

**FAYETTE COUNTY BOARD OF ELECTIONS  
AND VOTER REGISTRATION**

**MINUTES**

*May 27, 2016  
5:00 P.M.*

**Board Members Present:** Darryl Hicks, Chairman  
Addison Lester  
Aaron Wright

**Staff Present:** Leigh Combs, Elections Officer  
April Crosby, Elections Officer  
Beverly Westmoreland, Part-time Elections Clerk

**Others in Attendance:** Dennis Davenport, County Attorney  
Bill Ewing  
Tony Parrot

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Chairman Hicks called the May 27, 2016 meeting to order at approximately 5:01 p.m.

**A. APPROVAL OF AGENDA**

Chairman Hicks said the first order of business was the approval of the agenda. He then said he would like to add an Executive Session for personnel reasons to the agenda after Public Comments. Member Lester made the motion to approve the agenda as amended. Member Wright seconded the motion. **Motion carried.**

**B. HEARINGS**

**1. FELON ELECTORS**

Elections Officer Combs presented the list of felon Fayette County voters for May, 2016. Member Wright made the motion to approve the list of cancelled felon Fayette County voters. Member Lester seconded the motion. **Motion carried.**

## **2. DECEASED ELECTORS**

Elections Officer Combs presented the list of deceased Fayette County voters for May, 2016. Member Lester made the motion to approve the list of cancelled deceased Fayette County voters. Member Wright seconded the motion. **Motion carried.**

## **C. NEW BUSINESS**

### **3. APPROVE MINUTES – APRIL 26, 2016**

Member Wright made the motion to approve the April 26, 2016 Board of Election Minutes. Member Lester seconded the motion. **Motion carried.**

### **4. REVIEW OF BOARD OF ELECTIONS BYLAWS (UPDATE OR AMEND)**

County Attorney, Dennis Davenport, gave the Board a packet of information containing 4 documents. Included in the packet were copies of the current 2008 Bylaws, and he referred to “Conflict of Interest, Article III”, that had previously been discussed at the April, 2016 Board meeting. He gave the Board copies of the proposed amendments to Article III that the Board had requested and a “clean version” of the document with all the proposed changes.

For the record, Chairman Hicks read the proposed changes to the Elections and Voter Registration Bylaws that were adopted in January, 2008. He read the revised version of Article III, Conflict of Interest as follows: “Board members should not engage in political activity such as campaigning for any candidate on a Fayette County ballot (whether as a volunteer or as a paid position) or ballot questions, writing letters to the editor, or participating in discussion or comments regarding candidates or candidates’ activities. Board members should conduct themselves in an objective, detached and non-partisan manner while conducting the business of the Board. Board members may not speak at public meetings in support of or opposition to issue or candidate. The Code of Ethics for the Fayette County Government in effect as of the adoption of these Bylaws governs the affairs and activities of the Board and is incorporated by reference into these Bylaws.” Other minor changes to the wording of the Bylaws were discussed by the Board and Attorney Davenport agreed to make changes discussed..

The fourth document given to the Board by Attorney Davenport was a copy of the current Fayette County Code of Ethics. He then strongly urged the Board to

re-adopt the Code of Ethics every year in the Board's organizational meeting even if it has not been changed.

Chairman Hicks said the issues involving Bylaws will be addressed at the next Board meeting on June 28, 2016.

## **5. REDISTRICTING ISSUES**

Discussion followed regarding redistricting issues and re-counts.

Chairman Hicks asked Attorney Davenport if the May 24, 2016 Election could be certified now. He said the Secretary of State requires the Election be certified on the Monday following the election and since Monday is a Holiday, the Secretary of State says Tuesday is the last day to certify the election, which is the reason the Board meets on the Friday following the election. Chairman Hicks asked Attorney Davenport, as it relates to the re-districting issues, should the Board wait and certify, then discuss those issues, or should the issues be discussed now.

There was discussion between Attorney Davenport and the Board regarding one candidate had questions about whether or not constituent voters had gotten the right ballot in their race.

Attorney Davenport said he is not trying to discount that but it only becomes an issue in a close race. He said if a candidate asks for a recount, because it's a close race, and if you know the breadth of the problem, the only way you're going to know the breadth of the problem is have a candidate ask for a re-count. He further said that if there is a problem, you would need to be put on official notice from a candidate that there is a problem. He further said in order for a candidate to say that, it's got to be within 1% of the votes needed, then the candidate would have the right to ask for a re-count. He said the candidate has two business days after the certification by the Secretary of State. So until the Secretary of State certifies, he can't even ask for a re-count.

He said if the Board undertakes an investigation, because you believe there could be some issues, he asked how would that impact meeting that deadline with the Secretary of State for certification. Attorney Davenport advised the Board to go ahead and certify.

Chairman Hicks reiterated that any candidate that feels like there might be an issue can ask for a re-count after the certification by the Secretary of State.

Attorney Davenport then said there are two issues. There is the issue of a re-count which is only available for those candidates that are within the 1%. You also have the issue of someone who alleges there was an impropriety with some ballots there were not counted properly, who will have 5 business days to file a

petition with the Superior Court Clerk to make those allegations, and they don't have to be within that 1%.

He said he would like for the Board to table this redistricting issue right now and move forward with certification. He said the Board would do a called meeting if an issue is presented.

Attorney Davenport told the Board that once you do an investigation, if you get a request, it needs to come back to the Board at a called meeting. He said the Board should go back and have a called meeting to re-certify and then that re-certification goes back to the Secretary of State to start a new clock running.

Supervisor Sawyer spoke about the history of re-counts since he's been Supervisor. He said his experience is with one or two re-counts that produced no variation.

Member Lester said the candidate he spoke with had said he would probably not ask for a re-count because it's all computer generated but the question was the integrity of how some people were labeled in their districts.

Attorney Davenport said he could not advise anybody what they can and cannot do other than, if in fact somebody requests a re-count, and you know there are issues out there, other than just simply re-counting, it would come upon the Board to address those issues. The Board agreed to this statement.

No action was taken on redistricting issue.

## **6. INTERACTIVE VOTING MAP**

Supervisor Sawyer gave the Board a copy of the proposed interactive voting map to be put on the County website. Supervisor Sawyer said it is a work still in progress. He said it will contain all the information on "My Voter Page" with the addition of adding the district information. Some discussion followed regarding the map.

## **7. BUDGET**

Supervisor Sawyer gave the Board a comparison of the 2 budgets that the Board had asked for in the April 2016 Board of Election meeting. Chairman Hicks said this was what was budgeted for the fiscal year 2016 and what is budgeted for the fiscal year 2017 but it doesn't show what was actually spent to date in 2016. Supervisor Sawyer said he would get those year-to-date numbers to the Board.

There were no more questions on the budget and no action was taken.

## **8. WORKER COMPLAINT**

Supervisor Sawyer gave the Board background information regarding a voter complaint at an Advanced Voting Site. A constituent had complained that one of the poll workers was “campaigning at the Poll Site for a candidate”. Member Wright brought it to Supervisor Sawyer’s attention. Supervisor Sawyer investigated the complaint and said there was no indication that this complaint was valid.

Member Wright said he had discussion regarding this complaint with Supervisor Sawyer. The matter was discussed with the poll worker who denied the complaint. The poll worker was given a gentle reminder of the rules and the matter is considered to be resolved.

## **9. CERTIFY THE GENERAL PRIMARY / NON-PARTISAN ELECTION**

### **a. PROVISIONAL BALLOTS**

Officer Crosby gave the Board copies of 3 Provisional Ballots along with information regarding each of these provisional ballots.

Officer Combs spoke to the Board about a provisional voter who lived on Wentworth Court and had been in the wrong precinct for 8 years. This error was corrected during the re-districting process. The voter showed up at the wrong precinct and it was recommended the vote be counted. The Board agreed.

At this point, the Board gave approval of the 3 Provisional Votes to be counted in the total votes cast so the certification process could go forward.

### **b. POTENTIAL STATE CERTIFIED RUNOFF ELECTIONS – JULY 26, 2016**

Discussion followed regarding potential runoffs for Democratic State House Representative District 63, Republican State House Representative District # 73, U.S. Representative in the 115th Congressional House District #3 and Republican District Attorney for the Griffin Judicial Circuit. He said all 36 precincts will be open for this runoff.

Some discussion followed initiated by Member Lester regarding the process of accepting memory cards. Chairman Hicks suggested going back to the way they

previously had received the cards all together. The Board agreed that the process needs to be consistent with the memory cards and the DRE cards being brought to the first table being received by the Board.

Chairman Hicks said the Board would certify the May 24, 2016 General Primary/Non-Partisan Election. Member Wright made the motion to certify the election and Member Lester seconded the motion. **Motion carried.**

#### **D. OTHER BUSINESS**

Tony Parrot asked if the posting of special called meetings could be posted downstairs at the Commissioner's Office. Attorney Davenport said we are required to post on the window of the Elections Office. The consensus was since that was all that was required, the Elections Office would continue that required procedure.

Officer Combs made a request to postpone the report on downsizing the precincts until August and the Board was okay with the postponement of this project.

At this point, Supervisor Sawyer, presented the Board with the final Election Summary Report with the Provisional Ballots that were added to the totals so the Board could sign and certify the July 26, 2016 General Election Primary.

Member Lester asked about the candidates who had withdrawn from the General Primary. Supervisor Sawyer told him Maggie Laton, a Republican candidate for Commissioner District 2, James Knox, a Democratic Candidate for United States Senator, and Loyd Black, a Non-Partisan candidate for Judge of Magistrate Court, Post 1, had all withdrawn after the ballots had been printed.

#### **E. PUBLIC COMMENTS**

There were no public comments.

At this point, Chairman Hicks asked for a motion go into Executive Session at approximately 6:00 p.m. Member Lester made the motion and Member Wright seconded. **Motion carried.**

#### **F. EXECUTIVE SESSION**

(Chairman Hicks did the minutes for the Executive Session.)

The Board came out of Executive Session.

Attorney Davenport gave the Board extensive background information regarding Executive Session Minutes. He said the law was changed several years ago that changed the way Executive Session minutes are done. He said, for example, if you have something that involves sensitive topics such as impending litigation or threatened litigation, he advises his client that there is no duty to record that type of Executive Session. He said he keeps notes that are personal to him and are protected by attorney client privilege. He said if it is Personnel, you do have to record the minutes and you have to produce minutes substantially the same as you produce the regular minutes to include motions to go into Executive Session, who seconded the motion, and to include motions to come out of Executive Session. He said any time a vote happens in Executive Session, identify who makes the motion, who makes the second and what the vote is. If it involves Personnel, you are limited to what you can vote on in Executive Session that involves impending and threatened litigation. Typically, he said, you are not voting on Personnel items; there probably are rare circumstances where you will.

Attorney Davenport further said, when you come out of Executive Session with your vote, he advises his clients that not only do you put the motion to go into Executive Session and to come out in your Executive Session minutes, you also put it in your regular minutes so they dovetail together. He said your regular minutes will have an absence between the motion to go into Executive Session and your motion to come out and that's where those minutes fill in. He said once you produce those minutes, those minutes are confidential. He gave the Board further legalities of producing Executive Session Minutes.

Attorney Davenport said every time that you meet, you need to consider those previous Executive Meeting Minutes and approve those at that time. There will be times where you don't make it every 30 days, but don't let it get too far behind. He said don't meet again without approving your prior meeting's Executive Session Minutes unless you have a valid reason.

Attorney Davenport recommended "to create more Executive Session minutes tonight" and at the next meeting in June, as part of your agenda, we have Executive Session on the agenda. He said he would be back for that meeting and he would bring the Bylaws back and if Chairman Hicks would let him know those dates of March 23, 2016, April 29, 2016 and May 27, 2016. He said as part of that meeting, and if you have a Personnel item, for example, I would say "I need to go into Executive Session" for Personnel and for the approval of Executive Session Minutes. The motion would incorporate that, the second, and the vote. Then you do the Personnel item in Executive Session, you review those minutes and then you come out. You vote to come out of Executive Session. Before you adjourn the meeting, you have to approve those Executive Session minutes that you reviewed in Executive Session and the affidavit should be paired for each Executive Session minutes.

Attorney Davenport told the Board he has an affidavit template he has created and will email it to Chairman Hicks.

Attorney Davenport told the Board, generally, his governmental clients have someone in Executive Session to take minutes for that express purpose. Attorney Davenport mentioned to always identify who's in Executive Session in your Executive Session minutes and identify who

is speaking. There was further discussion between Chairman Hicks and Attorney Davenport regarding Executive Minutes.

**G. OTHER ITEMS FOR CONSIDERATION**

There were no other items for consideration.

**H. ADJOURNMENT**

The Board adjourned.

**The next scheduled Board meeting is June 28, 2016.**