

Education Officers Electoral Board of Marion Community Unit School District No. 2 (Electoral Board) overruled some objections and sustained others, and it directed its local elections official to not certify the bond question for a public vote. Wolf filed a complaint for judicial review in the circuit court of Williamson County. After a hearing, the circuit court affirmed the decision of the Electoral Board. On appeal, Wolf contends that he was denied procedural due process because the members of the Electoral Board had personal interests in the case and prejudged the validity of his petitions, and he requests that the judgment of the circuit court be overturned and that the case be remanded to the circuit court with instructions to certify the bond question for a public vote at the next regular election. We affirm.

¶ 3 This controversy arose after the local school board adopted a resolution to issue bonds to build a new elementary school within its district. The resolution was adopted pursuant to the Local Government Debt Reform Act (30 ILCS 350/1 to 18 (West 2008)), and it was subject to a backdoor referendum (30 ILCS 350/5 (West 2008)). A backdoor referendum may be initiated by a petition of voters, residents, or property owners in a governmental unit who seek the submission of a public question to the voters, residents, or property owners for the purpose of determining whether an action by the governing body in the governmental unit shall be effective, adopted, or rejected. 30 ILCS 350/3(c) (West 2008). The Election Code (Code) sets forth procedures governing the certification of public questions, including referenda petitions. 10 ILCS 5/1-1 to 30-2 (West 2008). Once a referendum petition seeking certification of a public question is filed, objectors may submit objections challenging the validity of the petition. 10 ILCS 5/10-8, 28-4 (West 2008). In absence of a timely objection, a referendum petition that is filed as required by the Code and is in apparent conformity with the provisions of the Code is deemed valid. 10 ILCS 5/10-

8, 28-4 (West 2008).

¶ 4 Section 28-3 of the Code establishes requirements for the form of petitions seeking the submission of public question for a public vote. 10 ILCS 5/28-3 (West 2008). Section 28-3 provides, among other things, that the sheets of the petition shall be of uniform size, that the sheets shall be the original ones signed by the voters, and that the sheets of the petition, before being filed with the proper officer or board, shall be bound securely and numbered consecutively. 10 ILCS 5/28-3 (West 2008). The requirements that public-question petitions must be bound securely and numbered consecutively are mandatory, and there must be substantial compliance with those requirements. *Jakstas v. Koske*, 352 Ill. App. 3d 861, 863-64, 817 N.E.2d 200, 203 (2004).

¶ 5 In determining whether a document is in "apparent conformity" with the Code, a local election official is limited to examining the face of the document and he may not go behind what appears on the face. *People ex rel. Giese v. Dillon*, 266 Ill. 272, 275-76, 107 N.E. 583, 584 (1914); *Haymore v. Orr*, 385 Ill. App. 3d 915, 918-19, 897 N.E.2d 337, 339-40 (2008); *Welch v. Educational Officers Electoral Board for Proviso High School District 209*, 322 Ill. App. 3d 568, 579, 750 N.E.2d 222, 230 (2001). The local election official's function is limited to determining whether a petition appears upon its face to be in compliance with the law. *Welch*, 322 Ill. App. 3d at 579, 750 N.E.2d at 230. Whether a petition is securely bound and sequentially numbered are matters that can be determined from examining the face of the petition, and no investigation outside the petition is required to make that determination. *Dillon*, 266 Ill. at 275-76, 107 N.E. at 584. In contrast, whether the parties signing the petition are legal voters in the district and whether the signatures are genuine are questions that require investigation outside of the petition. *Dillon*, 266 Ill. at 275-76,

107 N.E. at 584.

¶ 6 When objections to the referendum petition are submitted, the local education officers electoral board is statutorily designated to hear and pass upon the objections. 10 ILCS 5/10-9(5), 28-4 (West 2008). The education officers electoral board is composed of the presiding officer of the school board, the secretary of the school board, and the eligible elected school board member who has the longest term of continuous service as a board member. 10 ILCS 5/10-9(5) (West 2008).

¶ 7 Turning now to the facts in this case, the record shows that on December 17, 2009, the School Board adopted a resolution announcing its intent to issue bonds in an aggregate principal amount up to \$12 million for the costs of construction of a new elementary school building in the district. At that time, Todd Goodman was the president of the School Board, Sharon Wilson was the secretary of the School Board, and Richard Sanders was the eligible school board member with the longest term of continuous service, and they constituted the Electoral Board for their school district. On December 21, 2009, the School Board published a notice of the bond resolution in the classified section of the local newspaper. The notice stated that if a valid petition signed by 1,352 electors of the district was submitted within 30 days, then the local election official for the Electoral Board would be required to certify the bond question for placement on the ballot in the November 2, 2010, election.

¶ 8 On January 19, 2010, Wolf submitted 198 pages of petitions containing 1,591 signatures to Sharon Wilson in her capacity as the local election official for the Electoral Board. Wolf's petitions sought certification and placement of the bond issue on the ballot for a public vote. Two other people filed petitions seeking a public vote on the bond issue.

¶ 9 On January 21, 2010, Wilson, acting in her capacity as the local election

official, sent a letter to Todd Goodman, chairman of the Electoral Board. Wilson advised Goodman that referenda petitions had been filed by Wolf; that when filed, the pages of the petitions were not securely bound and consecutively numbered; and that the petitions were not in apparent conformity with the requirements of the Code. Wilson advised Goodman that the petitions were facially defective and that she would not certify the public question for placement on the ballot for the November 2, 2010, election. Wilson also advised that two other petitions had been filed and that each was facially defective and would not be certified. Those two petitions are not subjects of this appeal and will not be referenced further in this decision.

¶ 10 On January 27, 2010, Patricia Bundren filed objections to Wolf's petitions. Bundren challenged the validity of certain signatures contained in the petitions, and she charged that the pages of the petitions were not securely bound and consecutively numbered. On January 29, 2010, Wilson, acting in her capacity as the local election official, sent a letter to Chairman Goodman and advised that objections had been filed. She outlined the procedures to commence a hearing before the Electoral Board for purposes of considering the objections. On the same date, Wilson sent a letter to Wolf and advised him that an objector had filed objections to his petitions. Wilson also identified facial deficiencies in the petitions and directed Wolf to provide legal authorities supporting his petitions.

¶ 11 On February 4, 2010, the Electoral Board convened for the purpose of hearing the objections. Chairman Goodman, Wilson, and Sanders were present. Wolf immediately objected to the composition of the Electoral Board, and he filed a motion for substitution of all three members. Wolf claimed that Goodman was not an independent and uninterested member of the Electoral Board because, among other things, he had been a public and vocal supporter of the pending bond issue and a

prior, similar bond issue; upon information and belief, he assisted and coordinated with Bundren and others in opposing Wolf's petition drive and in organizing a counterpetition drive; and he, personally and through school district employees, encouraged voters to refrain from signing petitions. Wolf claimed that Wilson was not an independent and uninterested member of the Electoral Board because, among other things, she was an employee of the district; she had predetermined that his petitions were facially defective; she had ignored her statutory duty to place a question on the ballot in a prior election; upon information and belief, she opposed the gathering of signatures for the pending petitions and actively solicited objections to the petitions; and she was a witness to the condition of the petitions at the time they were filed, and she would be incompetent to judge the credibility and weight of her own testimony. Wolf claimed that Sanders was not an independent and uninterested member of the Electoral Board because, among other things, he had been a public and vocal supporter of the pending and a prior similar bond issue, and upon information and belief, he assisted and coordinated with Bundren and others in opposing Wolf's petitions and in organizing a counterpetition drive.

¶ 12 The Electoral Board adjourned to consider Wolf's motion for substitution. It had not addressed any substantive issues. On March 2, 2010, Sharon Wilson announced that she had recused herself from the proceedings. The two remaining members of the Electoral Board then found that Wolf had not overcome the presumption of honesty afforded to the Electoral Board and denied Wolf's motion for substitution. Shortly thereafter, the chief judge in Williamson County appointed Terry Foster, a retired circuit judge, to replace Wilson on the Electoral Board for this proceeding.

¶ 13 On May 14, 2010, the Electoral Board convened for a hearing on the objections

to Wolf's petitions. At that time, Wolf submitted a second motion seeking to substitute Goodman and Sanders. Wolf alleged that Goodman had provided media with information that the petitions were facially deficient; that despite knowledge that the petition contest was still pending, Goodman voted in favor of a subsequent resolution calling for alternate funding for construction of a new elementary school in an attempt to bypass the instant proceedings; and that Goodman, as a member of the School Board, allowed the construction of the new school to proceed despite knowledge that objections to Wolf's petitions had not been resolved. Wolf made similar claims as to the bias of Sanders and further claimed that Sanders' son was employed by an architectural firm that had been contracted to work on the new school project. After considering arguments from Wolf and Bundren, the Electoral Board found that it was capable of being fair and impartial and denied the second motion for substitution.

¶ 14 The Electoral Board reconvened on May 28, 2010, to consider the objections, including whether the pages of Wolf's petitions were securely bound when filed, whether the petitions contained duplicate signatures, and whether nonregistered voters had signed the petition. After comparing the signatures to those on voter registration documents and after hearing testimony and arguments, the Electoral Board found that Wolf's petitions, when filed, were not securely bound and that the petitions contained 1,288 signatures, a number well below that needed to certify the public question for placement on the ballot. The Electoral Board directed that the bond referendum measure would not be certified for placement on the November 2, 2010, ballot.

¶ 15 Wolf filed a complaint in the circuit court of Williamson County seeking a judicial review of the decision of the Electoral Board. Wolf also sought a writ of *mandamus* and injunctive relief, but those counts were dismissed. Following a

hearing, the circuit court affirmed the decision of the Electoral Board.

¶ 16 On appeal, Wolf contends that his procedural due process rights were violated because he was not provided with a fair hearing before an impartial and unbiased tribunal. He claims that two members of the Electoral Board had personal interests in the outcome and that these members had decided, prior to hearing the evidence and arguments, that his petitions were invalid.

¶ 17 The legislature vested the electoral board with original jurisdiction over objections to petitions and nominating papers, and so, a reviewing court considers the decision of the electoral board rather than the decision of the circuit court. *Druck v. Illinois State Board of Elections*, 387 Ill. App. 3d 144, 149, 899 N.E.2d 437, 441 (2008). The electoral board's factual findings will not be overturned unless they are against the manifest weight of the evidence standard, while its decisions on questions of law are reviewed *de novo*. *Druck*, 387 Ill. App. 3d at 149, 899 N.E.2d at 442. Whether a petitioner's procedural due process rights were violated is a legal question that is subject to a *de novo* standard of review. *Druck*, 387 Ill. App. 3d at 149, 899 N.E.2d at 442.

¶ 18 Administrative hearings are governed by fundamental principles of due process, and parties to an administrative proceeding are entitled to a fair hearing before an impartial tribunal. *Girot v. Keith*, 212 Ill. 2d 372, 380, 818 N.E.2d 1232, 1237 (2004); *Anderson v. McHenry Township*, 289 Ill. App. 3d 830, 832, 682 N.E.2d 1133, 1135 (1997). A fundamental principle of due process applicable to administrative agencies is that no person who has a personal interest in the subject matter of a suit may sit in judgment on the case. *Huff v. Rock Island County Sheriff's Merit Comm'n*, 294 Ill. App. 3d 477, 481, 689 N.E.2d 1159, 1163 (1998). A personal interest can be pecuniary or any other interest that may have an effect on the

impartiality of the decision maker. *Huff*, 294 Ill. App. 3d at 481, 689 N.E.2d at 1163. To prove bias, the plaintiff must overcome a presumption of honesty by showing in the record that the administrative proceedings were either tainted by dishonesty or contained an unacceptable risk of bias. *Huff*, 294 Ill. App. 3d at 481, 689 N.E.2d at 1163. A mere possibility of prejudice is insufficient to show that a board, or any of its members, is biased. *Collura v. Board of Police Commissioners of the Village of Itasca*, 113 Ill. 2d 361, 370, 498 N.E.2d 1148, 1152 (1986).

¶ 19 After reviewing the record, we find that Wolf failed to demonstrate that the decision of the Electoral Board was tainted by dishonesty or an unacceptable risk of bias. There seems no question that Goodman and Sanders, as members of the School Board, had taken public positions and expressed public views by voting in support of the resolution to issue bonds. But after the filing of the referenda petitions and the objections thereto, Goodman and Sanders, as statutorily designated members of the Electoral Board, had a statutory duty to consider and pass upon objections to the validity of Wolf's referenda petitions. It was in the performance of this statutory duty that each became familiar with certain facial deficiencies in Wolf's petitions prior to the hearing. The Illinois General Assembly granted the Electoral Board with limited adjudicative authority to rule on objections to public-question petitions. In absence of some showing that the Electoral Board or members thereof were incapable of judging a particular controversy fairly on the basis of its own circumstances, the fact that members of the Electoral Board had taken a public position on a policy issue related to a pending dispute is insufficient to overcome the presumptions of honesty and integrity afforded to the Electoral Board. *Hortonville Joint School District No. 1 v. Hortonville Education Ass'n*, 426 U.S. 482, 493 (1976); *A.R.F. Landfill, Inc. v. Pollution Control Board*, 174 Ill. App. 3d 82, 89, 528 N.E.2d 390, 394-95 (1988).

Without such a showing, administrative officials " 'are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances.' " *Scott v. Department of Commerce & Community Affairs*, 84 Ill. 2d 42, 55, 416 N.E.2d 1082, 1091 (1981) (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941), and *Withrow v. Larkin*, 421 U.S. 35, 55 (1975)). Wolf has presented nothing to disturb this assumption.

¶ 20 This case is factually distinguishable from the *Girot* case. *Girot*, 212 Ill. 2d 372, 818 N.E.2d 1232. There, the Illinois Supreme Court found that a mayoral candidate's due process right to be judged by an unbiased decision maker was adversely affected where a member of the Electoral Board held the simultaneous status of both a witness and a fact finder and thus adjudicated his or her own credibility. *Girot*, 212 Ill. 2d 372, 818 N.E.2d 1232. In this case, Sharon Wilson, the local election official with whom the petitions were filed, properly recused herself from the case because she was a witness to the facial condition of the petitions when filed by Wolf.

¶ 21 In this case, several of Bundren's objections challenged the facial validity of the petitions. So initially, the Electoral Board had to decide whether the pages of Wolf's petitions were securely bound and consecutively numbered. The uncontested evidence established that Wolf's petitions did not comply with these requirements. The Electoral Board compared certain signatures on the petitions with voter registration cards in order to verify that certain signatures were made by a registered voter in the district. This process involved some investigation and fact finding by the Board, but the record does not demonstrate dishonesty or an unacceptable risk of bias in the decisions made by the Electoral Board as to the validity of certain signatures. Wolf's contentions appear to allege little more than political bias rather than some

personal or pecuniary interest or conflict. He has not pointed to any provision in the Election Code that would require substitution for a political bias. Wolf has not established that he was deprived of his right to an impartial tribunal to consider and rule on objections to the validity of his referenda petitions.

¶ 22 Accordingly, we find that Wolf's due process argument is without merit and that the findings and conclusions of the Electoral Board are supported by the record and are not against the manifest weight of the evidence. The judgment of the circuit court, affirming the Electoral Board's decision to direct its local election official not to certify the bond referendum measure for placement on the ballot, is affirmed.

¶ 23 Affirmed.