

On Wednesday, January 2, 2019, at 6:45 p.m., a hearing was held by the City of Rock Island Electoral Board at City Hall, 1528 Third Avenue, in Council Chambers, 3rd Floor. Present were members Chairman Stephen L. Tollenaer, member Eudell Watts III (appointed by Chief Judge Walter Braud to fill the vacancy of Mayor Thoms), and member City Clerk Judith H. Gilbert. Also present were City Attorney Dave Morrison, Objector Mark B. Poulos, his attorney, Aaron Curry, and Respondent-Candidate Thomas M. Benson. Court Reporter Vickie Fickel was also present.

The hearing was called to order at 6:45 p.m. by Chairman Tollenaer. Chairman Tollenaer opened the hearing by reading a statement regarding the purpose of the hearing, the timeliness of the filing of the objection, introduction of members of the Electoral Board and legal advisor Dave Morrison, declaration of a quorum, and the rules and procedure for the hearing.

Member/Clerk Gilbert called the roll. Present: Tollenaer, Watts, and Gilbert.

MOTION by Tollenaer that the Electoral Board adopt the rules of procedure as stated in the Chair's opening statement; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

Mr. Aaron Curry presented three grounds for objections, citing state statute and case law for the objections of candidate Poulos to the nomination papers filed by candidate Benson. In summary, Benson's Statement of Candidacy form, his Loyalty Oath (conceded the Loyalty Oath was ruled unconstitutional), and his Consolidated Primary Petitions were not notarized as required by state statute. Mr. Curry asked that all of candidate Benson's nomination papers be ruled invalid.

Respondent-candidate Benson responded that his nomination papers are within substantial compliance with the law. He stipulated there is no signature by a notary public. He said signing before a notary is not required. Mr. Benson also stated he is a notary public in the state of Illinois even though he cannot notarize his own signature. He said it is only his name on all of his nomination papers. Mr. Benson stated he filed the papers personally and attested to his own signature. He added there has been no allegation of forgery or fraud. Mr. Benson stated he believes he is substantially compliant. He is testifying that he signed all of the papers and affirms them to be true. City Attorney Morrison asked Mr. Benson if he wished to be sworn as part of the record. Mr. Benson said yes, he does want to be sworn. The court reporter, Vickie Fickel, administered the oath to Mr. Benson. Mr. Morrison noted for the record that Mr. Benson had to raise his left hand for the oath because his right arm is in a device restricting his right arm movement due to an injury. Mr. Benson stated it is his signature on the nomination papers and affirmed all in the nomination papers to be true. He also stated again the notary signature is not a requirement; he is substantial compliance. Mr. Benson said if it weren't for the objection, he would otherwise be on the ballot. He said he has also withdrawn his objections to candidate Poulos' nomination papers.

A copy of Mr. Benson's Notary Public certificate was marked and entered as Exhibit Benson A. A copy was given to Mr. Curry.

Mr. Curry presented his rebuttal arguments. He objected to Mr. Benson's argument that he is a notary. Mr. Curry cited case law where the Court held that an out-of-state notary's signature made the nomination papers not in substantial compliance. Mr. Curry stated that state law's requirement for nomination papers to be notarized requires mandatory compliance. He added one cannot notarize one's own signature. Mr. Curry repeated none of the papers were notarized and do not comply with the election code. Mr. Curry said for those reasons, he stated Mr. Benson's nomination papers should be held invalid.

Mr. Benson asked to respond to that comment. He cited the acknowledgement of deed statute and said there was flawed reasoning in that case. He added that same case would not be decided that way today.

Chair Tollenaer asked if there were any more arguments to be presented; there were none.

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As Chair Tollenaer began his motion to go into closed session, Mr. Curry brought up and distributed a copy of state statute regarding the exceptions for going into closed sessions and noted that Electoral Boards cannot go into closed session. He would like it to be entered into the record. Mr. Morrison asked Mr. Curry that his position was that the discussion of the members should be open to the public; Mr. Curry responded that was correct. The document was marked and entered at Exhibit Poulos 1. Chair Tollenaer read the exemption for closed session. Mr. Curry stated Section d excludes Electoral Boards. Mr. Morrison said he doesn't know if he agrees with that statement, but it has been entered into the record.

MOTION by Tollenaer to go into closed session for record examination and deliberation; Watts seconded. The roll call vote was as follows: Tollenaer: Aye; Watts: Aye; and Gilbert: Aye. Motion passed on a 3-0 roll call vote. Time: 7:01 p.m.

Everyone was asked to vacate the room.

Electoral Board members went into closed session at 7:01 p.m. and first deliberated on Attorney Curry's objection to going into closed session to deliberate. Next, they began their deliberation of the three objections to candidate Benson's nomination papers. Each objection was discussed in turn with City Attorney Morrison providing his legal recommendation relative to statewide standards, state statute, and case law.

MOTION by Tollenaer to go out of closed session at 7:12 p.m.; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to return to open session at 7:13 p.m.; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to SUSTAIN the Objection #1 of Objector Poulos to the Nomination Papers of Candidate Benson; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to SUSTAIN the Objection #2 of Objector Poulos to the Nomination Papers of Candidate Benson; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to SUSTAIN the Objection #3 of Objector Poulos to the Nomination Papers of Candidate Benson; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to OVERRULE the Objection of Objector Poulos to the Nomination Papers of Candidate Benson being accepted by the City Clerk of City of Rock Island without notarization; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to rule Nomination Papers of Candidate Benson are INVALID; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to recess to prepare the written decision to Monday, January 7, 2019 at 5:15 p.m. in Council Chambers at City Hall; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

The Electoral Board hearing was recessed at 7:18 p.m.

The Electoral Board hearing was reconvened on Monday, January 7, 2019 at 5:15 p.m. in Council Chambers at City Hall. MOTION by Tollenaer to reconvene; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

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Present were Chair Stephen Tollenaer, member Eudell Watts III, and member Judith Gilbert, City Clerk. Also present were City Attorney Dave Morrison, Objector Mark B. Poulos and his attorney Aaron Curry and Candidate-Respondent Thomas M. Benson. Court Reporter Vickie Fickel was also present.

MOTION by Tollenaer that the Electoral Board for the City of Rock Island adopt the written decision to SUSTAIN the objections of objector Poulos to the nomination papers of candidate Benson; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

The nomination papers of Thomas M. Benson were ruled INVALID. Members of the Electoral Board signed the written decision.

MOTION by Watts to adjourn; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

The hearing was adjourned at 5:17 p.m.

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