

**PULASKI COUNTY ELECTION COMMISSION
BOARD MEETING
FRIDAY, MARCH 19, 2010
4:00 P.M.**

COMMISSIONERS PRESENT

Kent Walker, Chairman
Ozell Snider, Commissioner
Phil Wyrick, Commissioner

STAFF PRESENT

Melinda Allen
Tonya Washington
Bryan Poe

VISITORS: Amanda Mankin-Mitchell, Assistant County Attorney; Amanda Dickens, Scott Price, Jason Kennedy, County Clerk's Office

The meeting was called to order by Chairman Kent Walker. A quorum was determined; all commissioners present.

The commissioners had questions regarding protocol procedures for addressing down time of voting machines on Election Day. Pam Walker was not in attendance but will be available to answer questions when she returns to the office.

Chairman Walker noted that a lawsuit has been filed in a judicial race, Circuit Court, District 5, Subdistrict 6.1. Amanda Mankin-Mitchell was in attendance to explain the role of the Election Commission in the suit and any affects on the Election Commission in the future.

Mrs. Mankin-Mitchell stated that former Judge Willard Proctor filed a lawsuit against Secretary of State Charlie Daniels explaining that he should be included on

the ballot and that ACA §16-10-410(d) is unconstitutional, which he says, as an initial qualification of becoming a circuit judge, is an additional requirement to what is already in the constitution, making it unconstitutional. At this point only the Secretary of State is involved in the lawsuit. In the opinion of Mrs. Mankin-Mitchell, it is not necessary for the Election Commission to be involved in the lawsuit. However, she feels the Election Commission will be involved in the near future. She feels the pleadings are done incorrectly. Mr. Proctor says it's a pre-election challenge but sites post-election statutes. For a pre-election challenge, you must move for mandamus and declaratory judgement. He has asked for declaratory judgement on the constitutionality of the statute, but he has not moved for mandamus. It is possible that the suit will be kicked out. The Attorney General will be filing proceedings. Mrs. Mankin-Mitchell recommends waiting to see if there will be anything the county will need to do but right now she does not believe there is.

Chairman Walker asked what the implications would be if the Election Commission was brought into the suit. Mrs. Mankin-Mitchell stated that if Mr. Proctor amends the proceedings to make it a pre-election challenge, which would include being included on the ballot, and he has been included on the ballot based on the certification from the Secretary of State certifying him as a write-in candidate (there will be a line on the ballot), it will be to determine whether any votes cast of written for Proctor will be counted. A hearing has been set for April 2, 2010 in front of Judge Mackie Pierce.

Commissioner Wyrick asked if the Secretary of State has accepted the ballot presence of Mr. Proctor. Mrs. Mankin-Mitchell said that the Secretary of State has informed the Election Commission that Mr. Proctor has been certified as a candidate. Commissioner Wyrick asked if Mr. Proctor has been accepted, why is he filing suit to get accepted? In Mrs. Mankin-Mitchell's opinion, Mr. Proctor filed the suit in anticipation that the Secretary of State would not qualify him as a write-in candidate. At this point, the Election Commission has no authority to act until it has been joined into the suit.

Commissioner Wyrick asked that assuming a candidate had their name placed on the ballot, they would drop an impending lawsuit. Mrs. Mankin-Mitchell agreed. Commissioner Wyrick stated that the challenge for the Election Commission would be if Mr. Proctor were to drop the suit, there could possibly be clouds over this election later on because the suit has not been in front of a judge. He feels that if the Election Commission would participate in the lawsuit, it would expedite clarity on the issue. Mrs. Mankin-Mitchell disagreed saying that what Mr. Proctor is asking the court to declare is that the statute, ACA §16-10-410(d) is unconstitutional. He is not asking for inclusion on the ballot nor is he asking the Election Commission to count the votes cast for him; only that the statute be declared unconstitutional. Any relief he can get in front of the circuit court, the Election Commission cannot give Mr. Proctor. Mrs. Mankin-Mitchell feels that until Mr. Proctor pleads his case, it will be completely premature for the Election Commission to get involved with this lawsuit at this point.

Commissioner Wyrick explained that he would agree, individually, except for the timing of the issue. He feels that the Election Commission should act and have resolve as quickly as possible. Mrs. Mankin-Mitchell feels confident that Judge Mackie will decide as quickly as possible and that he is aware of the timelines. However, the Secretary of State has certified Mr. Proctor's name to the Election Commission, and the board does not have the authority to remove him from the ballot. The Election Commission does not have standing, at this point, to enter into the lawsuit because the relief he is asking for does not have anything to do with the board. Commissioner Wyrick stated that he agrees that the board does not have authority to remove Mr. Proctor from the ballot but the board does have the authority to ask a judge for clarity and expedite. Mrs. Mankin-Mitchell said the board does have authority but not in this lawsuit. There have not been any allegations made against the county nor is there any reason to get involved. The only issue at hand is the constitutionality of a statute and whether someone who has been removed from office is eligible to become a candidate for judicial office. The Secretary of State says he has met the qualifications set out in the constitution and therefore is certified as a write-in candidate.

Chairman Walker stated that if the board were joined in the lawsuit he would see the issue of the law been held as constitutional as a reason for the board to be within the suit, meaning if the law of removal were held constitutional, theoretically Mr. Proctor would not qualify and require the board to take his name off the ballot. Mrs. Mankin-Mitchell agreed and stated that at that point, the board would have to be joined in the lawsuit. She also said that if this case had been properly pled, the board would be necessary parties. If the case is dismissed, he is likely to amend and plead it correctly, so the board will be involved. If he pleads it as a mandamus, the board will be in court within seven (7) days.

Commissioner Snyder asked if time will allow Mr. Proctor to amend and plead mandamus; Mrs. Mankin-Mitchell responded, yes. She went on to say that if one of the grounds is that the necessary parties are not joined, it would not be proper for a judge to dismiss a case if the necessary parties are not there. At that point, the court would add the board in on its own (the judge himself) or he would give the plaintiff time to plead it properly, so that the case can be before the court and the necessary parties are there. It's usually a set amount of time, usually a short amount of time, to plead the case properly or the case is thrown out.

Chairman Walker expressed his sentiment to have the case addressed sooner rather than later to have some clarification for the commission, more importantly for the election, particularly on that race, that there is no cloud held. He hopes the issues will be right for the commission to receive said guidance, some judiciary. He reluctantly admits and agrees that he's not sure that the commission's involvement is right at this point. If it is the right time, he feels the board should be represented by the County Attorney's office. He asked if there were timeframes that would or would not matter whether Mr. Proctor were on the ballot.

Mrs. Allen said it would affect whether absentee ballots would be available by the 35-day deadline. The state would like to follow the 45-day deadline because of the federal MOVE act to accommodate military-overseas voters. However, test

ballots have to be printed for the Logic and Accuracy testing (L&A), which may take as long as three days, if testing runs smoothly. When testing is complete, ballots for the election can be ordered. She said it would definitely hurt the election if printing were to be prolonged.

Commissioner Snider, asking for clarity from Mrs. Mankin-Mitchell, that the board has to wait on a decision from the court. See agreed. The County Attorney's office will keep Mrs. Allen and the board updated as to what is going on with the lawsuit. She also said to feel free to call anytime. She anticipates that the Attorney General will be filing something next week and there are some grumblings about the Judicial and Discipline Committee intervening. She also believes that a decision will come fairly quickly and anticipate the board being involved in this lawsuit in some form in the near future. But at this point, as it exists, she advises that it would be too premature to get involved because the board can't afford the relief that the plaintiff is requesting.

Mrs. Allen asked if the board does become involved it would be a matter of whether any votes cast on Mr. Proctor's behalf would be counted; Mrs. Mankin-Mitchell agreed. She said that at that point, the County Attorney's office would request an expedient decision and if Mr. Proctor pleads the case correctly, the board would be in court within seven days because mandamus requires it be presented in seven days.

Commissioner Wyrick asked if the board has an option to get involved immediately or not get involved and wait. Mrs. Mankin-Mitchell said she does not believe the board has an immediate option at this time. Commissioner Wyrick asked what would prohibit the board from getting involved. Mrs. Mankin-Mitchell stated the County Attorney's office could file a Rule 19 Joinder stating that the board is a necessary party, but the questions becomes, "on what basis is this board a necessary party to the action as it stands now"?

Commissioner Wyrick asked if there is any merit to the time line of ballot printing as stated by Mrs. Allen? Mrs. Mankin-Mitchell agreed, but for clarification, it was

asked if the ballot order must be sent to the printer on Monday; Mrs. Allen agreed. Mrs. Mankin-Mitchell stated that the blank where Mr. Proctor's name is an option to be written in, can't be decided by Monday. It can't be changed on the Ivotronic voting device. If it were, the whole election would have to be recoded. There is no opportunity to wait on a decision because the ballots have to go to the printer and the election is already coded. The blank line will appear on the ballot regardless of any decision of the court. Mrs. Allen stated that L&A has been moved to Thursday because of the lawsuit and public notice of the L&A could not be pulled from print which will put it close to the 35-day notice. If it were delayed another week, it would place testing past the 35-day notice. Commissioner Wyrick hopes the commission would do everything possible to expedite this issue so the ballot can be done correctly. Mrs. Mankin-Mitchell reiterated that the blank will appear on the ballot regardless of what the board asked the County Attorney's office to do or what decision can be made by the court. The ballots must go to the printer on Monday.

Commissioner Snider asked what would happen if the case was dismissed and the votes for the write-in candidate are not counted, which are votes that would be taken from the other candidates in that race? Mrs. Mankin-Mitchell stated that it's always a possibility. However, it is the job of this board to conduct elections, not advocate on behalf any one candidate or another. The board does not have the authority to address this issue. Only the candidates in that race can bring that issue to the board. What the board will be faced with is whether any votes cast on Mr. Proctor's behalf will be counted.

Mrs. Mankin-Mitchell clarified, for the record, that a blank line will be placed on the ballot. No reference to the write-in candidate will be on the ballot. It is the responsibility of the voter to know who the write-in candidate is. On the Ivotronic, when write-in candidate is selected, a keyboard display appears for the voter to physically key in the write-candidates name.

Commissioner Wyrick asked Mrs. Mankin-Mitchell if she believed the write-in position on the ballot would jeopardize the election of who would be the winner

in that race. She did not believe that it would because history of Arkansas elections is very rare that a write-in candidate actually wins and an especially an election of this size. Again, it is not the responsibility of the Election Commission to be concerned that any candidate in a race may be missing votes because of a write-in candidate whose votes may or may not be counted. That is an issue for the other candidates in the race to raise.

Mrs. Mankin-Mitchell feels that this issue will be settled in short amount of time to know whether the board will be involved or not.

Move to adjourn made by Commissioner Wyrick; seconded by Commissioner Snider. All in favor; motion passed unanimously.

Meeting adjourned.