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

Objections of: Victoria Prewitt	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-220
Papers of: Eugene Greer	)	
	)	Related Cases: 11-EB-ALD-182,
	)	11-EB-ALD-133
Candidate for the office of	)	
Alderman of the 29th 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 Victoria Prewitt ("Objector") to the nomination papers ("Nomination Papers") of Eugene Greer, candidate for the office of Alderman of the 29th 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 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 Terence E. Flynn 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 Call. The following persons, among others, were present at such hearing; the Objector, Victoria Prewitt , by attorney, Michael J. Kasper; and the Candidate, Eugene Greer, 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 his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or 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 157.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 333.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 130.

D. The remaining number of signatures deemed valid as a result of the records examination total 203.

13. Although the results of the records examination indicated that the candidate had more than the required number of signatures, an evidentiary hearing was held on the remaining legal issue presented in the Objector's Petition. Specifically, the Objector alleged that the candidate owed an indebtedness to the City of Chicago which made him ineligible to be a candidate.

14. The Objector presented, as proof of said indebtedness, summary sheets from the City of Chicago Department of Revenue indicating that the candidate owed the City of Chicago $2,305.62 in unpaid parking tickets which the candidate were still outstanding (at least some, if not all of said tickets).

15. The Hearing Officer found that the candidate's opting into a Federal Class Action regarding the City's impoundment and notice procedures did not change the status of the indebtedness.

16. Section 3.1-10-5(b) 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.

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."**

16. The Electoral Board finds that the Hearing Officer correctly concluded that the candidate's unpaid parking tickets in the instant case constituted a disqualifying indebtedness under the Illinois Municipal Code.

17. 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.

18. For the reasons stated above, the Electoral Board finds that the Nomination Papers of Eugene Greer are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of Victoria Prewitt to the Nomination Papers of Eugene Greer, candidate for election to the office of Alderman of the 29th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of EUGENE GREER, candidate for election to the office of Alderman of the 29th 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 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.

COPY

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF ALDERMAN OF THE 29TH WARD, CITY OF CHICAGO TO BE VOTED UPON AT THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION

Victoria Prewitt, Petitioner – Objector	)	
	)	11-EB- ALD- 220
v.	)	
	)	(consolidated with Ald-133 & Ald-182)
Eugene Greer, Respondent – Candidate	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 29 A 11: 12

Report and Recommendation of Hearing Examiner
Terence E. Flynn

1. This case was initially called for hearing on December 6, 2010. Present at the hearing were the **pro se** candidate and Attorney Ryan of Attorney Kasper's office for objector Prewitt, as well as attorneys for objector Bush (Attorney Johns of Attorney Nally's office) and objector Haley (Michael C. Dorf) in the consolidated cases.

2. No request was made by any party to file any motions. Upon review and given the nature of the objections with the agreement of all parties, the matter was ordered sent to a Rule 6 records examination and the appropriate directive was issued. The matter was continued by agreement all parties to December 14, 2010.

3. At the second hearing on December 14th, it was determined that the Rule 6 records examination had not yet commenced. Present at this hearing were attorneys for all objectors, but the **pro se** candidate was absent. Given that the Rule 6 exam had not yet begun, and given that no party requested it, defaulting the candidate for non-appearance at this time was not considered. However, the Hearing Examiner did speak directly by phone with the candidate and informed him of the next hearing date and time and cautioned him that he must appear at that time and place whether or not

the Rule 6 exam had commenced. The matter was continued to December 20, 2010 at noon.

4. At the hearing of December 20, 2010, all parties were present and it was determined that the Rule 6 examination had just begun that day, and thus with the agreement of all parties, the matter was continued to December 22d for status on the Rule 6 results.

5. On December 22d the following occurred: objectors' attorneys appeared, the candidate's appearance was excused, and the matter was continued to December 28th for status on Rule 6 results, Rule 8 motions, if any, and legal issues to argue re the candidacy, especially that of the candidate's alleged indebtedness to the City of Chicago.

6. In the interim between 12/22 and the following hearing date, the Rule 6 records exam results became available. The Rule 6 examination was concluded on 12/22/10 at 7:34 p.m. Those results were the following: total signatures: 333; total objections: 196; total sustained: 130; total overruled: 66; total valid signatures: 203. That is 46 signatures greater than the 157-required minimum. The candidate preserved 55 challenges in the Rule 6 and the objector preserved 66. However, in the consolidated case Ald-133, apparently because of a different number and type of objection, the Rule 6 result was different and had the candidate below the required minimum signature requirement.

7. However, the Rule 6 results became irrelevant when, at the December 28th hearing evidence and argument was presented regarding paragraph 12 of the Objector's petition. Paragraph 12 alleged indebtedness by the candidate to the City of Chicago. In the petition, the alleged indebtedness is not specified. However, at the December 28th hearing Objector's Group Exhibit 1 was admitted into evidence. That exhibit was a certified copy of summary sheets on official forms of the Department of Revenue of the City of Chicago showing indebtedness to the City of Chicago by

Eugene Greer in the amount of $2,305.62 based upon unpaid parking tickets. The candidate made the following points regarding this evidence:

a) objector's attorneys had shown him the documents in the interim between the December 22nd and December 28th;
b) he believed he had paid some of the tickets that are part of the summary sheets that are Group Exhibit 1;
c) he opted into a Federal class action regarding the City's impoundment and notice procedures; but significantly,
d) the candidate admitted under oath that he did owe the City for unpaid tickets that are part of Objector's Group Exhibit 1; and,
e) the candidate knew that indebtedness to the City of Chicago is a disqualification to candidacy.

8. Under Cinkus v. Village of Stickney Electoral Board, 228 Ill.2d 200 (2008), that admission by the candidate is dispositive. He acknowledges a current indebtedness upon which he is in arrears. The Federal class action does not change matters, as no stay of payment has been entered and that lawsuit is involved with the notice, hearings, penalties and alike: the indebtedness is in arrears and was at the time of filing the nomination papers. Under Cinkus, that admitted arrearage is a disqualification pursuant to Section 3.1- 10 – 5(b) of the Municipal Code.

Therefore, it is the Recommendation of this Hearing Examiner that the name Eugene Greer not appear on the ballot for Alderman of the 29th Ward in the February 22, 2011 election.

Dated: December 29, 2010

Terence E. Flynn