BCTON-ALD

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-169
Papers of: John R. Videckis	)	
	)	
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 John R. Videckis, candidate for the office of Alderman of the 38th Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Elections 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'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, Kathleen Tompkins, by attorney, James P. Nally; and the Candidate, John R. Videckis, by attorney, Russ Stewart.

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 the Objector 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 Objector's Petition alleged that the Candidate was ineligible to run for office because the Candidate was in arrears on a debt owed to the City of Chicago.

10. The evidence established that the Candidate had an outstanding water bill with the City of Chicago for which the Candidate had entered into a payment plan with the City of Chicago prior to the time his Nomination Papers were filed. Specifically, the evidence established that on November 11, 2010, the Candidate entered into a payment plan for the outstanding water bill and that the agreement required a down payment and six monthly payments thereafter and that the Candidate paid the entire amount early on December 15, 2010.

11. 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 of the ineligibility of the Candidate 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.

12. Section 2-152-150 of the Municipal Code of the City of Chicago is instructive in determining whether an arrearage exists as contemplated in Cinkus. Section 2 -152-150 provides, in pertinent part, as follows:

> **Whenever used in this section, the following words and phrases shall have the following meanings:**
>
> **"Debt" means a specified sum of money owed to the city for which the period granted for payment has expired.**
>
> **(e) Notwithstanding the provisions of subsections (c) and (d) herein, the city may hire a person who owes a debt to the city if the commissioner of human resources determines that such person:**
>
> **(1) Has entered into an agreement with the department of revenue, or other appropriate city department, for the payment of all debts owed to the city and is in compliance with the agreement;**

13. Pursuant to Section 2 -152-150, the Electoral Board finds that because the Candidate entered into a payment plan for the payment of the outstanding water bill prior to the time the Candidate filed his Nomination Papers, no indebtedness existed that would invalidate the Candidate's Nomination Papers.

14. The Objector's Petition also contained allegations requiring a records examination and the Hearing Officer ordered that an examination of the Board's 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.

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

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

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

18. The examination of the registration records of the Board was terminated after it was determined that even if all of the remaining objections to individual signatures on the petition were sustained in favor of the Objector, the Candidate would still have more than the minimum number of valid signature on his nominating petitions to qualify for a place on the ballot for the office of Alderman of the 38th Ward of the City of Chicago.

19. 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 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, and that the Candidate's Nomination Papers should be found valid.

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. The Electoral Board finds that the Candidate has a sufficient number of valid signatures on his Nomination Papers to be placed upon the ballot as a candidate for election to the office of Alderman of the 38th Ward of the City of Chicago and further finds that the Candidate was not ineligible as a result of an indebtedness to the City of Chicago.

22. The Electoral Board further finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Kathleen Tompkins to the Nomination Papers of John R. Videckis, candidate for the office of Alderman of the 38th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of John R. Videckis, candidate for election to the office of Alderman of the 38th Ward of the City of Chicago, SHALL be printed on the 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 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.