

**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-151**
Papers of: SANDRA L. MALLORY) **(rel. 07-EB-ALD-021)**
)
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 SANDRA L. MALLORY, 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*, the Candidate, SANDRA L. MALLORY, by counsel, Robert Anderson.

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 overruled and that the Nomination Papers be found valid.

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 overruled the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

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

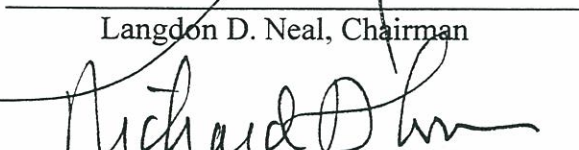
11. The Electoral Board further finds that there is another objection to the Candidate's Nomination Papers in case 07-EB-ALD-021 in which the Electoral Board has overruled the objections and found the Candidate's Nomination Papers valid.

IT IS THEREFORE ORDERED that the Objections of VIRGIL E. JONES, to the Nomination Papers of SANDRA L. MALLORY, 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 SANDRA L. MALLORY, 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.

3. Each party stated that he was in possession of the Rules of the Electoral Board. Counsel for the Candidate stated that she 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 filed a timely response. A hearing was held on January 8, 2007, at which the Objector was present *pro se* and the Candidate was present by counsel and in her proper person.

5. The parties agreed that there are two issues present in the case: (a) Whether or not the nomination papers of the Candidate are set forth in a form proper for a nomination in a non-partisan municipal general election; and (b) 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. The parties further agreed that, in the event that question (b) were answered in the affirmative, then further proceedings would be required to determine whether or not the Candidate sufficiently and seasonably complied with the applicable requirements, if any, of that ordinance, but such proceedings would be deferred pending the resolution of question (b).

6. 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 file 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.

7. On January 9, 2007, the Objector filed a supplemental memorandum 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.

Sufficiency of the Nomination Papers for a Non-Partisan Municipal Election

8. In an unnumbered paragraph which follows numbered Paragraph 5 of the Objector's Petition, the Objector stated:

THE STATEMENT OF CANDIDACY IS NOT THE PROPER STATEMENT FOR THE NON-PARTISAN ELECTION OF THE MUNICIPAL ELECTION THAT WILL BE HELD 27 FEBRUARY 2007. THE CANDIDATES HANDBOOK CLEARLY SHOWS

THAT THE PROPER FORM IS CLEARLY LISTED AS SBE NO. P-1A WHICH SHALL CONTAIN NON-PARTISAN AT THE TOP AND CONTAIN [sic] ONLY THE NAME ADDRESS-ZIP CODE OFFICE CITY, VILLAGE, OR DISTRICT FAILURE TO FOLLOW THIS FORM AS SET OUT IN 10 ILCS 5/7(1).

9. Examination of the nomination papers shows that the Candidate employed a form of statement of candidacy that might be used in a partisan election, but she described herself in the statement as a candidate of a “non-partisan party”. By contrast, her petition signature sheets make no references whatsoever to a party or a partisan nomination, but refer simply to the forthcoming general municipal election. The Objector contends that the nomination papers fail to follow a form prescribed at “10 ILCS 5/7(1)”, but no statute is codified at that number. It is clear that the Candidate avoided identification of herself as the candidate of a party for a partisan nomination. There is no political organization known as the “Non-Partisan Party”; common sense tells us that the Candidate used that term in her statement of candidacy to indicate that she is running in a non-partisan election. Directly or indirectly referring to the election as a primary, as if it were the occasion for the nomination of partisan candidates for election, is not sufficient grounds for invalidation of aldermanic nominating papers. *Campos v. Rangel*, 95-EB-ALD-79, CBEC (Jan. 23, 1995). In any event, the Illinois Supreme Court has taught in *Lewis v. Dunne*, 63 Ill.2d 48, 344 N.E.2d 443 (1976), that we may consider the statement of candidacy and the petition signature sheets together when evaluating the nomination papers. Taken as a whole, the nomination papers leave no doubt as to the nature of the instant candidacy: The Candidate seeks election on a non-partisan basis in a general municipal election.

10. The Hearing Examiner will recommend, therefore, that the objection of the Objector's Petition as to the suitability of the form for use in a non-partisan municipal general election be overruled.

Compliance with City of Chicago Campaign Financing Ordinance

11. 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 SANDRA L. MALLORY ... 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.

12. 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.

13. 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.

14. 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).

15. 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 Findings, Conclusions, and Decision

16. The Hearing examiner recommends that the Electoral Board enter the following finding of fact:

In her statement of candidacy, the Candidate identified herself as a "non-partisan" candidate, and as a matter of fact no reasonable person would be confused by the form of her identification of her candidacy as non-partisan.

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

(a) The nomination papers filed by the Candidate substantially comply with the requirements of law pertaining to the forms required in non-partisan municipal general elections.

(b) 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.

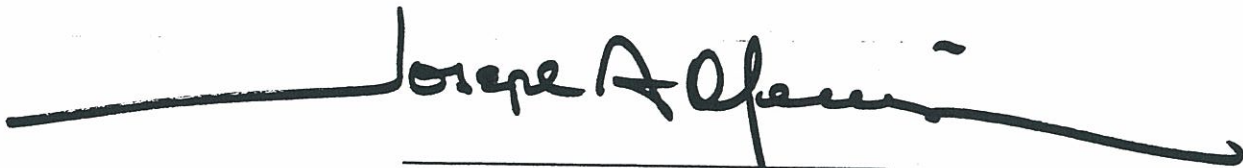
(c) The Objector's Petition is not well founded, and the relief sought therein should not be granted.

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

The name of Sandra L. Mallory 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 handwritten signature in black ink, appearing to read "Joseph A. Morris", written over a horizontal line. The signature is stylized and extends to the left and right of the line.

JOSEPH A. MORRIS
Hearing Examiner