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

Objections of: JERMAINE B. SHEPPARD and IRIS L. HEARD	))	
To the Nomination Papers of: DAVID E. NEELY	))	**No.: 07-EB-ALD-124**
Candidate for the office of Alderman of the Twentieth 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 and Richard A. Cowen, 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 JERMAINE B. SHEPPARD and IRIS L. HEARD, ("Objector(s)") to the nomination papers ("Nomination Papers") of DAVID E. NEELY, candidate for the office of Alderman of the Twentieth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 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(s) 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 January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Rodney Stewart for further hearings and proceedings.

6. The Objector(s) and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector(s), JERMAINE B. SHEPPARD and IRIS L. HEARD, by counsel, Michael Lavelle and Kara Allen; and the Candidate, DAVID E. NEELY pro se.

7. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and Recommended Decision 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 sustains the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of JERMAINE B. SHEPPARD, IRIS L. HEARD, to the Nomination Papers of DAVID E. NEELY, candidate for election to the office of Alderman of the Twentieth Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of DAVID E. NEELY, candidate for election to the office of Alderman of the Twentieth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 28th day of January, 2007.

Langdon D. Neal, Chairman

Richard A. Cowen, 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 10 days after the decision of the Electoral Board.

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

JERMAINE B. SHEPPARD and
IRIS L. HEARD,
Objectors,

and No. 07-EB-ALD-124

DAVID E. NEELY,
Candidate.

2007 JAN 26 A

Recommended Findings of Fact and Decision

The Candidate seeks to be named on the ballot for the February 27, 2007 election for alderman in the 20th Ward in the City of Chicago. The Objector's Petition challenged the number of valid signatures on the Candidate's nomination petitions and the Candidate's residency. The Candidate's Response was properly filed.

The Candidate filed several motions seeking to strike and dismiss the Objector's Petition. Objector responses to each motion were filed. Hearings were conducted and arguments by both parties were presented. Each of the motions filed by the Candidate were denied.

Out of 800 plus signatures contained in the Candidate's Circulator's Petitions, the Objector conceded that the Candidate had 405 valid signatures and withdrew all objections that were made with respect to the issue of invalid signatures. As a result, a Record Examination was not ordered.

The Objector in his petition raised a second issue with respect to the Candidate's residency. Pursuant to the Illinois Revised Statutes, "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(a) (amended 2004). The Objector has the burden of proving the allegation that the Candidate did not reside within the 20th Ward at least one year prior to the upcoming February 27, 2007 election. Once that burden has been met, the Candidate has the opportunity to refute that evidence by presenting his or her own evidence.

A hearing on the Objector's Petition was conducted on January 17, 2007. The Objector entered a certified copy of the Candidate's proof of registration at 8401 S. Luella Street, Chicago, IL in the 8th Ward as proof that the Candidate resided at 8401 S. Luella St. the City of Chicago on March 21, 2006, (as certified by the Chicago Board of Election Commissioners) into evidence in an effort to prove that the Candidate was not a resident of the 20th Ward for one year prior to the upcoming February 27, 2007 election. The Candidate sought to refute the Objector's evidence by presenting testimony from a witness as evidence that he resided in his home located in the 20th Ward at 5619 S. Wabash St. in the City of Chicago for at least one year prior to February 27, 2007. The Candidate also presented evidence that he purchased the property at the Wabash Street address in 1999. The witness testified that since May 2005, he has visited the Candidate's home in the 20th Ward at least 20 different times. He testified that on each occasion that he visited, he observed that the home was furnished and occupied as a residence by the Candidate. He further testified that as a member of the real estate mortgage profession in Illinois has assisted the Candidate with refinancing the property on several occasions from 1999 through and including one occasion in 2006.

During the course of hearing, the Candidate introduced several documents in an effort to prove that he was a resident of the 20th Ward for at least one year prior to the upcoming February 27, 2007 election. Among those documents introduced, the Candidate presented an appraisal report pertaining to the Wabash street property dated April 19, 2006; an Application for the Deferral of 2003 Cook County Real Estate Taxes dated February 23, 2004 for the (8th Ward) Luella street property on behalf of the Candidate's mother, Lottie V. Neely; an Affidavit of Title for the (8th Ward) Luella street property dated February 23, 2004 on behalf of the Candidate's mother, Lottie V. Neely; a copy of the Illinois driver's license for Lottie V. Neely; a Trustee's Deed of Joint Tenancy for Lottie V. Neely and David L. Neely, the Candidate's father dated May 11, 1971 and a death certificate evidencing the death of the Candidate's father, David L. Neely.

The evidence that the Candidate chose to introduce had little or no direct bearing on the issue of whether the Candidate was a resident of the 20th Ward for one year prior to the upcoming February election for the office of Alderman. The evidence tends to prove that the Candidate was an owner of the Wabash Street property for more than one year but did little to prove that he actually resided there. The Candidate's witness, while testifying that he believed that the Candidate did reside at the Wabash Street property for more than one year prior to February 2007, testified more with respect to his ongoing business relationship with the Candidate and his

having assisted the Candidate in refinancing the property on several occasions since 1999. While the witness did testify that he had visited the property on 25 different occasions since May 2005, the Candidate testified that he has resided on the property since he purchased it in 1999. The witness also testified that he has done business with the Candidate in assisting with refinancing since 1999. Instead of bringing neighbors, friends or relatives who have socialized or observed the Candidate at the property on a regular basis and could testify that based upon relevant facts they could state with certainty that he resided on this property for the past year, the Candidate elected to introduce the testimony of a business associate with whom he has had an ongoing business relationship for at least nine years. The financial interest on the part of this business associate raises questions of credibility with respect to his testimony.

The record introduced by the Objector demonstrated that the Candidate was a registered voter at the Luella address in the 8th Ward as recently as March 21, 2006. A review of the Candidate's voting history from the Chicago Board of Elections demonstrates that the Candidate changed his voter registration information on September 29, 2006 from the 8th Ward to the 20th Ward. The Candidate voted in the 20th Ward for the first time in November 2006. Once the Objector introduced the voter registration information, he met his burden of proof. The Candidate failed in his effort to refute the Objector's evidence in light of the fact that he did not introduce what otherwise would be considered evidence usually and customarily utilized by a resident of a property such as a copy of his own driver's license or state identification card which evidences not only his current address but the date that it was issued. While a copy of the appraisal is evidence of proof that the Candidate owns the property, it fails to prove that he actually resides within the property and the 20th Ward and has done for the past year.

After consideration of all of the evidence, it is recommended that the name of the Candidate, David E. Neely not appear on the February 27, 2007 ballot for Alderman in the 20th Ward.

Date: January 25, 2007

Rodney W. Stewart
Hearing Examiner

L:\2 sheppard/heard v neely decision

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

David E. Neely

v.

Chicago Board of Election Commissioners & the City of Chicago, et al.

No. 07 COEL 00011

ORDER

This matter coming before the court for hearing on Petitioner's Petition for Judicial Review and the Parties being present and the Court being advised in the premises,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED

1. For reasons stated in open court and on the record, the decision of the Electoral Board is sustained and the Petition for Judicial Review is denied.

2. This is a final and appealable judgment and there is no just cause for delay in enforcement or appeal.

Atty. No. : 2033

Name : James M. Sammon

Atty. for : Chicago Bd. of Election Commissioners

Address : 1 S. Wacker Dr. Ste 3500

City/State/Zip : Chicago IL 60603

Telephone : 312-782-3163

ENTERED
JUDGE SUSAN FOY GILLIS-1793

ENTER :

FEB - 2 2007

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Lawyers

SIXTH DIVISION
February 16, 2007

No. 1-07-0309

DAVID E. NEELY, the Candidate for Alderman of the 20th Ward in the City of Chicago, Petitioner-Appellant, v. THE BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO; LANGDON NEAL and RICHARD COWEN, as Members of the Board of Election Commissioners for the City of Chicago; IRIS L. HEARD and JERMAINE SHEPPARD, as Objectors. Respondents-Appellees.	)	Appeal from the Circuit Court of Cook County Honorable Susan Fox Gillis, Judge Presiding

JUSTICE McNULTY delivered the opinion of the court:

David Neely, Ph. D., attorney at law, filed nomination papers by which he sought election to the office of alderman from Chicago's 20th Ward in the February 2007 election. The Chicago Board of Election Commissioners sustained an objection to the nomination papers based on Neely's vote in the 8th Ward less than a year before the 2007 election. The trial court, on administrative review, upheld the Board's decision. Neely now appeals.

We too affirm the Board's decision, finding that Neely's deliberate assertion of residence in the 8th Ward in March 2006 proves that he has not resided in the 20th Ward, for purposes of serving as a representative of that ward, for the requisite year before the February 2007 election.

BACKGROUND

On March 21, 2006, Neely signed an application for a ballot he used when he voted in Chicago's 8th Ward that day. The application listed his address as 8401 South Luella Avenue, which lies in the 8th Ward. Above the signature the application said, "I hereby certify that I am registered from the address above and am qualified to vote."

In September 2006 Neely changed his voting address to 5619 South Wabash, which lies in the 20th Ward. In December 2006 Neely filed a petition to have his name included on the ballot for election as an alderman of the 20th Ward in the general election of February 27, 2007.

Jermaine Sheppard and Iris Heard objected that Neely would not have resided in the ward for the required one year prior to the election. At a hearing on the motion, objectors relied mostly on the application for ballot Neely signed in March 2006. Neely presented utility bills and insurance bills showing him as the addressee for bills for 5619 South Wabash since 1996. Appraisals of the property, done in 2004 and April 2006, listed Neely as owner and occupant.

A financial consultant who worked with Neely since 2004 testified that he went to the property in 2005 and 2006 and he found "that the residency of David E. Neely was continuous." The consultant added that he visited the property more than 20 times since March 2006, and he could "personally attest" that Neely

lived at the property. The consultant explained that he knew this from "coming in the morning when [Neely] wakes up and he comes to the door."

Neely testified that he lived at 5619 South Wabash since 1996. He always used his parents' address on Luella as his permanent mailing address and he maintained his voting registration at that address although he did not live there.

The hearing examiner found that Neely's evidence proved he owned the Wabash home, but he did not prove residence. The officer discounted the consultant's testimony because of the consultant's financial interest in the "ongoing business relationship for at least nine years." Thus, the examiner held that Neely did not effectively refute the objector's evidence based on the March 2006 ballot application.

Neely asked the Board to review the examiner's decision. Before the hearing Neely sought to introduce affidavits signed by eight persons who lived in the 20th Ward. In the affidavits the affiants swore that Neely had lived in the Wabash home for more than a year. At the hearing Neely expanded on his reasons for using his mother's address as his voting address:

> "I have been practicing law for 25 years. I handle criminal cases and civil rights cases. I handle high profile cases. I have always wanted to maintain some sense of privacy. And by voting at my mother's address, I did not disclose my actual address. ***

***

*** I have maintained a law practice, a home business, at 5619 South Wabash for over ten years. I live there. I raise my dogs there. I raise my family there."

Members of the Board recognized that the examiner made some factual errors, particularly in finding that the consultant had a business relationship of nine years with Neely. The Board never explicitly ruled on Neely's motion to introduce the eight affidavits from neighbors into the record.

One member said he found all of Neely's evidence credible, but the Board needed to rely on the voting registration from March 2006. He said:

"[W]hat would happen if we decided that a person can be registered anywhere they want to be but they can establish their own particular residency at another location for purposes of running for the ballot? ***

* * *

It would have to be an extraordinary set of circumstances for you to overcome that inconsistency between where you say you reside and where you have registered with the Board."

Another Board member said he found Neely and his financial consultant incredible, and the weight of the evidence supported the examiner's central findings. But that member also said, "I

do not believe that we should ever have a system where somebody says I live at this address in this ward and I am going to vote for however long I can from an address in another ward." The Board adopted the hearing examiner's findings and recommendations, holding that any factual errors in the findings had no material effect on the result. The trial court affirmed the Board on administrative review.

ANALYSIS

We review the Board's decision rather than the circuit court's judgment. Thigpen v. Retirement Board of Firemen's Annuity & Benefit Fund, 317 Ill. App. 3d 1010, 1017 (2000). We will disturb the board's findings of fact only if they contravene the manifest weight of the evidence. If the record sufficiently supports the findings of fact, we then apply the law to those facts. Oregon Community Unit School District No. 220 v. Property Tax Appeal Board, 285 Ill. App. 3d 170, 176 (1996). While we give substantial weight to the agency's interpretation of law, we must independently analyze the law in applying it to the facts. Oregon, 285 Ill. App. 3d at 175-76.

The Board adopted the hearing examiner's findings and decision. The findings include errors that the Board recognized but found immaterial. When we find such errors in factual findings, we must "first determine whether the factual findings independent of the error provide a sufficient basis for the agency's decision. [Citations.] If the facts provide such a

basis, we will affirm the decision. But if the decision lacks adequate support without the manifestly erroneous finding, we must reverse." Johnson v. Human Rights Comm'n, 318 Ill. App. 3d 582, 587 (2000).

The Board relied primarily on one factual finding, and Neely does not dispute that finding. In March 2006, when Neely signed an application for an 8th Ward ballot, he certified that he was "qualified to vote" for the 8th Ward candidates on the ballot. The Election Code provides:

> "No person shall be entitled to be registered in and from any precinct unless such person shall by the date of the election next following have resided in the State and within the precinct 30 days ***." 10 ILCS 5/5-2 (West 2004).

Thus, Neely, in March 2006, certified that he had resided within the precinct in the 8th Ward for at least 30 days prior to the March election. The Revised Cities and Villages Act of 1941 establishes 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 (West 2004).

Neely claims that his evidence of actual residence in the 20th Ward rebuts the certification he made in March 2006, and

many voters register with an address other than the address of their actual residences. We have found no Illinois case, and the parties have cited us none, in which a candidate sought to renounce a public record he created of his residence as part of an effort to establish eligibility for public office. However, we find some guidance in cases from other jurisdictions.

In McClelland v. Sharp, 430 S.W.2d 518 (Tex. Civ. App. 1968), the petitioner sought a writ of *mandamus* directing the respondent to put his name on the ballot as a candidate for state representative from the 24th legislative district for an election to take place on November 5, 1968. State law required residence in the district for one year as a qualification for the office. Twice within the year preceding the election the petitioner voted in the 22nd district, and he also made himself a candidate for an office in the 22nd district in a special election held on November 11, 1967.

The petitioner sought to introduce evidence that he actually moved into the 24th district more than a year before the 1968 election, but shortly after he filed for candidacy for an office in the 22nd district. He did not formally withdraw his candidacy for that office only because he knew he had little chance of winning. He saw no problem with continuing to vote in the 22nd district because he continued to maintain a part-time residence in that district after he moved his primary home to the 24th district.

The court denied the writ, holding that the respondent properly refused to put the petitioner's name on the ballot for the 24th district. The court explained:

> "[B]y voting in that special election [in the 22nd district, in November 1967], the relator represented himself to be a resident of that district on that date. His conduct, which implies that representation, is a matter of public record. The same can be said of his votes in the November 18, 1967, city bond election ***.
>
> * * *
>
> *** [W]here, as here, the facts reflected by public records establish a disqualification of the proposed candidate, the respondents were neither required to ignore those facts nor permitted to go outside the record inquiring of other facts in exercising their implied authority. Particularly is this true where the public records showing the disqualification of the relator are based on his own actual or implied representations as to his residence at the time in question." McClelland, 430 S.W.2d at 520-22.

Similarly, in People v. Platt, 117 N.Y. 159, 22 N.E. 937 (1889), the defendant accepted appointment to an office as commissioner, when the office required residence in New York City. The plaintiff sued to have the defendant removed from

office on grounds that he did not reside in the city. The defendant presented evidence that he maintained residences in the city and outside the city, in Tioga County. Platt, 117 N.Y. at 165, 22 N.E. at 937. He continued to vote in Tioga County even after his appointment as a commissioner. The court explained:

> "His right to vote was challenged on the ground that he was not a resident of the village, and he took the general oath and voted under the challenge. He thus declared, under oath, that he had resided in the county of Tioga for four months, and in the village for thirty days, prior to that election. ***
>
> ***
>
> The defendant offers his vote in Tioga county because he is a resident of that county, and of the election district where it is offered; it is received under the provision of law, that a person so situated shall be entitled to the privilege. And his absence from that county, however long, so that it is temporary, and not in abandonment of his home, will not deprive him of his residence, though his absence extend through a series of years. Nor can his actual presence during that time in another district entitle him to the enjoyment of another franchise for which only a resident of that district is, by law, qualified."

Platt, 117 N.Y. at 166-68, 22 N.E. at 938.

McClelland and Platt comport with the reasoning of other courts concerning the significance of voting. The Virginia Supreme Court said:

> "[P]articular significance should be attached to the repeated exercise of the right to vote, because this right depends upon citizenship and domicile ***. *** [S]uch act is a distinct, unequivocal, and public assertion by the voter of his legal domicile."
>
> Cooper's Administrator v. Commonwealth, 121 Va. 338, 349, 93 S.E. 680, 683 (1917).

And Wisconsin's Supreme Court held:

> "[W]e cannot conceive of any circumstance of more controlling weight, as bearing upon the question as to what state a man has taken up a permanent residence in, than the act of voting. This act is so important and deliberate that it should have decisive preponderance upon the question whether a [litigant] believes that he is a resident of a particular state. For the defendant must be presumed to know that he had no right to vote in Iowa unless he was a resident of that state. He exercised the elective franchise there because he considered himself at the time as a resident of that state, and as having the right to vote where he did."
>
> Wolf v. McGavock, 23 Wis. 516, 518-19 (1868).

Neely protests that the Board's decision here engrafts onto

the Election Code a requirement that the candidate have registered as a voter in the ward from which he seeks election at least one year prior to the election. Neely misinterprets the Board's ruling. The Board did not require any voting registration at all. But because Neely had registered, the Board looked to the public record of his registration, and particularly to the exercise of the power to vote in the 8th Ward in March 2006, as a deliberate assertion of residence in that ward. Neely did not present any evidence that the vote resulted from inadvertent error or misunderstanding. See Dixon v. Hughes, 587 So. 2d 679 (La. 1991); In re Jackson, 14 S.W.3d 843 (Tex. App. 2000). He explained that he intentionally misrepresented his residence to the Board in 2006 to keep his actual residence secret. We agree with the Board that this explanation cannot justify inclusion of his name on a ballot for office representing the 20th Ward.

We agree with the Board that the affidavits from eight neighbors have no bearing on the case, and the hearing examiner included only immaterial errors in his recitation of facts. Because of Neely's deliberate assertion of residency in the 8th Ward on March 21, 2006, the Board properly found Neely unqualified for election from the 20th Ward for the February 2007 election. Accordingly, we affirm the Board's decision.

Affirmed.

FITZGERALD SMITH, P.J., and O'MALLEY, J., concur.

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 1088	DATE	2/26/2007
CASE TITLE	DAVID NEELY, et al. vs. BOARD OF ELECTION COMMISSIONERS, et al.		

DOCKET ENTRY TEXT

Petitioners having filed their returns of service on February 26, 2007, petitioners' "emergency motion to reconsider order of dismissal for non-service" is granted as to the dismissal of the emergency petition for equitable relief on the grounds of inadequate service. Petitioners' emergency petition for equitable relief, considered as a motion for temporary restraining order, is denied for the reasons stated in open court. No complaint having been filed, this case is closed.

Suzanne B. Conlon

Notices mailed by judge's staff.

01:15

	Courtroom Deputy Initials:	CB

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 1088	**DATE**	2/26/2007
CASE TITLE	DAVID NEELY vs. BOARD OF EDUCATION, et al.		

DOCKET ENTRY TEXT

Petitioner David Neely's "emergency petition for equitable relief" (without filing a complaint) is denied for failure to give actual notice to defendants of the purported lawsuit or the emergency motion. The court notes that the certificate of service states this motion was sent to defendants on the date of filing (February 23, 2007) by mail. This is inadequate notice on its face.

Suzanne B. Conlon

Notified counsel by telephone.
Notices mailed by Judicial staff.

Courtroom Deputy Initials:	CB

No. 104183

IN THE

SUPREME COURT OF ILLINOIS

DAVID E. NEELY, etc.,	)	Appeal, Appellate Court
	)	First District
Petitioner,	)	AC1-07-0309
	)	
vs.	)	
	)	
THE BOARD OF ELECTION COMMISSIONERS for the CITY OF CHICAGO, et al.,	)	Circuit Court of Cook County
	)	Hon. Suan Fox Gillis,
	)	Judge Presiding.
	)	
Respondents.	)	

ORDER

This cause coming to be heard on the motion of the petitioner, and the court being fully advised in the premises;

IT IS ORDERED that the motion to accelerate appeal docket and leave to file petition in lieu of formal brief is denied.

Order entered by the Court.

Burke, J., took no part.