MINUTES OF THE BENTON COUNTY ELECTION COMMISSION

April 15, 2011

Commission members present: E. J. Miller, Chairman, Mike Sevak, Secretary, Bill Williams, Member

Others present: Amy Huston, Election Coordinator, Tena O'Brien, County Clerk, County Attorney George Spence, Christine Southard, Duane Neal, Kelly Copelin, and Kathy Mahmens, John Brown, Robbyn Tumey, Gwen Millager, Jim McCarthy

Media: Tom Sissom, Benton County Daily Record

Chairman E. J. Miller called the April 15, 2011 Election Commission meeting to order at 9:00 a.m. and welcomed everyone.

Minutes:
Chairman E. J. Miller made a motion that the minutes from the April 1, 2011 meeting be approved as submitted, motion duly seconded and carried by voice vote.

Committee Reports:
Chairman Miller stated that Commissioner Williams is the liaison officer for redistricting and that Duane Neal is also working on the project for redistricting. Duane Neal reported that John Brown has called a meeting for Tuesday, April 19 at 10:00 a.m. to begin preliminary discussions on redistricting. Commissioner Williams stated that he felt this meeting was premature as the technical group has not yet had a meeting to give them the first set of recommendations for the principles to be followed. He reported that at the Arkansas Board of Election Commissioners meeting, he received a document from the Secretary of State's office and that this document will be used in the beginning discussion for the technical group. Commissioner Williams stated that he will get a copy of this document to Mr. Neal. He asked for Mr. Neal and Mr. Brown's telephone numbers to be able to contact them in working with the redistricting.

Commissioner Mike Sevak asked Commissioner Williams to share the information he received. Commissioner Williams stated the document came from a Power Point presentation from the Secretary of State and that he would be glad to share the information.

Public Comments:
Chairman Miller opened the floor for public comment. Commissioner Williams commented on going to the Election Commission office in the middle of the night and that the box he removed was turned over to the newspaper. The contents in the box will be returned to County Clerk Tena O'Brien when the media is finished with it.

Old Business:

(A) City of Siloam Springs Billing: Chairman Miller reported that the City of Siloam Springs billing is still outstanding and that he has talked with Benton County Attorney George Spence and County Judge Clinard. He stated that Attorney George Spence told him the issue needs to be resolved, because going to court gets expensive. He reported that Commissioner Mike Sevak has talked to Jay Williams, City Attorney for City of Siloam Springs and that Attorney Jay Williams agreed that the issue needed to be settled outside of court. Commissioner Sevak stated the billing amount to be settled on is for $2,405.55 and that this amount omits the $10,000 G&A charges. Commissioner Sevak made a motion, to resolve this issue between the Benton County Election Commission and the City of Siloam Springs and to bill the City of Siloam Springs in the amount of $2,405.55. Chairman Miller reported that Siloam Springs had sent a check to the Election Commission dated October 27, 2010, in the amount of $369.55, however, that check is now expired because it has been over 90 days.

Commissioner Sevak made a motion that County Attorney George Spence writes a letter with the correct billing to the City of Siloam Springs, seconded by Chairman Miller. Chairman Miller asked for discussion. Commissioner Williams stated that this does not conform to the existing G & A Policy and that it is unfair to the other entities, who have paid all or a portion of their G&A expenses. Commissioner Williams stated the he would agree to negotiate to a lower rate for the G&A expense, but to eliminate it completely is not fair to the county and other election entities that have paid their share.

Chairman Miller noted Commissioner Williams' comments. Chairman Miller asked for a vote on the motion.

2 yeas: Miller, Sevak
1 nay: Williams

Motion to accept billing the City of Siloam Springs, for the amount $2,405.55, passed.

Chairman Miller confirmed with Attorney George Spence that he would write the letter to the City of Siloam Springs. County Attorney George Spence stated that he would, and that he would also return the expired check to Siloam Springs as well. Chairman Miller asked Attorney George Spence about the revision of the G&A policy. Commissioner Williams stated that he and Attorney George Spence have talked and that County Attorney George Spence has ideas on the G&A and how to improve the policy. Attorney George Spence stated that he will meet with Richard McComas, County Comptroller and Tena O'Brien, County Clerk to start working on a revision of the G&A and report back at a later date. Chairman Miller stated that would be appropriate.

(B) NWACC Billing: Chairman Miller stated another unresolved billing is with NWACC. Chairman Miller reported that representatives from NWACC have requested a meeting with the Election Commission to negotiate a reduction on their bill. Chairman Miller asked Commissioner Sevak to meet with them and attempt to resolve the billing. Commissioner Sevak agreed to do so. Chairman Miller asked Commissioner Sevak to report back at the next meeting.

(C) Any Outstanding Billing Pertaining to Elections of 2010: Commissioner Sevak asked if there were any other outstanding billings for 2010. Election Coordinator Amy Huston stated that there are no other outstanding bills. Christine Southard confirmed all elections in 2010 have been paid, except for the City of Siloam Springs and NWACC.

New Business:

(A) 2011 Election Schedule: Chairman Miller stated the School Election was coming up September 20, 2011 and that they need to develop a time-line which should begin around June 22nd. He has a document from the Secretary of State giving a detailed time-line of items to be completed. Commissioner Williams stated the proposed office relocation of the Election Commission was going to be at the same time as the School Election. Commissioner Williams suggested Tena O'Brien County Clerk compose a letter to Judge Clinard asking that the Election Commission office not to be moved during the School Election.

(B) Inventory of the Election Commission Facility: Chairman Miller asked County Clerk O'Brien if the inventory of equipment at the Election Commission office was complete. Tena O'Brien reported that she and County Properties Coordinator Marsha Graham inventoried the Ivo's and PEB's. She reported that Kathy Mahmens and Helen Peltier had prepared an inventory list and had listed some items missing. County Clerk Tena O'Brien reported that those items have been found with the exception of three Tom Tom's and two cell phones. She also reported that five "pizza box tables" were located in the County Clerk's office in the Bentonville office and four were located in the satellite office in Rogers, and one in the bathroom of the Election Commission office.

(C) Proposed Resolution Expressing Appreciation to County Judge and County Clerk: Chairman Miller stated that Commissioner Williams has proposed a resolution to Judge Clinard and County Clerk, Tena O'Brien expressing appreciation for their service in creating a situation for the Commissioners to do their jobs and at the same time allow the staff to do theirs. Commissioner Williams moved to adopt this resolution. Motion died for a lack of a second.

(D) Amend Policy Regarding G&A Billing: Chairman Miller stated that they have covered this extensively already and asked if anyone had any additional comments regarding the matter of amending the G&A policy billing. Robbyn Tumey stated that the G&A cost concerns her and questioned how an entity could afford to have a special election. She stated that she feels the $10,000 fee negates the democratic process in this economy. Commissioner Williams stated that as the author of the current G&A policy he would like to give an explanation. Commissioner Williams stated the policy was written so that either the commission could from the out-set reduce that number or the entity being billed could request a reduction. Commissioner Williams stated that to his knowledge, every time a request was made to lower the amount, the request was granted. He stated that the problem was that there had to be uniformity as a beginning point and that the goal is to be fair to the County and also be fair to whomever is having the election. Jim McCarthy asked to know the genesis of the policy. He stated that when he was on the Election Commission, either the County Clerk or the Election Commission prepared detailed billings and that all expenses were recovered with the exception of items the State disallowed. He asked why the Commission would want to up-charge an additional $10,000.

Commissioner Williams responded that this arose from discussions with the Quorum Court that beyond the direct cost of elections, ballots, poll workers, etc. there is significant costs to the County's budget in maintaining the building, telephones, copiers and all things to make the Election Commission office available and in the past the County had not been reimbursed for those expenses. He stated that the goal was to be fair with customers and to reimburse the County for the fixed costs. Jim McCarthy questioned when the Election Commission office moves into County property, would the $10,000 up-charge continue? Commissioner Williams responded that he did not know, he stated that if they had been going after the full amount for G&A expenses, it would have been $19,000 and that a breakdown of those costs can be given. He stated $10,000 was chosen as a low estimate of what the fixed costs were. Robbyn Tumey stated that if what she is hearing is, that it is an Election Commission mandate that you expect to pass no costs on to the County. Commissioner Williams responded that is not correct. He stated that the County is responsible for half of the costs of the General Election and would also be responsible for half the G&A costs. Robbyn Tumey stated that at a Quorum Court meeting, a remark was made about making the Election Commission a profit making entity. Commissioner Williams stated that was not correct.

Commissioner Sevak questioned Commissioner Williams about his statement regarding that there was discussion at a Quorum Court meeting allowing this $10,000 G&A. Commissioner Williams responded that was not correct. Commissioner Sevak stated he has asked in two commission meetings for a detailed listing of how the $10,000 fee was derived. Commissioner Sevak stated that he feels the G&A billing should be itemized and show what the $10,000 is covering. He stated he has only seen general overhead of the Election Commission and voting machines. Commissioner Sevak asked if there was paperwork regarding charging for voting machines. Commissioner Williams responded that there is a county ordinance that allows the Election Commission to charge on a per vote basis, but that was not what this was based on. He stated that the basis came from a discussion before the Quorum Court. He stated that the Quorum Court was not asked to approve it, nor did they approve it. The policy makes it clear that in 2010 an estimated cost of $10,000 was done and approved by a unanimous vote. He stated that if a detailed billing had been done, it would have been substantially higher, but that was not done, and the commission was trying to be fair to the customers.

John Brown stated that when he was on the Election Commission, they used what the state had billed for and that there was one thing he might have failed to do and that was to bill for the $10 per machine charge that is provided for in a Quorum Court ordinance. Chairman Miller asked where John Brown found that information. John Brown reported that it was given to him when he was chairman. Chairman Miller responded that he will look into that and will address it with the amended policy. John Brown added he has not seen, but was told that there is an Attorney General's opinion that the County will provide an office and telephone.

Commissioner Mike Sevak made a motion that the policy that was adopted last year be suspended until we hear back from County Attorney George Spence on his advice as far as the billing. He stated he would also like to put a recommendation in the new policy, that a notice be sent to the municipalities 90 days before an election, an itemized detail of the billing. He stated that this would give each municipality enough time to go through and see if they have any questions or concerns or any objections and then they could come to the election commission and address those issues. He stated this will prevent things such as the City of Siloam Springs and NWACC from happening in the future and it will also prevent him from saying "we have something here that's just charging people $10,000".

Commissioner Williams asked that the question be divided, as there were two things that are very separate. He stated he would like to be able to second the motion, that the policy be put into suspense. Chairman Miller asked Williams to second the motion and that they would then open this item for discussion. Commissioner Williams stated that they needed to divide the question because it should be two separate motions that Commissioner Sevak made in one. He stated that one is that the policy be suspended; the other is for a 90 day notification. Chairman Miller suggested backing up and suspending the policy.

Commissioner Sevak made a motion to suspend the G&A Administrative Expenses Policy until the Commissioners have had time to listen and have a viewing of County Attorney George Spence's observation, and future use and guidance on how they should proceed. Commissioner Williams seconded the motion. Chairman Miller asked if anyone had any further comments. After hearing none, he called for a vote. 3 yeas: Sevak, Williams and Miller.

Motion to suspend using the current G&A policy, passed.

Chairman Miller asked Commissioner Sevak to continue with the second part of his question.

Commissioner Sevak made a motion that when the new policy is put into effect and when it is voted on, it should be put in the policy for the Election Commission to send each municipality, no matter what kind of an election it is, an itemized billing of what they're going to be charged. He stated that we send it 90 days before the election and if they have any questions or concerns, those can be addressed in a timely manner. Commissioner Williams asked Sevak if he could change that motion to say 'well in advance' rather than locking in to 90 days. He stated that it is possible that sometimes they couldn't comply within 90 days. Commissioner Sevak stated he thinks 90 days would be sufficient. Commissioner Williams stated that there may be problems with that, and if he could just broaden that to say 'well in advance' then he would be glad to support it. Commissioner Sevak stated that he thinks the 90 days needs to be in there, and if we come to a situation where there is going to be some issue, then we can address it at that time. Chairman Miller asked Commissioner Sevak if he had made that in the form of a motion. Commissioner Sevak responded, yes. Chairman Miller seconded the motion and opened it up for discussion. Chairman Miller stated that he has no problem with the 90 days and that he would like to make it a little more reasonable to say, that when an entity comes to the Commission for an election such as a Fire Department election, or some such thing as that, there are usually documents that the Commission gets back to them approving their resolution and so forth. He stated that the Commission needs to send them their policy as to what the G&A costs will be and that will sometimes be greater than 90 days. He asked Commissioner Sevak if that was acceptable. Commissioner Sevak stated that as long as what we are charging them for is there. Chairman Miller stated yes, that is the point of the motion and that he agrees that the Commission will detail their charges. Chairman Miller stated that the Commission needs to give Attorney George Spence the chance to give them some guidance on the amended policy.

County Attorney George Spence suggested to the Commission that they might want to hold that in abeyance, until they hear from him. He stated that the way he heard the motion, was that the Commission would tell them in advance what the cost is going to be. He stated that the better way to do it would be to tell them in advance. He stated that way the commission would not have to prepare a document each time, you would just have a single document that says the basis of the cost of your election is going to be "X" and that would basically be the policy. He stated that after he works with County Comptroller Richard McComas, the Commission should have just a single document that sets policy on how entities will be charged for an election.

Commissioner Sevak made a motion to table until after the Commissioners hear from Attorney George Spence and gets his advice, seconded by Commissioner Williams. 3 yeas: Williams, Sevak, Miller

Motion to table, passed by voice vote.

Other Business:

Chairman Miller noted that in the November 2, 2010, General Election, Elm Springs was billed $8.84 and that did not cover the costs of having the election but that was the way the count came out. Commissioner Sevak questioned the figure. Chairman Miller stated that this was for the General Election and that the costs are calculated per Arkansas State Statute §7-5-104. Chairman Miller stated that he asked legal counsel Tim Humphreys about this matter and that Tim Humphreys read it three times and remarked that this statute needed work. Commissioner Sevak stated that is what he is hearing is correct; there are two different ways for billing elections. Chairman Miller responded that the billing for a primary election is different from billing for a General Election and that there are multiple ways of billing.

Jim McCarthy asked if the Elm Springs votes were cast in Cave Springs. Chairman Miller stated that he was not sure, but that it was on a billing document for the General Election. Jim McCarthy commented that usually happens when there are elections in Elm Springs, they usually bill Cave Springs which has four or five different ballot styles. Chairman Miller stated that is a part of the problem and that in the Garfield, Gateway and Avoca elections, there were 27 different ballot styles and there are many facets to the billing and there are many interpretations of the process. Commissioner Williams stated that expenses for the clerk's office, direct expenses for the election, and general and administrative expenses are the things that make up the final bill. Commissioner Sevak asked to see a detailed billing of how they came up with the current $10,000 G&A expense.

Chairman Miller stated that he would like to establish two policies with the commission and that they be voted on. He stated that he asked the County Clerk this morning what a reasonable amount of time was needed to transcribe and get a draft copy of the minutes to the Commissioners. County Clerk Tena O'Brien stated that if a meeting is held on Friday, the minutes could be ready in draft form for the Commissioners by Tuesday. Chairman Miller reported the second part would be that changes could be made by the three Commissioners and returned for correction to all commissioners and to the clerk by Thursday. Attorney George Spence cautioned that there should not be any discussion of what should or should not be in the minutes in emails, as this would be a FOIA violation, only corrections should be made. Chairman Miller made a motion to have minutes from a Friday meeting to the commissioners by Tuesday and corrections if any, back to the clerk by Thursday, seconded by Commissioner Williams. Motion carried by voice vote.

Chairman Miller stated the agenda should follow the same ground rules. He stated that he would like to see all items that are to be placed on the agenda be forwarded in the same fashion. Commissioner Williams made a motion to have the agenda done in the same manner as the minutes, seconded by Chairman Miller. Motion passed by voice vote.

Announcements:
None

Adjournment:
Chairman Miller adjourned the meeting.

Respectfully submitted,

Mike Sevak, Secretary

Prepared by Sharon Rose, Election Commission Staff