

STATE OF ILLINOIS  
CIRCUIT COURT  
SEVENTEENTH JUDICIAL CIRCUIT



C. ROBERT TOBIN III  
Circuit Judge

BOONE COUNTY COURTHOUSE  
601 N. MAIN STREET  
BELVIDERE, ILLINOIS 61008

March 6, 2023

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Bruce Moore v. Village of Poplar Grove Municipal Officers Electoral Board *et al.*  
2023-MR-14

***Memorandum of Decision***

History

The Petitioner (hereinafter referred to as "Moore") filed an objection petition against two persons seeking to be on the ballot for the election taking place April 4, 2023. The objections were filed against Owen Costanza (hereinafter referred to as "Costanza") and Jeffrey Goings (hereinafter referred to as "Goings") - - both of whom were seeking to be on the ballot as to the office of trustee of the Village of Poplar Grove. The Village of Poplar Grove Electoral Board (hereinafter referred to as "Electoral Board") conducted hearings as to all objections filed - - including the objections at issue in the case sub judice - - over a number of days between January 6, 2023 and February 7, 2023. The Electoral Board issued its final decision as to the objections at issue on February 9, 2023. On February 13, 2023, Moore filed a petition (hereinafter referred to as "Petition") in the above captioned matter seeking judicial review in accordance with 10 ILCS 5/10-10.1; on March 3, 2023, the Court conducted a hearing on said petition; and the Court took the matter under advisement.

Jurisdiction

The Court has jurisdiction of this matter pursuant to 10 ILCS 5/10-10.1.

Standard of Review

“We view an electoral board as an administrative agency, and the standards of review are essentially identical. An electoral board's findings of fact are deemed *prima facie* true and correct and will not be overturned on appeal unless they are against the manifest weight of the evidence. However, an electoral board's decisions on questions of law are not binding on a reviewing court, and a reviewing court will review *de novo* such questions. An electoral board's rulings on mixed questions of law and fact—questions on which the historical facts are admitted, the rule of law is undisputed, and the only remaining issue is whether the facts satisfy a statutory standard—will not be disturbed on review unless clearly erroneous.” Siegel v. Lake Cnty. Officers Electoral Bd., 385 Ill. App. 3d 452, 455–56 (2<sup>nd</sup> Dist. 2008). “An administrative agency's decision is clearly erroneous when we are left with the definite and firm conviction that a mistake has been committed.” Let Forest Park Vote on Video Gaming v. Vill. of Forest Park Mun. Officers Electoral Bd., 2018 IL App (1st) 180391, ¶ 7.

Statutory Construction

“Legislative directives containing the word ‘shall’ are typically interpreted to be mandatory. If a statute imposes requirements and expressly states that the failure to fulfill those requirements renders the ballot listing invalid, courts are generally bound to interpret the statute as mandatory. . . We note, however, that mandatory compliance does not necessarily mean strict compliance. Substantial compliance can satisfy even a mandatory provision of the Election Code.” Siegel v. Lake Cnty. Officers Electoral Bd., 385 Ill. App. 3d 452 (2<sup>nd</sup> Dist. 2008). “The provisions of the Election Code are designed to protect the integrity of the electoral process. Ultimately, though, access to a place on the ballot is a substantial right and not to be lightly denied. . . A minor error in a candidate's nominating papers should not result in a candidate's removal from the ballot. Moreover, substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation that does not affect the legislative intent to guarantee a fair and honest election.” Id. at 460–61; see also Let Forest Park Vote on Video Gaming v. Vill. of Forest Park Mun. Officers Electoral Bd., 2018 IL App (1st) 180391, ¶¶ 19-20; Atkinson v. Roddy, 2013 IL App (2d) 130139, ¶¶ 15-17.

OWEN COSTANZA

Moore asserted in his objection and renews in the Petition two concerns. The first issue alleged is that the headings on the signature pages are not the same on all pages; the second issue is that the statement of economic interest was not filed with the nominating petition. The Court addresses each one separately below.

(1) Heading

The standard form for obtaining signatures has the following wording:

OFFICE:

A Full Term is sought, unless an unexpired term is stated here: \_\_\_\_\_ year unexpired term

On Pages 1-3 that were submitted with the nominating petition, the box was filled out as follows:

OFFICE: Trustee of the Village of Poplar Grove, Illinois  A Full Term is sought, unless an unexpired term is stated here: <u>4</u> year unexpired term
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On Pages 4-5 that were submitted with the nominating petition, the box was filled out as follows:

OFFICE: Trustee of the Village of Poplar Grove, Illinois  A Full Term is sought, unless an unexpired term is stated here: <u>   </u> year unexpired term
---

Moore’s objection before the Electoral Board as well as the Court is that the headings must be identical and a failure to comply with such requirement results in the page(s) being stricken and the signatures thereon being excluded. Moore further asserts that even a substantial compliance standard cannot be met due to voter confusion. The Electoral Board disagreed and found that there would not be voter confusion. In addition to there not being confusion on the face of the signatory form, the Electoral Board heard evidence that the circulator of the petition was circulating two petitions at the time - - a two year and a full term - - because Costanza had not decided which opening to run for. The circulator was explaining to the signors that one was for an unexpired two year term and the other for a four year term. Resultantly, the Electoral Board denied this basis for an objection.

Based upon the allegations of Moore and the rulings by the Electoral Board, the Court finds that this is a mixed question of law and fact and will utilize the reviewing standard of “clearly erroneous”. Therefore, it is the Court’s duty to determine whether the Electoral Board’s decision leaves the Court with a “definite and firm conviction that a mistake has been committed”. Let Forest Park Vote on Video Gaming v. Vill. of Forest Park Mun. Officers Electoral Bd., 2018 IL App (1st) 180391, ¶ 7.

There is little question that the statute requires all headings to “be the same”. “All petitions for nomination under this Article 10 for candidates for public office in this State, shall in addition to other requirements provided by law, be as follows: Such petitions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, *an appropriate heading, giving the information as to name of candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid, and the heading of each sheet shall be the same. . .*” 10 ILCS 5/10-4 (italics added).

However, a requirement that the heading must be the same is one of those “technical violation[s] that does not affect the legislative intent to guarantee a fair and honest election.” Siegel supra. Rather, substantial compliance is the proper measuring stick.

“In each village incorporated under this Code, the electors of the village shall elect 6 trustees. The term of office of the trustees shall be 4 years and until their successors are elected and have qualified. Trustees elected at the first election for village officers after a village is incorporated, however, shall by lot designate one-half of their number, whose terms shall be 2 years and until their successors are elected and have qualified.” 65 ILCS 5/3.1-25-5. Hence, a “full term” is four years. Therefore, there would be no reason for a person signing the petition to believe that the office being sought is anything other than a four year (full) term as a trustee of the Village of Poplar Grove. Resultantly, the Electoral Board’s finding that there was no likelihood of voter confusion is not clearly erroneous. Consequently, the Electoral Board’s implicit finding that Costanza substantially complied with the heading requirement is not clearly erroneous.

(2) Statement of Economic Interest

Moore asserts that the requirement for filing a Statement of Economic Interest was not complied with by Costanza. It appears from the record that Costanza was initially indecisive as to whether he was going to run for a two year unexpired term or the full (four year) term. As a result he obtained signatures and filed a nominating petition as to both offices. He filed his Statement of Economic Interest with the Boone County Clerk and he filed a receipt thereof along with the petition for a two year office; he did not include a copy or a receipt with the petition at issue here (four year term). The receipt, already in the possession of the Village Clerk, was later copied by the clerk and placed with the nominating petition for the full term. Moore asserts that this is a violation of the statute that requires the filing of a Statement of Economic Interest, and implicitly that substantial compliance does not apply - - or, in the alternative, there was no substantial compliance. Based upon the allegations of Moore and the rulings by the Electoral Board, the Court finds that this, too, is a mixed question of law and fact and will utilize the reviewing standard of “clearly erroneous”.

“Such certificate of nomination or nomination papers in addition shall include as a part thereof, the oath required by Section 7-10.1 of this Act and must include a statement of candidacy for each of the candidates named therein, except candidates for electors for President and Vice-President of the United States. 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 before some officer authorized to take acknowledgments of deeds in this State. . . *Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. If the nomination papers of any candidate and the statement of economic interest of that candidate are not required to be filed with the*

*same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed.” 10 ILCS 5/10-5(3) (italics added).*

The duty to file a Statement of Economic Interest or a receipt thereof appears to merely require that said document must be on file with the person accepting the nominating papers by the last day on which the nominating petition may be filed. It does not appear to require separate Statements or receipts to be filed with each petition. The Court holds that this finding is not clearly erroneous.

Even if a separate receipt for each nominating petition is required, the actions by Costanza show substantial compliance. The Second District has described the intent of this legislative requirement. “Regarding the statutory provisions at issue in this case, 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.” Atkinson v. Roddy, 2013 IL App (2d) 130139, ¶ 18 (where the Court found substantial compliance even though the economic statement was filed in the wrong county).

#### JEFFERY GOINGS

In the Petition, Moore limits his objections as to Going's nomination petition to one issue - - the same argument raised against Costanza regarding the headings. Goings filled out his headings similar to Costanza in that Pages 1-3 read as follows:

OFFICE:

Trustee of the Village of Poplar Grove, Illinois

A Full Term is sought, unless an unexpired term is stated here: 4 year unexpired term

Pages 4-5 read as follows:

OFFICE:

Trustee of the Village of Poplar Grove, Illinois

A Full Term is sought, unless an unexpired term is stated here:     year unexpired term

For the same reasons set out above referencing the same issue with Costanza, the Court holds that the finding by the Electoral Board is not clearly erroneous.

Conclusion

For the reasons set out above, the Petition is denied as to both Costanza and Goings. The court date of March 8, 2023 is stricken. This order shall be deemed a final and appealable order.

A handwritten signature in black ink, appearing to read "C. Robert Tobin III", written over a horizontal line.

C. Robert Tobin III  
Circuit Judge