NBCON-ALD

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

Objections of: Delton J. Pierce	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-299
Papers of: Sekum Walker	)	
	)	Related Case: 11-EB-ALD-067
Candidate for the office of	)	
Alderman of the 6th 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 Delton J. Pierce ("Objector") to the nomination papers ("Nomination Papers") of Sekum Walker, candidate for the office of Alderman of the 6th 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 Frank A. Tedesso 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, Delton J. Pierce, by attorney, Paul J. Montes II; the Candidate, Sekum Walker, by attorney Sean Robertson.

7. Objector argues that some voter registration requirement is inferred by the language found in the form of the statement of candidacy set forth in Section 10-5 by stating that the candidate is a "qualified voter therein."

8. The Electoral Board finds, however, that even if it is assumed that language of the form of the statement of candidacy imposes a requirement that the candidate be registered to vote, the Candidate's statement here that she was a "qualified voter therein" in the City of Chicago is not false in light of *Henderson v. Miller*, 228 Ill.App.3d 260, 592 N.E.2d 570 (1st Dist. 1992).

9. In *Henderson*, the complainant alleged that the candidate fraudulently misrepresented that he was registered to vote at the address listed on this statement of candidacy when he stated on such statement that "I am a qualified voter therein" after listing his street

address, city, zip code, county and state of residence. 228 Ill.App.3d at 264. The complainant asked the court to infer that when the candidate swore that he was a "voter therein," he was swearing that he was a voter at the address listed on his statement of candidacy and not in the city of Chicago. Id. The court observed that the Municipal Code requires only that a candidate be a qualified elector of the municipality and that the act did not require a candidate be a voter at his place of residence. Therefore, the court found that the did not fraudulently misrepresent that he was a voter at the address listed on his statement of candidacy and that removal from office based on such an allegation was not justified.

10. In *Suter v. Acevedo*, 06-EB-RGA-04, this Board held that, under *Henderson v. Miller*, *supra*, "the form of the statement of candidacy prescribed by Section 7-10 of the Election Code does not require that a candidate be registered to vote at the residence address stated on his/her statement of candidacy so long as the candidate is registered vote at some address within the district in which he seeks to be nominated or elected." In *Suter*, there was no allegation that the candidate was not registered to vote at some address within the district in which he was seeking nomination, only that the candidate did not, in fact, reside there.

11. In the present case, the Objector argues alternatively that the holdings in *Henderson* and *Suter* do not apply because the Candidate is not, in fact, a registered voter at any address in the district because his registration status was "Inactive" as of the dates that the Candidate signed and filed her Statement of Candidacy. The Objector does not cite any legal authority in support of this proposition.

12. Section 216.20 of the State Board of Elections' rules define "Inactive voter" as "a person who, having once submitted a Voter Registration Application subsequently acknowledged by the election authority having jurisdiction over the voter's place of residence, or

a registration card, has not responded to a notice to confirm his or her address, but whose authority to vote has not yet been canceled." Under this definition, a person remains a registered voter until his or her registration is canceled. The fact that a person's registration status is listed as "Inactive" does not change this outcome, and, in fact, this Board has previously held that a person whose registration was "Inactive" was still eligible to circulate nominating petitions before the legislature repealed the requirement that circulators be registered voters (see, *Barnett v. Miller*, 99-EB-ALD-189, affirmed, *Rhodes, et al. v. Board of Election Commissioners for the City of Chicago, et al.*, Circuit Court of Cook County, No. 99 CO 038, affirmed Appellate Court of Illinois, First District, No. 1-99-0529) and sign nominating petitions (see, *Drish v. Walls*, 03-EB-MUN-02, CBEC, affirmed, *Walls v. Board of Election Commissioners of the City of Chicago*, 03 COEL 032, Cir. Ct. Cook Cty., appeal dismissed, 1-03-0568; *Munoz v. Gordils*, 03 EB-ALD-004, CBEC, February 10, 2003).

13. Under 42 U.S.C § 1973gg-6 and under Section 216.90 of the State Board of Elections' rules, any person who, once registered, moves to another address within the same election jurisdiction but fails to change his or her voter registration is still eligible to vote for federal offices. Thus, the fact that a person's voter registration is "Inactive" does not necessarily deprive that person of the right to vote.

14. Therefore, to the extent that the Objector claims that there is a requirement that the Candidate be registered to vote at the address listed on his Nomination Papers when they are filed and that any statement in his Statement of Candidacy that he is a "qualified voter therein" must be necessarily false, the Electoral Board finds these claims to be without merit.

15. 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.

16. 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.

17. 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 come in Related Case 11-EB-ALD-067.

IT IS THEREFORE ORDERED that the Objections of Delton J. Pierce to the Nomination Papers of Sekum Walker, candidate for election to the office of Alderman of the 6th 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. 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 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 SIXTH (6TH) WARD OF THE CITY OF CHICAGO, STATE OF ILLINOIS TO BE VOTED UPON AT THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION

BOARD OF ELECTION
CLERK'S OFFICE
DEC 15 P 4:08

DELTON PIERCE,	)	
Petitioner – Objector,	)	
	)	
v.	)	**11-EB-ALD-299**
	)	
SEKUM WALKER,	)	
Respondent – Candidate.	)	

HEARING OFFICER'S RECOMMENDED DECISION

1. The Respondent – Candidate, SEKUM WALKER, filed Nomination Papers for election to the Office of Alderman of the 6th Ward of the City of Chicago, to be voted upon at the February 22, 2011Municipal General Election.

2. Petitioner – Objector, DELTON PIERCE, filed a timely petition objecting to the Nomination Papers of the Candidate.

3. On December 6, 2010 this matter appeared on the Board's Initial Trial Call. The Hearing Officer received the following Board Group Exhibits into evidence: Board Group Exhibit A consisting of the Candidate's Nomination Papers; Board Group Exhibit B consisting of the Objector's Petition and Attachments; Board Group Exhibit C consisting of a copy of the call and proof of service; and Group Exhibit D consisting of the parties appearances. The parties acknowledged service and waived any and all issues regarding service. The Hearing Officer granted the Candidate leave to file a Motion to Strike and Dismiss and granted the Objector leave to file his Response. The matter was continued until December 10, 2010 for argument on Candidate's Motion to Strike and Dismiss.

4. The Objector's Petition alleged that the Nomination Papers were insufficient in law and fact since the Candidate was not a registered voter at the address identified in his Statement of Candidacy and Petition Sheets. The Objector alleged the Candidate was registered to vote at 7909 S. Eberhart but stated a residence address of 7932 S. St. Lawrence in his Nominating Papers. (See para.4 and 5. of Objector's Petition)

5. A Candidate is eligible to run for the office of Alderman of the City of Chicago provided he meets the following requirements:

a. The person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election;

b. The person is not in arrears in the payment of a tax or other indebtedness due to the municipality and has not been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.

c. The person has resided in the ward that the person seeks to represent at least one year next preceding the election. *65 ILCS 5/3.1-10-5.*

6. The fact that the Candidate stated in his Statement of Candidacy and his Petition Sheets that he resided at 7932 S. St. Lawrence and he was registered to vote at 7909 S. Eberhart is not a legally sufficient reason to bar him from placement on the ballot. In *Brown v. Ivory, 95 EB ALD 106 and 95 EB ALD 129, CBEC (1/31/1995),* the Board ruled that a candidate's statement that he resided at a certain address in the City of Chicago and that he was a qualified voter therein is not false and perjurious because there is no statute that requires that a candidate be a voter at his place of residence. *Brown v. Ivory, 95 EB ALD 106 and 95 EB ALD 129, CBEC (1/31/1995).* Use of the language "I am a qualified voter therin" is not equivalent to

swearing that the candidate is registered to vote at his place of residence. *Henderson v. Miller, 228 Ill.App.3d 260, 592 N.E.2d 570 (First. Dist. 1992).*

7. It is the recommended decision of the hearing Officer that the Candidate's Motion to Dismiss be granted and that the Objector's Petition be dismissed in this matter as legally insufficient.



Hearing Officer, Frank A. Tedesso