



**Pulaski County Election Commission
Meeting Minutes
February 21, 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; Helen Davis; Cheryl Warden; Ryan D. Davis, Candidate for House District 34; Roderick Talley, Candidate for House District 34; Adam Fogleman, County Attorney; Colonel Doug House; Rolly Hoyt, KTHV; Russ Racop; Susan Inman; Bailey McKinnon; Cherie Abston, Circuit County Clerk's Office; Rhonna Wade; Annie Depper; Barry Haas; Dianne Curry; Various members of the public and news media

The meeting was called to order at 5:01 p.m. by Chair Gomez. A quorum was present, with all commissioners in attendance.

The pledge of allegiance was led by Bailey McKinnon.

Approval of Previous Meeting Minutes

Commissioner Price moved to accept the minutes as written; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

Business

Precinct 75 Ballot for House District 34 Special Primary Runoff Election

Director Poe provided a memo detailing the locating of the misplaced ballot. A copy of the memo is attached to the minutes. Commissioner Price requested clarification regarding the security of the ballot. Director Poe assured him that it was. Commissioner McKinnon-Stahr requested clarification regarding the recertification of the unofficial results from the recount. County Attorney Adam Fogleman the decision falls to the commission to determine if they have enough information to determine if the ballot is indeed the misplaced ballot. If the commission feels that it is then the unofficial election results would need to be recertified.

Commissioner Price requested the Arkansas Supreme Court ruling from Mr. Fogleman that pertained to the misplaced. Mr. Fogleman stated the case was Ashcraft vs. Cox, 310 Ark 703 839S.W.2d 219 (1992). The case in question was three ballots were misplaced but were located before the certification of the election and were included in the election count. The court indicated was not in favor of disenfranchising voter because of misconduct on the part of someone else. There were no dissenting judges on the case.

Commissioner McKinnon-Stahr requested Marc Harrison to give his account of how the ballot was located. Mr. Harrison stated that everything that was in the memo is what he observed. Commissioner Price requested Cherie Abston to give her account of how the ballot was located. Ms. Abston gave a step by step detail of how the ballot was located, which matched the memo that was presented by Director Poe. Chair Gomez requested clarification regarding the warehouse workers as to whether they are poll workers. Director Poe stated they are part time county employees.

Commissioner Price asked those that were present at the time the ballot was located how confident they are that the ballot in question is the misplaced ballot. All that were present stated 100% confident. The ones that answered are Amanda Dickens, Bart Moreland, Jodie Dildy, Director Poe, Marc Harrison and Cherie Abston.

Commissioner Price requested clarification regarding the initials on the back of the ballot. Director Poe explained the procedure for obtaining a ballot at a polling location.

Mrs. Springer requested clarification regarding the ballot as to the initials, the removing of the ballot stub. Mr. Dildy explained the process for handling a ballot. She also requested clarification as to whether the initials that are on the back of the ballot were verified with the ballot I.D. clerk to be her initials. Director Poe stated the ballot I.D. clerk had not been asked to verify if those were her initials.

Russ Racop requested clarification regarding whether the all information pertaining to this election will be available for public viewing and if so when would it be available. Mr. Fogleman stated that any records that are not protected by law will be released according to the Freedom of Information Act. Mr. Fogleman suggested to that he coordinate with office staff to establish a time to examine the requested information. Mr. Racop requested to make a verbal Freedom of Information Act and this was received by Chair Gomez. Mr. Racop also stated that it he would possibly make a request for the information to be sent electronically.

Mr. Bolden requested clarification regarding the initials that are written on the back of the ballot. Mr. Fogleman explained the steps that a ballot I.D. clerk takes when giving a person a ballot.

A member of the audience requested clarification regarding the chain of custody. Director Poe, Commissioner McKinnon-Stahr and Mr. Dildy responded to his question. Mr. Racop at this point disrupted the meeting after which he left the meeting. Mr. Dildy explained what is believed to have transpired when the ballot got misplaced.

A member of the audience requested clarification between Mr. Dildy's explanation and the memo that was written by Director Poe. Director Poe clarified his memo.

Colonel House stated that there are documents might not be available for release that were requested by Mr. Racop due to pending criminal prosecution and due to the possibility of a contested election.

Dianne Curry requested clarification regarding when the ballot was misplaced for record. Mrs. Curry left the February 19, 2020 meeting early, so she was not in attendance at the time it was disclosed.

Commissioner Price requested clarification regarding the storage of leftover ballots as to whether the stubs are still attached. Mr. Dildy stated that the stubs are still attached, and the misplaced ballot did not have the stub attached.

A member of the audience requested clarification as to why the ballot was not counted on election night and if it was counted how did it get misplaced. Director Poe stated the ballot was included in the unofficial election results for election night but was accidentally left in the machine when the ballots were moved from the machine to the ballot box.

Mrs. Springer requested clarification from Mr. Fogleman regarding the receipt of information after the commission has decided, where does it state the commission is able to receive the misplaced ballot after the recount results have been certified. Mr. Fogleman stated the commission is obligated to count all legally cast ballots in their possession. A.C.A. § 7-5-319 and the Arkansas Supreme Court decision cited earlier both state that all legally cast ballots should be counted.

Mr. Bolden requested clarification regarding a Facebook post by Commissioner Price. Commissioner Price clarified his Facebook post and stated that his post was based upon information that was received from Director Poe. Commissioner McKinnon-Stahr did clarify that the Commissioner Price's post should not have been made because the commission had not decided about the misplaced ballot.

Mr. Bolden requested clarification from Mr. Fogleman regarding the misplaced ballot as to whether it could be counted. Mr. Fogleman stated that if the commission is confident the chain of custody is intact then the ballot can be counted.

Colonel House requested clarification regarding the machine boxes, which are steel and the storage boxes which are cardboard. He was told that is correct.

Mrs. Springer requested the record to reflect that she was not able to locate in the statutes where it says that additional information can be received after the certification of the unofficial results. She also requested clarification as to how the commission could be certain the ballot in question is the misplaced ballot if the ballot I.D. clerk has not been questioned. Commissioner Price requested clarification as to whether the ballot I.D. clerk's initials were on the back of the other ballots that were counted. He was told yes; the ballot I.D. clerk would have signed the back of the other ballots. After much discussion, Commission Price moved for the commission to examine the ballots and ballot stubs for Precinct 75, Immanuel Baptist Church; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

Meeting recessed at 6:14 p.m. in order to retrieve the ballot box and the ballot stub box.

Meeting resumed at 6:26 p.m.

Chair Gomez requested Mr. Fogleman to review A.C.A. § 7-5-319 regarding requests for recounts. Mr. Fogleman cited the following statutes: A.C.A. § 7-5-319(a)(1) states "Any candidate voted for who may be dissatisfied with the returns from any precinct shall have a recount of the votes cast therein upon the candidate's presenting the

county board of election commissioners with a petition requesting the recount”. A.C.A. § 7-5-319(2) states “When the number of outstanding absentee ballots of overseas voters is not sufficient to change the results of the election, the candidate must present the petition no later than two (2) days after the county board of election commissioners declares preliminary and unofficial results of the election, including a statement of the number of outstanding absentee ballots of overseas voters. A.C.A. § 7-5-319(b) states “At the time that the petition requesting the recount is presented, the county board of election commissioners shall provide to the candidate requesting the recount a copy of the test results on the voting machines and the electronic vote tabulating devices. Only one (1) recount per candidate per election shall be permitted. The county board of election commissioners shall certify the results of the last recount. The county board of election commissioners may upon its own motion conduct a recount of the returns from any or all precincts”. A.C.A. § 7-5-319(h) states “The costs of any recount shall be based on the actual costs incurred to conduct the recount, but in no instance shall the amount charged to conduct a recount exceed the rate of twenty-five cents (25¢) per vote cast in the precincts where the recount is requested or a total of two thousand five hundred dollars (\$2,500) for the entire county, whichever is less.

Chair Gomez requested for clarification purposes if any candidate that would like to present a petition and a fee of \$9.25, then a recount of the ballots for Precinct 75 can take place since the commission had not certified the election results. Mr. Fogleman replied yes. Chair Gomez requested clarification as to whether the commissioners could request a second recount. Mr. Fogleman stated the statute states a single request. After much discussion, Commissioner Price withdrew his motion to recount the ballot stubs and examine the ballots for the initials of the ballot I.D. clerk; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

After conferring with Mr. Fogleman, the commissioners opened the envelope containing the misplaced ballot. Commissioner McKinnon-Stahr invited the candidates or their representatives to come forward and review the ballot. Mr. Davis, Mr. Bolden and Mrs. Springer reviewed the ballot.

Chair Gomez requested clarification regarding whether the ballot may have gotten stuck in the voting machine because the ballot has crinkles at the top. Mr. Dildy stated that he has no way to tell if it came from the machine or if it could have occurred when the ballot was in transport. A representative from the Secretary of State’s office stated that it is something that is possible for the crinkles to have occurred in the machine. After much discussion, Commissioner McKinnon-Stahr moved to include the misplaced ballot from Precinct 75 into the total count of the recount

conducted on February 19, 2020 and that the recount be recertified; seconded by Commissioner Price. Motion passed by voice vote. The ballot was then sealed in a ballot box.

Colonel House requested clarification of the totals on the machines versus the totals from the night of the recount regarding Precinct 75. He was told that on election night the machine reflected 37 votes, 18 for Joy Springer and 19 for Ryan Davis. On the night of the recount 36 ballots were counted, 18 for each candidate. He also requested what the count will be now before the overseas ballot will be counted. Commissioner McKinnon-Stahr replied 372 for each candidate.

Mr. Bolden requested clarification regarding the what time the commissioners reviewed the absentee ballots on election night. Ms. Green replied during the first ten minutes of the meeting on the night of February 11, 2020.

Provisional Ballot Hearing for the February 11, 2020 House District 34 Special Primary Runoff Election

There were no voters present for the provisional ballot hearing. Commissioner McKinnon-Stahr moved to reject the provisional ballots; seconded by Commissioner Price. Motion passed by voice vote.

Review of the Uniformed Overseas Citizens Absentee Voting Act Ballot for the February 11, 2020 House District 34 Special Primary Runoff Election

Assistant Director Camp and Systems Analyst Amanda Dickens reviewed the overseas ballot in the meeting. The ballot was turned over to the commissioners for review due to address discrepancy. Mr. 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”. After much discussion the commissioner choose to air on the side of the voter, Commissioner McKinnon-Stahr moved to approve the overseas ballot for the February 11, 2020 Special Primary Runoff Election; seconded by Commissioner Price. Motion passed by voice vote. The commissioners requested that the clerk’s office revise the voter statement form for clarity with regards to the voter’s address.

Review Political Practice Pledges for the April 14, 2020 Jacksonville Special Election

Commissioner Price moved to accept the candidates list for the April 14, 2020 Jacksonville Special Election; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

Additional Election Official at Precinct 86/115, St. Mark Baptist Church

Ms. Inman suggested the commissioners visit the election day precincts. Chair Gomez and Commissioner Price stated they planned to do so. After some discussion, the commissioners decided to add an additional election official to Precinct 86/115. Commissioner Price moved to add an additional election official to Precinct 86/115, St. Mark Baptist Church; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

Certification of Official Election Results for the February 11, 2020 House District 34 Special Primary Runoff Election

There were 745 votes cast for the February 11, 2020 House District 34 Special Primary Runoff Election:

Joy C. Springer 373 votes

Ryan D. Davis 372 votes

Commissioner Price moved to approve the results of the February 11, 2020 House District 34 Special Primary Runoff Election; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

Ballot Draw for the March 3, 2020 House District 34 Special General Election

Mrs. Springer drew number 11, and Mr. Talley drew number 3. Mr. Talley will appear first on the ballot. Mrs. Springer will appear second on the ballot.

Meeting recessed at 7:45 p.m. to allow time to prepare the notice of election and the ballot styles for the March 3, 2020 House District 34 Special General Election.

Meeting resumed at 7:55 p.m.

Certification of Ballot Styles for the March 3, 2020 House District 34 Special Primary General Election

Commissioner Price moved to certify the ballot styles for the March 3, 2020 House District 34 Special Primary General Election; seconded by Commissioner McKinnon-Stahr. Motion passed by voice vote.

Notice of Election for the March 3, 2020 House District 34 Special Primary General Election

Commissioner McKinnon-Stahr moved to approve the March 3, 2020 House District 34 Special Primary General Election; seconded by Commissioner Price. Motion passed by voice vote.

Other Business

Russ Racop Freedom of Information Act Request

Mr. Racop requested documents and materials related to the February 11, 2020 House District 34 Special General under the freedom of information act. Due to a pending criminal investigation this information will not be available to him within the three (3) day business time frame. Mr. Fogleman cited A.C.A. § 7-5-416(L)(i) and A.C.A. § 7-5-416(L)(iii). Mr. Fogleman will draft a memo regarding this request. Chair Gomez requested clarification also question regarding a telephone call that was received at the election commission office morning at 8:00 a.m. Friday morning. Ms. Green explained the events of the telephone call. Commissioner Price shared his experience with Mr. Racop that morning regarding posts on Facebook. Mr. Dildy requested for the record that he had never seen Ms. Green that upset in the time that she has worked in this office. After some discussion, the commissioners requested Ms. Green to contact the Sheriff's office regarding obtaining a deputy to be stationed at the Pulaski County Regional Building during early voting and during commission meetings.

Commissioner Price publicly commended Mr. Moreland for going above and beyond the call of duty in thinking outside the box and coming up with the idea of where the misplaced ballot was located.

Schedule of Upcoming Meetings

February 24, 2020 at 5:00 p.m. for the review of logic and accuracy testing results, ballot draw and certification of ballot styles for the April 14, 2020 Jacksonville Special Election.

March 3, 2020 at 8:00 p.m. to certify the unofficial election results for the March 3, 2020 Preferential Primary and the House District 34 Special General Elections; and to discuss other business matters.

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 8:21 p.m.