



**Pulaski County Election Commission  
Meeting Minutes  
October 8, 2019  
12:00 p.m.**

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Members Present:

Evelyn D. Gomez  
Joshua A. Price  
Kristi McKinnon

Staff Present:

Bryan Poe  
Shawn Camp  
Betty Green

Visitors Present: Adam Fogleman, County Attorney; Chastity Scifres, Chief Deputy County Attorney; Jason Kennedy, Circuit County Clerk's Office

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The meeting was called to order at 12:00 p.m. by Chair Gomez. A quorum was present, with Commissioner McKinnon joining the meeting via telephone.

The pledge of allegiance was led by Adam Fogleman.

*Approval of Meeting Minutes*

Commissioner Price moved to accept the minutes as written. Motion passed by voice vote.

**Business**

*Discussion of Lawsuit—Tyrray Carr v Jim Wyatt et al*

Chair Gomez was served by a process server on October 7, 2019 regarding the case of Tyrray Carr v Jim Wyatt et al, case number 60CV-19-7095. The hearing regarding this matter is scheduled for October 9, 2019 at 10:00 a.m. Chair Gomez cites A.C.A. § 7-4-106 (a) which states "The county board of election commissioners, as created by this subchapter, may call upon the prosecuting attorney or his or her deputy for legal opinions, advice, or assistance in defending, commencing, or appealing civil actions at law and equity." Chair Gomez recommended for the Prosecuting Attorney's office to represent the Commission in this matter.

County Attorney Adam Fogleman presented A.C.A § 16-21-114 (d) which states “All civil duties provided by the laws of the State of Arkansas or the ordinances of the several counties to be performed by the prosecuting attorney shall be performed by the county attorney in those counties which have established the office of civil attorney.”

Mr. Fogleman also presented A.C.A. § 16-21-114 (b) which states “The county attorney shall commence and prosecute or defend all civil actions in which his county is concerned.”

Mr. Fogleman presented county ordinance 89-OR-52 (c) “Prosecute and defend all civil suits by or against the county and its instrumentalities and defend all civil suits against county employees based on acts committed within the scope of their official duties, except suits covered by insurance or a risk management plan.” This is a part of the duties of the county attorney.

Mr. Fogleman presented county ordinance 93-OR-118, Article VI, which states “A.C.A. § 7-4-106 provides that the County Attorney shall represent the Pulaski County Board of Election Commissioners and shall provide such legal opinion, advice or assistance as the Board shall request.” Mr. Fogleman stated the language of this ordinance supersedes A.C.A. § 7-4-106 based upon the word “may” which is stated in the election law and “shall” which be stated in 93-OR-118, Article VI.

Commissioner Price feels that the Commission should allow the County Attorney’s office to handle the case based on: the use of “shall” in A.C.A. § 16-21-114 (b) and (d) superseding the “may” language of A.C.A. § 7-4-106 (a) and as stated in county ordinance 93-OR-118, Article VI; and also for consistency since the county has historically handled these types of cases against the Pulaski County Election Commission in the past.

Chair Gomez feels that based upon the language in A.C.A. § 7-4-106 (a) that the Prosecuting Attorney’s office should be utilized as representation in this case; and because many of the counties in the State of Arkansas utilize the Prosecuting Attorney’s office in such cases.

Due to the difference of opinions, it was requested of Director Poe to contact Commissioner McKinnon in order to obtain her opinion.

Meeting recessed at 12:29 p.m. for Commissioner McKinnon to join the meeting via telephone.

Meeting resumed at 12:48 p.m. when Commissioner McKinnon was able to join the meeting via telephone. Chair Gomez updated Commissioner McKinnon regarding the reason for the meeting and the laws or statutes that were presented.

Chair Gomez and Commissioner Price voiced their opinions regarding whether the Prosecuting Attorney's office or the County Attorney's office should represent the Commission in this matter. Based upon the information that was provided to Commissioner McKinnon, she stated that she supports Chair Gomez in her recommendation to utilize the Prosecuting Attorney in this case.

Commissioner McKinnon moved to use the prosecuting attorney due to the sensitivity of the case under the election law A.C.A. § 7-4-106; seconded by Commissioner Price. Motion passed by voice vote.

Commissioner Price moved for Chair Gomez to draft a request to obtain the opinion of the Attorney General's Office regarding A.C.A. § 7-4-106 and A.C.A. § 16-21-114; seconded by Commissioner McKinnon. Motion passed by voice vote.

### **Other Business**

#### *Schedule of Upcoming Meetings*

October 9, 2019 at 5:00 p.m. for certification of logic and accuracy testing; appoint election officials for the November 5, 2019 Annual School Election.

November 5, 2019 at 8:00 p.m. to canvass absentee ballots and certify unofficial election results for the November 5, 2019 Annual School Election.

November 8, 2019 at 4:30 p.m. for preliminary review of provisional ballots for the November 5, 2019 Annual School Election.

November 13, 2019 at 5:00 p.m. for review of political practice pledges for the March 3, 2020 Preferential Primary Election.

November 20, 2019 at 5:00 p.m. for provisional ballot hearing and certification of official results for the November 5, 2019 Annual School Election.

December 4, 2019 at 5:00 p.m. to conduct the ballot position drawing meeting for the March 3, 2020 Preferential Primary Election.

Meeting adjourned at 12:58 p.m.