

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY

GARY SANDBURG,

Plaintiff(s)/Petitioner(s)

12 MR 608

vs.

PEORIA BOARD OF ELECTION COMMISSIONERS,
et. al.,

Defendants(s)/Respondents

FILED
ROBERT M. SPEARS

JAN 15 2013

CLERK OF THE CIRCUIT COURT
PEORIA COUNTY, ILLINOIS

ORDER

Hearing held on 1-14-13 on Petitioner's complaint for review of Board of Election Commissioners' ruling removing him from election ballot, filings, including the record of proceedings noted, arguments of counsel heard.

ISSUE: Is a candidate for councilman for a particular district in a managerial form of municipal government required to live in that district one year next preceding the election where the specific section of the qualifications statute contained within the Article limits the requirement to aldermen but where the general applicability statute for the Article arguably encompasses the managerial form?

ANSWER: No, a candidate for councilman for a particular district in a managerial form of municipal government is only required to live within the municipality one year next preceding the election although that candidate must be an actual resident of the district in order to be elected and retain that office during its tenure.

FACTS: Plaintiff sought ballot access for councilman for the 1st District of the City of Peoria for the upcoming April, 2014 general municipal election. Plaintiff did not live in that district for one year prior thereto but presented evidence of a residence within the district.¹ The Board ruled that the statute required a one year residency within the 1st District next preceding the election per 65 ILCS 5/3.1-10.5(c) thereby granting objections presented and removed petitioner from the ballot. Petitioner seeks review.

¹ The court is not required to determine if petitioner has established a residency within the district; however, petitioner is required to do and must be an actual resident of the district in order to be elected and retain office. *Peopl v. Kilpatrick*, 164 Ill. App. 328 (1912) and 65 ILCS 5/5-2-18.2 (2012).

DISCUSSION

65 ILCS 5/3.1-10.5 (2012) provides as follows:

§ 3.1-10-5. Qualifications; elective office.

(a) A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election or appointment, except as provided in Section 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2, or Section 5-2-11.

(b) 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 or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.

(c) A person is not eligible for the office of alderman of a ward unless that person has resided in the ward that the person seeks to represent, and a person is not eligible for the office of trustee of a district unless that person has resided in the municipality, at least one year next preceding the election or appointment, except as provided in Section 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2, or Section 5-2-11.

(d) If a person (i) is a resident of a municipality immediately prior to the active duty military service of that person or that person's spouse, (ii) resides anywhere outside of the municipality during that active duty military service, and (iii) immediately upon completion of that active duty military service is again a resident of the municipality, then the time during which the person resides outside the municipality during the active duty military service is deemed to be time during which the person is a resident of the municipality for purposes of determining the residency requirement under subsection (a). 65 ILCS 5/3.1-10-5 (2012) (emphasis added).

65 ILCS 5/3.1-5-5 provides:

§ 3.1-5-5. Application of Article. This Article 3.1 applies to all officers elected or appointed under this Article and Articles 4 and 5, unless provided otherwise. If there is a conflict between any provision in this Article 3.1 and any provision in Article 4 or Article 5, the provision in Article 4 or 5, as the case may be, shall control. 65 ILCS 5/3.1-5-5 (2012) (emphasis added).

Words in statutes are to be given their plain and commonly understood meaning in the absence of an indication of legislative intent to the contrary. *Neely v. Board of Election Commissioners of Chicago*, 242 Ill.2d 303, 320 (2011). Where a term has a settled legal meaning, a court will normally infer that the legislature intended to incorporate that settled meaning. *Id.* The term "alderman" has a common, ordinary meaning. It names one of the officers to be elected under a traditional form of municipal government-mayor/alderman. See 65 ILCS 5/3.1-15-5 (2012). The term "alderman" is not the term utilized by statute to refer to a municipal corporation's representatives governed by a managerial form of government wherein the municipality consists of

"districts" not "wards" unless that municipality, via election, adopts to retain or reinstitute "election by wards." See 65 ILCS 5/5-2-18 and 65 ILCS 5/5-2.18.2 (2012).

The above-quoted qualifications statute (65 ILCS 5/3.1-10-5) has four subparts/sections, a through d. Section a applies to all elective municipal offices, section b is limited to all elective office-seekers who have certain disqualifications (tax debts, felony convictions, etc.), and, section d is limited/is an exception (for military service). Section c is limited to "alderman of a ward" and "trustee of a district." The petitioner is not seeking to be elected to either of these offices; rather, he is seeking to be elected councilman for a district for the City of Peoria, an Article 5 municipality that has not elected to retain a ward structure whatsoever.

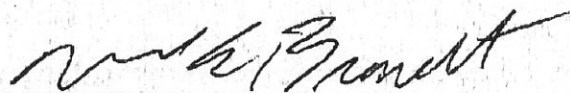
The legislature by specifying "alderman" and "ward" in the section did not thereby intend to include "city council," "commissioners," "councilmen," district representatives under Article 5 in a council/manager government or anything else but alderman. If the legislature had so intended it would have been a simple matter to use a generalized or other specific term(s) as it chose to do so in the other subsections. Respondent's suggestion that the nomenclature for municipal officers are all interchangeable has been implicitly rejected. See e.g. *Ketchmark v. Lynch*, 107 Ill. App. 3d 36, 41 (3rd Dist. 1969).

Respondent's reliance on the introductory language of Article 3.1, also quoted above, ignores first the use of the term "unless provided otherwise." That is, by using the limiting terms "alderman" and "ward" the legislature has "otherwise provided." Second, the express statutory distinctions between a mayor/alderman and manager/council form of municipal government-and the other forms of local government- are replete in the statutory schemes.

Equally persuasive are petitioner's case citations (paragraph 2 of his brief) strongly suggesting that, although ballot restrictions that are reasonable will be enforced, it is not appropriate to restrict ballot access where there is ambiguity-a fact that the Board recognized and counsel at bar have virtually conceded at the hearing.

For all of the above reasons the decision of the Peoria Board of Elections is reversed with direction to place petitioner on the upcoming primary and/or general election ballot as the case may be as provided by law.

Enter: 1-15-13



Michael E. Brandt, Chief Circuit Judge
10th Judicial Circuit
State of Illinois