

BEFORE THE DULY CONSTITUTED
DU PAGE COUNTY OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO PETITIONS
FOR CANDIDATES FOR THE OFFICE OF TRUSTEE,
CAROL STREAM FIRE PROTECTION DISTRICT, DU PAGE COUNTY, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION)
OF KEITH LAUG, OBJECTOR, TO THE)
NOMINATION PAPERS OF JEFF CLARK)
OF 1218 SARATOGA DRIVE, CAROL)
STREAM, ILLINOIS, AS CANDIDATE FOR) DOCKET No. 2013 C-4
THE OFFICE OF TRUSTEE OF THE CAROL)
STREAM FIREPROTECTION DISTRICT TO)
BE VOTED ON AT THE APRIL 9, 2013,)
CONSOLIDATED GENERAL ELECTION)

COUNTY OFFICERS' ELECTORAL BOARD DECISION

NOW COMES the County Officers' Electoral Board, consisting of Cathy Terrill, Chair; Art Ludwig, Member; and Christopher Hage, Member, organized and existing pursuant to law, and states as follows:

PREFATORY REMARKS

The County Officers' Electoral Board (hereinafter referred to as the "ELECTORAL BOARD"), pursuant to the Election Code, 10 ILCS 5/10-9, *et seq.*, and in accordance with the County Officers' Electoral Board Rules of Procedure (hereinafter referred to as the "RULES"), which were duly promulgated, approved, implemented and adopted on January 4, 2013, convened for the hearing and passing upon objections to Nomination Papers filed with the Carol Stream Fire Protection District.

The ELECTORAL BOARD convened for the purposes of hearing and passing upon the Verified Objector's Petition (hereinafter referred to as the "PETITION") filed by Keith Laug, (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Jeff Clark, (hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Trustee of the Carol Stream Fire Protection District (hereinafter referred to as the "OFFICE"), to be voted upon at the Consolidated General Election to be held April 9, 2013, (hereinafter referred to as the "ELECTION").

Within the time frame set forth by statute, the CANDIDATE filed with the Local Election Official for the Carol Stream Fire Protection District, Nominating Papers for the OFFICE to be voted on at the

ELECTION. A copy of the Nominating Papers is attached hereto and incorporated herein by reference as Exhibit "A." Objection to the Nominating Papers were timely filed with the Local Election Official for the Carol Stream Fire Protection District on December 27, 2012, who in turn filed the with the DuPage County Election Commission on December 28, 2012, as required by law. A copy of the filing of the Objection with the DuPage County Election Commission is attached hereto and incorporated herein by reference as Exhibit "B."

A Call Notice for Hearing was issued on December 31, 2012, by Cathy Terrill, Chair of the ELECTORAL BOARD. A copy of the Call Notice is attached hereto and incorporated herein by reference as Exhibit "C." The Call Notice was issued and served upon the OBJECTOR and the CANDIDATE, by certified mail, in accordance with the Election Code, 10 ILCS 5/10-10, as evidenced by the Certified Mail Receipts to both CANDIDATE and OBJECTOR attached hereto and incorporated herein by reference as Exhibit "D." The CANDIDATE and the OBJECTOR were also served by the DuPage County Sheriff's Office, in accordance with the Election Code. A copy of the proof of service to both CANDIDATE and OBJECTOR is attached hereto and incorporated herein by reference as Exhibit "E." The CANDIDATE appeared and filed a written Appearance. A copy of the Appearance is attached hereto and incorporated herein by reference as Exhibit "F." The OBJECTOR appeared and filed a written Appearance. A copy of the Appearance is attached hereto and incorporated herein by reference as Exhibit "G." Prior to commencement of the Hearing, the CANDIDATE filed a Motion to Strike the OBJECTION. A copy of the Motion is attached hereto and incorporated herein by reference as Exhibit "H."

On January 4, 2013, the ELECTORAL BOARD convened the Hearing on the Objection, which Hearing was held before the full and legally constituted ELECTORAL BOARD, in accordance with the Election Code, 10 ILCS 5/10-9(2), and the laws of the State of Illinois for hearing and passing on the objections to the CANDIDATE for said OFFICE. Notice of such Hearing was given in conformance with provisions of the Election Code and the Illinois Open Meetings Act.

PROCEEDINGS

As an initial matter, the CANDIDATE challenges whether the OBJECTOR has standing to contest the Nomination Papers, in that the OBJECTOR failed to state the relief requested of the ELECTORAL BOARD.

As to the requirements of an Objector's Petition, the Illinois Election Code, 10 ILCS 5/10-8, states:

The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board.

The ELECTORAL BOARD finds the CANDIDATE'S Motion to Strike is taken as is an affirmative defense, allowed under the Election Code, in accordance with *Dunham v. Naperville Township Officers Electoral Board*, 265 Ill. App. 3d 719, 640 N.E.2d 314, 317 (2d Dist. 1994); *Pochie v. Cook County Officers Electoral Bd.*, 289 Ill. App. 3d 585, 682 N.E.2d 258 (1st Dist. 1997) (objector's petition is subject to a motion to strike if any one of the requirements of Section 10-8 is not satisfied). Notably, however, while Section 5/10-8 requires inclusion of specific information, the Election Code suggests no penalty for lack of strict compliance with the requirements set forth therein. *Morton v. State Officers Electoral Board*, 311 Ill. App. 3d 982, 726 N.E.2d 201 (4th Dist. 2000). As the *Morton* Court held, "although objectors are obligated to comply with all provisions of the Code, it does not follow that every noncompliance will invalidate an objection." 726 N.E.2d at 203.

Thus, not every failure of an objector to follow the requirements of Section 5/10-8 will result in striking of the objection. In *Pochie*, where the candidate moved to strike the objector's petition contesting the objector's standing based on her failure to include her residence address in the objection, the motion was sustained. The *Pochie* Court held that the "residence address" requirement of the Election Code was mandatory, as it was needed to allow the candidate being challenged to readily determine whether the objector resided in the district, a requirement for making a valid objection. Compare this to *Morton*, where the objector failed to include his whole name in the objection, leaving off the suffix "Jr.", a failure the Court held was not sufficient to sustain a motion to dismiss, and *Wollan v. Jacoby*, 274 Ill. App. 3d 388, 653 N.E.2d 1303 (1st Dist. 1995), where the objector failed to file a copy of the petition with an original, and where the objector

mistakenly identified the office the candidate sought. In this case, the court held these failures were not enough to sustain a motion to strike the objection.

Here, while the OBJECTOR did not include the specific relief requested of the ELECTORAL BOARD, in all other respects the OBJECTION met the requirements of the Election Code. The ELECTORAL BOARD finds that the Election Code is clear that the filing of the instant Objection is meant to challenge the validity of the Nominating Papers submitted by the Candidate, *see* 10 ILCS 5/10-8, and, further, that review of the Objection leads to the conclusion that the relief requested by the OBJECTOR is removal of the CANDIDATE'S name from the Ballot if the ELECTORAL BOARD finds sustains the Objection.

Therefore, the Motion to Strike is denied.

OBJECTION

The OBJECTOR challenges the Nominating Papers on the following grounds:

Issue No. 1: Failure to Properly Designate Election

The OBJECTOR asserts that the CANDIDATE failed to properly designate, in his Statement of Candidacy, whether he was seeking nomination or election to an office, and that he failed to designate the Election as a "Consolidated Primary" or "Consolidated Election."

Section 5/10-5 of the Illinois Election Code requires that a candidate must file, in addition to Petitions for Nomination, the oath required by Section 5/7-10.1, and a statement of candidacy which shall "set out the address of such candidate, the office for which he is a candidate, shall state that the candidate is qualified for the office specified and has filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, shall require that the candidate's name be placed upon the official ballot and shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgements of deed in this state . . ."

The Electoral Board finds that review of the Statement of Candidacy at issue establishes that it complies with the requirements of this Section. It is true, however, that the CANDIDATE did fail to designate whether he was a candidate for nomination or election, and whether the election was a consolidated primary or

consolidated election in his Statement of Candidacy only. However, it has long been held that the Statement of Candidacy and Petitions for Nomination are to be read as a whole. *Lewis v. Dunne*, 63 Ill.2d 48 (1976). Thus, errors or omissions in the Statement of Candidacy may be cured if the information is properly set forth in the Petitions for Nomination. *Id.* Here, the Petitions for Nomination provide that the CANDIDATE is a “candidate for the office of Fire Trustee, to be voted at the Consolidated Election.” Thus, the Petitions for Nomination cure the irregularities set forth in the Statement of Candidacy, and the Electoral Board finds that the defect cited in the Statement of Candidacy does not result in voter confusion nor does it undermine the purposes of the Statement of Candidacy in any way, and for this reason, the defect alleged does not require removal of the CANDIDATE’S name from the Ballot.

Instructive on this issue is the holding of *Sullivan v. County Officers Electoral Board*, 225 Ill.App.3d 691, 693, 588 N.E.2d 475 (2nd Dist. 1992), in which the Court held that a minor error in a candidate's nominating papers should not result in a candidate's removal from the ballot. In this regard, the Court held that a candidate's name will not be removed from the ballot due to a minor error in a nominating petition where there is no basis for confusion as to the office for which the petition was filed and there is no conflict between the statement of candidacy and nominating petition in that regard. *Id.*

For the reasons set forth herein, this Objection is overruled.

Issue No. 2: Pre-Populating out a Portion of the Address

The OBJECTOR asserts that on pages 3 through 8 of the Nominating Petitions, the designation of the Village and County in the address portion of the Petitions was pre-populated, rather than this being inserted by each individual signer of the Petitions at issue.

In this regard, Section 5/10-4 of the Illinois Election Code provides as follows:

. . . The residence address required to be written or printed opposite each qualified primary elector’s name shall include the street address or rural route number of the signer, as the case may be, as well as the signer’s county, and city, village or town, and state. However, the

county or city, village or town, and state of residence of such electors may be printed on the petition forms where all of the such electors signing the petition reside in the same county or city, village or town, and state.

Accordingly, the Electoral Board finds that the allowance for the printing of such information on the Petition in Section 5/10-4 would similarly allow the pre-population of this information on behalf of all signers of a Petition, as is the case on Petition Sheets 3 through 8. For this reason, the Objection as to this issue is overruled.

REVIEW OF ELECTORAL BOARD DECISION

Any party seeking to review the decision and determination of the ELECTORAL BOARD shall do so in accordance with the provisions and time frame set forth in the Election Code, 10 ILCS 5/1-1 *et seq.*, and other pertinent statutory provisions, by filing a petition for judicial review within five (5) days from the date of this order with the Clerk of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

DU PAGE COUNTY OFFICERS' ELECTORAL BOARD,
SITTING IN ITS CAPACITY TO HEAR AND PASS ON
OBJECTIONS IN THE CAROL STREAM FIRE
PROTECTION DISTRICT

/s/ Cathy Terrill
CATHY TERRILL, CHAIR

/s/ Art Ludwig
ART LUDWIG, MEMBER

/s/ Christopher Hage
CHRISTOPHER HAGE, MEMBER

Dated: January 9, 2013

Prepared by:

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