

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

Objections of: VIRGIL E. JONES)
)
)
To the Nomination) **No.: 07-EB-ALD-143**
Papers of: SHAWN D. MONROE, SR.)
)
Candidate for the office of)
Alderman of the Fifteenth 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 VIRGIL E. JONES (“Objector”) to the nomination papers (“Nomination Papers”) of SHAWN D. MONROE, SR., candidate for the office of Alderman of the Fifteenth 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 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 Joseph Morris 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 Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, VIRGIL E. JONES, *pro se*; and the Candidate, SHAWN D. MONROE, SR., by counsel, Tiffany A. Nelson of Odelson & Sterk and James P. Nally PC.

7. The sole issue raised by the Objections is whether the Candidate's Nomination Papers are invalid due to the Candidate's alleged failure to comply with the City of Chicago Campaign Financing Ordinance, Mun. Code of Chicago, §2-164.

8. 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 overruled and that the Nomination Papers be found valid.

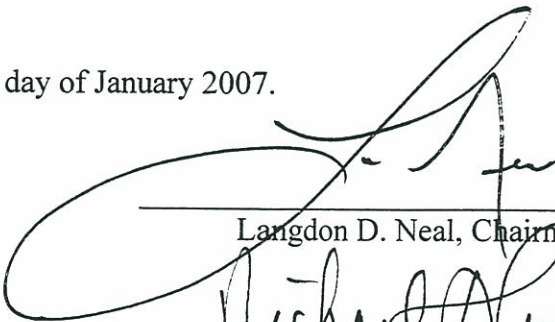
9. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and

Recommended Decision setting out his recommended findings and conclusions of law is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

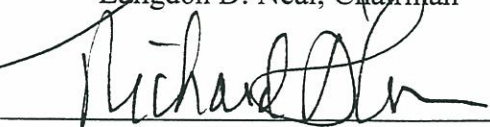
10. For the reasons stated above, the Electoral Board overruled the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of VIRGIL E. JONES to the Nomination Papers of SHAWN D. MONROE, SR., candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of SHAWN D. MONROE, SR., candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 16th 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.

BEFORE
 THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
 AS THE DULY CONSTITUTED ELECTORAL BOARD
 FOR THE HEARING AND PASSING UPON OBJECTIONS
 TO NOMINATION PAPERS OF CANDIDATES
 FOR THE FEBRUARY 27, 2007, MUNICIPAL GENERAL ELECTION
 FOR MAYOR, CLERK, TREASURER, AND ALDERMAN
 IN THE CITY OF CHICAGO

VIRGIL E. JONES,)	
)	
	<i>Objector,</i>	
)	
vs.)	No. 07-EB-ALD-143
)	
SHAWN D. MONROE, SR.,)	Hearing Examiner Morris
)	
	<i>Candidate.</i>	
)	

REPORT OF THE HEARING EXAMINER

To the Board of Election Commissioners of the City of Chicago:

Hearing Examiner JOSEPH A. MORRIS reports as follows:

1. This matter came before the Hearing Examiner, pursuant to notice, for initial hearing on January 2, 2007. The Objector was present *pro se*. The Candidate was present by counsel, Tiffany A. Nelson of Odelson & Sterk, with a written appearance by James P. Nally of James P. Nally, P.C., also on behalf of the Candidate. No issue was raised as to sufficiency or timeliness of notice of the objection or of the hearing. Both parties filed written appearances.

2. Without objection, the Candidate's nomination papers for the office of Alderman of the 15th Ward of the City of Chicago were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; the returns of service of process by the Sheriff of Cook County, Illinois, and written waivers were admitted into the record as Group Exhibit C; and the parties' written appearances were admitted into the record

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as Group Exhibit D.

3. Each party stated that he was in possession of the Rules of the Electoral Board. Counsel for the Candidate stated that he intended to file a motion to strike and dismiss the objection. A filing, briefing, and hearing schedule was established for the motion to strike and dismiss, under which such a motion was to be filed by the Candidate on or before January 3, 2007, at 5:00 p.m.; a response, if any, was to be filed by the Objector on or before January 4, 2007, at 5:00 pm.; a reply, if any was to be filed by the Candidate on or before January 5, 2007, at 5:00 p.m.; and a hearing on the motion was set for January 8, 2007. The parties agreed that there was no issue as the number or sufficiency of petition signatures, and that no records examination was required.

4. The Candidate filed a timely motion to strike and dismiss. The Objector did not file a response. (The Objector did file responses, however, in other cases, also pending before this Hearing Examiner, involving the same question which is at issue in this case. All such responses were substantially identical to each other. The Hearing Examiner considered those responses for such information about the applicable law and for such persuasive value as they might have.) A hearing was held on January 8, 2007, at which the Objector was present, *pro se*, and the Candidate was present by counsel, James P. Nally, and in his proper person.

5. The parties agreed that there is one question presented in the case: Whether or not the Electoral Board has authority to invalidate nomination papers based on the asserted failure of the Candidate to comply with the City of Chicago Campaign Financing Ordinance, Mun. Code of Chicago, § 2-164.

6. The parties further agreed that, in the event that the foregoing question were answered in the affirmative, then the Board would be required to decide the further question of whether or not

the Candidate properly and seasonably complied with the requirements, if any, of the ordinance, and, for that purpose, they stipulated to the facts that on January 2, 2007, the Candidate filed a statement of financial interests with the Chicago Board of Ethics and obtained a written receipt therefor.

7. Accordingly, the parties waived an evidentiary hearing and any written arguments. The parties made oral statements. The Objector contended that the Board had issued a rule requiring compliance with the City of Chicago Campaign Financing Ordinance and providing that the Board would enforce said ordinance in the course of its administration of electoral proceedings. The Objector asked for, and was granted, leave to submit on or before January 9, 2007, at 5:00 p.m., evidence of the existence of such a rule. Otherwise, the record was closed and the matter was submitted for decision by the Electoral Board.

8. The Objector failed to submit in this case any evidence that the Board had adopted a rule regarding the requirements and enforcement of the City of Chicago Campaign Financing Ordinance. The Hearing Examiner takes administrative notice, however, that, in several other cases pending contemporaneously before the Board, the Objector filed supplemental memoranda to which he attached a copy of an undated notice, printed on the stationery of the Chicago Board of Election Commissioners, which read, in its entirety, as follows:

TO: ALL CANDIDATES FOR ELECTION TO CITY OFFICE

FROM: Lance Gough, Executive Director

RE: City of Chicago Campaign Financing Ordinance
(Chapter 2-164 of the Municipal Code of Chicago)

The City of Chicago has adopted a "Campaign Financing Ordinance" (Chapter 2-164 of the Municipal Code of Chicago) which applies to any person who seeks nomination for election, election to or retention in any elected office of the government of the City of Chicago whether or not such person is elected. The Ordinance contains provisions regulating

gifts, favors and contributions.

The Ordinance is administered and enforced by the Board of Ethics of the City of Chicago. You should contact the Board of Ethics, Suite 500, 740 North Sedgwick Street, Chicago, Illinois, 60610 (312-744-9660), for further information regarding the Ordinance and your obligations under the Ordinance.

9. The Objector frames his claim with respect to the putative failure of the Candidate to file a statement disclosing financial interests with the Board of Ethics of the City of Chicago as follows:

THE NOMINATING PETITIONS CANNOT BE ACCEPTED FOR SHAWN D. MONROE, SR. ... BECAUSE THE CANDIDATE FAILED TO FOLLOW CHAPTER 2-164 OF THE CITY OF CHICAGO CAMPAIGN FINANCING ORDINANCE OF THE CITY OF CHICAGO MUNICIPAL CODE....

The asserted duty on the part of the Candidate to file such a statement, and the asserted duty of the Electoral Board to enforce a requirement to file such a statement, is thus grounded by the Objector in a municipal ordinance of the City of Chicago. This duty is distinct from the requirement imposed by Section 4A-101(g) of the Illinois Governmental Ethics Act, 5 ILCS § 420/4A-101(g), that a candidate for nomination or election to office in a unit of local government must file a verified written statement of economic interests, as provided in that statute, and the correlated mandates of Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5, which provides that the nomination papers of such a candidate “are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy...”; that the statement of economic interests must be filed within a specified time; that a receipt showing timely filing of the statement of economic interests must be filed with the election authority; and that the receipt itself must be thus filed within a specified time.

10. The powers and authorities of an electoral board established under the Illinois Election Code are those which are conferred upon it by the General Assembly. *Kozel v. State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988); *Reyes v. Bloomington Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (2d Dist. 1994). This Electoral Board derives its powers in this case from Section 10-10 of the Illinois Election Code, 10 ILCS § 5/10-10, and is thus the creature of the General Assembly of the State of Illinois. It is axiomatic that no inferior legislature, including the Common Council of the City of Chicago, may enlarge or diminish this Electoral Board's powers and authorities.

11. It should be even more obvious that this Board is without authority to expand its powers and functions on its own. In that context it must be stated that the undated memorandum of this Board's Executive Director, cited by the Objector, did nothing other than call the attention of candidates to the existence of the Chicago Campaign Financing Ordinance. It states on its face that enforcement of the ordinance is the province of the Chicago Board of Ethics; whether or not that statement is accurate, there is nothing about the Executive Director's memorandum which confers authority on this Board to enforce that Ordinance.

12. The Objector makes no claim that the asserted failure of the Candidate to effect a filing with the Board of Ethics of the City of Chicago offends any Illinois statute, let alone a statute enforcement of which is expressly confided by the General Assembly to this Electoral Board. Section 10-5 of the Illinois Election Code specifically cites the Illinois Governmental Ethics Act, and provides an enforcement mechanism for the requirements of that act which does, indeed, assign policing tasks to electoral authorities. Neither Section 10-5 nor any other provision of the Illinois Election Code connects the authority of municipal governments to regulate the ethical standards of

candidates for office with any enforcement powers to be exercised by an electoral board. This Board has previously held that it is without authority to invalidate nomination papers on account of a candidate's failure to comply with a municipal ethics ordinance of the City of Chicago. *Smith v Sherman*, 95-EB-ALD-20 CBEC (Jan. 23, 1995); *Smith v. Tines*, 95-EB-ALD 25 CBEC (Jan. 28, 1995); *Whitehead v. Golar*, 91-EB-ALD-45 CBEC (Feb. 4, 1991); and *Whitehead v. Massie*, 91-EB-ALD-43 CBEC (Feb. 4, 1991).

13. Upon review of the applicable law, the Hearing Examiner counsels that, under current Illinois statutes, the Electoral Board is without authority to enforce, or conduct proceedings under or relating to, a municipal ethics ordinance. The Hearing Examiner is therefore without authority even to inquire into whether or not a candidate had a duty to comply with such an ordinance, let alone into whether or not the candidate did, in fact, comply with such an ordinance, and the Hearing Examiner has attempted no determination, and offers no recommendation, as to such matters.

Recommended Conclusions and Decision

14. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) This Electoral Board is without authority to enforce the City of Chicago Campaign Financing Ordinance, Chapter 2-164 of the City of Chicago Municipal Code, or to undertake any proceedings under, or relating to, said ordinance.

(b) The Objector's Petition is not well-founded and should be overruled, and the relief sought therein should not be granted.

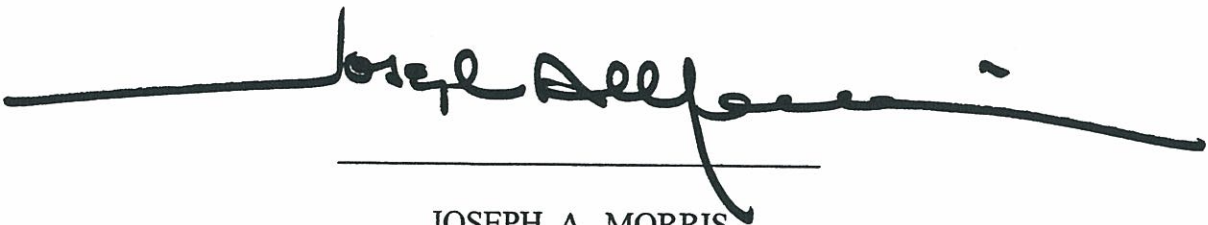
(c) The Candidate's motion to strike and dismiss is well-founded, and should be granted.

15. Accordingly, on the basis of the conclusions recommended herein, the Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Shawn D. Monroe, Sr., shall appear and shall be printed on the ballot for election to the office of Alderman of the 15th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 27, 2007.

Dated: January 13, 2007.

Respectfully submitted,

A large, handwritten signature in black ink, which appears to read "Joseph A. Morris". The signature is written over a horizontal line that extends across the width of the page.

JOSEPH A. MORRIS
Hearing Examiner