

Judge Harrison's Ruling on Walker Ballot Hearing

February 20 2013 7:27 PM

IN THE CIRCUIT COURT
FOR THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

BRANT T. WALKER,

Petitioner,

vs.

GARY FLEMMING, CHARLES
and MARY BOULDS, Individually
and as Members of the MUNICIPAL
OFFICERS ELECTORAL BOARD OF
THE CITY OF ALTON; and DONALD
GROSHONG

Respondents.

Case No. 13-MR-31

FILED

FEB 20 2013

CLERK OF CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

ORDER REGARDING PETITION FOR JUDICIAL REVIEW

Cause comes forth on Petition for Judicial Review filed by Petitioner Brant T. Walker with regard to the sustaining of Respondent Groshong's objection. The matter concerns the Alton Municipal Election scheduled for April 9, 2013. Additional Respondent's include the Electoral Board and its respective members.

Matter taken under advisement after submission of all pleadings, exhibits, memorandum, and written arguments by all counsel on behalf of all parties. Being fully advised in the premises, the court rules as follows:

The objection concerns Walker's eligibility to run for Alton Municipal Office. The objection was sustained by the Electoral Board with regard to municipal debt existing at the time of filing nomination papers pursuant to 65 ILCS 5/3.1-10-5(b). This section in relevant part renders a person not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality.

The indebtedness at issue concerns the payment of sewer and refuse services at 1000 Marie Street, Alton, Illinois. Under certain ordinances of the City of Alton, the property owner is jointly and severally liable for these services, when they are provided to properties within the City of Alton. Walker is the owner of 1000 Marie Street, and is jointly and severally liable for sewer and refuse services provided to that property.

Before the Board was evidence of an administrative transfer of billing and collection for these services. During the relevant period, Illinois-American Water Company ("Illinois-American") discontinued its role as billing and collection agent for sewer and refuse service fees for the City of Alton (related to Illinois-American's water bills). While the agreement between Illinois-American and the City of Alton was designed to terminate on or about November 1, 2012, transfers of billing and collection information continued to overlap at least as late as January 20, 2013.

Walker filed his nomination papers on December 17, 2012, which is agreed by the parties to be the operative date for statutory consideration. On that date, Illinois-American records indicated a delinquent amount for sewer and refuse services was owed for the Marie property. As owner, Walker was liable for that delinquent amount. As section 5(b) does not provide for a *de minimis* amount, nor does it require notice, such a debt, standing alone, would render Walker ineligible.

Contrary to the Illinois-American evidence of this indebtedness, Walker argued multiple references to activities of various City of Alton employees, which Walker suggests should have resulted in the Electoral Board inferring no indebtedness. First, occupancy permits were issued with regard to the property at various times. Occupancy permits are not ordinarily issued, if the property is delinquent. However, the testimony from all collection witnesses indicated that the City of Alton's records were historically not as current as the Illinois-American records at the relevant time. Further, the occupancy permits were not issued on or about December 17, 2012, but many years earlier.

Second, the City of Alton issued new billing statements with regard to the Marie property on December 19, 2012. (As this was two days after Walker filed his nomination papers, it was unknown to him at the time of filing). Municipal collection officials testified that this initial bill started out with a prior balance of \$0.00, reflecting only the

transfer of billing services. It was only after a further transfer of additional collection data by Illinois-American, that the City of Alton's bills carried forward the prior indebtedness incurred during Illinois-American's tenure as agent. Further, Walker does not claim equitable estoppel with regard to the December 19, 2012 bill, as he could not have relied upon it as a basis for filing his nomination papers two days prior on December 17, 2012.

As to any factual dispute, the court's review extends considerable deference to the Electoral Board. Walker's Memorandum of Law applies the "manifest weight of the evidence" standard. The Respondents' arguments do not suggest a contrary standard of review. The Court finds that the decision of the Electoral Board is not against the manifest weight of the evidence or any of the deferential standards of review. Even under a *de novo* review, the Illinois-American records are likely the best evidence of the indebtedness related to the property. As a result, the decision of the Electoral Board sustaining the objection is hereby affirmed.

The parties have raised a variety of procedural matters unrelated to the evidence of indebtedness. The Respondents have filed Motions to Dismiss the Judicial Review based upon the timelines of the service. The Court finds that on its face 10 ILCS 5/10-10.1 is a "date of mailing" provision and is not further shortened by Supreme Court Rule 12(c). (Accord, Supreme Court Rule 373).

Walker also argues that the relevant joint liability ordinances (Alton City Ordinances 5-2-8 and 6-10-4-5) are in direct conflict with the Illinois Public Utilities Act (particularly 220 ILCS 5/1-102(d)(iii)). This argument was not adequately raised, or noticed, or defined as facial or as applied. Further, the apparently facial argument is not borne out by the relevant provisions. Without improved real estate (owned by Walker), the costs of supplying public services are not incurred. As the owner and beneficiary of real property enhanced by public services, Walker is poorly situated to argue that the costs of supplying public utility services (such as sewer and refuse - from which he as owner and landlord benefits) are not allocated to those who cause the cost to be incurred, as opposed to the general tax-paying public.

Finally, Walker suggests that the decision resulted from the bias or prejudice of the Electoral Board. First, Walker, by his attorney, and all other parties agreed to the

procedure followed and raised no objection at the start of the Electoral Board's hearing. Second, Walker provides no evidence, in his memorandum or otherwise, of bias or prejudice. Third, Walker suggests that the mere decision against him constitutes evidence of bias or prejudice (or at least a sufficient appearance to require reversal). However, Walker fails to cite any legal basis for this argument. As the appropriate procedures were followed, these claims fail for lack of a sufficient basis.

Therefore, the decision of the Electoral Board of the City of Alton is hereby AFFIRMED. Petitioner Walker's Petition for Judicial Review requesting reversal of that decision is hereby DENIED.

Clerk to provide copies.

DATE: February 20, 2013


Honorable Clarence Harrison
Judge Presiding