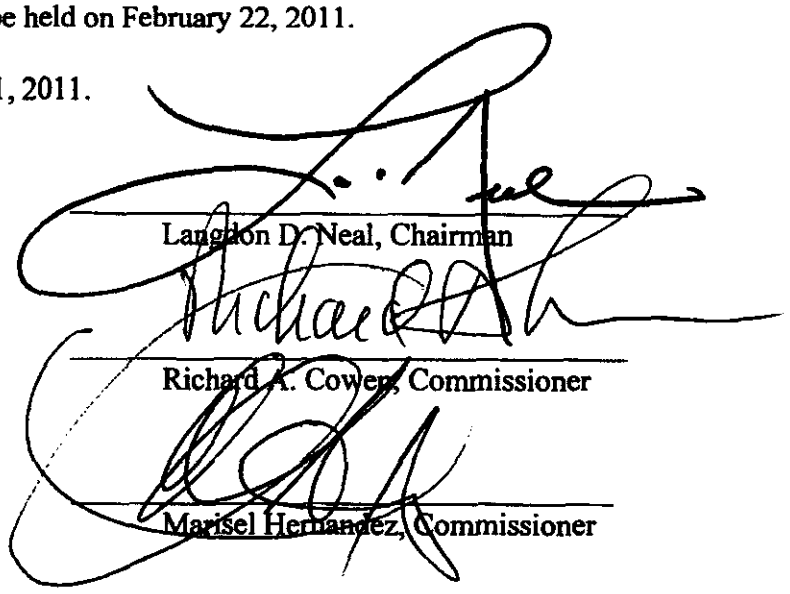
20. The Electoral Board finds that in light of the Cinkus case, the Hearing Officer correctly concluded that the candidate was ineligible to run for the office of Alderman in the City of Chicago.

20. 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.

21. For the reasons stated above, the Electoral Board finds that the Candidate's nominating papers are invalid.

IT IS THEREFORE ORDERED that the Objections of Kathleen Tompkins to the Nomination Papers of Helen A. Alex, 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 Helen A. Alex, 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 11, 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.

BEFORE THE BOARD OF ELECTION COMMISSIONERS
SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS
ELECTORAL BOARD FOR THE CITY OF CHICAGO

KATHLEEN TOMPKINS	)	
	)	
Petitioner-Objector	)	
	)	
	)	
	)	**No. 11 - EB - ALD-165**
Vs.	)	**Linda R. Crane**
	)	**Hearing Officer**
	)	
HELEN A. ALEX	)	
	)	
Respondent-Candidate	)	

BOARD OF ELECTIONS
2011 JAN -6 A 8:58

RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners ("CBOE") on verified objections of **KATHLEEN TOMPKINS** ("objector") to the nomination papers of **HELEN A. ALEX** ("Candidate"), Linda R. Crane, Hearing Officer, finds and recommends as follows:

1. The candidate, **HELEN A. ALEX,** has filed Nomination Papers in support of her nomination to the office of Alderman of the 38th Ward in the City of Chicago to be voted upon during the upcoming election on February 22, 2011 (election).
2. The objector, **KATHLEEN TOMPKINS,** has filed a Verified Objector's Petition objecting to the sufficiency of the Candidate's nomination papers for the reasons stated in Paragraphs 2 through 25 of her Petition.
3. Paragraph 22 of the Objector's Petition alleges that the nomination papers *"contain fewer than the 147 validly collected signatures of qualified and duly registered legal voters of the 38th Ward...signed by such voters in their own*

proper person with proper addresses far below the number required under Illinois law..."

4. Paragraphs 24 and 25 of the Objector's Petition allege that the Candidate *"is not qualified to appear on the ballot for the office the candidate is seeking due to debts in arrears to the City of Chicago including but not limited to ordinance violation citation tickets issued to the Candidate under the name of Helen Alex-O'Shea notice number 505-676-6680 totaling $244 in arrears, and notice 511-007-6210 totaling $136.37 in arrears as set forth on the attached Exhibit A incorporated herein and is in arrears on debt owed to the City of Chicago at the time of the statement of candidacy was signed, in violation of the Illinois Election Code and Illinois Municipal Code, and Cinkus vs. Village of Stickney Officers Electoral Board...and therefore the Nomination Papers are invalid in their entirety."*
5. The initial hearing on this matter was held on December 6, 2010. In attendance were: the candidate, **HELEN A. ALEX**, appearing pro se; and the objector through her attorney, James P. Nally. At that hearing, the objector requested that the candidate's name not be printed on the ballot for the election to the office of Alderman, 38th Ward, City of Chicago, for the above-referenced reasons.
6. A second hearing was scheduled for and was held on December 13, 2010 to allow the candidate an opportunity to file a Rule 5 Motion to Strike the Objector's petition in whole or in part. A Record Examination was ordered to determine the number of valid signatures filed by the candidate in her nomination petitions.

7. On December 7, 2010, the candidate filed a Rule 5 Motion to Strike and Dismiss the Objector's Petition. In the candidate's Motion to Strike, the candidate asks that the Objector's Petition be stricken due to the objector's lack of standing. The motion states that the objector is *"not a qualified objector"* and, therefore, lacks standing because the objector does not reside at the address contained in the Petition and, therefore, fails to fulfill the requirement of Illinois state law, which requires "the objector's petition (to) give the objector's name and residence address..."

8. In the Respondent's Motion to Strike, the candidate states that she has *"no knowledge of any debts to the city of Chicago and in no way should be disqualified."*

9. On December 8, 2010, the objector filed a Response to Motion to Strike Objector's Petition that began by citing the legal standard that applies to reviews of motions to dismiss, arguing that *" 'all pleadings are construed in the light most favorable to the non-moving party, and all well plead facts in the Complaint, as well as reasonable inferences drawn there from, are taken as true.' "* Weiss v. Waterhouse Securities, 335 Ill. App. 3d 875 at 882 (1st Dist. 2002). The objector acknowledged that the Illinois State election law requires the Verified Objector's Petition to include the name and address of the objector; and admitted that the address included in the Petition was not the objector's address. The objector raised an affirmative defense that the Petition was valid because the Petition contained an address but that the address was incorrect due to a minor typographical "scrivener's" error that resulted in the misstatement of the

objector's address as 5927 W. Warner instead of the correct address which is 5327 W. Warner, Chicago, Illinois. The objector argued that Illinois Appellate Court case law supports her position that she meets the statutory requirements as an objector despite the fact that the numerical portion of her address that was included in her Petition mistakenly contained a 9 instead of a 3 because she is, in fact, a duly registered voter who resides within the 38th Ward in Chicago, Illinois at 5327 W. Warner. Citing *Morton v. State Officers Electoral Board*, 311 Ill.App.3d 982 (2000) and *Ryan v. Landek*, 159 Ill. App. 3d 10 (1987), the objector argued that the standard for determining whether an error in the statement of the objector's address in the objector's petition will result in invalidation is "substantial compliance." Specifically, the objector argued that *Morton* and *Landek* stand for the proposition that a one digit deviation away from the correct address is de minimis and that a disqualification based solely on it would be unduly harsh and inconsistent with the purpose of the address requirement in the Code.

10. On December 13, 2010, the parties all appeared, again through their legal counsel. A hearing was held on the following issues:

    a. Whether the results of the Record Examination show that the candidate had filed at least 147 valid signatures on her nomination petitions;

    b. Whether the objector met the statutory standing requirement; and

    c. Whether the candidate was in arrears on a debt to the City of Chicago at the time he filed her nomination papers that would prevent him from running for office in the municipal election.

11. The objector argued the points raised in her Response to the Motion to Strike (see Paragraph 9 herein) and added that the *Morton* case found that the statute that requires the objector to include her address requires on substantial compliance, not strict compliance, with the rule; and, moreover, *"does not include a penalty provision for an Objector's lack of strict compliance with this requirement"* because the purpose of the requirement is that the objector give notice that she is a registered voter who resides in the Ward.

12. Pursuant to Rule 6 of the Board's Rules of Procedure, a Records Examination was ordered to determine the adequacy of the Petitioner's allegations as to whether the Petitioner had filed the minimum number of required valid signatures as required by the Illinois Election Code. The Records Examination was completed on December 13, 2010.

The reported results were as follows:

Number of Signatures Filed	448
Number of Objections to Signatures	227
Total Objections Ruled On	224
Number of Objections Overruled	039
Number of Objections Sustained	185
Number of Valid Signatures	263
Number of Signatures Required	147

13. The results of the preliminary Record Examination were that the Candidate filed at least 116 more total valid signatures than the minimum required.

14. A third hearing was scheduled for December 20, 2010 to allow the parties to acquire records from the city regarding the candidate's tickets as evidence of whether or not the candidate was in arrears on a debt to the city at the time she filed her nomination papers.

15. On December 20, 2010 the parties all appeared, again through their legal counsel; and a hearing was held on the following remaining issues:

    a. Whether the objector had satisfied the requirement that the Objector's Petition contain her address; and

    b. Whether the candidate was in arrears on a debt to the City of Chicago at the time he filed her nomination papers that would prevent her from running for office in the municipal election.

16. The parties provided evidence, including the candidate's own admission, that the candidate had an unpaid traffic tickets issued by the City of Chicago in the amount of at least $136.37 when she filed her nomination papers on November 22, 2010. The candidate provided proof of that she had paid the tickets during the week of 12-13-2010; and admitted that they were unpaid on November 22, 2010 when she filed her nomination papers.

17. The objector reiterated her argument, based on the Landek and Morton cases, that support a finding that the purpose of the requirement that the objector's address must be included in the Petition was not thwarted by the typographical error in the address given the fact that the incorrect address is also located inside of the 38th Ward and that the objector is a registered voter who resides inside of the 38th Ward, as required by the statute.

18. For the reasons stated above, the Hearing Officer recommends the following to the Chicago Board of Election Commissioners:

a. That the Objector's objection to this candidacy based on the insufficiency of the number of required valid signatures filed with the nomination papers should be overruled;

b. That the Objector's objection to this candidacy based on the allegation that the candidate was in arrearage on a debt owed to the city on November 22, 2010 should be sustained;

c. That the Candidate's Motion to Strike and Dismiss based on the error in the objector's address as it appeared in the Objector's Petition should be denied; and

d. That the Candidate's name should be excluded from the ballot during the upcoming election.

Respectfully submitted,

Date: January 5, 2011 By: _____
LINDA R. CRANE, Hearing Officer