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

Objections of: Chauncey L. Stroud	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-295
Papers of: Michael D. Chandler	)	
	)	Related Case: 11-EB-ALD-286
Candidate for the office of	)	
Alderman of the 24th 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 Chauncey L. Stroud ("Objector") to the nomination papers ("Nomination Papers") of Michael D. Chandler, candidate for the office of Alderman of the 24th 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 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 Christopher B. Cohen 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, Chauncey L. Stroud, pro se; the Candidate, Michael D. Chandler, pro se.

7. Objector alleges among other things that the Candidate has not timely filed a Statement of Financial Interest with the City of Chicago Board of Ethics pursuant to section 2-164-0-50 of the Municipal Code of the City of Chicago ("City of Chicago Campaign Financing Ordinance"). Section 2-164-0-50 of the Municipal Code provides as follows:

> Every person who qualifies as a candidate shall thereby become a "reporting individual" for purposes of Chapter 2-156 of this code, and shall file a statement of financial interests, in the form prescribed by the Board of Ethics pursuant to said chapter, within five days after qualifying as a candidate. The provisions of Chapter 2-156 relating to time, place and manner of filing statements, delivering notices and receipts shall apply to statements of candidates. (Prior Code §26.3-5)

Section 2-164-060 of the Municipal Code provides as follows:

> No elected official shall be allowed to take the oath of office, continue in office or receive compensation from the City unless he has filed the statement of financial interest required by Section 2-164-050 and Chapter 2-156 of this code. (Prior Code §26.3-6)

8. Objector argues that because the Candidate failed to timely file a statement of financial interest, the Candidate cannot take the oath of office if elected and is, therefore, ineligible for elective municipal office in the City of Chicago.

9. Furthermore, Objector argues that, because Section 10-5 of the Illinois Election Code (10 ILCS 5/10-5) requires each candidate for office to swear or affirm under oath that he or she is legally qualified to hold such office, the Candidate's Statement of Candidacy claiming that the Candidate is qualified for the office sought is false.

10. Objector's argument is based upon the Illinois Supreme Court's decision in 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 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) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5) precluded Cinkus from running for office because he was in violation of said section. Sec. 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.

Cinkus then paid or attempted to pay the debt with the village. The electoral board removed Cinkus from the ballot and the matter ultimately went to the Illinois Supreme Court wherein the Court addressed the question of whether a violation of the Illinois Municipal Code's arrearage prohibition, read in conjunction with the statement of candidacy provisions of Section 10-5 of the Election Code, bars a candidate from the ballot. The Supreme Court determined that

> ...reading these two statutes together, the disqualifications provided by section 3.1 - 10 - 5 (b) of the Illinois Municipal Code renders a candidate ineligible to run for

office if not remedied by the time the candidate files his or her nomination papers. 886 N. E. 2d 1023.

The import of *Cinkus* is that it was the first case to hold that an arrearage to a village not only precludes a person from taking office, but it also precludes a person from running for office.

11. The question presented to this Electoral Board is whether the City of Chicago Campaign Financing Ordinance imposes eligibility restrictions on candidates running for elective municipal office in the City of Chicago and, if so, whether they are enforceable by electoral boards by virtue of the case of *Cinkus v the Village of Stickney Municipal Officers Electoral Board*, 886 N.E.2d 1011, 228 Ill. 2d 200 (2008).

12. While the *Cinkus* is clear that eligibility restrictions contained in the Illinois Municipal Code may bar a person's candidacy, the City of Chicago's Campaign Financing Ordinance has no similar effect.

13. It is argued that Section 21-35 of Article 20 of the Illinois Municipal Code (otherwise knows as the "Revised Cities and Villages Act") (65 ILCS 20/21-35) allows the Chicago City Council to enact eligibility requirements for elective municipal office in the City of Chicago. Section 21-35 provides that "all laws in force in the city of Chicago governing elections for municipal offices or applicable thereto and not inconsistent with the provisions of this article, shall apply to and govern all elections held under the terms of this article." Municipal ordinances, the argument goes, are intended to be included in the above cited phrase "all laws in force ...." It is also argued that Section 21-22 of Article 21 of the Illinois Municipal Code similarly empowers the City Council to enact eligibility requirements for its elected officers by providing in part, "All elections for aldermen shall be in accordance with the provisions of law in force and operative in the City of Chicago for such elections at the time the elections are held." (65 ILCS 20/21-22) Objector would read into these statutes the authority of

municipalities to enact, by municipal ordinance, additional eligibility requirements for election to an office created by state statute. However, no case has ever held that these provisions referring to "all laws in force" were intended to include municipal ordinances. More likely, this section is an outgrowth of Sections 3.1-5-5 ("This Article 3.1 applies to all officers elected or appointed under this Article and Articles 4 and 5, unless provided otherwise.") and 3.1-10-10 (" The general election law applies to the scheduling, manner of conducting, voting at, and contesting of municipal elections.") of the Illinois Municipal Code (65 ILCS 5/3.1-5-5 and 65 ILCS 5/3.1-10-10). The "general election law" referred to in Section 3.1-10-10 of the Illinois Municipal Code of course means the "general election law" found in the Illinois Election Code. See, Section 1-1 of the Election Code (10 ILCS 5/1-1) ("This Act is the general election law of Illinois and any reference in any other Act to 'the general election law' or the 'the general election law of this State' is a reference to this Act, as now or hereafter amended."). The Election Code and Article 3.1 of the Illinois Municipal Code are the laws that govern elections in the City of Chicago, except where they are inconsistent with the express provisions of Article 21 of the Illinois Municipal Code. See, e.g., *Robinson v. Jones*, 186 Ill.App.3d 82, 542 N.E.2d 127 (First Dist. 1989); *United Citizens v. Coalition*, 125 Ill.2d 332, 531 N.E.2d 802 (1988) (reconciling the Election Code and the Illinois Municipal Code). Except for cases addressing the exercise of home rule powers through referendum, not a single election case has been cited for the proposition that a municipality can, through ordinance, create ballot access barriers for candidates seeking elective municipal office.

14. Illinois courts have held, for instance, that where the Constitution undertakes to prescribe qualifications for office, its declaration is conclusive of the whole matter. *Thies v. State Bd. of Elections,* 124 Ill.2d 317, 325, 529 N.E.2d 565, 569 (1988). The legislature is without

authority to change or add to the qualifications unless the Constitution gives it the power. *Cusack v. Howlett* (1969), 44 Ill.2d 233, 242-43, 254 N.E.2d 506. The same principle, it seems, applies to offices created by the legislature. Where an office is created by statute, it is wholly within the power of the Legislature creating it. For example, the length of term and mode of appointment may be altered at pleasure by the legislature, and the office may be abolished altogether. *People ex rel. Hoyne v. McCormick*, 261 Ill. 413, 421, 103 N.E. 1053, 1057 (1913).

15. While a municipality may provide for its officer, their manner of selection and terms of office, they may do so only acting through home rule power, subject to referendum.

16. The Illinois Attorney General has taken up this question in various opinions, the most relevant being Attorney General Opinion 00-003 dated March 7, 2000. In that opinion, Attorney General Jim Ryan was faced with the question of whether a home rule municipality has the authority to lengthen the statutory durational residency requirement for candidates running in the municipality. The Attorney General first looked to article VII, section 6 of the Illinois Constitution of 1970 which provides in pertinent part:

> (f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provide by law...A home rule municipality shall have the power to provide its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law.

The Attorney General determined that the durational residency requirement of municipal officers is a provision relating to the manner of selection of those officers, for purposes of article VII, section 6 of the Constitution, and that the establishment of qualifications for public office is a key component of the manner in which elected officers are selected. Accordingly, the Attorney General determined that:

> the statutory qualifications for office established by statute may be altered by a referendum adopted in a home rule municipality pursuant to article VII, section 6 of the Constitution." (page 5) Emphasis added.

Attorney General Lisa Madigan had the opportunity to address a similar issue. In Attorney General Opinion 05-007 dated September 7, 2005, Attorney General Madigan took up the question of whether home rule municipalities may, by referendum, implement election systems, such as cumulative voting or instant run-off voting, that are not specifically authorized by the Election Code or the Illinois Municipal Code. She determined that

> "pursuant to article VII, section of the Illinois Constitution of 1970, a home rule municipality had such authority subject to referendum approval, to adopt procedures for selecting municipal officers that differ from those set forth in either the Election Code or the Municipal Code." (page 1) Emphasis added.

Attorney General Madigan further recognized that

> [a]lthough they have been granted extensive powers with respect to their local government and affairs (Ill. Const.1970, art. VII, Sec.(a), home rule municipalities may change their manner of selection of officers only: (1) as provided by statute; or (2) as approved by a referendum. See *Leck v Michaelson*, 111 Ill .2d 523, 528 (1986); *Clarke v Village of Arlington Heights*, 57 Ill. 2d 50, 54 (1974).

Attorneys General Ryan and Madigan have made clear that (a) a home rule unit's change in the qualifications for office is a change in the manner of selection of officers and that (b) such a change must be accomplished by referendum.

17. Applying these Attorneys General opinions and the cases they cite to the instant question of whether a violation of the City of Chicago Financing Ordinance affects a candidate's eligibility to be on the ballot for elective municipal office, the answer is that such a violation cannot act as a bar to the ballot.

18. The City of Chicago Financing Ordinance clearly seeks to change the qualifications for office of candidates running for municipal office in the City of Chicago. However, the ordinance was not approved by a referendum as required by Article VII, sec. 6 of the Illinois Constitution. Absent a referendum, the City is without authority to enact binding changes to the selection of its officers.

19. Because the ordinance was not enacted via referendum, it is not necessary to reach the question of whether this Electoral Board has jurisdiction to address violations of the City of Chicago Financing Ordinance. However, even if such a question was now before the Electoral Board, it is clear from Section 2-164-170(a) of the Chicago Municipal Code that jurisdiction rests with the City of Chicago Board of Ethics, not with this Electoral Board. Section 2-164-170(a) of the ordinance provides, as follows:

> 2-164-170 Powers and Duties of Board in Regard to Campaign Financing Ordinance. In addition to the other powers and duties conferred on it by this Code, the Board of Ethics shall have the following powers and duties:
>
> (a) To initiate and to receive complaints of violations of any of the provisions of this chapter and to investigate and act upon such complaints as provided by this chapter; provided, however, that the Board shall have no authority to investigate any complaint alleging a violation of any provision of this ordinance or alleging other misconduct by an alderman. If the Board receives a complaint alleging a violation or other misconduct by an alderman, the Board shall, within two days after receipt thereof, transmit such complaint to the standing committee of the City Council having jurisdiction over such complaints.

As the foregoing provision indicates, the Board of Ethics – not the Board of Election Commissioners – has the power and duty over violations of *any provisions of this chapter* with the exception of violations involving incumbent alderman. It is significant to note that the provision carves out a jurisdictional exception for alderman but not for

candidates. Accordingly, it must be concluded that the Board of Ethics would be the proper entity to address a candidate's failure to comply with the Ordinance.

20. Therefore, while the ordinance may attempt to impose eligibility restrictions on candidates, the ordinance is not enforceable by an electoral board by means of removing candidates from the ballot. The powers of electoral boards are only those prescribed by the legislature. *Kozel v. State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988). This Electoral Board has long held that it does not have authority to invalidate nomination papers for an alleged failure to comply with the City of Chicago's municipal ordinance requiring the filing of statements of financial interests. See, e.g. *Bednarz v. Doherty*, 91-EB-ALD-53, CBEC, January 16, 1991; *Bocanegra v. Sanchez*, 07-EB-ALD-107, CBEC, January 9, 2007. While *Cinkus* stands for the proposition that eligibility requirements imposed by the Illinois Municipal Code may act as a bar to ballot access, there is no authority for the proposition that a municipality may enact additional eligibility requirements of its own (at least not in the absence of home rule power exercised and approved by referendum) to bar candidates from the ballot.

21. For these reasons, the Electoral Board overrules the objection based upon any alleged failure of the Candidate to timely file a Statement of Financial Interests required by municipal ordinance of the City of Chicago.

22. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

23. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's

recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

24. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers. A decision whether the Candidate's Nomination Papers are valid will be made in Related Case 11-EB-ALD-286.

IT IS THEREFORE ORDERED that the Objections of Chauncey L. Stroud to the Nomination Papers of Michael D. Chandler, candidate for election to the office of Alderman of the 24th Ward of the City of Chicago, are hereby OVERRULED.

Dated: Chicago, Illinois, on December 29, 2010.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel A. Hernández, 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.

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

Objections of CHAUNCEY L. STROUD	)	
To the Nomination Papers of: MICHAEL D. CHANDLER	)	No. 11-EB-ALD-295
Candidate for the office of Alderman for the Twenty-Fourth Ward, City of Chicago, County of Cook, State of Illinois, to be voted upon at the February 22, 2011 Municipal General Election	)	

BOARD OF ELECTIONS
2010 DEC 20 P 5:27

HEARING OFFICER'S RECOMMENDED DECISION

This matter came before the Chicago Board of Election Commissioners ("CBOE" or "Board") on the verified Objector's Petition of CHAUNCEY L. STROUD ("Objector") to the nomination papers of MICHAEL D. CHANDLER ("Candidate"). The Board appointed Christopher B. Cohen as hearing officer for this case. The hearing officer finds and recommends as follows:

1. The Candidate timely filed nomination papers with the Board for the office of Alderman of the Twenty-Fourth Ward.
2. Objections to the Candidate's nomination papers were timely filed by the Objector on 11/30/10. They contained the following allegations: that (¶4) the Candidate failed to file a Statement of Financial Interests as required by the City of Chicago's Municipal Code; and (¶5) the Candidate was in arrears in paying an indebtedness due the City of Chicago; and (¶6) the Candidate falsely swore than he was qualified for the office sought.
3. The Board's official file contained the original nomination papers of the Candidate and the original Objections of the Objector.
4. A case management conference/hearing on the Objection Petition was begun December 6, 2010 at 69 W. Washington, Chicago, IL. The Objector appeared in person and pro se. The Candidate appeared in person and pro se. Each party stated on the record that he received service of the Board's Call and each waived further service on the record. Each filed a formal written appearance.
5. The hearing officer provided each party a hard copy of the Board's Rules and the Index of Electoral Board Decisions dated October 2010 and indicated where to find them on line.
6. At the 12/6/10 hearing, the Candidate challenged all three issues raised in the Objector's Petition and orally moved to file a Motion to Strike and Dismiss the Objection. He handed the Objector and filed with the Board's hearing officer instanter a copy of his Statement of Financial Interests previously filed with the City of Chicago with a stamped date of 12/6/10 as well as portions of the Board of Ethics' Rules plus an 11/30/10 Board of Ethics' Memo from its Executive Director as to when Statement filings were due.

7. The Candidate asserted that the Objection did not state any particular debt had been owed and, in any case, denied on the record owing any debt to the City. He presented to the Objector and filed with the Board's hearing officer documents obtained from the City of Chicago Revenue Department, including an Indebtedness Statement dated 11./15/10 signed by Christine Hayes, indicating that MICHAEL D. CHANDLER owed no outstanding debt to the City. The Candidate further denied on the record any false swearing regarding his qualifications for the office sought.
8. In view of his strenuous and detailed challenge to the Objection, the Candidate argued that it was unnecessary for him to file further pleadings in writing. The hearing officer recommends that the documents filed by the Candidate, when combined with his oral statements, be deemed to be a motion to challenge the sufficiency of the Objector's Petition in the nature of a motion to strike or dismiss.
9. The hearing officer set a briefing schedule which established deadlines of 5 pm on 12/7/10 for the Objector to file any responsive pleadings to the Motion and 5 pm on 12/8/10 for the Candidate to file any reply. The Candidate stated on the record that he waived the right to file on 12/8/10. A hearing was scheduled for 12/8/10.
10. The Objector's Response to Candidate's Motion to Dismiss was stamped by the Board as "Waiting in Line to File at 5:00 pm" and stamped as filed at 5:49 pm 12/7/10. The Candidate filed no further documents or pleadings.
11. Regarding his allegations in ¶4, the Objector filed a photocopy of a Board of Ethics Candidates Guide, a copy of *Cinkus v. Village Of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 886 N.E.2d 1011 (2008) and a copy of the Chicago Financing Ordinance.
12. Judicial notice is taken that §2-152-150(a) of the Municipal Code of the City of Chicago reads in part as follows:

    > "Debt" means a specified sum of money owed to the city for which the period granted for payment has expired.

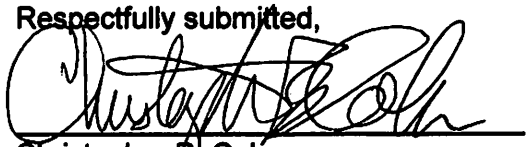
13. At the 12/8/10 hearing, the Candidate was sworn and testified under oath that he filed his Statement of Financial Interests with the Board of Ethics on 12/6/10. As to ¶4 in the Objector's Petition regarding the Chicago Ethics Ordinance, the Hearing Officer called the parties' attention to prior rulings of this Board. He indicated that those rulings appeared at page 31 of a document entitled the "Index of Electoral Board Decisions" dated October 2010. The hearing officer noted that the document containing these decisions could be found on the Board's website at www.chicagoelections.com. These rulings held that this Electoral Board did not have authority to grant what the Objector was seeking in Paragraph ¶4 of his Petition. The Board has no authority to invalidate nomination papers for failure to comply with the City of Chicago's Ethics Ordinance. *Bocanegra v. Sanchez*, 07-EB-ALD-107, CBEC, January 9, 2007; *Jones v. Monroe*, 07-EB-ALD-143, CBEC, January 16, 2007; *Smith v. Sherman*, 95-EB-ALD-20, CBEC, January 23, 1995; *Smith v. Tines*, 95-EB-ALD-24, CBEC, January 28, 1995; *Whitehead v. Massie*, 91-EB-ALD-43, CBEC, February 4, 1991; *Whitehead v. Gholar*, 91-EB-ALD-45, CBEC, February 4, 1991; *Bednarz v. Doherty*, 91-EB-ALD-53, CBEC, January 16, 1991. The hearing officer's recommended conclusion is that allegations in ¶4 be overruled as insufficient at law.
14. Also at the 12/8/10 hearing, the Objector on the record made an oral Motion to Withdraw ¶5 of the Objection Petition alleging that the Candidate was in arrears in paying an indebtedness due the City of Chicago. The hearing officer's recommended finding is that this Objection was timely withdrawn and that the Motion be granted.
15. After listening to oral presentations from each of the parties and considering all evidence presented, the hearing officer's recommended finding is that with ¶4

overruled and ¶5 withdrawn, the allegations in ¶6 regarding false pleading in the Statement of Candidacy be overruled.

16. The Objections in related case 11-EB-ALD-286, William Jackson v Michael D. Chandler, were withdrawn.

In light of the above, it is this hearing officer's recommendation that the Objector's Petition be overruled, that the Candidate's nomination papers be deemed valid and sufficient in law and in fact and that the name of Candidate MICHAEL D. CHANDLER appear on the ballot for the office of Alderman of the Twenty-Fourth Ward at the February 22, 2011 Municipal General Election.

Respectfully submitted,



Christopher B. Cohen
Hearing Officer
December 18, 2010