

MINUTES OF THE BENTON COUNTY ELECTION COMMISSION

June 22, 2011

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

Others present: Dana Ferguson, Sharon Rose, Kim Umphres, Jim McCarthy, Gwen Millager, Robbyn Tumey, Duane Neal, County Attorney George Spence, and Phyllis Lefferly

Media: Tom Sissom, Benton County Daily Record

Chairman E. J. Miller called the June 22, 2011 Election Commission meeting to order and welcomed everyone.

Minutes:

Chairman E. J. Miller made a motion that the minutes from the June 1, 2011 meeting be approved as submitted, seconded by Commissioner Sevak. Motion carried by voice vote. Chairman Miller commented that he failed to accept Commissioner Williams apology at the last commission meeting but that he whole heartedly accepted the apology.

Committee Reports:

Duane Neal stated the Redistricting Committee had met and discussed what they believe was the task of collecting information and reporting back to the commissioners concerning any suggestions for the redistricting. He reported that they had met with the NW Arkansas Regional Planning Commission and was advised to wait until the State House and State Senate districts were in place. Duane Neal stated that the Redistricting Committee has not met with the County Clerk's office as a group, but that he did speak with Dana Ferguson in the clerk's office and she has started a layout based on the information that she has received and she is taking the same approach of waiting for the State House and State Senate redistricting to be completed. He stated at that point, it would be easier to layout a proposal for the JP redistricting. He also stated that the committee hopes to gain information from anyone in the county and that the committee has discussed meeting with the Quorum Court, to ask for their input. He stated that based upon the input the committee receives and following the State House and State Senate redistricting, they plan to collect all the information and present two or three proposals to the commission. Chairman Miller stated at the last meeting he had asked Dana Ferguson if it was possible to get an 8 ½ X 11 copy of the current JP District map. Dana responded that she had distributed a copy of the map of the current JP Districts along with a copy of one proposed draft of the new JP districts to the commissioners and Duane Neal. Dana Ferguson agreed with Mr. Neal, in that she will have to wait on the state lines to be drawn before she can go any further. Chairman Miller stated that he had seen a map of the Senate and Representative areas and is extremely disappointed in what the state has drawn up so far. Duane Neal stated that the Board of Apportionment has not put anything out. Chairman Miller states that the map he saw was absolutely ridiculous, in that one of the districts included Bella Vista from the Missouri border through the Oklahoma border down through Springdale and over to Madison and Carroll Counties. Duane Neal states that there are several versions out there. Chairman Miller asked Dana Ferguson if she was the only one in the clerk's office working on the maps. Dana responded that she was.

Public Comment:

None

Old Business:

Chairman Miller stated that County Attorney George Spence was to report on the refund of G&A expenses and the status of the election billings for the City of Siloam Springs and NWACC, but he has been delayed. Commissioner Williams

suggested that “Old Business” be moved to the end of the agenda. Chairman Miller moved all items listed on the agenda under “Old Business to” the end of the agenda.

New Business:

Chairman Miller reported that the annual School Election is scheduled for September 20, 2011 and that today starts the countdown for the School Election according to the timeline set out by the Secretary of State’s Office. He reported that today, June 22nd, is the first date that candidates filing by petition can circulate their petition and the clerk shall not count any signatures valid that are dated more than 90 days prior to the election and the petitions must contain 20 signatures from registered voters in that school district. Chairman Miller stated that there are other timelines to be followed and that July 27, 2011 will be the date for the ballot draw.

Commissioner Williams suggested postponing County Attorney George Spence’s reports until the next meeting, as it was more of an informational update than commission action. Chairman Miller agreed but stated he would like to know, at the next meeting, where we stand on the refunds of the G&A expenses; where we stand on the acceptance for the City of Siloam Springs on the renegotiated billing; and where we stand on the NWACC renegotiated billing. Chairman Miller stated the other item on the agenda was the Attorney General Opinion and he did not feel that Attorney George Spence would say anything negative about the opinion. Commissioner Williams suggested that if there is something we could take action on, to ask the staff to study that and propose whatever policies or resolutions we need to follow to be in compliance and move forward. Chairman Miller stated that will be in the minutes and asked Sharon Rose to get the minutes to the three commissioners as soon as possible so a draft review can be done and a follow-up will be from there.

Other Business:

Chairman Miller reported that County Attorney George Spence wrote a letter to the State Board of Election Commissioners regarding the billing of the poll workers for the May Primary and run-off elections. The letter received back from SBEC indicates that it is the State Board of Election Commissioners policy to allow only six (6) poll workers per precinct. Chairman Miller announced that in many of the precincts where there are a large number of voters. Chairman Miller stated that County Attorney George Spence just arrived and informed him on what was being discussed. Chairman Miller continued reviewing the letter received from the SBEC. He stated that six (6) poll workers are to be paid per precinct, unless there are multiple precincts within a polling location. Chairman Miller stated for an example, Siloam Springs has Precincts 11,12,13,14; two of those precincts are small in registered voters. He stated that the SBEC definition and determination is that you can have six (6) poll workers for each of those precincts and therefore, technically the Siloam Springs location could have as many as 24 poll workers. Chairman Miller stated that was how he interpreted it. Chairman Miller also stated there are several precincts that have multiple precincts in one location. Chairman Miller reported that he has done some preliminary work and the preliminary work indicates that for the May 18, 2010, Primary Election, there was roughly 30 poll workers exposure and that represents about a dozen precincts over the limit and in the Primary Run-Off there were 12 poll workers and that those 42 poll workers in the two elections represents about \$105. The letter also indicated that if the commission would submit documentation with a reason why additional poll workers were needed for those locations, it is usually approved. Chairman Miller stated that he has put together the locations where there were excess poll workers. For example, Precinct 9, Siloam Springs Community Building had 2,469 registered voters. There are five (5) locations in Bella Vista with registered voters of 2,688, 2,725, 2,114, 2,144 and 3,132. Chairman Miller stated in his conversation with Tim Humphries in reference to the letter he wrote to County Attorney George Spence indicated as far as he was concerned, a good enough reason to allow additional poll workers. Chairman Miller confirmed his conversation with Mr. Humphries in an email and that he had a spread sheet attached that would detail the exception to the rule for additional poll workers due to heavy registered voters in those precincts. Chairman Miller asked for an exception for the poll workers. Chairman Miller stated he also had received an email from Susie Storms, Director, SBEC, stating “a resubmission of the list of poll workers by precinct correctly reflecting the precinct to which each worker was actually assigned is needed. He stated that a copy of this was handed out and will serve as the county’s justification for exceeding the maximum six (6) workers per precinct.” Chairman Miller also stated that according to his conversation with Tim Humphries that it was justified and would likely put an end to the matter. Chairman Miller suggested that the person, who prepared the original poll workers sheets for those two elections, be asked to revisit that and put the workers in the proper precinct for resubmission. County Attorney George Spence apologized to the commission for being late and that some of the things that have been discussed in the meeting would be his recommendation. County Attorney George Spence stated that to follow-up on the letter, he feels that the State would probably approve what has been done; they just want their records straight. County Attorney Spence stated that

justification has been provided in the last line from Susie Storms letter in which she stated that it would serve as justification. He stated that she is the Director and it will take the State Boards approval, but it seems to indicate that it will be approved. The only thing that needs to be submitted is the corrected poll workers listings. County Attorney Spence suggested that the commission ask County Clerk Tena O'Brien's office to get it together to resubmit to Susie Storms. Commissioner Williams moved that the clerk's office get the appropriate information together and authorize the chairman to speak for the commission in this matter. Chairman Miller responded to County Attorney George Spence that he had done preliminary work and using the resources of the person who prepared the original listing and that he has asked the Human Resource Department to hire her at that point. He stated that Barbara Ludwig indicated that she would go through County Judge Bob Clinard and County Clerk Tena O'Brien, to get that person hired and it would probably take less than a day. Chairman Miller stated that he thinks she is the most qualified since she put the sheets together and that the commissioners will have to sign before it can be resubmitted. Commissioner Williams reminded Chairman Miller he had a motion on the floor. Chairman Miller asked for a second. Commissioner Sevak asked Commissioner Williams to restate his motion. Commissioner Williams made motion that the commission proceed as outlined in the discussion in working with the State Board of Election Commissioners to make appropriate changes and that the chairman be authorized to speak for the commission in this matter, seconded by Commissioner Sevak. Chairman Miller asked for additional discussion. There being none, motion passed by unanimous vote. Chairman Miller stated he will follow-up with the Human Resource Department to get this started and to put an end to the situation.

Old Business:

Chairman Miller asked County Attorney George Spence for an update on the G&A expenses. County Attorney Spence stated he did not know if Richard McComas, County Comptroller, had issued any checks. Chairman Miller requested Sharon Rose to put this on the agenda for the next meeting under "Old Business"; the refund of G&A expenses. County Attorney George Spence stated that he would check with Richard McComas and that he or Richard would email the commissioners. Chairman Miller stated he would like for it to stay on the agenda and to get it into the minutes that it had been cleared up. Chairman Miller asked County Attorney George Spence if he had heard from the City of Siloam Springs. County Attorney Spence stated that Chairman Miller should have received a copy of the letter from him that was written to the City of Siloam Springs. Attorney Spence reported that the City of Siloam Springs sent him a copy of the check in the amount of \$2,405.55 which was sent to the Election Commission. Chairman Miller stated he did not receive a copy of the letter from Siloam Springs. County Attorney George Spence stated it was a copy of his letter sent to Siloam Springs and a copy of the check. (Copies were made and handed out to the commissioners.) Chairman Miller asked County Attorney George Spence about the NWACC billing issue. County Attorney George Spence reported that NWACC contacted him requesting an amended bill and that he contacted the county clerk's office who faxed it to NWACC. He reported that he knows this was done because NWACC mailed him a copy. County Attorney Spence stated that he did not know if the check had been received. Dana Ferguson stated that she would check with the County Clerk Tena O'Brien. Chairman Miller asked for a copy of the resubmitted bill and requested that it be put with the packet for the next meeting. He also asked that the status of election billing for NWACC remain on the agenda. County Attorney George Spence stated it was his understanding they were going to pay the bill.

Chairman Miller asked County Attorney George Spence about the Attorney General Opinion 2011-034. Attorney George Spence stated he read the opinion and in going through it, there are items in which he has given a contrary opinion on previously and states that the opinion of the Attorney General is an opinion of an attorney. County Attorney George Spence stated in his opinion, it carries as much legal precedence as his does, and having said that, theirs is well researched and thorough. The two main issues that were disagreed about was (1) if two commissioners could call a meeting opposed to the chair calling the meeting. County Attorney George Spence stated he still disagrees with that, but that is what the Attorney General states. County Attorney Spence stated going forward we will not have any of those issues. In his opinion, two commissioners can call a meeting because that is parliamentary procedure. The Attorney General opinion is that only the chair could call a meeting. County Attorney George Spence stated the other question (2) was about the removal of the chair by the other commissioners. The Attorney General has set it up and has a legal basis to do so and acknowledges two views on this and it could go either way as there is not a court decision. Attorney Spence stated that he feels two commissioners can remove the chair and the Attorney General says "no", "The chair is a fixture and can only be removed if there is a statutory way". He stated that it is his opinion that their opinion is a little inconsistent because they have allowed the commission to make their own rules and contrary to Robert's Rules, you can change the chair by changing the rules of the commission. He states that this is a little inconsistent but that is the Attorney General's opinion. County Attorney George Spence stated that he hopes this question does not come up again and if it does, he will have his

opinion and the Attorney General's opinion and he will go forward in some manner. It does say that any two commissioners can decide how the procedures of the commission are supposed to be. Commissioner Williams stated that in the decision regarding two commissioners calling a meeting, the Attorney General dodged in his opinion a central point. In that, how can two commissioners meet and discuss commission business including calling a meeting without violating the Freedom of Information Act. Previously the commission would ask the staff to draw up resolutions and policies to help clarify how the commission does things. Commissioner Williams asked County Attorney George Spence if he would mind working with the staff on these things. County Attorney George Spence stated that the Freedom of Information Act prohibits public meetings happening without public notice or press notice. He did not know if communications solely for the purpose of calling a meeting, as long as no one talks about anything else and just setting a date, he was not sure it would be a violation of the Freedom of Information Act. He continued stating that the Freedom of Information Act was designed to allow openness in government and there must be a way to call a meeting. He stated for example, the City Council can be called into session by the Mayor and usually there is a provision that allows for a certain number of City Council members to call a meeting, it is hard to see how you can actually call a meeting like that and have less than the whole number call a meeting without calling a meeting. County Attorney George Spence stated that he feels that the Freedom of Information Act as long as you do not go beyond that and have discussion about other things. Commissioner Williams asked if a policy can be established saying a commissioner can request in a public way to have a meeting. This would have an effect of notifying the other commissioners a meeting was desired, if then the second commissioner wanted a meeting. Commissioner Williams believed it would be open and at the same time allowable. Chairman Miller stated under these particular circumstances that when this was brought up, the person went to the Election Coordinator and asked that a meeting be called and the proper notice be sent and that is the way it took place. County Attorney George Spence stated that if he was writing the rule, instead of a commissioner calling another commissioner talking about a meeting, they could notify the Clerk and the Clerk would contact the other commissioners that a request for a meeting was received and then if there was a second request then the Clerk could set the meeting.

Other Business:

None

Announcements:

Chairman Miller announced that the next meeting will be held on June 29, 2011 at 9:00 AM.

Adjournment:

Commissioner Williams moved that the meeting be adjourned, Seconded by Commissioner Sevak. The meeting adjourned at 9:43 AM.

Respectfully submitted,

Mike Sevak, Secretary

Prepared by Sharon Rose, Election Commission Staff