No. 1-11-0261

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION
February 18, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TOM COURTNEY and JOHN COURTNEY,	)	Appeal from the Circuit Court of Cook County.
Petitioners-Appellants,	)	
v.	)	No. 2011 COEL 02
BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, *et al.*,	)	Honorable Robert W. Bertucci, Judge Presiding.
Respondents-Appellees.	)	

PRESIDING JUSTICE HALL delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

O R D E R

Held: Petitioners failed to meet their burden of establishing the existence of an indebtedness due the City of Chicago which would render the candidate ineligible for municipal

office under section 3.1-10-5(b) of the Municipal Code.

Petitioners, Tom Courtney and John Courtney, filed written objections to the candidacy of respondent, Walter Burnett, Jr. (candidate), who seeks to run as a candidate for Alderman of the 27th Ward of the City of Chicago in the Municipal General Election to be held on February 22, 2011. Petitioners argued that under section 3.1-10-5(b) of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/3.1-10-5(b) (West 2008)), the candidate was ineligible to run for Alderman because at the time he filed his nomination papers he was in arrears on a debt owed to the City of Chicago (City).

Section 3.1-10-5(b) of the Municipal Code renders a person ineligible for elective municipal office if that person is in arrears on an indebtedness owed to the municipality.[1] In *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 218-22, 886 N.E.2d 1011 (2008), our supreme court determined that section 3.1-10-5(b) of the Municipal Code, when

[1] Section 3.1-10-5(b) of the Municipal Code provides in relevant part that a "person is 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." 65 ILCS 5/3.1-10-5(b) (West 2008).

read and interpreted in conjunction with section 10-5 of the Election Code (10 ILCS 5/10-5 (West 2006)), denies the "right to candidacy" to an individual if he is "in arrears of a debt owed" to a municipality at the time he files his nomination papers.[2]

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[2] In *Cinkus*, our supreme court made the following statement in regard to these two statutes:

"Section 10-5 of the Election Code prescribes the content of a candidate's nomination papers. Among the various requirements, nomination papers

> 'must include a statement of candidacy * * *. Each such statement 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 request that the candidate's name be placed upon the official ballot and shall be subscribed and sworn to by such candidate * * * and may be in substantially the following form:
>
> * * *
>
> I, ..., being first duly sworn, say that I reside at .... street, in the city (or village) of ...., in the county of ...., State of Illinois; and that I am a qualified voter

Following an evidentiary hearing, the hearing examiner issued a report and recommended decision, recommending that the petitioners' objections be overruled; that the candidate's nomination papers be deemed valid; and that his name be included on the ballot for the office of Alderman of the 27th Ward in the Municipal General Election to be held on February 22, 2011. The Board of Election Commissioners of the City of Chicago (Board), subsequently adopted the hearing examiner's recommended findings and conclusions of law.

Petitioners sought judicial review in the circuit court of Cook County, which confirmed the decision of the Board. Petitioners now appeal. We affirm.

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therein; that I am a candidate for election to the office of .... to be voted upon at the election to be held on the .... day of ....,....; and that I *am* legally qualified to hold such office * * *.' (Emphases added.) 10 ILCS 5/10-5 (West 2006).

* * *

Accordingly, reading these two statutes together, the disqualifications provided by section 3.1-10-5(b) of the Illinois Municipal Code render a candidate ineligible to run for office if not remedied by the time the candidate files his or her nominating paper." *Cinkus*, 228 Ill. 2d at 219-20.

For purposes of judicial review, the Board is considered an administrative agency. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209, 886 N.E.2d 1011 (2008). We review the Board's decision rather than the circuit court's judgment. *Cinkus*, 228 Ill. 2d at 212.

An electoral board's findings of fact are deemed *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Cullerton v. Du Page County Officers Electoral Board*, 384 Ill. App. 3d 989, 991, 894 N.E.2d 774 (2008). An electoral board's decisions on questions of law are reviewed *de novo*. *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App. 3d 452, 455, 895 N.E.2d 69 (2008). And an electoral board's rulings on mixed questions of law and fact are reviewed under a clearly erroneous standard. *Cullerton*, 384 Ill. App. 3d at 991; *Siegel*, 385 Ill. App. 3d at 455-56.

In the instant case, the Board's determination of whether the candidate's nomination papers were valid, presented a mixed question of law and fact because it required the Board to examine the legal effect of a given set of facts. Therefore, we review the Board's decision under the clearly erroneous standard.

A decision is clearly erroneous only if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Citizens Organized to Save the Tax Cap v. State*

Board of Elections, 392 Ill. App. 3d 392, 397, 910 N.E.2d 605 (2009). After reviewing the Board's decision, we are not left with a definite and firm conviction that a mistake has been committed.

Petitioners allege that at the time the candidate filed his nomination papers he was in arrears on a debt owed to the City by virtue of an administrative judgment entered against a Trust of which he is a beneficiary. Petitioners maintain that an administrative judgment was entered against Chicago Trust Company trust number 1110667 (Trust), in the amount of $525.00 for a building-code violation for failure to obtain a construction permit relating to real property located at 2711 W. Maypole, Chicago, Illinois. The administrative judgment was registered with the circuit court of Cook County (case no. 04 M1 606826).

The circuit court never rendered a judgment against the Trust, the trustee, or the candidate. The record indicates that the case was stricken from the call on January 20, 2005, and since then, the City has taken no steps to collect any debt or enforce any judgment against the Trust.

As the parties contesting candidacy, petitioners bear the burden of proving that the candidate is ineligible to run for Alderman. See, *e.g.*, *Hagen v. Stone*, 277 Ill. App. 3d 388, 390, 660 N.E.2d 189 (1995) ("the burden of proof in a proceeding to

contest nominating petitions lies with the objector"). We do not believe that the petitioners have met their burden.

At the hearing on the petitioners' petition, it was established that the administrative proceeding which gave rise to case no. 04 M1 606826, arose out of a "stop work notice" issued to the owner of 2711 W. Maypole for having interior repairs performed without a permit. The candidate presented unrebutted evidence that 2711 W. Maypole was not owned by the Trust, but rather by Ms. Patricia Johnson. The evidence showed that the stop work notice related to construction at 2711 W. Maypole, permanent index number (PIN) 16-12-418-084, a property owned by Ms. Patricia Johnson.

The evidence showed that on August 8, 2003, when the City inspector conducted an inspection of 2711 W. Maypole, he wrote the wrong PIN by one digit, 16-12-418-064, on the stop work notice. The PIN on the stop work notice matches the PIN for a property owned by the Trust located at 2723 W. Maypole. That property is vacant land, making it impossible for the land to incur a violation of failure to obtain a construction permit for interior repairs.

The candidate also offered the testimony of Ms. Patricia Johnson, who testified that she was the owner of 2711 W. Maypole, and had owned the property since 1996, and that the correct PIN

for her property was 16-12-418-084. A certified copy of a deed for 2711 W. Maypole was offered as an exhibit. The deed was recorded November 7, 1996, and showed Ms. Patricia Johnson as the grantee. Additional documents were offered into evidence establishing that Ms. Johnson was the owner of 2711 W. Maypole.

Moreover, the candidate introduced into evidence, an "indebtedness statement" from the City of Chicago Department of Revenue stating that the department had "performed a thorough indebtedness investigation at the request of [Walter Burnett] on [November 10, 2010] for outstanding debt owed to the City of Chicago." The indebtedness statement stated, "Please accept this as confirmation that no outstanding debt was found across any of the debt types, Parking, Water, Administrative Hearings, Inspection Fees, Cost Recovery and Tax/Licensing."

The petitioners had the burden of establishing the existence of an indebtedness due the City which would render the candidate ineligible for municipal office under section 3.1-10-5(b) of the Municipal Code, when read and interpreted in conjunction with section 10-5 of the Election Code. Petitioners have failed to establish any such indebtedness.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.