BCCON-ALD

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

Objections of: Tom Courtney and John Courtney	)	
To the Nomination Papers of: Gevonna Fassett	)	No.: 11-EB-ALD-172
	)	Related Case: 11-EB-ALD-278
Candidate for the office of Alderman of the 27th 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 Tom CourtneyJohn Courtney ("Objectors") to the nomination papers ("Nomination Papers") of Gevonna Fassett, candidate for the office of Alderman of the 27th 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 Objectors 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 Edna Turkington for further hearings and proceedings. Upon motion of the Objector, the matter was reassigned to Hearing Officer Barbara Goodman by James Scanlon, the Board's General Counsel.

6. The Objectors 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 Objectors, Tom Courtney John Courtney, by attorney, James P. Nally; and the Candidate, Gevonna Fassett, 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 Objectors and/or they 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 111.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 203.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 27.

D. The remaining number of signatures deemed valid as a result of the records examination total 176.

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 27th Ward of the City of Chicago.

14. The Objector alleges that the candidate does not meet the one-year durational residency requirement to be eligible to run for the office of Alderman.

15. Section 3.1-10-5 of the Illinois Municipal Code (65 ILCS 5/3.1-10-5) sets forth the residency requirements for elective municipal office:

> a) A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election…

16. Section 21-14(a) of the Revised Cities and Villages Act pertaining to the qualifications of Alderman in the City of Chicago provides that "no member may be elected or appointed to the city council after the effective date of this amendatory Act of the 93rd General Assembly unless he or she has resided in the ward he or she seeks to represent at least one year next preceding the date of the election or appointment. 65 ILCS 20/21-14. In the election following redistricting, a candidate for alderman may be elected from any ward containing a part of the ward in which he or she resided for at least one year next preceding the election that follows the redistricting, and, if elected, that person may be reelected from the new ward he or she represents if he or she resides in that ward for at least one year next preceding the reelection."

17. In order to establish residency for voting purposes, two elements are necessary: (1) physical presence in the place, and (2) the intention to remain thereof as a permanent home. Thus, a voter's temporary absence from an established residence will not cause him to lose that residence for voting purposes if at all times he intends to return and never intends to permanently abandon the place as his permanent residence. *Stein v. County Board of Trustees of DuPage County*, 85 Ill.App.2d 251, 229 N.E.2d 165, aff'd, 40 Ill.2d 477, 240 N.E.2d 668 (1968). *Stein* also pointed out that domicile is a continuing thing and a person must, at all times, have a domicile.

18. The Hearing Officer conducted an evidentiary hearing on the issue of the candidate's residency and found that the candidate had the physical presence in the 27th Ward and the intent to remain at her current address in the 27th Ward for more than one year preceding the date of the election. The Hearing Officer therefore concluded that the candidate has met the durational residency requirement set forth in the Illinois Municipal Code.

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 176 valid signatures, which 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 27th Ward of the City of Chicago. The Hearing Officer further found that the candidate met the durational residency requirement set forth in 65 ILCS 5/3.1-10-5 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. For the reasons stated above, the Electoral Board finds that the Objections are overruled.

22. The Electoral Board further finds that there are objections pending in Related Case 11-EB-ALD-278 that will determine whether the Nomination Papers of Gevonna Fassett are valid.

IT IS THEREFORE ORDERED that the Objections of Tom Courtney and John Courtney to the Nomination Papers of Gevonna Fassett, candidate for election to the office of Alderman of the 27th Ward of the City of Chicago, are hereby OVERRULED.

Dated: Chicago, Illinois, on January 7, 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.