

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

Objections of: ZEHRA QUADRI)
)
)
To the Nomination) No.: 15-EB-ALD-016
Papers of: SHAJAN M. KURIAKOSE)
)
Candidate for the office of)
Alderman of the 50th 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 ZEHRA QUADRI (“Objector”) to the nomination papers (“Nomination Papers”) of SHAJAN M. KURIAKOSE, candidate for the office of Alderman of the 50th 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 Richard E. Zulkey 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, ZEHRA QUADRI, by her attorneys, Frank Avila and James Skyles; the Candidate, SHAJAN M. KURIAKOSE, by his attorney, Anish A. Parikh.

7. The Objections in this case allege that the Candidate does not satisfy the 1-year durational residency requirements for the office of Alderman of the 50th Ward in the City of Chicago.

8. Section 21-14(a) of the Revised Cities and Villages Act 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. 65 ILCS 20/21-14. 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.”

9. 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. 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.” *Baumgartner*, 355 Ill.App.3d at 849. “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.

10. The parties here have also referred to the case of *Neely v. Board of Election Commissioners*, 371 Ill.App.3d 694 (1st Dist. 2007). 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. In the instant case, there was evidence that the Candidate established a residence at 6329 N. Albany in the 50th Ward on February 14 or

February 15, 2014, at least one year prior to the February 24, 2015 Municipal General Election, but that he also voted in the polling place assigned to his former address, which was not in the 50th Ward, at the March 18, 2014 general primary, which was less than one year prior to the election.

11. There is also evidence that on February 22, 2014, the Candidate attempted to change his address on his voter registration when he applied to the Illinois Secretary of State to change the address on his driver's license, but was informed that, because of the close proximity to the March 18, 2014 primary election, his registration could not be processed in time. He was advised to vote at his former polling place, which he did without objection from election officials there.

12. The Electoral Board finds that the Hearing Officer carefully and correctly addressed the *Neely* case in his recommendation. In *Neely*, 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.*

13. Here, the Hearing Officer found that the Candidate had attempted to update his address on his voter registration to reflect the 50th Ward address within 30 days prior to the March 18, 2014 primary election but was informed that because the update would not be processed in time he should vote at his former polling place, which he did without objection. So, unlike *Neely*, the Candidate here presented evidence that his vote at his former polling place was, in fact, the result of inadvertent delay 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.”

14. “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). Here, the Hearing Officer listened to the testimony of the witnesses, adjudged their credibility and weighed the evidence before him. The Hearing Officer concluded that the Candidate here established residency in the 50th Ward at least one year before the February 24, 2015 Municipal General Election.

15. 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.


16. Here, the Electoral Board finds that the Hearing Officer correctly concluded that the Candidate timely established a residence within the 50th Ward at least one year prior to the February 24, 2015 Municipal General Election.

17. 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.

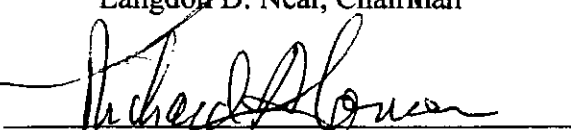
IT IS THEREFORE ORDERED that the Objections of ZEHRA QUADRI to the Nomination Papers of SHAJAN M. KURIAKOSE, candidate for election to the office of Alderman of the 50th Ward of the City of Chicago, are hereby OVERRULED and said

Nomination Papers are hereby declared VALID and the name of SHAJAN M. KURIAKOSE, candidate for election to the office of Alderman of the 50th 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.

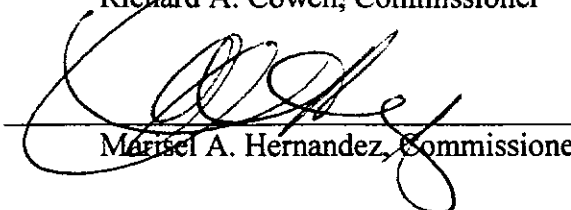
Dated: Chicago, Illinois, on January 19, 2015.



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.

BEFORE THE ELECTION COMMISSIONERS OF THE CITY OF CHICAGO

Zehra Quadri		
Petitioner-Objector		
v.		No. 15-EB-ALD-016
		Ward 50
Shajan N. Kuriakose		
Respondent-Candidate		

CHICAGO BOARD OF
ELECTION COMMISSIONERS
2015 JAN 13 P 1:43

RECOMMENDATION OF HEARING OFFICER

This cause was heard and the facts and circumstances are as follows:

Parties and Attorneys:

Petitioner-Objector is Zehra Quadri, represented by Frank Avila.

Respondent-Candidate is Shajan N. Kuriakose, represented by Anish A. Parikh.

I. Issues:

The only issue is residency. There is no issue regarding the number of signatures.

II. Status:

The case came to be heard on December 9, 2014. Thereafter, requests were made for subpoenas by the Objector, over objection of the Candidate, subpoenas were recommended and they were issued to the candidate, Secretary of State, City of Chicago, Owner of 1440 S. Wabash, Elizabeth Pearce, Tri-View Property, the Owner of 6329 N. Albany, People's Gas and Comcast. A notice to Produce was sent to the Board of Elections.

At the hearing on January 2, 2015, a representative of People's Gas appeared in response to the Objector's subpoena, but he advised the Hearing Officer that no list of requested documents was served with the subpoena. He was released.

Hearings occurred on January 2, 2015 at 5:00 pm and on January 7, 2015 at 4:00 p.m.

The witnesses that testified were Charles Haliday of the Election Board and the candidate, Shajan N. Kuriakose who was tendered a Rule 237 notice to appear.

There are 3 issues that permeate this cause. First, Illinois generally favors candidate eligibility and ballot access. *Maksym v. Board of Election Commissioners*, 242 Ill. 2d 303. Every doubt must be resolved in favor of eligibility. *Velazquez v. Soliz*, 141 Ill. App. 3d 1024 (1986).

Secondly, Maksym can also be cited for the principle of residency. For residency, two elements are required: physical presence and an intent to remain in that place as a permanent home. Once established, one can be absent from it for a matter of years without having abandoned it. Both the establishment and the abandonment of a residence is a matter of intent. Once the residence is established, the presumption is that it continues. The contesting party has the burden to show abandonment.

Finally, the parties to this hearing refer to *Neely v. Board of Election Commissioners for the City of Chicago*, 371 Ill. App. 3d 694, 863 N.E.2d 795 (2007). This is a summary of the Neely case:

Neely the candidate sought election to the office of alderman for the 20th Ward in the February, 2007 election. Less than a year before this election, he voted in the 8th Ward. For this reason, he was denied access to the ballot in the 20th Ward as he had not resided in it. His deliberate assertion of residency in the 8th Ward precluded him from serving in the 20th Ward. On March 21, 2006 Neely signed an application for ballot to vote in the 8th Ward listing his address as 8401 South Luella Avenue which is in the 8th Ward. The application contained a certification which said: "I hereby certify that I am registered from the address above and am qualified to vote."

In September, 2006, about 6 months later, Neely changed his voting address to 5619 South Wabash which is in the 20th Ward. In December 2006, he filed for the position of the 20th Ward Alderman. Because Neely had registered to vote, there was a public record "to the exercise of the power to vote in the 8th Ward in March 2006, as a deliberate assertion of residency in that Ward." It is noted that Neely did not present any evidence that his vote resulted from "inadvertent error or misunderstanding."

III. Exhibits.

A. Objector's Exhibits.

1. State of Illinois 2014 Election and Campaign Calendar

2. Primary Election Handbook. March 18, 2014 referring to Affidavit Form Ballot Application and Provisional Forms.
3. Illinois Voter Registration Application (Chicago) form, directing deadline not later than 28 days before next election.
4. Illinois Voters Registration Application (Illinois) form directing deadline no later than 28 days before the next election.
5. Candidate Voter Registration Documents.
6. Candidates Commonwealth Edison Bill.
7. City Clerk Redacted Receipt showing late payment from October 1, 2014 to October 24, 2014.
8. Calendar Dates, Time Line of Relevant Election Dates.
9. Illinois Voter Application. February 7, 2014 for 1440 S. Wabash (211) Chicago, Illinois to change voting address.
10. Illinois Voter Registration Application filed at Des Plaines Secretary of State Office for 6329 N Albany Chicago, Illinois on February 22, 2014 to change voting address.
11. Group Affidavit from postman and 5 neighbors in 6329 N. Albany building stating they do not know candidate in building or have not been aware of his presence earlier than September, 2014.
12. Photos of 6329-6327 N. Albany Chicago Illinois with 44 Units.
13. Shajan Registration Timeline.
14. Shajan Residency Registration Timeline (Not Admitted).
15. Calendar with Days (Not Admitted).
16. 2014 Calendar Days (Not Admitted).
17. Photo of front of 1440 S. Wabash Chicago, Illinois building.
18. Photos of tenant name on 1440 S. Wabash electronic directory within 30 days of instant hearing.

B. Candidate's Exhibits.

1. The Voters' Bill of Rights emphasizing "you have a right to:
...
4. Vote at your old polling place if you have moved within 30 days of the election."
2. Voter Registration notice stating, "Registration is closed 27 days prior to the election."
3. Illinois Voter Registration Application Receipt filed in Secretary of State facility in Des Plaines, Illinois to change voting address dated February 22, 2014.
4. Chase Bank Deposit Summary 2/20/2014 open date 3/27/ 2010 with Albany address.
5. Affidavit of Ram Villivalam advising he helped candidate move from 1440 S. Wabash. Chicago, Illinois to 6329 N. Albany. Chicago, Illinois on February 15, 2014.
6. Chase Bank Balance Summary from December 13, 2013 showing 6329 W. Albany (2fl.) Chicago, Illinois address from summaries of 2/ 14/14 through 3/13/14 forward.
7. American Express personal details showing 6329 N. Albany (2) Chicago, Illinois Address.
8. J.P. Morgan/ Chase Bank Profile showing 6329 N. Albany, Chicago, Illinois address.
9. Illinois Driver's License issued February 22, 2014, with 6329 N. Albany, Chicago, Illinois address.
10. Chicago Board of Election certified registration card dated December 4, 2014 showing 6329 N. Albany (2) Chicago Illinois as voting address.

It also shows April 15, 2014 as the date of "new value."
11. ComEd Bill (Also Objector Ex. 6).
12. Candidate lease of 6329 N. Albany (2) Chicago, Illinois dated February 12, 2014, beginning on February 15, 2014.

IV. Testimony/Witness

Charles Haliday

Objector called Charles Haliday to testify: He was sworn in. He was employed by the Election Board for over 33 years and is the Manager of the Board Registration Department.

The witness explained several rules and procedures carried on by the Board of Elections. The election Calendar was discussed as well as the operation of the office.

The Election Board was the primary agency to engage in voter registration. He was not familiar with the process engaged by the Secretary of State, but the Secretary of State did process voting applications at the request of driver's license applicants. This could be change of address requests as well.

The last day to register for the March 18, 2014 election was February 18, 2014. There was a grace period that applied only when the applicant physically came to the Election Board office. It appears that the Candidate applied to change his address when he renewed his driver's license at the Secretary of State Des Plaines, Illinois office. This was on February 22, 2014.

In turn, the Election Board office was preparing for early voting and for the election itself. Thus, the candidate's change of address application from the Secretary of State should not have been issued. The Board did advise of the registration process through media. The March 18, 2014 Handbook was reviewed along with Provisional Ballots and affidavits. The affidavit on the voter's application does certify that the voter lives at the address given. The Election Board maintains voter registration year round except for the period of 27 days before an election. The effective date of any change is when the change is entered into the system. The Secretary of State sends its completed forms to the Election Board for validation and verification. The registration of the candidate became active in the system on April 15, 2014.

The witness noted that sometimes things fall through the cracks.

There is a Voters Bill of Rights. It gives a voter the right to vote in his old polling place if he moved within 30 days of the election. If he moved more than 30 days, he would not be registered to vote.

Shajan N. Juriakose, the candidate testified.

He was sworn in.

The Candidate was called by the Objector as an adverse witness under Rule 237.

Kuriakose lived in Elmwood Park, then in Florida for a time before moving into 1440 S. Wabash, Chicago, Illinois.

On March 18, 2014, he voted in the primary election at the old polling place at Old St. Mary's Church. This was the designated polling place for 1440 S. Wabash, Chicago, Illinois. When he voted, he advised the judges he changed his address within 30 days of the election, and was allowed to vote.

When he changed his address at the Des Plaines Secretary of State office, he was advised there that he would have to vote at his former address as the address change would not be processed in time.

The candidate moved from the 1440 S. Wabash, Chicago Illinois address between February 15 and 16, 2014. His friend Ram Villivalam by Affidavit said he helped the candidate move on February 15, 2014. All items were removed from the 1440 apartment and the candidate never returned there (Candidate Exhibit 5). The candidate said he returned the key even though the lease he had ran to March 31, 2014. He was bound to pay rent to the end of this term for it. He could not produce a lease for the 1440 apartment, but he did have a lease for the 6329 N. Albany, Chicago, Illinois apartment that was effective on February 15, 2014. He has resided at the 6329 N. Albany address from the move in date to the present time. He moved to the north side because he thought it would be a better area to raise a family. A friend named Mr. Patel arranged for this apartment. He has no special arrangement with the owner or managers of either building. He has not been politically active, and except for this matter, is not familiar with election procedures. As he moved, he had wanted to vote in the 50th ward. When he registered in Des Plaines, he had no special knowledge about this election process or its rules.

Several exhibits were presented by both parties. The objector presented a photo of the electronic tenant directory in the 1440 S. Wabash apartment that had the Candidate's name still listed within the past 30 days of this hearing. The Candidate responded by saying that it took 6 months to get his name on when he lived there and that he had no knowledge of the building management or their operations. The candidate presented utility bills, driver's license, bank statements, and the like. The Objector argued inferences relating to the payment of the utility bills and the dates that certain car registries were made. Objector argued that the utility payments made were much less than they should be if the Candidate actually lived at the Albany apartment.

Objector also presented affidavits from the postman and 5 Albany building tenants saying that they had not seen or dealt with the Candidate for several months after he claimed to have moved in the building. Here, it must be noted that this is a 44 unit apartment building with several entrance addresses.

IV. Discussion.

The evidence consisted of testimony and documents. In the course of proceeding, it is clear that the candidate moved from the Wabash address on February 15 or 16, 2014. He left Wabash with all of his possessions and turned in the key. He did not return to it. This action demonstrates an intent to abandon. Maksym v. Emanuel, 11-EB-MUN-010, CBEC, Dec. 23, 2010, 242 Ill. 2d 303, 950 N.E.2d 1051 (2011).

A lease for the 6329 N. Albany flat was dated February 12, 2014 and the lease term began on February 15, 2014. The candidate moved into the apartment and established his physical presence in the unit. His testimony displayed his intention to remain therein as a permanent home. This intent preceded his abandonment of Wabash. Stein v. County Board of Trustees of DuPage County, 85 Ill. App. 2d 251, 229 N.E.2d 161 (1968). The Candidate moved from one leasehold to another.

The next election to be held is on February 24, 2015.

Section 3-1-10-5 of the Municipal Code requires a candidate for alderman to reside in the ward that the candidate seeks to represent at least one year next preceding the election or appointment.

The Candidate voted in the March 18, 2014 election in a ward other than the ward he now claims to be his residence.

Prior to the election the candidate sought to change his voting address from the Wabash address to the Albany address at the Des Plaines, Illinois office of the Secretary of State on February 22, 2014. On this same day, he changed the information on his driver's license. Here, he was also advised that he would have to vote at his Wabash address as the change could not be processed in time.

At the Wabash address polling place, on the March 18, 2014 election date, he advised the judge of his address change. However, he was allowed to vote with no other questions or affidavits to be signed.

At this point, the candidate was a resident of the 50th ward at the Albany Address and he was a voter in the city of Chicago. The question that comes forward, as in Neely, is whether the act of voting on March 18, 2014 was a deliberate assertion of residence in the ward of the Wabash property. If so, he would not be a resident of the Albany property for a full year prior to the February 24, 2015 election.

In Neely, the Court relied on one factual finding. When he voted in another ward, he signed a ballot application that she was "qualified to vote" in that ward. Later, when filed nomination papers to run for office in another ward, he could not say he lived in this other ward for one year prior to the election. This was because the voting ballot application was a deliberate assertion of residence and served to show he did not reside in the ward he wished to be a Candidate for one year prior to the election. The Neely court had found no case where a candidate sought to renounce a public record he created of his residence to establish eligibility for office.

The Court went on to say that Neely "did not present any evidence that the vote resulted from inadvertent error or misunderstanding." The Court noted that Neely explained he wished to keep his actual residence secret.

These facts and circumstances are different from the case at bar. Although the Candidate here always seems to be on the edge, he did seek to change his voting registration. After he established the residence on Albany, he went to vote at the Wabash address "in good faith." He sought to exercise his voting privilege under the Voters' Bill of Rights that enabled him to vote at the old polling place if he moved within 30 days of the election.

In the March 18, 2014 Primary Election Handbook (page 28), it permits voting if a person changes address within 30 days and resides in Illinois. The Candidate advised the election judges of his situation, but was allowed to vote normally without completion of any affidavits. It seems that these circumstances do present "inadvertent error or misunderstanding" as provided for in Neely. The Candidate's situation is opposite of Neely as the Candidate sought to leave the Ward he voted in and reside in another.

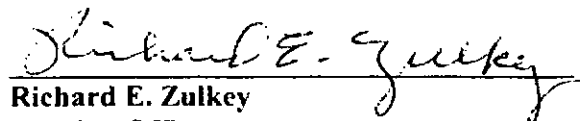
Although the language in Neely is strong where it discusses a deliberate assertion of residency and renunciation of a public record of residence, the Candidate in this instant did not engage in such conduct to establish eligibility for public office. He sought only to vote at the old address as he had moved within 30 days. Here, it might be apt to refer to Brown v. Ivory, 95-EB-ALD-106 and 95-EB-ALD-129, CBEC, January 31, 1995 where 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.

3. RECOMMENDATION.

As stated above, the Candidate is close with respect to various time lines, but residency appears to be established within a year of the election. Doubt must be resolved in favor of candidacy.

The Candidate should appear on the ballot.

Respectfully submitted,


Richard E. Zulkey
Hearing Officer

Richard E. Zulkey
77 W. Washington (1900)
Chicago, IL 60602
tel. (312) 372-5541
fax (312) 372-5545
Attorney No: 20881