

**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-153**
Papers of: BRIAN E. DUNN)
)
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 BRIAN E. DUNN, 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, BRIAN E. DUNN, *pro se*. The Candidate was later represented in these proceedings by attorney Joshua M. Martin.

7. The Objector has alleged in part that the form of the Candidate's Nomination Papers is not legally sufficient in connection with a nonpartisan municipal election and that as a result the Nomination Papers are invalid.

8. The Objector further alleges that the Candidate has allegedly failed to comply with the City of Chicago Campaign Financing Ordinance, Municipal Code of Chicago, §2-164, thus rendering his Nomination Papers invalid.

9. 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.

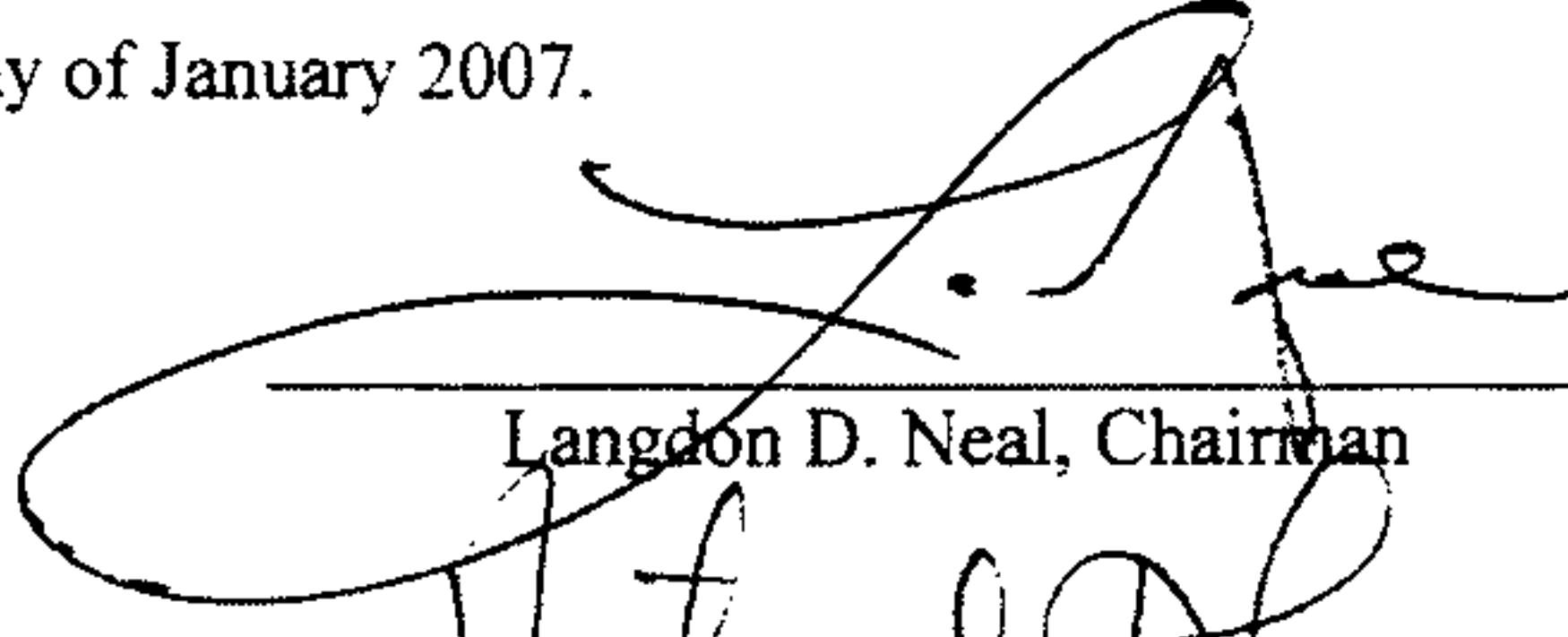
10. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all

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.

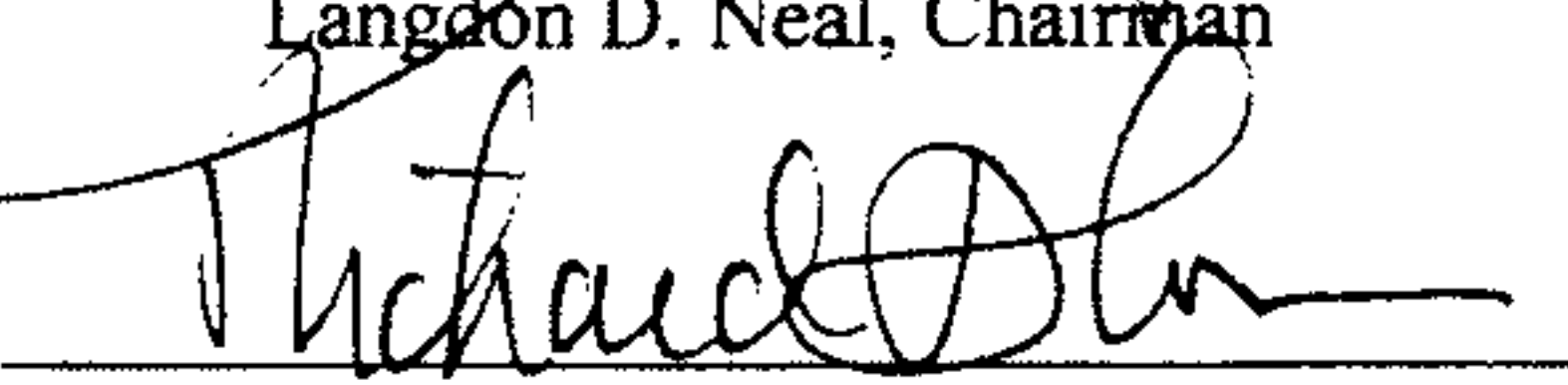
11. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of VIRGIL E. JONES to the Nomination Papers of BRIAN E. DUNN, 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 BRIAN E. DUNN, 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,

)
)
) *Objector,*)

vs.

No. 07-EB-ALD-153

Hearing Examiner Morris

BRIAN E. DUNN,

)
)
) *Candidate.*)

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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 *pro se*. 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 as Group Exhibit D.

3. Each party stated that he was in possession of the Rules of the Electoral Board. 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 4, 2007, at 5:00 p.m.; a response, if any, was to be filed by the Objector on or before January 5, 2007, at 5:00 pm.; a reply, if any was to be filed by the Candidate on or before January 6, 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. On January 4, 2007, Joshua M. Martin of the Law Offices of J. M. Martin, Ltd., filed an instrument styled BRIAN DUNN'S RESPONSE TO VIRGIL HILL'S [S/C] OBJECTIONS TO THE NOMINATION PAPERS OF BRIAN DUNN which, consistent with Rule 5 of the Rules of Procedure of this Board, the Hearing Examiner treated as a motion to strike and dismiss the Objector's Petition. The Objector filed no response.

5. A hearing was held on January 8, 2007. The Objector was present *pro se*. The Candidate was present by counsel, Joshua M. Martin of the Law Offices of J. M. Martin, Ltd., who was granted leave to appear additionally on behalf of the Candidate, and the Candidate was present, as well, in his proper person.

6. The Hearing Examiner took up a threshold matter raised in the Candidate's motion to strike and dismiss, in which the Candidate, invoking Rule 13 of the Rules of Procedure of this Board and, derivatively, Section 2-606 of the Illinois Code of Civil Procedure, 735 ILCS § 5/2-606, moved to strike that portion of the Objector's Petition challenging the form of the Candidates' nomination papers. The asserted ground for the motion to strike was the failure of the Objector to

attach to the Objector's Petition a copy of the challenged nomination papers. The Hearing Examiner noted that the nomination papers in their entirety were already of record in this proceeding as Board Group Exhibit A, and that no interest of notice, certainty, or economy of administration would be served by requiring the same papers to be duplicated and attached to the Objector's Petition. Accordingly, the motion to strike was denied in part, with the remainder of the motion to strike and dismiss reserved for further hearing and decision.

7. The parties agreed that two ultimate issues are presented in this case:

(a) Whether or not the form of the Candidate's nomination papers are legally sufficient in connection with a non-partisan general municipal election.

(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.

8. With respect to the issue of whether or not the form of the Candidate's nomination papers is legally sufficient in connection with a non-partisan general municipal election, the parties stated that there were no factual issues in dispute and that the question should be decided on the basis of a legal evaluation of the face of the Candidate's nomination papers.

9. With respect to the issue of the asserted failure of the Candidate to comply with the City of Chicago Campaign Financing Ordinance, Mun. Code of Chicago, § 2-164, the parties stipulated that the Candidate filed such a statement with the Board of Ethics of the City of Chicago subsequent to 3:00 p.m. on December 22, 2006, and prior to the date of hearing, and that there were no other relevant facts to be adduced.

10. 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.

11. 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.

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

12. In Paragraph 6 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 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).

13. Examination of the Candidate's statement of candidacy shows that at its head are printed five boxes, labeled, respectively, "NAME", "ADDRESS-ZIP CODE", "OFFICE", "WARD", and "PARTY". Information is set forth in each box in print, as follows:

"NAME":	"BRIAN E. DUNN".
"ADDRESS-ZIP CODE":	"5615 SO. HONORE CHICAGO IL. 60636".
"OFFICE":	"ALDERMAN".
"WARD":	"15".
"PARTY":	"DEMOCRATIC".

The relevant part of the body of his Statement of Candidacy states as follows:

I, BRIAN E. DUNN being first duly sworn say that I reside at 5615 S. HONORE in the City of Chicago Zip Code 60636 in the County of Cook, State of Illinois; that I am a qualified voter therein and am a qualified Primary voter of the DEMOCRATIC Party; that I am a candidate for Election to the office of ALDERMAN in the 15 Ward, to be voted upon at the election to be held on February 27, 2006 [sic] and that I am legally qualified to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official DEMOCRATIC ballot for Election for such office.

14. It is further undisputed that the Candidate submitted, as part of his nomination papers, 34 sheets of petition signatures, the text of each of which, apart from signature lines, circulators' certificates, and acknowledgments, stated as follows:

We, the undersigned, registered and qualified voters of the 15th Ward, City of Chicago, County of Cook, State of Illinois, do Hereby [*sic*] petition that the following named person shall be a candidate for election to the office hereinafter specified to be voted For [*sic*] at the Municipal General Election to be held on February 27, 2007.

There followed three boxes, labeled, respectively, "NAME", "OFFICE", and "ADDRESS".

Information is set forth in each box in print, as follows:

"NAME":	"BRIAN E. DUNN".
"OFFICE":	"ALDERMAN OF THE 15 TH WARD, IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS".
"ADDRESS":	"5615 SO. HONORE Chicago, Illinois 60636".

15. Several statutes supply applicable law governing the election of aldermen in the City of Chicago. Section 21-28 of the Revised Cities and Villages Act of 1941, 65 ILCS § 20/21-28, provides in pertinent part as follows:

- (a) All nominations for alderman of any ward in the city shall be by petition. ****

- (c) All such petitions, and procedure with respect thereto, shall conform in other respects to the provisions of the election and ballot laws then in force in the city of Chicago concerning the nomination of independent candidates for public office by petition. The method of nomination herein provided is exclusive of and replaces all other methods heretofore provided by law.

Section 21-32 of that Act, 65 ILCS § 20/21-32, provides in pertinent part as follows:

No party name, party initial, party circle platform, principle, appellation or distinguishing mark of any kind shall be printed upon any election ballot used at any aldermanic election held under the provisions of this article.

Section 3.1-10-10 of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-10, which provides in pertinent part as follows:

The general election law applies to the scheduling, manner of conducting, voting at, and contesting of municipal elections.

Section 10-3.1 of the Illinois Election Code, 10 ILCS § 5/10-3.1, provides in pertinent part as follows:

Petitions for nomination of nonpartisan candidates for offices to be filled at an election provided in Article 2A of this Code shall be in conformity with any requirements as to contents and number of signatures specified in the statute creating the political subdivision or providing the applicable form of government thereof. Petitions for nomination of nonpartisan candidates for municipal offices where the statute creating the municipality or providing the form of government thereof, or the ordinance so providing, pursuant to Article VII of the Constitution, requires election to such office on a nonpartisan basis and does not permit political party nominations (including without limitation Articles 4 and 5 of the Municipal Code) shall be in conformity with any requirements as to contents and number of signatures specified in such statute or ordinance.

The provisions of this Article 10 relating to independent candidate petition requirements shall apply to nonpartisan petitions to the extent they are not inconsistent with the requirements of such other statutes or ordinances.

Section 10-3 of the Election Code, 10 ILCS § 5/10-3, provides in pertinent part as follows:

Nominations of independent candidates for public office within any district or political subdivision less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district...

16. Against this statutory background, this Board has addressed past cases in which candidates, seeking election to aldermanic office in non-partisan municipal elections, filed nomination papers that purported to put them on the ballot in partisan primaries. For example, in *Toney v. Maxwell*, 91-EB-ALD-122, CBEC (Jan. 25, 1991), the preambular paragraph of the candidate's petition signature sheets and the circulator's affidavit on each of those sheets identified the candidate as from the Democratic Party. The Board found this a transgression against statutory

commands that aldermanic petitions conform to requirements applicable to the nomination papers of independent candidates, and invalidated the petitions. That the error was on the circulated petition sheets, rather than on the statement of candidacy, and therefore may have misled subscribing voters, was clearly a concern of the Board in that case. Modern Illinois election jurisprudence has developed a strong doctrine favoring the consideration of nomination papers in their entireties — that is, taking statements of candidacy and petition signature sheets together, rather than separately — in testing them for compliance with statutory requirements. *See, e.g., Lewis v. Dunne*, 63 Ill.2d 48, 344 N.E.2d 443 (1976). If anything in such evaluations, greater weight is given to the petition signature sheets than to the statement of candidacy.

17. It must be observed, then, that in the case at bar, the Candidate's statement of candidacy, lodged by him with the Chicago Board of Election Commissioners, identifies him as of the Democratic Party and asks that his name be printed on the "official" — and arguably non-existent — ballot of the Democratic Party. By contrast, his petition signature sheets — the documents that were presented to voters, asking them to help him get his name on a non-partisan ballot by affixing their signatures — contained no partisan references. The petition signature sheets referred simply to the forthcoming municipal general election, and contained no confusing or erroneous language about parties or primaries. Those were the essential facts in *Dix v. Terry*, 03-EB-ALD-071, CBEC (Jan. 31, 2003). There, this Board found no evidence that voters were confused about the candidate's stated or unstated political affiliations. Although the statement of candidacy contained extraneous information, the petition signature sheets did not, and on those facts the Board found grounds insufficient to invalidate the candidate's nomination papers. That precedent controls this case.

18. This conclusion is reinforced by contemplation of another issue that might have been, but was not, raised in this case. The Candidate's statement of candidacy asks that his name be on the ballot for the general election to be held on "February 27, 2006"; there was no such election on that day in the past, and there will certainly be no such election on that date in the future. The Objector did not raise this issue in his Objector's Petition, and therefore it will not be acted upon here. It is worth noting, however, that similar situations have arisen before. For example, in *Gordon v. Pellett*, 92-EB-WC-93, CBEC (Jan. 30, 1992), and *Ahimaz v. Sheriff*, 92-EB-WC-88, CBEC (Jan. 29, 1992), candidates filed statements of candidacy listing March 17, 1991, as the date of a primary election when the correct date was March 17, 1992. In each case this Board noted that the correct election date was set forth in the body of the candidate's petition signature sheets, and it held that the errors on the statements of candidacy were insufficient to invalidate the respective nomination papers. The crucial point is this: Getting something wrong on the statement of candidacy was cured by getting it right in the petition signature sheets.

19. This Candidate got it right in his petition signature sheets. The Hearing Examiner will recommend, therefore, that the objection of the Objector's Petition as to the suitability of the form of the Candidate's statement of candidacy in a non-partisan municipal general election be overruled.

Compliance with City of Chicago Campaign Financing Ordinance

20. 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 BRIAN E. DUNN ...

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.

21. 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.

22. 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.

23. The Objector makes no assertion that the asserted failure of the Candidate to effect a filing with the Board of Ethics of the City of Chicago implicates 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); and *Whitehead v. Golar*, 91-EB-ALD-45 CBEC (Feb. 4, 1991).

24. 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

25. On the bases of a facial examination of the nomination papers, of the Objector's Petition and attachments, of the statements and stipulations of the parties, and of all other proceedings held herein, 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 should be overruled, and the relief sought therein should not be granted.

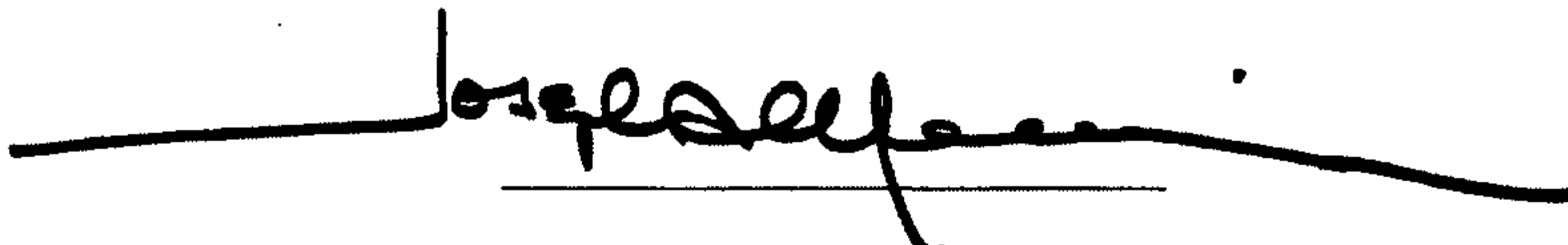
(d) The Candidate's motion to strike and dismiss, except insofar as it was denied in part by the Hearing Examiner as set forth *supra*, should be granted.

26. Accordingly, on the basis of the conclusions and report set forth herein, the Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Brian E. Dunn 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 12, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph A. Morris", is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the left and right.

JOSEPH A. MORRIS
Hearing Examiner