

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

Objections of: WILLIE J. RILEY)
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)
To the Nomination) No.: 15-EB-ALD-011
Papers of: JAMES E. DUKES)
)
Candidate for the office of)
Alderman of the 17th 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 WILLIE J. RILEY ("Objector") to the nomination papers ("Nomination Papers") of JAMES E. DUKES, candidate for the office of Alderman of the 17th Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 2014, 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 8, 2014 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Joe Ponsetto 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, WILLIE J. RILEY, by his attorney, Stephen Stern; the Candidate, JAMES E. DUKES, by his attorney, Frank Avila.

7. The sole objection raised in the Objector's Petition is that the Candidate has not resided in the 17th Ward of the City of Chicago for at least one year next preceding the election to be held on February 24, 2015 and is therefore not eligible for the office of Alderman of the 17th Ward.

8. Section 3.1-10-5 of the Illinois Municipal Code (65 ILCS 5/3.1-10-5) sets forth the following residency qualifications for elective municipal office: (a) "A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election" and (b) "A person is not eligible for the office of alderman of a ward unless that person has resided in the ward at least one year next preceding the election or appointment."

9. Section 21-14(a) of the Revised Cities and Villages Act (65 ILCS 20/21-14) pertaining to the qualifications of Alderman in the City of Chicago provides that “no member may be elected or appointed to the city council after the effective date of this amendatory Act of the 93rd General Assembly unless he or she has resided in the ward he or she seeks to represent at least one year next preceding the date of the election or appointment. In the election following redistricting, a candidate for alderman may be elected from any ward containing a part of the ward in which he or she resided for at least one year next preceding the election that follows the redistricting, and, if elected, that person may be reelected from the new ward he or she represents if he or she resides in that ward for at least one year next preceding the reelection.”

10. In *Maksym v. Board of Election Commissioners*, 242 Ill.2d 303, 950 N.E.2d 1051 (2011), the Supreme Court discussed four “well-settled principles.” First, to establish residency, two elements are required: (1) physical presence, and (2) an intent to remain in that place as a permanent home. Second, once residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. Third, both the establishment and the abandonment of a residence is principally a question of intent. Fourth, once a residence has been established, the presumption is that it continues, and the burden of proof is on the contesting party to show that it has been abandoned. 242 Ill.2d at 319. Thus, a voter’s temporary absence from an established residence will not cause him to lose that residence for voting purposes if at all times he intends to return and never intends to permanently abandon the place as his permanent residence. *Stein v. County Board of Trustees of DuPage County*, 85 Ill.App.2d 251, 229 N.E.2d 165, *aff’d*, 40 Ill.2d 477, 240 N.E.2d 668 (1968). *Stein* also pointed out that domicile is a continuing thing and a person must, at all times, have a

domicile. Accordingly, one's domicile may not be abandoned until another is acquired. Whether a person has acquired a new residence, however, is a separate question depending on his physical presence and intent with respect to a new residence. "Residence is lost upon abandonment; however, 'an absence for months, or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of the former residence, will not be an abandonment'." *People ex rel. Madigan v. Baumgartner*, 355 Ill.App.3d 842, 847, 823 N.E.2d 1144, 1150 (Fourth Dist., 2005), citing *Stein, supra*, in turn quoting *Kreitz v. Behrensmeyer*, 125 Ill. 141, 195, 17 N.E. 232, 253 (1888). "[W]here a person leaves his residence and goes to another place, even if it be another [s]tate, with an intention to return to his former abode, or with only a conditional intention of acquiring a new residence, he does not lose his former residence so long as his intention remains conditional." *Baumgartner*, 355 Ill.App.3d at 847-848, quoting *Pope v. Board of Election Commissioners*, 370 Ill. 196, 201, 18 N.E.2d 214, 216 (1938). "To change residence, 'there must be, both in fact and intention, an abandonment of the former residence and a new domicile acquired by actual residence, coupled with the intention to make it a permanent home'." *Baumgartner*, 355 Ill.App.3d at 848, quoting *Welsh v. Shumway*, 232 Ill. 54, 77, 83 N.E. 549, 559 (1907). Implicit in the residency requirement of intention to make a place a person's permanent home is the ability of that person to choose whether he wishes to exercise the rights afforded to a permanent resident in his new location or if he wishes to continue his residence at the home he has temporarily left. *Baumgartner*, 355 Ill.App.3d at 849. As long as he does not seek to 'exercise the rights of property or of citizenship incident to or resulting from permanent residence' at his new location but instead continues to exercise those rights, including the right to vote, at his original location, he remains a resident at the original location." *Id.* "If a person has established a physical presence in two places where

he may reside, he may choose which he intends to make his permanent home.” *Baumgartner*, 355 Ill.App.3d at 850.

11. Various sections of the Election Code (see 10 ILCS 5/7-10; 5/8-8; 5/10-5) require a candidate to include with his nomination petition a sworn statement of candidacy attesting that he or she “is qualified for the office specified.” The word “is” indicates present tense, indicative mood. *Goodman v. Ward*, 241 Ill.2d 398, 407, 948 N.E.2d 580, 586 (2011). The legislature’s use of this word evinces an intention to require candidates to meet the qualifications for the office they seek, including the residency requirement, at the time they submit the statement of candidacy which must accompany their nominating papers. *Id.* That this was the legislature’s intention is further supported by the form for the statement of candidacy included by the legislature in the text of the statutes. *Id.* The form’s language calls for a candidate to swear or affirm that, among other things, “I *am* legally qualified (including being the holder of any license that may be an eligibility requirement for the office I seek the nomination for) to hold such office * * *.” Because “am” indicates present tense and because the signed statement must accompany the nominating petition when it is filed, the statute can only be understood to mean that a candidate must meet the qualifications of office at the time he or she files a nomination petition with electoral authorities. *Id.*

12. The scope of the electoral board’s authority and the type of evidence that is admissible for the purpose of determining residency is discussed in length in *Delk v. The Board of Election Commissioners of the City of Chicago*, 112 Ill.App.3d 735, 445 N.E.2d 1232 (First Dist. 1983).

13. Here, the Hearing Officer heard the testimony of the witnesses and considered the evidence offered. “It is the responsibility of the trier of fact to assess the credibility of the

witnesses and the weight of their testimony, resolve conflicts in the evidence and draw reasonable inferences from the evidence” *People v. McCulloch*, 404 Ill.App.3d 125, 131-132, 936 N.E.2d 743 (2nd Dist. 2010).

14. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer concluded, after having observed and judged credibility of the testimony of the witnesses and considered and weighed the evidence that the Candidate did meet the residency requirement for the officer of Alderman of the 17th Ward of the City of Chicago. The Hearing Officer recommends, therefore, that the Objections to the Candidate’s Nomination Papers be overruled and that the Nomination Papers be declared valid.

15. The Objector filed a motion pursuant to Rule 20 of the Electoral Board’s Rules of Procedure to address the Board regarding the Hearing Officer’s recommendation. The Objector argues that the Hearing Officer entered his recommended decision without distinguishing or mentioning the case of *Neely v. Board of Election Commissioners for the City of Chicago*, 371 Ill.App.3d 694 (1st Dist. 2007), which, Objector contends, applies to the facts in this case. Objector argues that the ruling in *Neely* should preclude a finding here that the Candidate resided in the 17th Ward.

16. In *Neely*, the aldermanic candidate claimed to be residing in the 20th Ward when he voted and signed an application for ballot in the 8th Ward within the one-year prior to the 2007 aldermanic election. The appellate court noted that the candidate there exercised his power to vote in a different ward in the preceding primary election “as a deliberate assertion of residence in that ward” and that the candidate had “explained that he intentionally misrepresented his residence to the Board in 2006 to keep his actual residence secret.” 371

Ill.App.3d at 700. The *Neely* court further observed that “Neely did not present any evidence that the vote resulted from inadvertent error or misunderstanding.” *Id.*

17. Here, the Hearing Officer found that the Candidate was registered to vote at 10218 S. Peoria Street, Chicago, Illinois from 1992 through March 2014. However, prior to the March 2014 primary election, the Candidate registered to vote at 1642 West 78th Place (where he now claims to reside) and that an official registrar from the Chicago Board of Election Commissioners testified that she did, in fact, register the Candidate from that address and turned in the proper paperwork to the Board in January 2014. The Hearing Officer further found that the Candidate went to the polling place assigned for the 78th Place address on Election Day but was informed that his registration had not been changed to that address and that he was still registered at the Peoria Street address. He was instructed to go to the polling place for the Peoria Street address and vote, which he did. In May 2014, the Candidate again completed the paperwork needed to change his voter registration to the 78th Place address, using the same official registrar from the Board of Election Commissioners as before and that this registration change was processed by the Board.

18. Unlike Neely, the Candidate here presented evidence that his vote in the polling place assigned for the Peoria Street address was, in fact, the result of inadvertent error in the handling of his voter registration change of address documents, or misunderstanding, and that there was no intent on his part to “intentionally misrepresent” his residence or to keep his true residence a “secret.” Therefore, the *Neely* case is distinguishable from the instant case.

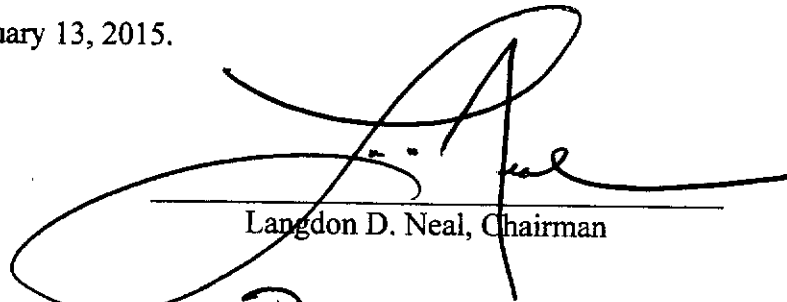
19. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer’s

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.


20. 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 WILLIE J. RILEY to the Nomination Papers of JAMES E. DUKES, candidate for election to the office of Alderman of the 17th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JAMES E. DUKES, candidate for election to the office of Alderman of the 17th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.

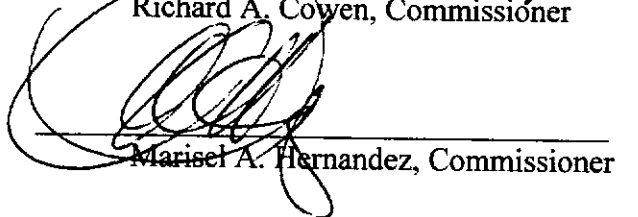
Dated: Chicago, Illinois, on January 13, 2015.



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

Objection of Willie J. Riley,

Petitioner – Objector

No. 15 EB – ALD - 11

To the Nomination papers of: James E. Dukes

Joseph L. Ponsetto

Respondent - Candidate

RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners ("CBOE") on the objection of Willie J. Riley ("Objector") to the nomination papers of James E. Dukes ("Candidate") a Candidate for the office of Alderman of the 17th Ward of the City of Chicago, County of cook, State of Illinois, to be voted on at the Election to be held on February 24, 2015. Following an evidentiary hearing, Joseph L. Ponsetto, Hearing Officer, being duly advised finds and recommends as follows:

Issue addressed:

The sole issue in this matter is the Objector's contention that the Candidate has not resided in the 17th Ward for at least one year next preceding the election to be held on February 24, 2015 and is therefore not eligible for the office of Alderman of the 17th Ward of the City of Chicago.

The relevant facts presented by the parties as found by the hearing officer after having conducting a very spirited and detailed evidentiary hearing and having the opportunity to observe the testimony of the witnesses and the documentary evidence and judge the credibility of all is as follows:

- 1) Candidate was registered to vote at an address of 10218 South Peoria, Chicago, Illinois from 1992 through and including March of 2014. During that time period he voted from that registration some 23 times most relevantly in the March 2014 primary election.
- 2) Prior to voting in that election the Candidate registered from 1642 West 78th Place Chicago, Illinois. An official registrar from the Chicago Board of Elections testified that she in fact did

- register the Candidate from that address and turned the proper paperwork into the Board in January of 2014.
- 3) Candidate went to the polling place appropriate for the 78th place address on Election Day in March but was informed that his registration had not been changed to that address and that he was still registered on Peoria. He was instructed to go to the polling place for that address and vote which he did.
 - 4) In May of 2014 the Candidate again completed the paperwork work necessary to put his registration at the address that he thought he had registered from in January of 2014. This was done with the same official registrar from the Chicago Board of Elections and was processed by the Board of Elections.
 - 5) On January 31, 2014 the Candidate entered into a lease agreement and paid move in costs to live at 1642 West 78th place Chicago, Illinois commencing February 1, 2014. However he did not live at that residence for the entire one year term of the lease. Later in the year he moved to 6829 South Bishop Chicago, Illinois which is the address that he is currently registered from and the address which is reflected on his petitions and Statement of Candidacy. Both of these addresses are in the 17th Ward.
 - 6) The Candidate acknowledged that during the relevant period surrounding February of 2014 his Illinois driver's license was for an address of 4501 South Forestville in the City of Chicago. He sold the home in the summer of 2014 but was not living there after moving to 1642 West 78th place Chicago, Illinois in February. He lived at that address from 2009 with limited interruption in when he moved to an address in the old 17th Ward for a brief period in the summer of 2013.
 - 7) He acknowledged that the address of 10218 South Peoria Chicago Illinois was his residence until his divorce in 2009 when he moved to the Forestville address.

Statute that applies: 65 ILCS 20/21-14(a)

In relevant part:

"In the election following redistricting, a candidate for alderman may be elected from any ward containing a part of the ward in which he or she has resided for at least one year next preceding the election that follows the redistricting, Section 21-14(a) of the Revised Cities and Villages Act, which is part of the Illinois Municipal Code (65 ILCS 20/21-14(a) establishing certain qualifications for Alderman in the City of Chicago.

Arguments of the Parties:

The Objector put forth a very formidable presentation which actually forced the Candidate into acknowledging a myriad of missteps which clearly do not follow our laws and or procedures. In a very cavalier manner the Candidate acknowledged that he voted from an address where he had not resided for years swearing to election officials that he did in fact live there. He had no problem with using an address for his driver's license when he knew he no longer lived at that address and which conflicted with his voter registration. Specifically the voting in March of 2014 is highlighted and the basis for the

argument that you cannot have it both ways as to where you reside during the one year window needed to establish residency. The objector does however acknowledge the lease entered into for the address in the 17th ward and brings no other evidence to rebut the circumstances surrounding the lease and apparent move in.

The Candidate as indicated, in the very essence of hubris, does testify to all of his failures to keep his paperwork correct even up to the point of acknowledging potential felonious behavior in voting from an address he does not reside at. However he asks that that behavior support his argument that no matter how chaotic his life may be organizationally he be allowed to be placed on the ballot because his intent was always to establish residency in one year anticipation of his run for office in the 17th ward.

Hearing Officer's Conclusions of law

Ballot access is a substantial right and not lightly to be denied. *Vestrup v. Dupage County Election Commission*, 335 Ill. App. 3d 156, 779 N.E. 2nd 376 (2nd District 2002) Courts are mindful of "the need to tread cautiously when construing statutory language which restricts the people's right to endorse and nominate the candidate of their choice. The right to stand for office is to some extent derivative from the right of the people to express their opinions by voting. *Nader V. Keith*, 385 F3d 729 (7th Circuit 2004) Granted these rights are not absolute and States may impose reasonable restrictions upon political parties because States have an interest in requiring a demonstration of qualification in order for elections to be run fairly and effectively. *Munro v. Socialist Worker's Party* 479 U.S. 189 (1986).

The Candidate has presented sufficient nomination papers to be placed on the ballot for the position of Alderman of the 17th Ward in the City of Chicago. The sole question is whether he rebutted the contention of the Objector that he did not reside in the 17th Ward for the year preceding the February 24, 2015 election therefore preventing objector of sustain his burden that he did not. Based on the evidence relating to his lease and his explanation supported by the testimony of a Board of Elections official as to why he voted at his old address it is the finding that on the sole issue of the time period commencing on February 1, 2014 that the candidate did establish residency in the 17th Ward.

Recommendation:

In light of the recommended findings specified above, the Hearing Officer recommends that the Objection of Willie J. Riley be overruled and that James E. Dukes did meet the residency requirement for the office of Alderman and that the name James E. Dukes appear on the ballot for Alderman of the 17th Ward for the February 24, 2015 election

ENTERED THIS 7th day of January, 2015

Joseph Ponsetto /s/

Joseph Ponsetto

Hearing Officer