

LUZERNE COUNTY BOARD OF ELECTIONS AND REGISTRATIONS

AGENDA

VIDEO/TELECONFERENCE VIA ZOOM - May 12, 2021 at 5:00 P.M.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ADDITIONS TO/DELETIONS FROM AGENDA

APPROVAL OF AGENDA

PUBLIC COMMENT (limited to 4 minutes & one comment time per person)

APPROVAL OF MEETING MINUTES (FROM APRIL 28, 2021 MEETING)

AGENDA ITEMS - SOLICITOR

AGENDA ITEMS - BUREAU OF ELECTION

1. Change of Pittston City Hall Drop Box to Pittston Memorial Library
2. Approval of May 18, 2021 Proclamation

AGENDA ITEMS - BOARD OF ELECTIONS & REGISTRATION

1. Discussion/Vote on changing Public Comment in beginning of meeting to agenda items only and adding a public comment at end for matters not listed on the agenda but which must be within the subject matter jurisdiction of the Board.
(DW)
2. Update of Board of Election & Registration Overview on county website (DW)
3. Discussion/Vote on policy/plan for Write-In Votes (lumping as scattered where possible vs. writing all names in) (All)
4. Discussion/Vote on Curing of Mail-In Ballots (prior to Election Day and during Pre-Canvassing) (All)
5. Schedule for Board members on Election Day and Days after Election Day (All)

MOTION TO ADJOURN

ADJOURNMENT

LUZERNE COUNTY BOARD OF ELECTIONS
AND REGISTRATIONS MEETING
MINUTES APRIL 28, 2021

CALL TO ORDER 5 PM

PLEDGE OF ALLEGIANCE

ROLL CALL-Kathy Roth, Richard Nardone, Missy Thomas, Audrey Serniak , Denise Williams
all present

APPROVAL OF AGENDA

Chair, Denise Williams advised that there would be 2 additions to the agenda: 1. Dave Parsnik would like to have Bob Morgan appointed as the Board's clerk 2. Discuss another drop box in Dallas Township

Motion to approve Denise Williams 2nd Missy Thomas; unanimous

PUBLIC COMMENT (4 minutes)

Walter Griffith, Trucksville-Congratulations to Denise Williams; poll worker salaries should be ratified by the current Board; suggested we give the Bureau a time frame of 6-12 months for candidate financial reports to be posted online; write-in votes need to be tabulated and certified and the variation lists of names must be taken into account; mentioned plans for early voting

Claudia Glennan, Salem Township-the public comments at the beginning, can they be moved to later so that people can comment on agenda items

Brian Shiner, Kingston-Congratulations to Chair, Denise Williams; should discuss the election of the DA but not vote on it; the decision should go to County Council

Jean Gross, Butler Township-She questioned if there is a possibility of poll workers working part-time or splitting shifts on Election Day since it is a long day

Justin Behrens, Mountain Top-Regarding the DA race, we need to follow the letter of the law; Solicitor Mike Butera has experience and made a decision that is being questioned. Regarding drop boxes 1. concerned that the boxes are in Democratic areas, 2. there is a municipal race and a box is in that municipal building, 3. Act 77 requires the boxes be secured and monitored, follow the letter of the law; reconsider the drop boxes.

MINUTES of April 21, 2021

Motion to accept Missy Thomas 2nd Rick Nardone; unanimously

SOLICITOR'S REPORT

Paula Radick reported that Marty Flynn will remain on the ballot for now; there were no fatal errors and the court satisfied with his amendments.

BUREAU OF ELECTIONS REPORT

Motion made to appoint Bob Morgan as clerk by Denise Williams 2nd Missy Williams

Rick Nardone asked who would take over if Bob not available; Eryn Harvey is deputy director and she would take over; Bob Morgan reported that he is getting up to speed and can take over from Eyrn; Dave Parsnik advised that would designate the deputy director if Bob can't be clerk

Motion to appoint Bob Morgan clerk by Denise Williams 2nd Rick Nardone
Rollcall: Rick Nardone yes; Kathy Roth yes; ; Audrey Serniak Yes; Missy Thomas yes;
Denise Williams yes

Bob Morgan advised Eryn Harvey would continue with the Bureau report

The polling location list and ballots are ready and need Board approval
Twenty-five poll workers are still needed; poll worker pay is \$195, \$215 with training; judge of elections \$230, \$250 with training plus mileage; CARE money is being used for salaries;
Mailing the ballots began Monday; early voting will be May 3-May 11, 9am-4:30pm; drop boxes will be installed on Monday

Romilda Crocama advised a 4th drop box could be added; Dallas Township needed to approve at their 4/29 meeting

Denise Williams asked if there was a way to better publicize the new polling places other than new registration cards; Eryn Harvey said the proclamation would be printed in the newspaper; Missy Thomas suggested it appear in both papers

Rick Nardone said the Board didn't agree to more than 3 drop boxes; Denise Williams said there was a need for one in that area; Missy Thomas heard from people with concerns about the drop boxes; Eyrn Harvey asked what concerns people had; Bob Morgan stated that Lackawanna County has 6 drop boxes with a lower population than Luzerne County; Rick Nardone wanted to know the population cut-off that determined the box; Audrey Serniak said it's not only population, but distance and convenient access to the box

Motion by Kathy Thomas to table until after the primary, leaving it at 3 new boxes plus the Penn Place box 2nd Rick Nardone
Roll call-Kathy Roth yes; Audrey Serniak no; Missy Thomas yes; Rick Nardone yes; Denise Williams no; 3 yes, 2 no, motion carries

Missy Thomas questioned if Lackawanna County had drop boxes in municipal buildings and was advised they do

BOARD OF ELECTIONS REPORT

Agenda Format:

Denise Williams reported that she has included the person's initials after the agenda item so that everyone knows who requested it; there are detailed items under the reports; there is no open discussion for board members; also appending items like the minutes to be approved; fosters transparency for the board and public

Audrey Serniak-likes the structure; feels it will improve the meetings

Rick Nardone-likes the open discussion; feels it is needed

Missy Thomas-would like a minute or 2 to review things off the cuff, maybe at the end

Denise Williams-because of the Sunshine Law items have to be placed on the agenda or the agenda has to be amended at the beginning of the meeting

Timing of the Election for DA:

Romilda Crocarno invited Joseph Cosgrove and Mike Butera to present their opinions.

Joseph Cosgrove-His position is to put the DA position on the ballot. The change in the statute modified how the vacancy is filled. Prior, the court appointed a qualified successor for the remainder of the term now the court appoints the Assistant DA until the next municipal election. Because it is past the time to select candidates in the primary, selection defaults to the parties under party rules; not a close call; current appointee's term ends January 2022; people can get on the ballot if not the party nominee; follow the law.

Missy Thomas asked if the Charter supersedes; Joseph Cosgrove advised that the Charter requires a November election

Denise Williams does any law state there needs to be a primary; Missy Thomas said if there is no primary the people do not have a choice in candidates; 1404 says no primary required, 2953 says what happens if no primary

Mike Butera-said he had nothing to add beyond his memorandum; it makes sense not to hold the DA election in November

Denise Williams-SB 84 is short and clear, the election should take place in November, parties can nominate

Audrey Serniak-PA has closed primaries; anyone can get on the ballot if they do the work; third parties do not nominate through the primary. Joseph Cosgrove-hard to get on the ballot but if you don't like the law, change it; Audrey Serniak-county is following the new law

Rick Nardone-he concludes the election has to be held in November; what happens if the current DA resigns? Mike Butera-timing matters; Joseph Cosgrove-if late September the first assistant is appointed and the election would be November 2023

Romilda Crocarno-Charter also requires the election in November; statute modified the Home Rule Charter; the law unified the procedure over different classes of the commonwealth; she has the utmost respect for Mr. Butera and Mr. Cosgrove; her position is that the election should be held in November

Motion to hold the election for DA in November Audrey Serniak 2nd Rick Nardone
Roll call-Audrey Serniak yes, Missy Thomas abstain, Rick Nardone yes, Kathy Roth abstain, Denise Williams yes; 3 yes, 2 abstain, motion passes; the election for DA will be on the November ballot

Poll Workers and Split Shifts

Rick Nardone-since the election day is a very long day and if it doesn't burden the Bureau, thinks it would be good to allow for split shifts

Eryn Harvey-this is happening now although it is not encouraged; no guarantee that the second person will show up; not publicized

Bob Morgan-one person is the preference; covering the position is the concern

Rick Nardone-thinks this should be better publicized

Audrey Serniak-this has come up in the past with regard to the pay; one person gets the paycheck and is responsible for getting their share to the other party

Approval of Poll Locations and Candidate List

Polling Places:

Rick Nardone-good job done by the Bureau

Denise Williams-187 total with 38 new; the website has been updated

Motion to approve Missy Thomas 2nd Kathy Roth; all in favor, motion carries

Candidate List:

Rick Nardone-recognizing the work to get accurate

Eryn Harvey-candidate petitions are accepted, there is a challenge period

Dave Parsnik-a spreadsheet is constructed from the petitions, the spreadsheet is sent to Dominion and it is reviewed and edited at least 5 times, a working document is produced and is published on the website Rick Nardone-any challenges? Once someone was left off several years ago

Motion to approve Missy Thomas 2nd Audrey Serniak; all in favor, motion carries

Ballot Box Collection and Chain of Custody

Bob Morgan-transmitted the memo on election security to the Board

Denise Williams-who picks up the ballots?

Dave Parsnik-When the post offices were used only Bureau employees or sheriff deputies picked up the ballots; the ballots are placed into a sealed blue bag and taken to the Bureau;there is a record sheet that is used to record the time, people, etc.;the ballots go into the vault until they can be scanned into the system; at the drop box site the box is secured to a table or counter; this is the first time for off-site drop boxes; the Board can approve whether Bureau employees or sheriff's deputies can transport the ballots; no oath is administered; oath is required for canvassing; there is a declaration signed by election officials that they will not allow tampering and will fulfill their duties; on election day the judges of election transport provisional ballots in a black bag

Missy Thomas-would prefer an oath

Dave Parsnik-would prefer to use sheriff's deputies; they will be trained and there have been no issues in the past

Rick Nardone-suggested a workshop so that new members can gain 'tribal knowledge' and Missy Thomas agreed

Denise Williams-we need a plan in place that includes an oath and signed declaration

Audrey Serniak-sherrif's deputies already take an oath, would that cover ballot transport?
Dave Parsnik thinks the personnel oath applies; will have them sign a declaration; advised limited Bureau personnel available

Denise Williams feels strongly that one person should be an election official

Eryn Harvey-short-handed so it is hard to lose one person; can Board Members help?
Dave Parsnik would like to use the same process as was used last year for the post office ballots; no issues with that process

Rick Nardone-need to be practical when allocating resources; 2 sheriff's deputies are ok

There are 6 employees in the Bureau; there are no live feeds; there are cameras and a chain of custody; Missy Thomas questioned adding an additional box

Denise Williams verified there are 2 deputies during pickup; Eryn Harvey-2 people; depends on the work schedule as to who specifically does the pick up; Dave Parsnik-Bureau supervises; Rick Nardone would prefer randomness to specific people assigned (randomness is built into the current process)

Denise Williams would like a pool of deputies, trained, signed declarations, and Board would have names

Dave Parsnik-he will talk with the sheriff and ride with the deputy

Rick Nardone asked what the best use of Dave Parsnik's time

Dave Parsnik said best use of his time is for 2 sheriff's deputies with documentation to transport the ballots

Motion for the Board to authorize the Bureau to assign sheriff's deputies to collection of the ballots with training and signed documentation Rick Nardone 2nd Kathy Roth

Roll call: Missy Thomas yes, Rick Nardone yes, Kathy Roth yes, Audrey Serniak yes, Denise Williams yes; motion passes

Overview of Board of Elections Posted on Website

Denise Williams-should be a better overview of the Board of Elections on the website; it's just the meeting dates and information on how to get on the Board; it doesn't explain what we do; needs improvement; who wrote the overviews of the other boards; does it need Council approval

Romilda Crocamo-doesn't know who drafted but will look into it

Motion to Adjourn Kathy Roth 2nd Missy Thomas; unanimous

ADJOURNED 7:20 PM

Next meeting will be virtual, May 12, 2021, 5 PM

MEMORANDUM

TO: Luzerne County Board of Elections

FROM: Luzerne County Office of Law

DATE: May 10, 2021

RE: Question regarding Notice and Curing of ballots

We received an inquiry from Chairperson Williams regarding the status of the notice and curing of mail in ballots for the upcoming primary election. We want to provide the Election Board with the information we have in order for you to make an informed decision as to whether the Election Board will engage in providing notice to the parties to cure during this election.

For the November 2020 general election we received minimal guidance from the Commonwealth of Pennsylvania Department of State informing us that we could adopt a notice and cure procedure for the November general election pre-canvass process the night before the election from Jonathan M. Marks, Deputy Secretary for Elections & Commissions:

The Department of State has been asked whether county boards of elections can provide information to authorized representatives and representatives of political parties during the pre-canvass about voters whose absentee and mail-in ballots have been rejected. The Department issued provisional ballot guidance on October 21, 2020, that explains that voters whose completed absentee or mail-in ballots are rejected by the county board for reasons unrelated to voter qualifications may be issued a provisional ballot. To facilitate communication with these voters, the county boards of elections **should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected and should promptly update the SURE system.** (*emphasis added*).

When the option of “curing” the ballots was presented to the parties’ representatives and the Election Board, no objections were raised to “cure” the ballots. At all times, both a Democratic and Republican representative were present for the pre-canvass process. Once the mail in ballots were flagged as being defective, they were set aside for the Election Board to create a list containing the person’s name and address which was provided to the party representatives and the Election Bureau. We provided approximately one hundred and twenty names for potential curing. We do not have the information as to how many ballots were ultimately cured. It is a time consuming process. At 8:00 p.m. the process ceased.

We have not received any updated guidance for the upcoming primary election. The guidance provided on April 13, 2021 does not reference notice and curing of ballots. Recently, we contacted the Department of State to ask whether there is any updated guidance from the Department of State regarding the curing of ballots for the upcoming primary election that could be

provided to us. We were informed by Jessica Mathis, Director of the Bureau of Elections and Notaries that they do not have any updated guidance at this time.

The question was raised as to whether “with the large number of write-in ballots for this Primary Election, is it possible that some of the borough/ township/judge of elections positions could be determined by “cured” ballots- being that there may be a smaller number of votes or write ins for these positions?” However slight, it may be possible that this could occur. As noted, the Election Board compiled a list of approximately one hundred and twenty people who could potentially cure their mail in ballot if contacted, but we do not have the statistics as to whether they ultimately did cure.

The Supreme Court of Pennsylvania addressed the issue as follows:

Upon review, we conclude that the Boards are not required to implement a “notice and opportunity to cure” procedure for mail-in and absentee ballots that voters have filled out incompletely or incorrectly. Put simply, as argued by the parties in opposition to the requested relief, Petitioner has cited no constitutional or statutory basis that would countenance imposing the procedure Petitioner seeks to require (*i.e.*, having the Boards contact those individuals whose ballots the Boards have reviewed and identified as including “minor” or “facial” defects—and for whom the Boards have contact information—and then afford those individuals the opportunity to cure defects until the UOCAVA deadline).

While the Pennsylvania Constitution mandates that elections be “free and equal,” it leaves the task of effectuating that mandate to the Legislature. *Winston*, 91 A. at 522. As noted herein, although the Election Code provides the procedures for casting and counting a vote by mail, it does not provide for the “notice and opportunity to cure” procedure sought by Petitioner. To the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, we agree that the decision to provide a “notice and opportunity to cure” procedure to alleviate that risk is one best suited for the Legislature. We express this agreement particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Pennsylvania's government...

Pennsylvania Democratic Party v. Boockvar, 238 A.3d 345, 374 (Pa. 2020), *cert. denied sub nom. Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021).

Furthermore, the United States District Court for the Middle District of Pennsylvania determined as follows:

Rational basis existed for decision of the Secretary of the Commonwealth of Pennsylvania to provide counties with discretion to use notice-and-cure procedure for procedurally defective mail-in ballots for presidential election during COVID-19 pandemic, and thus, Secretary's decision did not violate rights of voters, who were not given opportunity to cure their mail-in ballots after ballots were invalidated, under Equal Protection Clause; although states may not discriminatorily sanction procedures likely to burden some persons' right to vote more than others, they need not expand the right to vote in perfect uniformity, and no county was forced to adopt notice-and-cure procedure but made choice to do so, or not. U.S. Const. Amend. 14; 25 Pa. Stat. Ann. § 3150.16.

Judge Brann further held:

Individual Plaintiffs' claims fail because it is perfectly rational for a state to provide counties discretion to notify voters that they may cure procedurally defective mail-in ballots. Though states may not discriminatorily sanction procedures that are likely to burden some persons' right to vote more than others, they need not expand the right to vote in perfect uniformity. All Plaintiffs have alleged is that Secretary Boockvar allowed counties to choose whether or not they wished to use the notice-and-cure procedure. No county was forced to adopt notice-and-cure; each county made a choice to do so, or not. Because it is not irrational or arbitrary for a state to allow counties to expand the right to vote if they so choose, Individual Plaintiffs fail to state an equal-protection claim.

Donald J. Trump for President, Inc. v. Boockvar, No. 4:20-CV-02078, 2020 WL 6821992, at *12 (M.D. Pa. Nov. 21, 2020), *aff'd sub nom. Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377 (3d Cir. 2020), and *appeal dismissed sub nom. Signed v. PA*, No. 20-3384, 2021 WL 807531 (3d Cir. Jan. 7, 2021).