



**Pulaski County Election Commission
Meeting Minutes
February 19, 2020
5:00 p.m.**

Members Present:

Evelyn D. Gomez
Joshua A. Price
Kristi McKinnon-Stahr

Staff Present:

Bryan Poe
Betty Green
Amanda Dickens
Bart Moreland
Jodie Dildy
Shawn Camp

Visitors Present: Marc Harrison, Circuit County Clerk's Office; Joy C. Springer, Candidate for House District 34; Charles Bolden; Claudius Johnson; Helen Davis; Cheryl Warden; Ryan D. Davis, Candidate for House District 34; Roderick Talley, Candidate for House District 34; Alexis Freeman; Adam Fogleman, County Attorney; Colonel Doug House; John Moritz, Arkansas Democrat Gazette; Various members of the public and news media

The meeting was called to order at 5:00 p.m. by Chair Gomez. A quorum was present, with all commissioners in attendance.

The pledge of allegiance was led by Commissioner Price.

Approval of Previous Meeting Minutes

Chair Gomez publicly thank Administrative Assistant Betty Green for a swift turn around with the minutes. Commissioner McKinnon-Stahr moved to accept the minutes with corrections; seconded by Commissioner Price. Motion passed by voice vote.

Business

Recount of the February 11, 2020 House District 34 Special Primary Runoff Election

Director Poe reviewed the recount procedures and introduced the election officials that are assigned to work the recount. Recount began at 5:10 p.m.

Discussion of Disqualified Absentee Ballots

Director Poe presented a list of the disqualified absentee ballots which contained the statutes explaining why the ballots were disqualified. The commissioners started the process of reviewing the absentee ballots for the recount until County Attorney Adam Fogleman reviewed A.C.A. § 7-5-416(b)(1)(F)(ii) which states “If the county board of election commissioners determines that the application and the voter’s statement do not compare as to name, address, date of birth, and signature, the absentee ballot shall not be counted.”

Mr. Fogleman also cited A.C.A. § 7-5-416 (a)(1) which states “The election officials for absentee ballots may meet in a place designated by the county board of election commissioners no earlier than the Tuesday before the election for the purpose of opening the outer envelope, processing, and canvassing of absentee ballot paper work and no earlier than 8:30 a.m. on election day for the purpose of opening the inner absentee ballot envelope and counting the absentee ballots”. He stated that this statute limits the ability of the commissioners to revisit the absentee ballots because the day and time for review has already passed. The statute does not give the commissioners the authority to revisit the absentee ballots for consideration after it has been determined that the ballots were disqualified.

Commissioner McKinnon-Stahr requested clarification from Mr. Fogleman regarding why the commission are not allowed to go outside the scope of the law. Mr. Fogleman stated that the election commission don’t have any inherent authority. The only authority the election commission is given by constitutional provision or by statute which enables them to determine how ballots are counted, how the voting process is conducted, and how absentee ballots are considered. All of which are set by the state’s general assembly. Commissioner Price further clarified that if something is not addressed within the law, then the commission doesn’t get to create it. Mr. Fogleman stated that is correct.

Other Business

Public Comments

Mrs. Springer requested clarification regarding an absentee ballot that was a provisional ballot and the voter is allowed the opportunity to provide their identification. Yet a person who voted an absentee ballot and it was determined that the signature did not match is not afforded the same opportunity to be able to come in and verify whether it is their signature. Director Poe explained that a voter failed

to provide a copy of their identification but under the identification law is allowed the opportunity to cure their ballot by coming either to the election commission office or to the clerk's office and present a valid photo identification. Mr. Fogleman cited A.C.A. § 7-5-415 (b)(1)(H) which states "If the absentee voter fails to return the voter statement, the vote shall not be counted".

Mrs. Springer stated that the one in question returned the voter statement and Mr. Fogleman referenced A.C.A. § 7-5-415(b)(1)(F)(ii). She expressed her disagreement with the commissioners regarding whether the absentee ballots should be considered by the commissioners because the motion was made in the February 13, 2020 meeting for the absentee ballots should be a part of the recount. She also expressed her disagreement with Mr. Fogleman telling the commissioners that they should follow the law as it is written.

Chair Gomez stated that at the time of the meeting when the motion was made, it was done so without the benefit of counsel from the county attorney. Mrs. Springer requested clarification as to when the request of the county attorney was made. She requested a copy of the memo that was given to the county attorney. Mrs. Springer requested for the record to reflect that the request was made on February 19, 2020 after the motion was made on February 13, 2020 for the commissioners to examine the absentee ballots again.

Mrs. Springer requested that Alexis Freeman be allowed to address the commissioners because she was one of the absentee voters whose vote was not counted because the signatures did not match. Mrs. Springer requested for the record to reflect that the commissioners are denying Ms. Freeman the opportunity to prove that she is the person who signed her ballot. Mrs. Springer presented a copy of Ms. Freeman's driver's license for the commissioners to compare the signature to the voter statement. Ms. Freeman and her father were at the meeting to attest to her being the person who signed absentee ballot. Ms. Freeman requested the opportunity to review the information that she signed in order to verify that she was the one who signed it, even if the ballot is not counted. Mr. Fogleman stated that the voter statement that is submitted with an absentee ballot is what is considered and compared against other records that are kept on the voter roll, she is able to view her voter statement but the decision to count the ballot can not be changed.

Commissioner Price drew Mrs. Springer's attention to the of the section of the February 18, 2020 minutes regarding the discussion of affidavits. Chair Gomez requested clarification of Mrs. Springer's concerns. Commissioner McKinnon-Stahr clarified the reason that she made the motion on February 13, 2020. Commissioner

McKinnon-Stahr stated that it was done without having a clarification from Mr. Fogleman, now that they have the clarification, they must follow the law.

Mr. Rizzelle Aaron requested clarification as to how many commissioners must make the decision whether to reject the signature. He was told that it is the majority. Mr. Aaron requested a clarification as to how many are considered a majority; he was told two. Mr. Aaron stated that he has the feeling that Chair Gomez is not interested in recounting the ballots and that he feels that she is condescending in her responses when speaking with the public. He requested that when speaking with the citizens that she be more mindful of the way that she communicates with the public. Chair Gomez apologized for the way she was speaks to the public.

Dianne Curry stated that she feels that not revisiting the absentee ballots is voter suppression and that the voter are being disenfranchised by not reviewing the ballots. Commissioner McKinnon-Stahr stated that there are some changes that need to be made but it must be done through the legislature.

Ms. Freeman stated that she is sadden and frustrating that her vote won't be counted, but she is understanding of the law. She feels that it is an injustice. Commissioner Price assured her that the commissioners also try to air on the side of the voter and that a decision on a signature goes through several stages before a final decision is made.

Mrs. Springer requested clarification regarding the absentee ballot that the commissioners approved the signature on. She requested for the record that the approved ballot was for Ryan Davis. Commissioner Price stated that there was a 50/50 chance as to who received the vote.

Mr. Charles Bolden requested clarification as to what will be done about the person that voted a provisional ballot on February 11, 2020 and put the ballot in the voting machine. Mr. Fogleman assured him that the information will be provided to the prosecuting attorney for an investigation. Commissioner McKinnon-Stahr stated it is two-part responsibility by both the voter and the election official that was working at the polling location. This is also the reason that it was voted on by the commissioners to mark the word "PROVISIONAL" on the ballots so that it can be distinguished from a regular ballot.

Colonel Doug House requested clarification as to whether any of the absentee ballots that were marked as disqualified, if any of them were Uniformed Overseas Citizens

Absentee Voting Act (UOCAVA). Chair Gomez assured him that the UOCAVA's have not been reviewed. These ballots will be reviewed on Friday, February 21, 2020.

Mr. Roderick Talley requested clarification regarding signatures not matching in the future, what will be done. Mr. Fogleman stated that it is the judgement of the commission to determine if the signature matches. Chair Gomez assured him that there is training for the commissioners have attended training at the state board and can request more extensive training in matters such as this. Commissioner McKinnon-Stahr stated that it is something for the future but as for the upcoming election the commissioners will have to follow the current laws. Commissioner Price assured him that by the time the signature gets to the commissioners that it has gone through several stages. Director Poe explained the processing of absentee ballots.

Mr. Bolden requested clarification of a bearer presenting an absentee ballot to the clerk's office. Director Poe reviewed how the absentee poll workers review the ballots and determine if a ballot should be counted. Mr. Bolden requested clarification as to how it would be handled if an elderly person with Parkinson's disease were to sign an absentee ballot. Mr. Fogleman stated that the commission only has the current laws at their disposal and recommends that the General Assembly address this matter. Mr. Claudius Johnson suggested that the commissioners speak with the county attorney before they agree to do something. Commissioner Price assured everyone that their opinions are important.

Mr. Bolden requested clarification of the events that happened at the polling location where the voter put the provisional ballot in the voting machine. Director Poe explained what happened. Mrs. Springer requested the name of the person that put the ballot in the machine. Chair Gomez assured Mr. Bolden that everything regarding this matter will be turned over to the prosecuting attorney.

Dr. J.J. Lacey requested clarification as to whether the election official will be held accountable for the actions that occurred at the polling location. Director Poe stated that it will have to be handled in executive session because it involves an employee.

Commissioner McKinnon-Stahr requested a correction to a report that was on KATV's website and in a video that stated that the candidates for House District 34 will have their names to appear on the ballot for March 3, 2020 twice. This statement is incorrect, there will be two separate ballots for the voters in House District 34 on March 3, 2020. The reporter for KATV was present during the meeting and stated that he would make the correction.

Commissioner McKinnon-Stahr requested Marc Harrison to investigate a couple of incidents where she was notified that voters were not being asked for their identification because the person from the clerk's office knew the voter. Mr. Harrison stated that he will investigate this matter.

Chair Gomez stated that there is a freedom of information act request from KTHV. She requested that the commissioners send all information that they might have to Director Poe so that he will be able to reply to the request.

Mrs. Cheryl Warden requested clarification regarding County Judge Barry Hyde. Chair Gomez stated that Judge Hyde and the members of the Quorum Court are the people that would need to be spoken with regarding obtaining more money for new voting equipment.

Mr. Aaron requested clarification as to whether any of the commissioners had a one on one conversation with Mr. Fogleman. Mr. Fogleman stated that he had not spoken with any of the commissioners prior to the meeting, and that he was requested to by Prosecuting Attorney Larry Jegley to respond to the presented questions.

Meeting recessed at 6:35 p.m. to wait for the final numbers for the recount.

Meeting resumed at 8:41 p.m.

Recount Results for the February 11, 2020 House District 34 Special Primary Election Runoff

Early Voting Results	
Joy C. Springer	83
Ryan D. Davis	82
Absentee Voting Results	
Joy C. Springer	38
Ryan D. Davis	14
Election Day Voting Results	
Joy C. Springer	251
Ryan D. Davis	275
Totals	
Joy C. Springer	372
Ryan D. Davis	371

There is a discrepancy of one vote for election day from Precinct 75, Immanuel Baptist Church. According to the tape for the unofficial election day results from Immanuel Baptist Church, there were 37 ballots cast at this location. Eighteen votes were cast for Joy C. Springer and 19 were cast for Ryan D. Davis, however there were only 36 ballots in the ballot box, giving each candidate 18 votes each in the recount.

The following measures were taken to try to locate the missing ballot: (1) The chain of custody was checked, (2) seal on the ballot box was verified with the election day protocol, (3) ballot count on the election day protocol was verified to be 37 ballots used, (4) ballot stub box was verified by two people to contain 37 ballot stubs, (5) the certificate of elections produced by the M100 on election day was verified, it reflected 37 votes, 18 votes for Joy C. Springer and 19 votes for Ryan D. Davis, (6) members of the staff went to the warehouse and checked the M100 that was used at Immanuel Baptist Church (7) members of the staff went to Immanuel Baptist Church to check to make sure the ballot wasn't left at the polling location. With these steps taken Director Poe stated that the only option that was available is to certify the ballots that are currently in the possession of the election commission.

Mr. Ryan Davis requested clarification regarding the discrepancy between the ballot count on election night and the ballot count for the recount and that the certification of the February 19, 2020 recount would reflect the difference of one vote. Director Poe explained that the missing ballot was misplaced in the transition of the ballots from the machine and storing them in the ballot box. Mr. Davis requested to know if there were 37 signatures for election day and would it change the outcome of the recount.

Mr. Talley expressed his opinion regarding the events of the House District 34 Special Primary Election Runoff.

Mr. Fogleman advised the commission to preserve everything pertaining to the election and document everything associated with the election. He stated that there is an Arkansas Supreme Court ruling that states if the missing ballot is located and it was in the chain of custody it can be counted in the final count.

Mr. Bolden inquired about the numbering of the ballots. Mr. Fogleman cited Amendment 51 that provided for the numbering of ballots, but Amendment 81 made votes cast a secret, so the ballots are no longer numbered.

Mr. Talley requested clarification regarding the events of another tie. Mr. Fogleman explained that in the event of a tie then it is considered a vacancy in nomination and the Democratic Party will have to choose this nominee.

Commissioner Price moved to accept the recount certification for the February 11, 2020 House District 34 Special Primary Runoff; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

Schedule of Upcoming Meetings

February 21, 2020 at 5:00 p.m. for provisional ballot hearing and certification of results for House District 34 Special Primary Runoff Election.

February 24, 2020 at 5:00 p.m. to review political practice pledges, ballot draw and certification of ballot styles for the April 14, 2020 Jacksonville Special Election.

March 3, 2020 at 9:00 p.m. to certify the unofficial election results for the March 3, 2020 Preferential Primary and the House District 34 Special General Elections.

March 9, 2020 at 5:00 p.m. for the preliminary provisional ballot review for the March 3, 2020 Preferential Primary and the House District 34 Special General Elections.

March 13, 2020 at 5:00 p.m. for provisional ballot hearing and certification of election results for the March 3, 2020 Preferential Primary and the House District 34 Special General Elections.

Meeting adjourned at 9:04 p.m.