NBCON-ALD

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

Objections of: Sylvester "Junebug" Hendricks	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-353
Papers of: Leslie A. Hairston	)	
	)	Related Cases: 11-EB-ALD-089,
	)	11-EB-ALD-340
Candidate for the office of	)	
Alderman of the 5th 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 Sylvester "Junebug" Hendricks ("Objector") to the nomination papers ("Nomination Papers") of Leslie A. Hairston, candidate for the office of Alderman of the 5th 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 Kelly McCloskey Cherf 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, Sylvester "Junebug" Hendricks, pro se; the Candidate, Leslie A. Hairston, by attorney Keri-Lyn J. Krafthefer.

7. The Hearing Officer has tendered to the Electoral Board her 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 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.

9. 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.

10. The Electoral Board further finds that the Candidate's Nomination Papers were also declared valid in Related Cases 11-EB-ALD-089 and 11-EB-ALD-340.

IT IS THEREFORE ORDERED that the Objections of Sylvester "Junebug" Hendricks to the Nomination Papers of Leslie A. Hairston, candidate for election to the office of Alderman of the 5th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Leslie A. Hairston, candidate for election to the office of Alderman of the 5th 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 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.

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

Objections of: SYLVESTER "JUNEBUG" HENDRICKS	)	
To the Nomination Papers of: LESLIE A. HAIRSTON	)	No. 11-EB-ALD-353
Candidate for the office of Alderman for the 5th Ward of the City of Chicago.	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 22 P 5:05

HEARING EXAMINER'S REPORT AND RECOMMENDATION

This matter coming before the duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners, and before the undersigned Hearing Examiner, the Hearing Examiner hereby makes the following Report and Recommendation:

PRELIMINARY FACTS

1. The Candidate filed Nomination Papers as a Candidate for the office of Alderman for the 5th Ward for the City of Chicago. Such Nomination Papers consist of: a) Statement of Candidacy; b) Nomination Petition Sheets; c) loyalty oath; and d) receipt for Statement of Economic Interests.

2. The Objector's Petition to the Nomination Papers of the Candidate was timely filed on November 30, 2010. In the Petition, the Objector argues that the Nomination Papers are invalid for the following reasons: a) the last day filing ticket was not fastened together in book form with the nomination papers; b) a portion of the Statement of Economic Interests was "white-out" smeared; c) the Candidate identifies on her Statement of Economic Interests a "Legal Home Business" which is not licensed or registered with the City of Chicago Business Services, the Cook County Assumed Name For-Profit Business Entities, Secretary of State For-Profit Business Corporations or the I.R.S.; d) the Statement of Economic Interests is for her employment status as Alderman of the 5th Ward and is dated April 10, 2010; e) a separate Statement of Economic Interests regarding her candidacy was not filed; f) the cover sheet for her Nomination Papers contains a political slogan and includes a red, white and blue label; g) petition sheet No. 23 has no notary public day of week designation for the month of November 2010; and h) petition sheet No. 29 has alterations with the words 71st and Yates written at the top.

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 certified mail or by Sheriff's service, as provided by statute.

4. The initial hearing on these Objections was called on December 6, 2010. Keri-Lyn Krafthefer appeared on behalf of the Candidate. Sylvester "Junebug" Hendricks appeared *pro se.*

5. At the initial hearing, the Candidate requested the opportunity to file a motion to strike and dismiss Objector's Petition. A briefing schedule was set pursuant to the Rules of Procedure for the Board of Election Commissioners of the City of Chicago. A motion to strike and dismiss Objector's Petition was filed. No response was filed. The parties presented oral argument at a hearing on December 13, 2010. Sylvester "Junebug" Hendricks appeared *pro se.* Keri-Lyn Krafthefer appeared on behalf of the Candidate.

MOTION TO STRIKE

6. For her motion to strike, the Candidate argues a) that there is no requirement that the First Day Filing Ticket be bound with the Nomination Papers; b) none of the arguments pertaining to the Statement of Economic Interests are valid; c) the Candidate's cover sheet label does not invalidate the Nomination Papers; d) failure by the notary to specify the precise date does not invalidate the petition page; and e) scrivener's errors do not invalidate the petition pages.

There is No Requirement that the First Day Filing Ticket be Bound with the Candidate's Nomination Papers.

7. Section 10-4 of the Election Code does not require that the First Day Filing Ticket be bound with the Candidate's Nomination Papers.

8. Therefore, the hearing examiner recommends that paragraph 1 of the Petition be stricken.

The Candidate's Statement of Economic Interests is Sufficient and Otherwise Complies with the Election Code.

9. **The "white-out" smeared portion of the Statement of Economic Interests.** The first sentence of the Candidate's Statement of Economic Interests appears to be smeared.

10. This "smearing" does not affect the contents of the Statement and all of the requisite information is legible.

11. Therefore, the hearing examiner recommends that paragraph 2 of the Petition be stricken.

12. **Failure to register or be licensed with governmental entities.** The Objector contends that the Candidate is not licensed or registered with the City of Chicago Business Services License Bureau or other legal entities.

13. Whether or not a candidate should be licensed or registered with another governmental entity is not for the purview of the Electoral Board. The Electoral Board lacks jurisdiction to inquire into the truth and accuracy of the Statement of Economic Interests. *Greer v. McGowan*, 95-EB-ALD 75.

14. Therefore the hearing examiner recommends that paragraph 3 of the Petition be stricken.

15. **The Candidate's Statement of Economic Interests Filed in April 2010 is Valid.** It is undisputed that the Candidate is an incumbent alderman and that in connection with her aldermanic position, she filed her Statement of Economic Interests in April 2010.

16. The record shows that a receipt for the Statement of Economic Interests was timely filed (Group Exhibit A).

17. Section 10-5 of the Election Code provides:

> Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for filing of nomination papers **unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed.** If the nomination papers of any candidate and the statement of economic interest of that candidate are not required to be filed with the same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed.

10 ILCS 5/10-5 (emphasis added).

18. Section 10-5 clearly provides for an exception for the filing of the Statement of Economic Interests for those candidates, such as this Candidate, who already filed such a Statement in relation to the same governmental unit in the same calendar year in which the Nomination Papers were filed, *i.e.*, 2010.

19. Therefore, the hearing examiner recommends that paragraphs 4 and 5 of the Petition be stricken.

The Candidate's Cover Sheet Does Not Invalidate the Nomination Papers.

20. The cover sheet to the Candidate's Nomination Papers includes a sticker which states "Leslie A. Hairston, 5th Ward Alderman."

21. This sticker or the colors associated with it (red, white and blue) are not a basis for invalidating the Candidate's Nomination Papers.

22. Accordingly, the hearing examiner recommends that paragraph 6 of the Petition be stricken.

Missing date by Notary Does Not Invalidate the Subject Petition Page or the Nomination Papers.

23. The Objector contends that in petition page 23, the notary failed to include the precise date.

24. A candidate's failure to specify a date in the notarial jurat constitutes an insufficient basis to invalidate the nominating papers. *Hendon v. Davis*, 02-EB-ALD-11, CBEC, January 21, 2002.

25. Therefore, the hearing examiner recommends that paragraph 7 of the Petition be stricken.

Scrivener's Errors will not Invalidate the Subject Petition Page or the Nomination Papers.

26. The Objector complains that the words "71st and Yates" appearing on petition page 29 violate the uniform conformity of the Nomination Papers.

27. Nothing in the Election Code invalidates nomination papers for errant scribbles on the petition pages.

28. Therefore, the hearing examiner recommends that paragraph 8 of the Petition be stricken.

Summary of Recommendations on the Candidate's Motion to Strike and Dismiss Objector's Petition.

29. For the foregoing reasons, the hearing examiner recommends that the Candidate's motion to strike and dismiss Objector's Petition be granted, and the Petition be dismissed.

CONCLUSION

30. The hearing examiner recommends the following: a) the motion to strike and dismiss the Objector's Petition be granted; b) the Objector's Petition be dismissed; and c) the name of Leslie Hairston be printed on the ballot for the office of Alderman for the 5th Ward of the City of Chicago for the Municipal General Election to be held on February 22, 2011.

RELATED CASES

31. There are two related cases, *i.e.*, *Herminstyne/Chalmers v. Hairston* (11-EB-ALD-340) and *Wahaldo v. Hairston* (11-EB-ALD-089). In *Herminstyne/Chalmers*, one of the objectors withdrew her objections and the other objector defaulted. In *Wahadlo*, the hearing examiner recommended that the Candidate's motion to strike and dismiss the Objector's Petition be granted. Therefore, in both cases, the hearing examiner recommended that the name of Leslie A. Hairston be printed on the ballot for the office of Alderman for the 5th Ward of the City of Chicago for the Municipal General Election to be held on February 22, 2011.

Date: December 22, 2010

Kelly McCloskey Cherf
Hearing Officer