

The Gatekeeper

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Responsibilities of the board secretary in accepting and rejecting nominating petitions

A school board candidate submits a nominating petition that does not appear to conform to the legal requirements of *The School Code* and *The Election Code*. Should the board secretary or designated representative reject it? Does he or she have the authority?

The answer is, it depends on what the deficiency is.

Section 9-10 of *The School Code* contains language that is easily overlooked. This statute specifically provides that the board secretary (local election official) or designated representative shall receive and file only those petitions that contain the following:

- a statement of candidacy;
- the required number of voter signatures (50 in the case of a candidate for board of education);
- a notarized circulator's affidavit; and
- a receipt from the county clerk showing that the candidate has filed his or her Statement of Economic Interest on or before the last day for petition filing. (This receipt can be submitted later, up until the last day for filing.)

An appellate court decision in *North v. Hinkle*, 294 Ill.App.3d 84, 229 Ill.Dec.579, (2d Dist. 1998) held that language in *The Election Code* requires that all nominating papers "being filed as required by this *Code* and being in apparent conformity

with the provisions of this Act," are deemed valid unless a proper objection is filed. Relying on prior case authority and "concerns for public policy," the court held that a local election official has the affirmative duty to refuse to certify nominating petitions that do not apparently conform to the mandatory requirements of *The Election Code*. The court concluded that there must be "a gatekeeper to turn away nominating papers that do not even purport to conform to the law. ... We believe that the local election official serves this function."

Clearly, the school board secretary is expected to ensure that nominating papers contain the specified items before accepting them for filing and certification.

On the other hand, it is just as important that the secretary or designated representative not overstep his or her authority. Here are some of the areas where petitions may be deficient but where the board secretary does *not* have the authority to refuse to certify:

1) Questionable signatures. Even though the secretary may know to an absolute certainty that a majority of

the candidates' signatures are forgeries or otherwise deficient, as long as the total number of actual signatures is 50 or more, the secretary should accept that petition and allow the statutory objection process to address the matter.

2) Questionable authority of the circulator or notary. Assume, for example, that the board secretary is aware a circulator is not in fact 18 years of age as sworn to in the circulator's affidavit. Nevertheless, the board secretary is under the obligation to accept that petition.

3) Incomplete or incorrect statement of candidacy. Suppose the candidate fails to accurately identify the office he or she is seeking. For example, the candidate puts down "board of education" without correctly identifying the district number or inadvertently misidentifies the district number. Neither *The School Code* nor *The Election Code* authorizes the board secretary to question the accuracy of information. (The secretary might, however, point out the problem to the candidate and suggest that the nominating papers

(over)

be corrected before filing to avoid objections.)

4) Unnumbered petition sheets.

Courts have removed candidates from the ballot for failing to consecutively number all of the pages comprising the nominating petition. However, Illinois courts are not unanimous on this issue. Moreover, *The School Code* does not specifically direct the board secretary to

refuse to certify a nominating petition with unnumbered pages. Therefore, it is recommended that the secretary accept such petitions and allow the objection process to determine whether a failure to number some or all of the petition sheets should result in the candidate being removed from the ballot.

School board secretaries should consult with the school board attor-

ney should individual questions arise.

Updated and adapted from an article by John B. Murphey, a partner in the Chicago law firm Rosenthal, Murphey & Coblenz. From 1987 to 2000 Murphy was a member of the Board of Education of Evergreen Park School District 124, in Cook County, serving as president from 1997 to 2000.