

**BEFORE THE MUNICIPAL OFFICERS ELECTORAL BOARD
OF THE CITY OF EVANSTON**

Lynne Greene, Petitioner-Objector,)	
)	
vs.)	No. 17-MOEB (Clerk)-EV-01
)	
Devon Reid, Respondent-Candidate;)	
)	
)	
)	

ELECTORAL BOARD FINDINGS AND ORDER

Candidate Devon Reid ("Reid"), filed nomination papers to run for the office of Clerk, City of Evanston, in the 2017 Municipal Election. The objector, Lynne Greene ("objector"), filed objections to those nomination papers, alleging that they were invalid.

The findings and Order are forth below.

Procedural History

Pursuant to notice, the Municipal Officers Electoral Board of the City of Evanston (hereafter "MOEB"), convened public hearings to consider the objections filed by the objector. Due notice of the hearings were given pursuant to the Illinois Open Meetings Act and the Illinois Election Code. An initial hearing was conducted on December 12, 2016. All parties were present in person or through counsel. Due to the statutorily mandated disqualification of City Clerk Greene from serving on the Board, Ald. Melissa Wynne became the duly designated third member of this MOEB.

The Board recessed the December 12th hearing for the objector and candidate to brief the issues. Due to a medical emergency, the second hearing scheduled on December 16, 2016 was continued to December 19, 2016.

All hearings were transcribed by a certified court reporter.

Findings

1. At the December 12th hearing, certain exhibits were marked and moved as evidence into the Record. The exhibits include:
 - The call and agenda for the December 12th hearing;
 - The Verified Objector's Petition;
 - The Nomination Papers filed by the candidate;
 - Appearances by the objector's counsel, and candidate; and
 - The Rules of Procedure of the MOEB.
 - Additional exhibits were moved into evidence into the Record on December 19th.

2. All of these exhibits were admitted into evidence by agreement of all parties. Notice of the hearings were proper and all parties consented to jurisdiction of the MOEB.

3. The MOEB took notice of the relevant provisions of the Illinois Election Code. The MOEB reviewed all papers and briefs filed in these cases by the parties in considering the issues of fact and law presented.
4. The MOEB was able to judge the credibility of all who presented the cases of the respective parties, to weigh the evidence, to consider applicable law, and to draw the appropriate inferences from said presentations.
5. Upon conclusion of the hearing dated December 19, 2016, the MOEB issued this Order.

Applicable Law

6. The Illinois Election Code vests the MOEB with the power to hear and decide objections to nomination papers. 10 ILCS 5/10-1 – 10.1. An electoral board “will only consider written objections and the written specifications of such objections to the original petitions, as set forth in the objector’s petition.” A Board cannot raise its own objections to nominating petitions *sua sponte*. *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581.
7. Objector appeared through counsel. The objection listed two bases:
 - a) that Reid failed to file a Statement of Economic Interests (“SOEI”) as required under the Illinois Governmental Ethics Act, 5 ILCS 420/1-101, et seq.; and
 - b) that Reid failed to file a receipt for the SOEI with his Nomination Papers as required under the Illinois Election Code, 10 ILCS 5/7-12.
8. Reid orally moved to dismiss the objection at the December 12th hearing. The MOEB took that motion with the case, and ordered the candidate to file the motion in writing with any relevant exhibits attached thereto. The MOEB also ordered the objector to file a response to the motion to dismiss/brief in support of the objection.
9. Reid’s motion to dismiss (which the MOEB also elects to treat as the candidate’s brief opposing the objection), filed on December 13th, contained a copy of an SOEI filed by Reid with the Cook County Clerk that had a date stamp of November 25, 2016. There was no receipt for the SOEI attached to the motion. At the subsequent hearing, Reid upon questioning by the MOEB, indicated he filed that receipt for the SOEI with the City Clerk’s office on December 7, 2016. This receipt filing post-dated the filing of the rest of his nomination papers on November 28th.
10. Reid argued in favor of his motion to dismiss the objection on the following purported grounds: promissory estoppel, mootness, substantial compliance, extenuating circumstances, and improperly filed objection.
11. Objector rebutted Reid’s arguments by arguing Reid failed to comply with mandatory provisions of the Election Code.
12. The core issue involves Reid’s argument, (which he incorrectly phrases as “promissory estoppel”), that he detrimentally relied upon purportedly incorrect election advice from City Clerk Rodney Greene. The issue could be

characterized as whether the City is equitably estopped from invalidating Reid's candidacy due to the purported confusion of Reid (and other candidates), regarding applicable filing dates for candidate nomination papers. However, we decline to fully enter into that subject, as it exceeds the ambit of this Board's jurisdiction. (Many Illinois appellate cases consider this complex issue, such as *Merz v. Volberding*, *Preuter v. State Officers Electoral Board*, *Heabler v. MOEB of Village of Lakemoor*).

Rather, the ultimate question presented by the objection is:

What nomination process is fair and equitable to all candidates, and should this Board find in favor of ballot access, candidate eligibility, and voter enfranchisement? **We answer in the affirmative as to all 3.**

13. The Illinois Supreme Court stated that nomination papers can be read as a whole to determine the validity of a candidacy. *Lewis v. Dunne*, 344 NE2d 443 (1976). This black letter law is followed by dozens of appellate decisions and electoral board decisions. Access to a position on the ballot is a substantial right which should not be lightly denied. *Welch v. Johnson*, 147 Ill.2d 40 (1992). Strict compliance is not always required of a mandatory provision of the Election Code. *Cunningham v. Schaefflein*, 969 NE2d 69 (1st Dist. 2012). The purpose of the requirement that a candidate file a statement of economic interests is to facilitate the public's right to information regarding the candidate's financial dealings with the unit of government in which he or she seeks office. *Kellogg v. Cook County Electoral Officers Board*, 895 NE2d 1161 (2004).
14. The reasoning and holding in *Atkinson v. Roddy*, 991 NE2d 467 (2nd Dist. 2013), is persuasive. That court found that a candidate's filing of an SOEI at the incorrect county clerk's office was a technical error that did not impair the integrity of the electoral process or prevent a fair and honest election. The objection lodged against the purportedly improper filed SOEI in that case was overruled.

In this case, Reid filed the SOEI on November 25th. The SOEI was attached to his motion to dismiss, and is otherwise available for public inspection at the Cook County Clerk's Office. The purpose that Reid's SOEI be available for copying and inspection by the public has been satisfied.

15. The case of *Atkinson v. Schelling* is also relevant. The court in that case ordered a candidate remain on the ballot based on good faith reliance on good faith information provided by the municipal clerk. 2013 Ill.App.2d 130140 (2nd Dist. 2013)(Court would not read a remedy into a statute that fails to provide for one, particularly a drastic remedy that deprives a citizen of the right to run for office). Reid filed petitions containing the signatures of hundreds of individuals. None of those signatures were challenged. It is undisputed that Reid demonstrated at least a minimal appeal to voters.

It is undisputed that the matters implicated by this objection, and the circumstances surrounding the issue of the timing of nomination petition filing, are unprecedented in Evanston. This is not a situation where you can simply open a book and point to what is right, and reasonable people may disagree on what the proper resolution of this objection should be.

16. We note the facts and issues presented in the 2015 Village of Oswego electoral board matters, case no. 2015 MR15, Circuit Court of the 23rd Judicial Circuit, Kendall County. The court in that case entered an order ensuring all candidates who filed nomination papers during 2 different petition filing periods were entitled to remain on the ballot.
17. Because we decide to overrule the objections on the basis of equity along with the concurrent determination that Reid's filing the SOEI form itself with the Cook County Clerk on November 25th substantially complied with the Election Code, we need not resolve whether the filing of the SOEI receipt was timely or not. We also need not reach the other issues raised by Reid in his motion to dismiss. Due to the factual issues presented, we deny Reid's motion to dismiss.
18. As to the issue of what happened over a quarter century of past City elections and the 1992 referendum, consideration of those matters exceeds the scope of our jurisdictional authority. This Board cannot opine as to whether what occurred in past nomination filing periods or past municipal elections is correct or incorrect.
19. We acknowledge that there is scarce legal support or guidance on the issue of ballot certification when candidates file nomination papers during two different filing periods, in purported reliance upon evolving information from the local election official. We acknowledge that this Order is subject to criticism by everyone. But the facts are that ballot position lottery and candidate certification to the Cook County Clerk, will gain greater clarity **only after** the end of the December 19th candidate filing period.

With ballot access, voter enfranchisement, and equity in mind, we choose to be in the position of defending a position that is fair and equitable to everyone, rather than taking a position that favors one faction over another. We decline to infringe upon the statutory jurisdiction or duties of the City's statutorily designated local election official, City Clerk Rodney Greene. 10 ILCS 5/1-3. This Order should not be construed as an implicit or explicit criticism of Clerk Greene.

20. This matter will likely be subject to judicial review, and/or, there is a strong possibility that the City Clerk and the Cook County Clerk may take further action implicating these matters. If at a subsequent proceeding, a court is able to fashion a fairer and more equitable way to handle these matters, then those court order(s) will be given appropriate effect.

Order

21. For purposes of this Order, the Record is incorporated and referenced hereto, as if fully set forth herein. For the reasons set forth in the Record and also cited in this Order, the MOEB HEREBY ORDERS that:
- a) Candidate Devon Reid's motion to dismiss is denied due to questions of fact.
 - b) The Board **overrules** all objections filed by Lynne Greene in case no. 17-MOEB (Clerk) – EV-01.
22. This **FINAL** Order and Decision is personally served upon the objector/counsel for objector and candidate/counsel for candidate at the date listed below, pursuant to 10 ILCS 5/10-10. It is a final administrative decision pursuant to 5 ILCS 5/10-10.1.

Dated: December 19, 2016



Chairman, Elizabeth Tisdahl
Municipal Officers Electoral Board

Member, Ald. Melissa Wynne
Municipal Officers Electoral Board



Member, Ald. Ann Rainey
Municipal Officers Electoral Board