NBCON-ALD

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-343
Papers of: Sharon Denise Dixon	)	
	)	
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 Sharon Denise Dixon, 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 Edwin Reyes 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, Sharon Denise Dixon, by attorney Richard K. Means.

7. 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.

8. The sole issue presented in the Objector's Petition is whether the candidate is ineligible to be a candidate because he is in arrears in the payment of a tax or other indebtedness due to the City of Chicago in violation of the Illinois Municipal Code.

9. Sec. 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.***

10. The objector bases his objection 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.

11. 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."**

12. In the instant case, there was no evidence presented by the Objector to establish the existence of an adjudicated debt owed by the candidate.

13. 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.

14. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Chauncey L. Stroud to the Nomination Papers of Sharon Denise Dixon, candidate for election to the office of Alderman of the 24th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Sharon Denise Dixon, candidate for election to the office of Alderman of the 24th Ward of the City of Chicago, SHALL 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 TWENTY-FOURTH WARD OF THE CITY OF CHICAGO, STATE OF ILLINOIS

Objections of: Chauncey L. Stroud Petitioner/Objector vs. To the Nomination Papers of: Sharon Denise Dixon Respondent/Candidate Candidate for the Office of Alderman for the 24th Ward of the City of Chicago Democratic Party	)	Case No.: 11-EB-ALD-343 Hearing Officer: Edwin Reyes

BOARD OF ELECTION
POLLING PLACE DEPT
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HEARING OFFICER'S RECOMMENDATION

The Objector Chauncey L. Stroud alleges in his verified Objector's Petition that:

1.) The Candidate is ineligible to be a Candidate for the office of Alderman of the Twenty-Fourth Ward of the City of Chicago because she was in arrears in the payment of a tax or other indebtedness due to the City of Chicago in violation of the Illinois Municipal Code (See Cinkus v. Stickney Municipal Officers Electoral Bd, 228 ILL.2d. 200, 219-22, 886 N.E.2d 1011, 1023-25 (ILL.2008).

2.) The Nomination Papers contain a Statement of Candidacy which contains false swearing in that the Candidate was not qualified for the office specified at the time that the Statement was executed and sworn to in violation of the Illinois Election Code.

At the initial Hearing the Objector Chauncey L. Stroud requested a Subpoena to prove that the Candidate Sharon Denise Dixon was in arrears to the City of Chicago citing Cinkus, supra. The Hearing Officer continued case to give the Objector time to bring competent evidence, before granting a request for a Subpoena. The Candidate produced a letter from the Chicago Department of Revenue verifying, the Candidate was not in arrears to the City of Chicago.

The Objector failed to convince the Hearing Officer that a Subpoena was warranted. The Objector stated that he wanted to Subpoena the Candidate's campaign records. The Hearing Officer denied the Objector's request for a Subpoena. The Objector failed to prove that the Candidate was in arrears in the payment of a tax or other indebtedness. The Candidate through counsel correctly stated that in order for Candidate to be in arrears, there had to be an adjudication of a debt, which the Objector did not produced.

The Objector did not produced evidence that the Nomination Papers contain a Statement of Candidacy which contain false swearing. An Objection is required to fully state the nature of the Objections and what relief is being sought to comply with the Election Code. Kopee v. Sims, 07-EB-MUN-002, CBEL, January 19, 2007, Crosby v. Beavers, 95 EB-ALD-202 CBEL, January 24, 1995.

The Hearing Officer recommends that the name of Sharon Denise Dixon appears as a Candidate for Alderman of the 24th Ward on February 22, 2011 Election.

Hearing Officer,

Edwin Reyes

Edwin Reyes