

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF COUNTY SHERIFF
DU PAGE COUNTY, ILLINOIS**

RICHARD J. KERN, JR.,)	
)	
Petitioner-Objector,)	
v.)	No. 2013 P-07
)	
MIKE QUIROZ,)	
)	
Respondent-Candidate.)	

DU PAGE COUNTY OFFICERS' ELECTORAL BOARD DECISION

NOW COMES the DuPage County Officers' Electoral Board, consisting of Christopher Hage, Chairman; Art Ludwig, Member; and Kevin Millon, duly appointed Public 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 December 16, 2013, convened for the hearing and passing upon objections to Nominating Papers filed with the DuPage Board of Election Commissioners ("ELECTION COMMISSION").

The ELECTORAL BOARD convened for the purposes of hearing and passing upon the Objector's Petition (hereinafter referred to as the "PETITION") filed by Richard J. Kern, Jr. (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Mike Quiroz (hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Sheriff of DuPage County (hereinafter referred to as the "OFFICE"), to be voted upon at the Primary Election to be

held March 18, 2014, (hereinafter referred to as the "ELECTION").

Within the timeframe set forth by statute, the CANDIDATE filed with the ELECTION COMMISSION, 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." An Objection to the Nominating Papers was timely filed with the ELECTION COMMISSION, as required by law. A copy of the Objection is attached hereto and incorporated herein by reference as Exhibit "B."

A Call Notice for Hearing was issued on December 10, 2013, by Christopher Hage, Chairman 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 a return receipt as required. Copies of the return receipt to both CANDIDATE and OBJECTOR are 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. Copies of the proof of service to both CANDIDATE and OBJECTOR are attached hereto and incorporated herein by reference as Exhibit "E." The Signature Requirement Sheet was made a part of the record and is attached hereto and incorporated herein by reference as Exhibit "F." The appointment of Public Member Kevin Millon by Chief Judge John T. Elsner is attached hereto and incorporated herein by reference as Exhibit "G." The CANDIDATE appeared and filed a written Appearance through his attorney. A copy of the Appearance is attached hereto and incorporated herein by reference as Exhibit "H." The OBJECTOR appeared and filed a written Appearance through his attorney. A copy of the Appearance is attached hereto and incorporated herein by reference as Exhibit "I."

A Motion to Strike Objector's Petition (Exhibit "J"); Staff Summary (Exhibit "K"); and the Rules of the Electoral Board (Exhibit "L"), all made a part of this Decision and incorporated herein by reference.

On December 16, 2013, the ELECTORAL BOARD convened the Hearing on the Objection. Prior to commencing the evidentiary portion of the Hearing, the ELECTORAL BOARD voted to continue the Hearing in this cause to December 30, 2013, to allow staff to proceed to an examination of the objections using the records of the ELECTION COMMISSION. This determination of all matters in this cause was made and voted upon on December 30, 2013, at the Electoral Board's hearing, and adopted by this written Decision on December 30, 2013. The Hearing, on all dates, 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 Hearings were given in conformance with provisions of the Election Code and the Illinois Open Meetings Act and acknowledged by the CANDIDATE and the OBJECTOR.

PROCEEDINGS

The OBJECTOR challenges the Nominating Papers based on challenges to signatures of persons alleged not to be registered voters (para. 7); signer not active voter (para. 8); signer not residing in the county (para. 9); signer not proper person and not genuine (para. 10); signer signed petition twice (para. 11); signer signed Zaruba petition (para. 12); and for other reasons (para. 13). The OBJECTOR also alleges a pattern of fraud and false swearing (para. 1 & 6) and alterations of the petitions and notary jurat (para. 2, 3, 4 & 5). The CANDIDATE submitted Nominating Petitions containing 2,679 signatures.

1. General Case Law

In order to be a Candidate for election to Office, the Election Code requires the Candidate to file Nominating Petitions containing a prescribed minimum number of valid signatures, which must be duly authenticated and attested to as provided by law. *See* 10 ILCS 5/7-10. The signature requirement is a mandatory requirement of the Election Code. *See Brisco v. Kusper*, 435 F.2d 1046, 1054 (7th Cir. 1970); *Merz v. Volberding*, 94 Ill. App. 3d 1111, 419 N.E.2d 628 (1st Dist. 1981). The *Briscoe* Court held that the “purpose of the signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters.” *Id.* Failure to comply with mandatory provisions of the Election Code mandate the removal of a candidate’s name from the ballot. *Bowe v. Board of Election Commissioners of the City of Chicago*, 614 F.2d 1147 (7th Cir. 1980); *see also Fortes v. Dixon*, 122 Ill. App. 3d 697, 462 N.E.2d 615 (1st Dist. 1984); and *Huskey v. Municipal Officers Electoral Board*, 156 Ill. App. 3d 201, 509 N.E.2d 555 (1st Dist. 1987).

2. Signature Objections – Not Registered/Not Active/Not Signed by Signer/Out of County/Signed Twice

The Election Code requires that, in order for an individual to be determined eligible to sign a Nominating Petition, his or her signature must appear on the Nominating Petition, along with his or her proper address. 10 ILCS 5/7-10. Section 5/3-1.2, which pertains to determining the eligibility of an individual to sign a Nominating Petition, provides:

For the purpose of determining eligibility to sign a nominating petition or a petition proposing a public question the terms "voter", "registered voter", "qualified voter", "legal voter", "elector", "qualified elector", "primary elector" and "qualified primary elector" as used in this Code or in another Statute *shall*

mean a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition. . . .

10 ILCS 5/3-1.2 (West 2012) (Emphasis added). In *Greene v. Board of Election Commissioners*, 112 Ill. App. 3d 862, 868, 445 N.E.2d 1337 (1st Dist. 1983), the court held that persons signing Nominating Petitions must be registered to vote at the residence set forth on the petition. The court concluded that requiring strict compliance with the signature requirement was necessary to facilitate the verification procedure and to preserve the integrity of the election process. *Id.* at 869; *see also Benjamin v. Board of Election Commissioners*, 122 Ill. App. 3d 693, 462 N.E.2d 626 (1st Dist. 1984). Therefore, to be valid, the signature must be that of a person registered to vote at the address next to his/her name. Failure to include a complete address is in violation of this Section, and if the address cannot be ascertained, the signature will be stricken.

3. Staff Summary

The Staff Summary (Ex. K) revealed that the CANDIDATE has more than sufficient signatures over the minimum of 998 to gain ballot access.

4. Evidence

No objections were raised to the results of the Staff Summary which was accepted and submitted into evidence as Ex. K.

5. Motion to Strike and Dismiss Objector's Petition

The CANDIDATE filed a Motion to Strike the Objector's Petition. The OBJECTOR did not file a Response. Both the OBJECTOR and CANDIDATE, through their respective counsel, had an opportunity to argue their respective positions on the Motion to Strike and the Objection.

RULING

(a) **Motion to Strike and Dismiss**

The Motion attacks the Objector's Petition at paragraphs 1, 2, 3 and 4 on grounds that everything but the actual signature may be altered by completing the name of the address, city or village, county and state. The case of Lucas v. Lakin, 175 Ill.2d 166, 676 N.E.2d 637, 221 Ill. Dec. 834 (1997), clearly sets forth that the signer had to "add one's signature" to the petition. There is no requirement in the Election Code that the signer, himself, add the address, city, county and state. As also pointed out in the Motion, the case of Crossman v. Board of Election Commissioners, 2012 IL App (1st) 120291, is instructive. The Appellate Court found that changes made in the Statement of Candidacy after it was signed and notarized were *de minimus* and did not affect the validity of the document. The Court said the nomination papers were in substantial compliance with the requirements of the Election Code before the changes and clarifications were made and thus, there was no legal insufficiency. Also, in a landmark case in Election Law, Briscoe v. Kusper, 435 F2d 1046 (7th Circuit, 1970), the United States Court of Appeals found that only the true signatures of the voter must be put on the petition by the voter.

Further, it is obvious that the alterations were clarifications of the name of the town and other similar clarifications, and were initialed by the CANDIDATE himself. This is hardly an attempt to create a fraud or a "pervasive and systematic attempt to undermine the integrity of the electoral process." (Objector's Petition, para. 1). This was an open and obvious clarification of the towns and other minor alterations to better explain the address of the circulator. The Board finds that the Motion to Strike paragraphs 1, 2, 3 and 4 should be granted.

The allegation in paragraph 5 of the Petition goes to the alterations made on sheet 209 of the Nominating Petitions. The Board also grants the Motion to Strike on the legal basis found in

Crossman without any other evidence brought forth by the Objector. The Board notes that even if this page was stricken in its entirety, the CANDIDATE would still have sufficient signatures over the minimum required.

Lastly, the Board grants the Motion as to paragraph 6 of the Objector's Petition. The Crossman case and other election law cases have spoken unfavorably to the use of percentages when attempting to invalidate entire petition sheets. Moreover, the allegations in paragraph 6 only go to the OBJECTOR's own allegation percentages and not to the actual findings of the Staff as to those allegations.

The Board, granting the Motion to Strike as to paragraphs 1, 2, 3, 4, 5 and 6, rests the remainder of the Objection on the Staff findings and any additional evidence from the parties.

(b) Objector's Petition Allegations Against Signatures

The remaining allegations in the OBJECTOR's Petition go to the individual signatures (para. 7, 8, 9, 10, 11, 12, & 13). The Staff of the Board of Election Commissioners did a record examination and certified the results found on Ex. K. The summary reveals that of the 1,318 objections, 844 were sustained and 31 deferred for rulings by the Board. If all 31 were invalid, there would be 875 invalid signatures taken from the 2,679 filed for a total of 1,804, or 906 above the minimum requirement of 998 valid signatures.

The ELECTORAL BOARD overrules the Objection made by the Objector that the CANDIDATE submitted Nominating Papers which did not contain sufficient signatures. Based on the objections examined, the ELECTORAL BOARD holds that the CANDIDATE has more than the required minimum signatures needed of 998 for ballot access. The OBJECTOR and CANDIDATE presented no evidence other than the adopted findings of the staff which are found on Exhibit K, contained herein.

CONCLUSION

Based on the rulings made herein as to the Objections set forth in the Objector's Petition, the ELECTORAL BOARD denies the OBJECTOR'S Petition, finding that the CANDIDATE does have the requisite minimum number of signatures to have the CANDIDATE'S name placed on the Ballot. Accordingly, the name of MIKE QUIROZ **shall be** printed on the Official Ballot as a Candidate for the Office of Sheriff of DuPage County for the General Primary Election to be held on March 18, 2014.

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



CHRISTOPHER HAGE, CHAIR



ART LUDWIG, MEMBER



KEVIN MILLON, PUBLIC MEMBER

Dated: December 30, 2013

Prepared by:
Burton S. Odelson
Odelson & Sterk, Ltd.
3318 W. 95th Street
Evergreen Park, Illinois 60805