



**Pulaski County Election Commission
Meeting Minutes
March 1, 2014
10:15 a.m.**

Members Present

Leonard A. Boyle, Sr.
Chris Burks

Staff Present

Bryan Poe
Tonya Washington

Visitors Present: George Ritter, Ritter Law Firm, Maumelle; Alex Reed, Pulaski County Republican Committee; Emily Walkenhorst, AR Democrat Gazette; Larry Crane, Jason Kennedy, County Clerk's office; Mark Johnson, Pulaski County voter

The meeting was called to order by Chairman Leonard A. Boyle, Sr. A quorum was determined; Chairman Boyle and Commissioner Burks, present.

Approval of Meeting Minutes, February 22, 2014

Minutes tabled for approval until next meeting.

Roll Call

Commissioner Burks asked for a roll call to record the attendance of visitors in today's meeting.

Poll Worker Training

Mr. Poe stated that 380 poll workers have been trained as of today. An additional 275-200 poll workers will be training today which will be the last day of training.

Pulaski Tech Millage Election - March 11, 2014

Discussion of Absentee Procedures

Mr. Poe stated that the staff is still on hold for updating absentee procedures in handling provisional ballots. The SBEC has issued an emergency rule establishing a cure period for absentee ballots. However, the emergency rule is in contrast with the law and County Attorney Karla Burnett has advised the board not to follow the rule. At this point there are three options, 1) the board can follow the rule as passed by the SBEC; 2) ignore the SBEC rule and follow the Attorney General's opinion; or, 3) file suit against the SBEC seeking declaratory judgment which would provide the most certainty in knowing how to handle absentee ballots in the upcoming election on March 11, 2014. Currently the election commission staff is waiting for the county board's decision to know how to proceed.

Alex Reed noted that the Republican Committee would be meeting early next week to select a new commissioner and requested that the board hold its decision on how to proceed until a new commissioner is appointed to the board.

Motion made by Commissioner Burks, on the advice of County Attorney Karla Burnett and the Attorney General, to file for declaratory judgment and on the advice that two votes will pass the motion. It was seconded by Chairman Boyle.

George Ritter stated that he does not believe the Attorney General's opinion is sound. He believes that Act 595 of 2013 clearly allows for a cure period in regards to absentee ballots. He believes the intent of the legislature was to allow a cure period for absentee voters to present identification if not submitted with the ballot. He stated that, in his humble opinion, the Democratic Party was attempting not to implement the emergency rule so as to disenfranchise voters. He believes the SBEC filled in the gap, made it consistent with the intent of allowing everybody to have a cure period; if there is an ambiguity in the law, the law needs to be interpreted in a way that gives everybody the best opportunity to vote. He feels that counsel giving advice to ignore the SBEC is not good advice. He stated that when a board adopts a rule it is law until it is set aside by a court. And he believes that asking for a declaratory judgment is a waste of tax payer money. He requested strongly that the board follow the reasonable set of regulations that have been adopted by the SBEC to implement the law.

Chairman Boyle noted that this board is not the Democratic Party; it is the Pulaski County Election Commission and that the board is not here to practice partisan principles. This board, along with former commissioner Phil Wyrick, has worked together to make decisions concerning this board.

Circuit/County Clerk Larry Crane stated that he has practiced law in Arkansas since 1975 and practiced administrative law most of that time. He noted that an administrative body cannot adopt something that is not founded in law. He feels that counties do not have the jurisdiction to do what the state would like them to do and would be a problem hence forth. If the counties were to abide by the SBEC rules, then a candidate who is counted out by absentee ballots and then there were provisional that were allowed to come in, there would surely be litigation to follow. The only way to solve this issue would be to file for a declaratory judgment.

Following County Clerk Crane's comments, Chairman Boyle stated that this board seeks to have a clear and concise opinion of how the board will move forward.

Mr. Ritter asked what the end result would be and if it is worth the time and effort. Chairman Boyles stated that the board feels that it is.

Chairman Boyle asked for additional attendee to introduce himself. Mark Johnson, Pulaski County voter.

Commissioner Burks thanked Mr. Ritter and County Clerk Crane for their comments. He went on to state that the opinions department in the Attorney General's (AG's) office are professional as well as nonpartisan. He knows Beth Walker, who has been in the AG's office for thirty (30) years. It is her job to interpret the Arkansas Code and she writes the AG's opinions and she is an expert. It is her job to be an expert. The AG opinion that she wrote and signed said that it is the law. He said he understands the nature and deference of the law, but that is what it says. Karla Burnett, the county attorney, is also experienced. Her

advice is not to disregard the rulemaking process but to ask a judge to definitively interpret the law because there are differences in opinion. There is a budget for legal issues and that budget gets returned to the county general fund if not used. He stated that he does not feel this is a waste of taxpayer dollars. Quoting from comments in the AR Democrat Gazette made by Ms. Burnett before the state board yesterday that, “the rules exceed the board’s authority because they extend and modify the law without authorization. The legislature did not include a cure period for absentee voters who do not show identification, so the board cannot create one with its own rules. Nobody wants to disenfranchise a voter. You all [the SBEC] are not disenfranchising voters. We [the CBEC] aren’t disenfranchising voters. The legislature did that. The legislature enacted a law that says if you don’t send documentation back with a ballot, your vote won’t count.” Commissioner Burks stated that his perspective is that the legislature did this.

For background purposes, Commissioner Burks stated that attorney Tim Humphries testified before the SBEC in agreement with the AG’s opinion that what they were doing was not constant with the law and that the legislature did this. Mr. Humphries is also a thirty (30) professional. When receiving the bill draft, Mr. Humphries contacted the bill sponsor, Rep. Bryan King, and notified him that he was leaving off this part about absentee and it’s a problem and asked if he would consider correcting it. This is not the professionals just now seeing this. It was caught right from the beginning. Legislative intent is a hard thing to determine. But the legislative sponsors knew about this from the beginning, that there was a problem with absentees. A court is not going to look to a newspaper article to see what Rep. Bryan King says now. Rep. King may say now, I intended it, but that’s not the legislative intent for the purposes of legal analysis. The purpose of legal analysis of legislative intent is the comments before the committee, comments before the board, drafts of the bill and the text of the bill itself. The professional AG opinion, our attorney, and others attorneys all say, this is how the rule reads. Let’s get a judge to figure it out.

Motion was made by Commissioner Burks to take the advice of Pulaski County Karla Burnett and to employ her to bring a defensive declaratory action, to defend the Pulaski County Election Commission, against a possible suit. And we will ask for her staff to employ all legal arguments and their professional judgment, to ask the court to interpret it, Act 595 of 2013, including but without limitation, the subsections that relate to whether absentee voters have a cure period. We are asking that her staff do this, with all due speed, considering out upcoming county election. It was seconded by Chairman Boyle. For clarification, Commissioner Burks included that the county attorney’s staff contact the county clerk’s office and look into issues of standing, issues of attorney employment, all possible plaintiffs and all possible legal issues for legal review. Our staff will convey this message to the county attorney.

Alex Reed reiterated the comments of Commissioner Burks that there were attorneys who agreed with the AG’s opinion. He also noted that there were attorneys who agreed with the SBEC rules, Martha Adcock, general counsel, Secretary of State’s

office, J. Harmon Smith, SBEC designee for the Democratic Party, Chad Pekron, SBEC designee, Speaker of the House.

Motion passed.

Motion to move into executive session by Commissioner Burks; seconded by Chairman Boyle. Motion passed.

Meeting reconvened. Karla Burnett was employed to represent the board in declaratory judgment action.

Chairman Boyle noted that when commissioner are visiting polling site that they will assist with election officials when possible and that the staff provided them with information necessary to assist them.

Meeting adjourned.