

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

GEORGE BROWN,)	
)	
Petitioner-Objectors,)	
)	
v.)	NO. 15 EB-ALD 017
)	
MICHAEL E. LAFARGUE,)	
)	
Respondent- Candidate.)	

HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter came to be heard initially on December 10, 2014. The Objector, Mr. George Brown, was represented by Odelson & Sterk, Ltd. as counsel. The Candidate, Mr. Michael E. LaFargue, appeared and was represented by Andrew Finko, P.C.

Counsel for the Candidate made an oral motion to strike the Objector's Petition on the basis that it failed to state a reason for the objection and that the alleged defect of not filing a Statement of Economic Interest (SOEI) was incorrect, since a filed SOEI was contained in the case file of the Election Board. After some discussion with counsel, the Candidate was directed to file a written Motion To Strike. The case was set for hearing on the Motion to Strike to December 16, 2014.

ISSUES RAISED

The essence of Objectors' Petition is contained in paragraphs 5, 6 and 7 of the Petition. In summary, they are: a) that the SOEI is a nullity because it is not filed in relation to any unit of government and does not specify the office in a particular unit of government; that the SOEI did not contain the address or unit of government; the SOEI receipt was not filed in compliance with the Election Code because and in relation to the Candidate's unit of government; and that the Statement of Candidacy was is invalid because the SOEI was not filed in conformity to the Ethics Act and the Election Code.

FACTS AND EVIDENCE PRESENTED BY THE PARTIES

The Candidate first argued that the SOEI was properly filed with the Clerk of Cook County, and that on the top right hand corner, it contained a dated stamp indicating receipt from that office for the SOEI. He argued that there is no other requirement in relationship to the receipt, and therefore there is no defect with the SOEI receipt.

With respect to the SOEI itself, the Candidate argued that SOEI filed is in full compliance with the Election Code. It should be noted that the SOEI filed by the Candidate is the pre-printed form issued by the Cook County Clerk's office. It contained the caption: "For Candidates Only", and two lines to be filled in. The first line requires the insertion of the "Name" of the candidate. The second line requires the insertion of the "Office" sought by the candidate. No other requirements are listed at the caption portion of the Cook County Clerk's form. The SOEI form caption is then followed by the "General Directions" and questions to be completed by the candidate as required by 5 ILCS 420/4A-104, the Illinois Governmental Ethics Act.

The Candidate argued that his full name is contained in the first line of the SOEI, and that the second line clearly contains that office which he is seeking, "9th Ward Alderman". The Candidate maintains that he is in compliance with the Election Code. In support thereof, he cited various cases listed in his Motion to Strike.

The Objector argued that the Candidate's SOEI is defective because the "9th Ward Alderman" does not sufficiently identify the unit of government. In addition, he contends that the candidate has not listed an address required by 5 ILCS 420/4A-104.

In support of this position, the objector presented the hearing officer with various cases to consider, including some aimed at aiding in statutory interpretation.

CASE REVIEW AND FINDINGS

The issue that the receipt for the filing of Statement of Economic Interest does not identify the Candidate's unit of government sought may be disposed of summarily. This specific issue was addressed in *Cardona v. Board of Election Commissioners*, 346 Ill.App.3d 342, 805 N.E.2d 360 (1st Dist 2004). There the court affirmed the Election Boards finding that neither the Election Code nor the Illinois Governmental Ethics Act requires such a unit of government identification on the receipt. Therefore the content of the receipt of the SOEI is a non-issue and of no consequence in this case.

Next, Objector relies primarily on the case of *Jones v. Municipal Officers Electoral Board*, 112 Ill.App.3d 926, 446 N.E.2d 256 (1st Dist. 1983). for disqualifying the candidate because he did not state an office in relation to which the SOEI was filed. In his SOEI, the Candidate inserted the line for "Office" the words "9th Ward Alderman".

In *Jones*, the candidate's SOEI suffered from various defects. There the candidate identified himself on the "Name" line of the SOEI as "Reverend Elias J. Jones 3rd Ward". On the second line for "Office or position of employment for which this statement is filed", the candidate inserted the words: "Pastor of 1st Unity Missionary Baptist Church".

The *Jones* court found that the Candidate's 3rd Ward designation alone on the SOEI was insufficient identification of the office sought. Moreover, it found that the candidate's designation of the title "Reverend" on his SOEI violated the prohibitions of 10 ILCS 5/10-5.1, i.e., using titles or degrees with the candidate's name.

In the present case, the Candidate identified himself with his full name, and identified the office sought as the "9th Ward Alderman". The Candidate contends that this designation is sufficient enough to alert the public of the office being sought. He argues that in a City of Chicago election where the offices being elected are Mayor,

Treasurer and Alderman, "9th Ward Alderman" designation is obvious of the office. In addition, he states that the Nomination Papers filed with the Board of Elections provide plenty of evidence of which office he is seeking, and that all of the Nomination Papers should be read as a whole and are open to the general public. In support thereof, he cites the following case: *Requeña v. Cook County Officers Electoral Board*, 295 Ill.App.3d 728, 692 N.E.2d 1217 (1st Dist 1998), a similar case where the candidate identified the office as "Circuit Court of Cook County" instead of the specific judicial vacancy sought. The court there did not follow the sanction of removal from the ballot as in *Jones*.

Other cases have similarly found that the Candidate's designation of office sought as "8th Ward Alderman" was sufficiently identified. See *Brown v. Neely*, 91 EB-ALD 163, CBEC, January 30, 1991. See also *James Kloustad v Humphrey*, 99-EB-ALD-075, where the candidate failed to list "City of Chicago" in the governmental unit square, was found to be in substantial compliance where the Statement of Candidacy, read as a whole, showed that the governmental unit was the City of Chicago.

It is noted that the Candidates Nomination Papers include a Statement of Candidacy which shows that he has listed the office of "Alderman, 9th Ward, City of Chicago, State of Illinois". It further identifies the office and city of Chicago in the sworn statement portion of the Statement of Candidacy. In addition, the Statement of Candidacy contains the Candidates address in two different locations.

It is further noted that the Nomination Papers contained in the Board of Elections file also include a completed Statement of Economic Interest which was filed with the City of Chicago Board of Ethics, and is entitled "City of Chicago 2014 Statement of Economic Interests". It contains the Candidate's full name, address and identifies the office being sought as "Candidate 9th Ward Alderman".

Lastly, the Candidate asserts that he completed and filed the Cook County form of Statement of Economic Interest, such as it is. The Objector maintains that the Ethics Law requires the SOEI to include office sought and the candidates address, and this Candidate did not include his address in the SOEI filed with the Clerk of Cook County, and therefore it is defective.

In reviewing the SOEI of the Candidate, it is noted that his response to question number 2 states that he is a Realtor- Independent Contractor operating out of an address identified as 9327 S. Michigan Ave., Chicago, Illinois 60619. This address is the same address which the Candidate lists in his Statement of Candidacy; his City of Chicago SOEI; and in the receipt he received when he submitted his Nomination Papers.

No cases were submitted by either party addressing the issue of failure to list an address on the SOEI, and none were found by the Hearing Officer.

In the case of Cardona, the Board of Election was reluctant to disqualify the Candidate from the ballot because he relied upon the receipt prepared by the Illinois Secretary of State where the receipt merely identified the office as "Candidate". The case herein is similar to Cardona, only in that the candidate relied on the form generated by the Cook County Clerk's office and completed only the information contained therein, and did not specifically list an address as required by the Section 420/4A-104 of the Ethics Act.

CONCLUSIONS AND RECOMMENDATION

The Candidates SOEI substantially complies with the requirements of the Election Code and the Illinois Governmental Ethics Act. The SOEI is intended to notify the public at large what, if any, financial relations the candidate has with the governmental unit he or she is seeking office.

The Candidate completed and filed the Statement of Economic Interest form

provided by the Cook County Clerk. He indicated his full name, identified the office sought as "9th Ward Alderman", and fully completed the remaining questions, and signed the Verification. The identification of office stated in the Candidate's SOEI has been found to be sufficient in the case of *Brown v. Neely*, 91 EB-ALD 163.

The Cook County Clerk SOEI form does not require the listing of an address, although this is a requirement which the candidate must "substantially" provide pursuant to Section 420/4A-104. Nevertheless, the Candidate provided an address in response to question number 2 of the SOEI, which is the same address listed in his Statement of Candidacy, Receipt for Nomination Papers and the City of Chicago SOEI.

The Statement of Candidacy and Nomination Papers, when read as a whole, substantially identifies the office sought by the Candidate and his address. (See *Lewis v. Dunne* 63 Ill.2d 48, 344 N.E.2d 443 (1976).

Therefore, the Candidate's Motion to Strike the Objector's Petition is sustained, and it is recommended that the Candidates' name should be included in the February 24, 2015 election ballot.

Respectfully Submitted,

S/ Yamil E. Colón

Hearing Officer

December 22, 2014

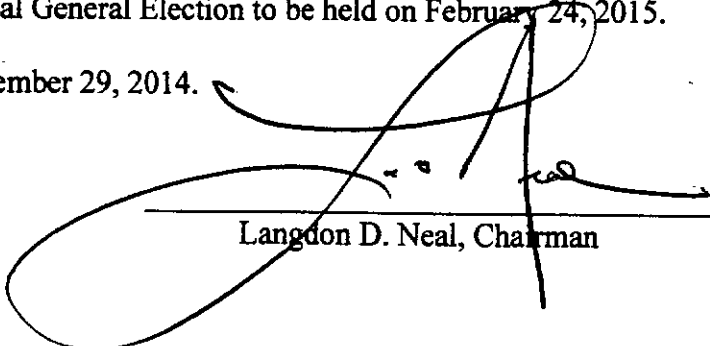
inadvertently untrue, incorrect and incomplete economic interests statement. Because of that difference, the *Jones* court's conclusion that removal from the ballot is the only possible remedy for the taint upon the nomination process caused by the candidate's violation of the Election Code is inapplicable here." 147 Ill.2d at 55.

17. Thus, even if the Candidate's Statement of Economic Interests and the receipt therefor were deficient for failing to properly identify the office sought and the unit of government involved, *Welsh* underscores that the appropriate remedy for such deficiency does not involve removal from the ballot.

18. For the reasons stated above, the Electoral Board dismisses 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 GEORGE BROWN to the Nomination Papers of MICHAEL E. LAFARGUE, candidate for election to the office of Alderman of the 9th Ward of the City of Chicago, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of MICHAEL E. LAFARGUE, candidate for election to the office of Alderman of the 9th 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 December 29, 2014.



Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner



Marisel A. Hernandez, Commissioner

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

Objections of: GEORGE BROWN)
)
)
To the Nomination) No.: 15-EB-ALD-017
Papers of: MICHAEL E. LAFARGUE)
)
Candidate for the office of)
Alderman of the 9th 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 GEORGE BROWN (“Objector”) to the nomination papers (“Nomination Papers”) of MICHAEL E. LAFARGUE, candidate for the office of Alderman of the 9th 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 Yamil E. Colon 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, GEORGE BROWN, by his attorney, Luke J. Keller; the Candidate, MICHAEL E. LAFARGUE, by his attorney, Andrew Finko.

7. The Objections contend that the Candidate's Statement of Economic Interests is a nullity because it was not filed in relation to any unit of government and does not specify the office in a particular unit of government, that the Statement does not contain the address or unit of government, that the receipt for the Statement was not filed in compliance with the Election Code and that the Statement was not filed in conformity with the Governmental Ethics Act and the Election Code.

8. The Candidate filed a motion to strike and dismiss the Objector's Petition contending that he is in full compliance with the Election Code.

9. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Candidate's motion to strike

and dismiss the Objector's Petition be granted, that the Objections to the Candidate's Nomination Papers be dismissed and that the Nomination Papers be declared valid.

10. 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.

11. The Objector filed a request under Rule 20 of the Electoral Board's Rules of Procedure contending that cases like *Purnell v. Municipal Officers Electoral Board for the City of Chicago*, 275 Ill.App.3d 1038, 657 N.E.2d 55 (1995) and *Jones v. Municipal Officers Electoral Board*, 112 Ill.App.3d 927, 446 N.E.2d 256 (1983) compel a finding that the Candidate be removed from the ballot for failing to properly identify on his Statement of Economic Interest the office he is seeking and failing to specify the unit of government for which he is attempting to qualify.

12. First, the Electoral Board agrees with the Hearing Officer that nothing in the Code requires that a receipt for an economic interests statement must contain a specific description of the office the candidate is seeking. *Cardona v. Board of Election Commissioners for the City of Chicago*, 346 Ill.App.3d 342, 344, 805 N.E.2d 360, 362 (2004).

13. Second, the Electoral Board finds that the cases cited by the Objector do not, as a matter of law, compel the result that Objector is seeking.

14. *Purnell* is distinguishable in that the candidate there relied upon a Statement of Economic Interest Statement he previously filed in the same calendar year in relation to his

employment as a police officer for the City of Chicago. The court held that such statement was defective and could not be relied upon by the candidate in relation to his candidacy.

15. *Jones* was essentially overruled by the Illinois Supreme Court in *Welch v. Johnson*, 147 Ill.2d 40, 53, 167, 588 N.E.2d 1119 (1992). In *Welch*, the Court noted that Section 10-5 provides in relevant part: "Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests *as required in the Illinois Governmental Ethics Act* in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers * * *." 10 ILCS 5/10-5. The Court interpreted the "as required" language above not as a reference to the substantive requirements of the Ethics Act, but merely a reference to the fact that the Ethics Act, and not the Election Code, requires the filing of statements of economic interests. Moreover, the Court held, Section 10-5 refers to and is applicable only where there is a *complete* failure to file such a statement. It does not refer to the filing of a statement that is untrue, incorrect or incomplete. 147 Ill.2d at 53-54. Thus, Section 10-5 of the Election Code provides no authority for the court to order the removal of a candidate's name from the ballot and removal from the ballot is not a permissible sanction for the filing of a statement of economic interests which is not true, correct or complete when filed with the appropriate officer merely due to an inadvertence on the part of the person filing the statement. *Welsh v. Johnson*, 147 Ill.2d 40, 51, 588 N.E.2d 1119 (1992), citing *Crudup v. Sims*, 292 Ill.App.3d 1075, 1077-1078, 686 N.E.2d 714, 71, 226 (1997) and *Requena v. Cook County Officers Electoral Bd.*, 295 Ill.App.3d 728, 733, 692 N.E.2d 1217, 1220 (1998).

16. Referring to *Jones*, the Supreme Court said, "We find *Jones* of no avail to the plaintiffs for the simple reason that we disagree with them as to what exactly the Election Code, when construed in light of the Ethics Act, mandates of a candidate in relation to the filing of an

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.