

SHELBY COUNTY ELECTION COMMISSION
REGULAR MEETING
May 21, 2014

APPROVED

The Regular Meeting of the Shelby County Election Commission was held on May 21, 2014 at 4:00 PM at the Election Operations Center, 980 Nixon Drive. All Commissioners in attendance.

Meeting was called to order by Chairman Meyers at 4:10 P.M.

DISCUSSION/APPROVAL OF MINUTES FROM JANUARY 22, 2014, REGULAR COMMISSION MEETING, AND APRIL 16, 2014 REGULAR COMMISSION SPECIAL MEETING

Commissioner Lester voiced a concern relative to the absence of her comments to the audit report in the January 8th Operations attachment. Following discussion Chairman Meyers stated Commissioner Lester's comments would be reflected in the May minutes. Commissioner Stamson moved to approve January 22, 2014 Minutes as submitted. Commissioner Nollner seconded. Motion approved.

April 16th Regular Commission Meeting minutes were deferred.

CERTIFICATION OF RESULTS FROM MAY 6, 2014 COUNTY PRIMARIES ELECTION

Commissioner Lester stated she could no longer in good conscious motion to certify election results under the existing system. Receiving precinct results and Auditor reports at the meeting does not allow for proper review. Stated she understands this has been an ongoing process but going forward she would like information prior to the meeting. She doesn't have understanding of exactly what she is certifying. Chairman Meyers read the process that the auditors performed which included the Early and Pre-Election Voting Procedures, Election Day Procedures and Post-Election Procedures.

Monice Hagler, Attorney for the Election Commission, stated the Commission is to review the process auditors were hired to do, which is to compare tapes, check the machines and prepare a summary. Information presented to the board is a consolidation of what the auditors found. So basically, the Commission is certifying which candidates for each position have been selected.

John Ryder, Assistant County Attorney, stated fundamentally the procedure is the Commission certifies the numbers based on its procedures and based on the audit results. This board must act. If someone wants to challenges those numbers, or contest the election, they must do so in accordance with TCA 2-17-101. If a candidate is challenging a Primary Election then the candidate goes to the Primary Board and they would consider the challenge. The statute specifies how they present that challenge and what time frame has to be considered and what the Primary Board can do.

Daniel Moore of Watkins, Uiberall, PLLC, stated they send a draft to administration and could circulate additional copies prior to the meeting.

Martavious Jones, Democratic Candidate for County Commission, District 10 addressed the Commission. He thanked Mr. Holden and his staff for conducting a transparent open explanation and process of how elections are conducted in Shelby County. He previously sent a letter to the Commission voicing his concerns relative to certifying the accuracy of the results in the election. Completely satisfied with the first 95% of process demonstrated by administration, the latter in his opinion affects the certification process. The certified tapes submitted on Election Night from Hanley and Rozelle Elementary were

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results of one machine and not a summary of machines at each facility. Following today's demonstration, Mr. Jones was satisfied with results of Hanley Elementary but asked that Commission NOT certify results from Rozelle because only tape from one machine was available for display and signed by poll workers. He additionally asked that votes from the other machines not be counted. Not counting those votes would declare him the winner. He asked if the Commission could certify all other precincts except Rozelle.

Attorney Hagler stated per statute, the Commission can certify less than half, but failure to certify would violate statute and abrogate Commission responsibility.

Chairman Meyers asked Mr. Holden to address the assertion made by Mr. Jones regarding the machine tapes. Per Mr. Holden, what was produced on Election Night by the Election Officials at the polling location was a single tape however, the votes on the four Rozelle machines and printed in Mr. Jones presence today corresponded with tabulated results broadcast Election Night; the only difference was the addition of one provisional ballot counted for Mr. Jones. Tabulation results show 2,124 for Mr. Milton and 2,099, with provisional ballot, for Mr. Jones.

Charles Higgins, attorney representing Mr. Milton stated their position has always been they wanted an accurate count. They have listened to the issues Mr. Jones has raised and came here today to observe and try to understand what happened. From what they observed the results reported correspond with tapes on the four machines. Their position is excluding those machines would be to exclude votes cast in this Election. He feels that the Commission should certify the results today.

Following comments, Commissioner Stamson moved to certify the results of the May 6, 2014 Republican and Democratic Primary Elections as submitted by the auditors. Commissioner Nollner second. Motion approved. Commissioner Lester abstained.

ATTORNEY'S REPORT

Attorney Ryder presented the following report:

1. District 4, Shelby County School Board Election – Election on appeal. Kenneth Whalum verses Kevin Woods. New nine member school district approved by Judge Mays removed Mr. Whalum from District 4. Mr. Woods moving to dismiss appeal. Oral argument is now set for June 17, 2014.

ADMINISTRATOR'S REPORT

Mr. Richard Holden presented the following report:

- Election certification work has been completed for May 6, 2014.
- School Board redistricting - working with County IT to make sure all voter records are updated. Want to bring to Commission that lines were drawn on census block that sometime split a parcel. Working in cooperation with regional GIS to ensure adjustments do not change extent of the legislative body.
- Receiving annexation questions from Southwind and Lakeland. Questions forwarded to State Coordinator and the appropriate legal authority. Awaiting response.
- Proposed standards for number of early voting satellite locations have been recommended and will be presented to the Board for consideration.

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- Voters in the areas formerly designated as Woodstock 02 and Lucy 02 were reassigned. Cards and letters were mailed on May 2nd.
- With regard to the August Sample Ballot, we have information from the state and working to develop sample ballot. Should be on website by end of month. Chairman Meyers stated there were some emails regarding how the name for the new Environmental Court will be reflected on the sample ballot. Attorney Ryder stated the statute created the additional division and it shall be referred to as the Environmental Court. Commissioner Lester requested that she receive a copy of the sample ballot before it's posted on the website.
- A Bureau of Ethics and Campaign finance complaint was filed with SCEC by an unsuccessful candidate regarding tax payments of the successful candidate. The complaint was forwarded to BECF and the State Ethics Commission will hear the issue and advise.
- Information about the Wine in Grocery Stores referendum-signature requirements to be released to media on May 27.
- Budget hearing request for additional positions has been completed and submitted to the County Commission. We are awaiting action from the Commission.
- TACEO conference held June 1 through June 4 in Nashville.
- Petitions are being issued May 23 through August 21 for school board positions for Bartlett, Collierville, and Germantown.
- Roundtable conducted with Election Officials- We determined that we will have improvements to the instruction classes including mentoring for new and inexperienced election officials.
- May Early Voting reports posted to ShelbyVote.com. An issue has been raised regarding turnout statistics during Early Voting. Reports have been posted to the website reflecting the numbers of registered voters. For reporting purposes, however, until at least one vote has been cast by a voter in any given precinct, the number of registered voters in that precinct is not included.
- Locations that double as Early Voting sites and Election Day polling places need additional staff. Each such polling site will have an additional Election Official on Election Day. The added official will be equipped with an untethered EPB, able to lookup voter, and verify that they are at correct precinct. Staff recommended Early Voting to begin at the Downtown location on July 18 and end on August 2, 2014. Early Voting to begin at the satellite locations on July 21 and end on August 2. Commissioner Lester moved to approve staff recommendation for Early Voting dates. Commissioner Nollner second. Motion approved unanimously.
- We are working to increase our visibility on Facebook. When voter registration cards are mailed to a group for polling place changes, we will also post notices on the SCEC Facebook Page.

DISCUSSION OF CLASSIFICATION OF STAFF EMPLOYEES

Chairman Meyers stated that this is an issue he brought before the County based on his interpretation of the statute requiring the Administrator to appoint all staff that work underneath him. He further stated that he asked Kim Hackney, Deputy CAO and Kim Koratsky, Assistant County Attorney, to be present today to answer questions about this particular issue.

Mr. Kim Koratsky, Assistant County Attorney, stated that because of Chairman Meyer's inquiry he examined the classification of Election Commission employees. In the process, discovered this body is a hybrid body of Commissioners in Shelby County appointed by the **State Election Commission**. Although per statute the Election Commission is an arm of County government but is governed by the State. As state officials, the Election Commission appoints the administrator. The courts used a control test to

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determine who controls employees. Based on the control test, the employees of the Election Commission are not County employees; they are employees of the Election Commission. As such, they are not County employees and cannot enjoy civil service protection.

Ms. Kim Hackney, Deputy CAO, stated that the employees will still be eligible for benefits such as insurance and retirement benefits except for Civil Service.

Commissioner Stamson asked if there could be a signed agreement between the County and the Commission stating the County is authorized to fund the Commission and that all other county benefits will remain the same.

Ms. Hackney stated that she did provide a letter to the chairman and we could either let that stand or this body could create a letter of agreement as well. Commissioner Stamson wanted employees to have something in writing stating that they would keep their benefits. Ms. Hackney stated that the Commission would not have to post jobs, but could use County posting site and that Human Resources would be available to assist. Ms. Hackney recommended the Election Commission either adopts the county policies or come up with their own. Additional discussion ensues. Ms. Hackney also suggested that a letter be sent to staff.

Commissioner Lester asked what rights the current employees have in case they are not appointed. Ms. Hackney stated they would not be treated as displaced County workers but they would work with them to see if they could assist in some way. Attorney Koratsky stated that they are not employees of Shelby County but are employees of a public body and have same rights as a public employee except for civil service rights.

Chairman Meyers stated that since this was discovered and enforced now, we wouldn't need to take any action. Ms. Hackney stated if this body would like to pursue Mr. Stamson's request to enter into some type of letter of agreement we would certainly look at that issue and give them some extra time. Chairman Meyers stated that he believe we want all of our employees to obtain the level of benefits and benefits status that they currently enjoy in county government.

Ms. Hackney stated that her suggestion is to leave the compensation and all policies in place. Adopt Shelby County policies including the compensation pay grades.

Political Activist Del Gill stated this is going to be seen a vicious Republican takeover of appointed employees switching pie in sky out of Nashville, this will never stand.

Staff member comments:

Kimberly Perkins - she understands employees would now be state at-will employees with benefits from the SCEC.

Trevenia Lewis-Freeman - asked why the change? Stated when I walked in today I was a civil service employee answering to county officials and now I'm not. I am a state employee.

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Lillie Jones -asked at what point did I not become a civil service employee; why am I just being made aware of this? She also asked when and why it stopped with the Election Commission or has it ever been there period? Attorney Koratsky responded that was a question for the board.

Chairman Meyers stated he was surprised that this is occurring immediately. He's not sure what to do about it; his goal is maintain the status quo. Further stated a lot of confidence in the people working with the Election Commission who have done a fine job under some very difficult circumstances. Further stated that answers are not available at this time, however, he will work very hard to maintain the status quo. Certainly one of the things that we need to do both as a group and as a team is to meet together. He really envisioned some kind of roll out period; all new people would be hired by Mr. Holden and current staff would maintain their status quo. Some day in the future everyone who wanted to stay could stay and be appointed by Mr. Holden. People who did not want to stay could go elsewhere. Because of what he's hearing today, he's not sure he can do that given the current situation.

Ms. Kim Hackney reiterated the need to send a letter to staff from this body giving them proper notice.

Mr. Holden stated as the administrator he sees no reasons to make any changes with the existing staff. They have just gone through a series of successful elections. Staff just needs to do their jobs as they have been doing. Further stated that it seems to him the greatest impact of this action deals with vacancies moving forward. He agrees with suggestions that we get together with everybody and put our heads together and find the best way to work together as a successful team. Chairman Meyers stated that the employees should hear that we intend to maintain the status quo and currently nobody would fall into the extremes where they would need civil service protection. Mr. Holden stated that was correct. He intends to maintain the employees that we have.

ELECTION OPERATIONS/TECHNOLOGY

Commissioner Dee Nollner reported that the Operations and Technology Committee met on May 14th. Jeff Yallope, IT Department, outlined the source of our telephone problems that have been ongoing and will present a simple, straight forward solution to be implemented before Early Voting begins on July 18th. Albert Holmes, Operations Manager, reported the improved set-up process resulted in fewer trouble shooting calls from precincts and Early Voting sites. New procedures will be put into place to assure precinct bags will have all the needed supplies. Two additional poll workers will be assigned to traditionally busy precincts on Election Day, August 7. Mr. Holmes recommended the replacement of many CFD cards. Additional efforts will be made to help voters be better informed before arriving at polling locations and the public was asked to help in this regard.

VOTER CANDIDATE SERVICES/HUMAN RESOURCES

Commissioner Stamson reported that the Voter and Candidate Services Committee met on May 14th. Status report on data management and review of application statistics file report by Ms. Kimberly Perkins. There was a discussion concerning voter registration cards that questions whether all cards had been mailed to the voters. Chairman Meyers requested that we come up with some way to verify that cards were mailed.

Commissioner Stamson further reported that Commissioner Lester asked about the voter registration statistical report? Ms. Perkins failed to have report ready for the meeting. Chairman Meyers gave Ms.

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Perkins a directive to have the report ready for every meeting. There was a discussion concerning the turnout report.

Administrator Holden gave a report on human resources matter and stated that Ana Ramirez resigned which created another vacancy within the Commission. He also stated that Sharon Logan's husband passed away and she would be on leave for the rest of the week.

Chairman Meyers asked all Commissioners if they had received a copy of letter from Mr. Kennedy, CAO, regarding status of Election Commission workers and he felt that we would need to act on it. This action would need to be done in an open meeting by vote. There was lengthy discussion and the matter was moved to the next regular meeting for discussion and a vote.

There was a discussion concerning an alternative site for the Shelby County Office building as an early voting site. Early Voting statics for the last 4 election were given to each Commissioner and the matter was moved to the next committee meeting for discussion. The employee tracking form was discussed. Commissioner Lester stated she would send the correct form to all Commissioners.

Mr. Martavious Jones wanted to address the Commission regarding a discrepancy in the District 4 County Commission race. There was a brief discussion and Administrator Holden agreed to look at all precincts involved and advise.

COMMISSIONER LESTER'S ATTACHMENTS TO JANUARY 8TH OPERATIONS REPORT:

Commissioner Lester voiced a concern relative to the validity of items reported as corrected in auditor's report. There was no evidence presented supporting assertion. She specifically asked if there were policies, procedures, documentation of training, or minutes of meetings to validate corrections and if she visited the center and inquired would information be available? To that, the AOE responded affirmatively. An observable concern was that citations noted by the auditor were not consistent with the response in the AOE summary. In the discussion that ensued relative to the "no hire list" Commissioner Lester was to draft a document for tracking undesirable employees to be presented to the body for review.

ANNOUNCEMENTS

Election Operations and Technology Committee Meeting, June 2, 2014, 4:00 PM
Voter & Candidate Services & HR Committee Meeting, June 2, 2014, 5:00 PM
Regular Commission Meeting, June 18, 2014, 4:00 PM

ADJOURNMENT

Without objection, meeting adjourned at 6:45 PM.

THOSE PRESENT

Richard Holden, AOE
Joe W. Young, II, Deputy
Monice Hagler, Attorney
Carlos Bibbs, Assistant City Attorney
Albert Holmes, Staff

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Rosemary Barbee, Staff
Kimberly Perkins, Staff
Del Gill
Suzanne Thompson
Dr. Joe Weinberg
Kim Hackney, Deputy CAO
Kim Koratsky, Assistant County Attorney
Jackson Baker, Memphis Flyer
Bill Dries, Daily News
Lillie Jones, Staff
Trevenia Lewis-Freeman, Staff
Sharon Logan, Staff
Mia Williams, Staff
Daniel Moore, Auditor
Andy Sawyer