

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

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Objections of: JAMES E. SACHAY )  
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To the Nomination ) No. 08-EB-WC-40  
Papers of: FRANK COCANATE )  
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Candidate for the office of Ward )  
Committeeman for the 41st Ward of the )  
City of Chicago, Democratic Party )

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of JAMES E. SACHAY ("Objector") to the nomination papers ("Nomination Papers") of FRANK COCANATE, candidate for election to the office of Ward Committeeman for the 41st Ward of the City of Chicago, Democratic Party ("Candidate"), having convened on November 26, 2007, at 10:00 a.m., at 69 W. Washington Street, 8<sup>th</sup> Floor Conference Room, 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 November 26, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner William P. Jones for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, JAMES E. SACHAY, appearing by counsel, Andrew M. Raucci; and the Candidate, FRANK COCANATE, appearing by counsel, Russ Stewart.

7. The substance of the Objector's allegations filed here are as follows:

A. Section 7-10 of the Election Code requires that each petition sheet contain an affidavit of the circulator which shall state, under oath, that "...that I am 18 years of age or older ...."

B. That the Candidate's petition sheet contained a circulator's affidavit stating "...that I am 16 years of age or older ...."

C. That the circulator's affidavits on each sheet are fatally defective and the signatures on all such sheets are invalid for the reason that the affidavits do not state that the circulator is 18 years of age or older.

D. That after all of the allegedly defective sheets are removed, the Candidate is left with no valid signatures.

8. The Hearing Examiner conducted evidentiary hearings in this matter. The Candidate testified that the statement in each of the circulator's affidavits that the circulator is "...16 years of age or older ..." was an inadvertent typographical error. Additionally, the five circulators of the Candidate's nominating petition sheets, including the Candidate himself, appeared and testified. After hearing the testimony and considering the evidence, the Hearing Examiner concluded that each of the five circulators was, in fact, over the age of 18.

9. The Hearing Examiner heard argument from both sides whether the requirements for the form of the circulator's affidavit in Section 7-10 of the Election Code is mandatory or directory, and whether the statement in such circulator's affidavit that the circulator is "...16 years of age or older ..." instead of stating he or she is "...18 years of age or older ..." renders such sheets invalid.

10. The Hearing Examiner concluded that the Candidate's petition forms substantially complied with the provisions of Section 7-10.

11. 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.

12. 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.

13. Section 7-10 of the Election Code (10 ILCS 5/7-10) states in relevant part, "At the bottom of each sheet of such petition shall be added a circulator statement signed by a person 18 years of age or older who is a citizen of the United States, stating ...." This section then sets forth what information must be included in the contents of the circulator's "statement." Section 7-10 also provides in part that the name of no candidate shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf "in substantially the following form:": Part of the form set forth in the statute provides, "I, ....., do hereby certify that I reside at No. .... street, in the ..... of ....., county of ....., and State of ....., that I am 18 years of age or older, that I am a citizen of the United States, that the signatures on this sheet were signed in my presence, and are genuine, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petitions qualified voters of the ..... party, and that their respective residences are correctly stated, as above set forth." The statutory form then includes a signature line for the circulator and jurat for completion by the person administering the oath.

14. The Objector contends that the form required by Section 7-10 is mandatory and the failure to include a statement that the circulator is "18 years of age or older" is fatal, relying primarily on *Simmons v. Dubose*, 142 Ill.App.3d 1077, 392 N.E.2d 586 (1<sup>st</sup> Dist. 1986). However, in *Simmons* the court held that the *content* requirements of the circulator's affidavit were mandatory and that the failure to indicate either (i) the dates on which the sheet was circulated, or (ii) the first date and last date the sheet was

circulated, or (iii) certifying that none of the signatures on the sheet were signed more than 90 days preceding the last day for filing the petition, rendered the petition sheets invalid.

15. In *O'Connor v. Cook County Officers Electoral Board*, 281 Ill.App.3d 1108, 667 N.E.2d 672 (1<sup>st</sup> Dist. 1996), the court held that the “form” of the circulator’s affidavit contained in Section 7-10 of the Code is *not* mandatory. Instead, the court held that “the form of the affidavit contained in section 7-10 is merely suggestive or directory.” 281 Ill.App.3d at 1114. The court noted the legislature’s choice of the words “in *substantially* in the following form” in describing the form of the circulator’s affidavit reflected in intent that the form actually used need not be identical to or exactly like the form set forth in the statute. The court further observed that “if the legislature had intended to require that the nominating petition be in the *exact* form as set out in section 7-10, it would not have used the word ‘substantially’.” 281 Ill.App.3d at 1113.

16. The *O'Connor* court also pointed out that further support for its position was that Section 7-10, in setting out the form of the circulator’s statement, failed to include language pertaining to the circulation dates that had been held to be mandatory in *Simmons*. “Thus, if the form of the affidavit set forth in section 7-10 is viewed as mandatory, section 7-10 would be internally inconsistent” for failing to include the mandatory content of the statement within the form of the statement. 281 Ill.App.3d at 1113.

17. Finally, the *O'Connor* court pointed out that in describing the what must appear at the bottom of each petition sheet, Section 7-10 required a statement “signed by a person 18 years of age or older who is a citizen of the United States.” These words

describe the qualifications of the person who must sign the statement, not what the statement must contain.

18. Here, the evidence is uncontroverted that the five individuals who circulated the Candidate's nomination sheets were, in fact, 18 years of age or older. Thus, they met the qualifications for signing the circulator's statement at the bottom of the sheets they circulated and the Objector does not contend otherwise.

19. The failure to include language in the circulator's statement at the bottom of each sheet that the circulator is "18 years of age or older" does not violate any mandatory requirement of Section 7-10. Therefore, such failure does not render the petition sheets invalid where the uncontroverted evidence established that the circulators of said sheets were, in fact, 18 years of age or older.

20. 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 JAMES E. SACHAY to the Nomination Papers of FRANK COCANATE, candidate for election to the office of Ward Committeeman for the 41st Ward of the City of Chicago, Democratic Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of FRANK COCANATE, candidate for election to the office of Ward Committeeman for the 41st Ward of the City of Chicago, Democratic Party, SHALL be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

Dated: Chicago, Illinois, this 14<sup>th</sup> day of December 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel A. Hernandez, 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.