

MINUTES OF THE FAYETTE COUNTY ELECTION BOARD

Tuesday, April 9, 2024

10:00 AM in the Fayette County Meeting Room, 2 West Main Street, Uniontown, PA 15401

CALL TO ORDER:

The meeting was called to order at 10 a.m. by Chairman Scott Dunn. A moment was taken for reflection or silent prayer, followed by the Pledge of Allegiance.

ROLL CALL:

In attendance were Election Board Members as follows:

Scott Dunn, Chair

Vincent Vicites

Dave Lohr

The Chair declared that a quorum was in attendance

Also present were:

Sheryl Heid, Fayette County Solicitor

Jack Purcell, Fayette County Solicitor

Marybeth Kuznik, Director of Elections

Jessica Zele, Deputy Director of Elections

Tammy Nedrow, Chief of Staff for Commissioner Dunn

Mary Over, Chief of Staff for Commissioner Vicites

Members of the public and press.

PUBLIC COMMENT:

Charmaine Steve of Springhill Township asked why a sample ballot for the April 23 Primary has not been put up on the internet yet. Chair Scott Dunn explained that the ballot this time was delayed by several court rulings and Director of Elections Marybeth Kuznik explained that because of the delay the sample ballots are just now at the printer and posting them online has been a matter of staffing. They will be available within the next two days.

APPROVAL OF MINUTES OF FEBRUARY 22, 2024 MEETING:

Motion made by Dave Lohr to approve the meeting minutes from February 22, 2024.

Motion seconded by Vince Vicites.

Motion passed unanimously.

REPORT ON APRIL 23 PRIMARY ELECTION PREPARATIONS:

Report by Marybeth Kuznik, Director of Elections and Voter Registration. The Election Bureau is very busy; today is two weeks out from the Primary.

BALLOT CONTENT-- We were delayed with ballot prep and printing for well over a week because of a state-level case regarding a candidate who was removed from the ballot and was appealing to the State Supreme Court. The removal of that candidate, Joseph Vodvarka, was upheld by the Supreme Court, however his name will be on our ballot because of our ballot finalization and printing deadline. If we had waited for a final court decision on his removal, we would not have been able to test our equipment or get the ballots printed in a timely manner. We will be sending out signs to be posted at all polling places and including a notice with mail-in and absentee ballots that any vote for Joseph Vodvarka, other than a write-in vote, will not be counted and will appear as an undervote in our final results. Board member Dave Lohr noted that the majority of other counties in the state are doing the same thing. Director Kuznik noted that in 2016 the same candidate was removed then added back to the ballot statewide by the PA Supreme Court; counties that had already removed him from the 2016 ballot had massive turmoil. Learning from 2016, many counties including Fayette left Vodvarka's name on the ballot pending final resolution of the case this time as the most prudent way to avoid problems.

MAIL-IN AND ABSENTEE BALLOTS -- At this point we received 7213 applications of which 5541 are Democratic and 1671 are Republican. Non-partisan applications are being taken but ballots can only be sent to them for November. Our first batch of mail ballots actually went out two days early because of the efforts of the mail house. Incoming ballots received are being sorted by precinct and then locked in the vault where they will stay until Pre-Canvass begins at 7 AM on Election Day. We have 2780 ballots returned at this time. Returned ballots are currently 2238 Democratic and 542 Republican.

BALLOT CURING -- We had 39 ballots so far that had an issue with the signature or date. At this point we have sent 31 letters to these voters to come in and correct or cure the problem; the remainder will be going out today. If the voter provided a valid phone number or email with their voter registration, they will be contacted by those methods as well. Board member Dave Lohr noted and County Solicitor Jack Purcell confirmed that there is still no final court decision on the matter of ballot curing. County Solicitor Sheryl Heid noted that because of this there is nothing out there that we are doing it incorrectly; there is no requirement to do it, but we have extended this option to voters in the past. Director Kuznik noted that we are using the new color-coded envelopes required by the state and it does appear to have made a difference in the number of ballots with signature and date problems. Solicitor Purcell noted that the new envelopes make it clearer that the date is to be the date the voter signed.

CURRENT ELECTION AND PREPARATION FOR FALL – Director Kuznik stated that we are not getting the massive amount of interest that a normal presidential primary would because the presumptive nominees for President are known at this time. Nonetheless, the Election Bureau is gearing up for a huge election in the fall with ongoing pollworker recruitment, pollworker training, and request for additional materials. She is requesting 200 additional voter privacy booths with the hope that may help decrease wait times and lines of voters in November. Despite the delay with the court case, we are currently on track with preparations for the primary. Kuznik believes that we are seeing the effects of the improvements the Election Board has put into place such as the mail house, sorter, and Poll Pads. We have need for fewer hours of overtime and fewer hours of part-time help. She is happy to discuss any questions about election matters with members of the Election Board or Solicitors at any time.

CONSIDER RATIFICATION OF THE APPROVAL OF ELECTION NIGHT REPORTING SYSTEM WITH SCYTL (SOE SOFTWARE CORPORATION, DBA SCYTL):

Motion to ratify made by Vince Vicites

Motion seconded by Dave Lohr

Discussion: Chairman Dunn requested Director Kuznik to explain the Election Night Reporting System for the public and press. She presented as follows:

- a. The Election Night Reporting will be a new online site that links off the Fayette County website
- b. Will have graphs, precinct-by-precinct results
- c. Much more modern and accessible than our past procedure of printing pdf files of results and posting them
- d. Accessible for voters and members of the public who have disabilities (pdf posting is not accessible)
- e. Can be seen in action by going to Westmoreland, Allegheny, Washington, Cambria, and other local counties that use the same system
- f. Fayette County banner for our site will have the courthouse, Fallingwater, and sunrise over the mountains; will be unique and distinctive to Fayette County.

Chairman Dunn reiterated that this site will be easier for the public to access and understand. Board member Vicites pointed out that many people from both inside and outside Fayette County access our website for election results on election night and he believes this upgrade will serve the public well. Solicitor Purcell requested the source of funds for the project; Kuznik noted that the cost will come from our Act 88 Election Integrity Grant which covers transparency costs for Pre-canvassing and Canvassing election results. This upgrade will help to make our results much more transparent.

Vote on the motion: Motion passed unanimously.

POSSIBLE EXECUTIVE SESSION FOR DISCUSSION OF PENDING LITIGATION MATTERS

Solicitor Heid stated that she does not think it was necessary for the Board to go into executive session for this discussion because Judge Leskinen has ruled on the legal actions filed by Jon Marietta and other plaintiffs. Those actions were dismissed by the Court after long, arduous consideration and after Marietta and the other plaintiffs being given every opportunity to make their point with the Court. Our election results were upheld in every way. Appeals have been started but is yet to be seen if the plaintiffs will actually complete their appeals in a way that is necessary for their appeals to be considered by the higher courts. There is no action required on our part at this time.

Board Member Lohr asked if this decision was for the Primary election of 2023, and Solicitor Heid replied that one decision for the Primary was made and two were for the fall election of 2023. She was glad that the Court resolved those cases at the Common Pleas level before we started the new election cycle. The Court was concerned by how long those matters were taking. The Court has stated an intention to move election matters more expeditiously in the future. This will help both the Election Board and plaintiffs who actually want to have their matters heard promptly and resolved.

Solicitor Purcell mentioned three election matters that are still pending in courts outside Fayette County:

- a. The ballot curing issue
- b. Constitutional claim in Commonwealth Court challenging the location of the initial counting of mail-in ballots
 - a. Claim that PA Constitution requires counting in the polling place on election night; Fayette and other counties are opposed because they know the costs and harm to pollworkers that would cause
- c. Case regarding the missing and “wrong” dates on ballots in federal court; there may be an appeal of this case

Both solicitors stated that there is no action we need to take at this time regarding any of these cases; there will likely be more cases filed as we approach the November election and beyond.

Director Kuznik requested to state for the record that she hoped our pollworkers would not be asked to count ballots after serving for 16 hours on Election Day; from her own experience as a pollworker she knows they are incredibly tired at that point in the evening, and it would be a great hardship. In addition, tired people are prone to making mistakes.

Board member Lohr stated that he cautions everyone to remember that the count on election night is unofficial and gives an idea of the results, but it is not final. Results are subject to correction and change as ballots are canvassed, military ballots come in, provisional ballots are counted, etc. There are two signings of the results by the Election Board; nothing is final or official until the Election Board signs the results for the second time.

COSTS OF LITIGATION -- Board member Vicites remarked that the Marietta legal actions were costly to the taxpayers, and that an accounting should be made and released to the public as to what these actions cost them. Director Kuznik stated that the Election Bureau has committed to researching and providing an accounting of these costs after the April 23 Primary election is resolved.

Board Member Lohr remarked that these costs include the hours and hours of time of our staff and the courts, and the printing and paper for copying documents. It is possibly tens of thousands of dollars. There were misstatements and accusations against our staff and our solicitors that were false and should never have been said. He found this appalling. The stress that was put on our staff was un-called for.

Mr. Dunn stated that he wanted to go on record adding the costs for extra advertising, stenographers/court reporters; there are a lot of expenses we had to go through. It was unwarranted and unprofessional to have aspersions of fraud cast on a volunteer Board of Elections, our solicitors, our election staff, and our judges and court. He wanted to publicly thank all the people who did work on the election. Mr. Vicites concurred, saying they hung in there and did their job. Mr. Purcell specifically named volunteer Interim Board members John Kopas III, Robert Lesnick, and Mark Rowan, as public servants who wanted nothing more than to make sure the system worked properly. He wanted to thank Sheryl Heid for her good work and for dealing with the brunt of the case as she did.

Mr. Lohr pointed out that this another issue; if their name is going to be dragged through the mud people may no longer agree to serve as the Interim Board of Elections when the County Commissioners cannot be on the Election Board. Good people who want to get involved in government may decide to stay away. He finds it sad when something with no teeth is carried on and hurts the county.

Solicitor Purcell mentioned that some of the Marietta cases qualified under our CCAP insurance policy and we have a \$10,000 deductible that comes out of the county General Fund and costs may go higher with appeals. Mr. Lohr stated that these exorbitant claims will increase our costs for insurance.

Mr. Vicites pointed out that outrageous claims about the Governor's airplane and similar matters hurts the county's reputation. Solicitor Heid pointed out that when something like this is portrayed to the local court as an emergency; either she or Jack Purcell have to drop whatever they are doing, come to the election office and observe that the machines are here, then run to the court and report to the judge that everything is OK. That is ridiculous. She works constantly with the Election Bureau staff. Director Kuznik has repeatedly said she doesn't mind people questioning things and she and her Election Bureau staff will provide an honest answer to the best of their ability. But for people to make fraudulent statements and then ignore the answer is unfair.

Solicitor Purcell stated it is helpful that Ms. Kuznik is also a lawyer and she has been able to assist with some of the legal research and other matters as her own schedule allows. Kuznik said that she wanted to thank the Interim Board for their diligent work in the face of a difficult situation, as well as the County Solicitors and the permanent Election Board. It is helpful to know that she and her office have the support of our boards when strange and false accusations like these are being made.

With no further discussion,

Motion to adjourn made by Dave Lohr.

Motion seconded by Vince Vicites.

Motion passed unanimously.

Meeting adjourned at 10:40 a.m.