

**FAYETTE COUNTY BOARD OF ELECTIONS
AND VOTER REGISTRATION**

Minutes

January 22, 2013

5:00 p.m.

Board Members Present: Addison Lester, Chairman
Marilyn Watts
Darryl Hicks

Staff Present: Tom Sawyer, Elections Supervisor

Others in Attendance: Dennis Davenport, Interim Attorney for Fayette Co.
Tony Parrott, Division Head, Fayette Co. Water Dept.

Call to Order.

Chairman Addison Lester called the January 22, 2013 meeting to order (approximately 5:10 pm) and asked that the record show that Addison Lester and Marilyn Watts were present. He indicated that item A on the Agenda would be skipped in anticipation of Darryl Hicks being present for that discussion.

B. HEARINGS

1. DECEASED ELECTORS - Supervisor Sawyer presented the list of deceased voters. He presented a list of deceased voters that came from the Secretary of State report which contained persons that might not be an exact match with our voters list and those of vital records of the State of Georgia. In addition, another report from the Secretary of State contained persons that are an exact match. These electors are automatically deleted by the Secretary of State and this report is not submitted to the Fayette County Elections Board. Family members have been notified for the reports that are not exact matches. Member Watts moved that this list be accepted and Chairman Lester seconded the motion.

2. FELONS - Supervisor Sawyer also presented the list of felons and indicated they had all been notified by letter.

Member Watts moved that the list of deceased electors and the list of felons be approved and deleted from our records. Chairman Lester seconded the motion. Motion carried.

(At this point, Member Darryl Hicks arrived at 5:22 p.m.)

A. LEGAL UPDATE – DENNIS DAVENPORT – INTERIM COUNTY ATTORNEY

Dennis Davenport, Fayette County Interim Attorney, was introduced and asked to give a legal update and a discussion about open records requests as discussed the previous month. Mr. Davenport explained that he is still in the process of finding out where the county is on legal matters and litigation.

Mr. Davenport indicated he had received a request last week from Supervisor Sawyer for information in reference to a hearing before Judge Chris Edwards to take place on January 24, 2013. He said there was an appeal of a decision made by the Board of Elections to Superior Court. There was a request for our office to produce a written record of the August 13, 2012 hearing. His understanding was that our position was we did not have to produce that and were not going to produce it.

Mr. Davenport said we are a public body and a written record must be produced. A transcript must be presented. He said he would not go before the judge without producing a record. He asked Supervisor Sawyer to start producing that record. He said that hearing on January 24, 2013 has been taken off – this was confirmed with the Judge’s secretary today. Mr. Davenport said that he had come to this meeting of the Board of Elections to be sure that Supervisor Sawyer presented this information to the Board for them to vote on to approve.

What the suit is about and the prospects for it has yet to be determined as he takes times to look into the file. He has not completed reading the file. He asked for any questions about this matter.

Discussion followed:

Chairman Lester said when we had the meeting on November 28, 2012 there was the question of the extension of time to produce that record and what was our responsibility to produce that. Chairman Lester contacted Scott Bennett a couple days after the November meeting and said Mr. Bennett said “the party making the appeal has the responsibility of providing the information available to the court and we had fulfilled that responsibility”. That was why no action had been taken at that time.

Mr. Davenport said that was a true statement; however, it presupposes that the body that’s responsible to produce it doesn’t take the position that we’re not going to produce it because the Appellate goes to that body and says it’s my responsibility to get this record up. If you have that record and the Appellate negligently doesn’t do anything with it and it lays there for 30-45 days, it can get dismissed because the Appellate did not bear his or her duty. You can’t say it’s his responsibility to produce it if you don’t provide it for him to produce. His duty to produce is to give it to the Superior Court. Your duty to produce is to create it. If you don’t create it, you can’t produce it, so before his duty ever attaches, your duty to create it exists. Once you’ve created it, if he doesn’t provide it to the Superior Court ...that’s his fault and it can be dismissed. So we’ve got to provide it. The word “produce” is the problem.

Member Hicks asked if an audio version could be provided as opposed to a written copy of it.

Mr. Davenport asked how minutes were done regularly. The answer is they are written. He asked why this would be any different.

There was discussion as to how the minutes are done and if a summary could be provided. Consensus by Mr. Davenport was that enough germane information needs to be provided in the minutes for this particular hearing so the judge could decide on the matter.

Member Hicks said, going forward, that a summary would suffice as opposed to a verbatim dictation of the regularly scheduled Board meetings minutes.

Mr. Davenport indicated that the court would object to that being an official transcript (referring to the August 13, 2012 meeting) because the court reporter has done a verbatim transcript of the proceedings. We are providing what our duty is to provide, which is a written memorization of our meeting. There is nothing that requires it to be verbatim. They will be our official approved minutes. Their court reporter could compete with our official approved minutes if the court reporter wants to do that. Mr. Davenport will present the minutes as official and approved.

Supervisor Sawyer spoke about the hearing and about the rhetoric that was going on back and forth in relation to the minutes. Copies of the minutes were passed out. Chairman Lester indicated he had read the minutes but Member Hicks had not had a chance to read them. Since only Chairman Lester and Member Hicks would be voting on accepting these minutes, a vote was not taken. Mr. Davenport said he will present the minutes as a draft with the caveat that these minutes have not been approved as yet. Member Hicks asked if we could approve these minutes via e-mail. Mr. Davenport said that we could not. It was decided the minutes would be up for approval on February 5, 2013 since the Board members would all be here for the special election being held on that date. Mr. Davenport indicated that since we did not meet the deadline of November 28, 2012, it is imperative to present those minutes as soon as possible.

Chairman Lester moved to have a special called meeting of the Board on February 5, 2013 at 6:30 p.m. just prior to the polls closing for the purpose of approving these minutes. Member Hicks seconded the motion & motion carried. None opposed.

Supervisor Sawyer will handle having the meeting posted and an agenda prepared. He will notify the newspapers that a meeting is being held other than the regularly scheduled monthly meeting and also the pertinent information regarding the meeting. Mr. Davenport said that this should be done as soon as possible but no later than 24 hours prior to the meeting. Supervisor Sawyer said he will have all the minutes prepared by February 5, 2013. Mr. Davenport said as soon as the minutes have been approved, he will present them as such.

Chairman Lester introduced the topic of open records requests. He asked that Supervisor Sawyer share what he has learned through our new county administrator, Mr. Steve Rapson, at the staff meeting today (Jan. 22, 2013). Apparently, various departments are handling these requests differently. Supervisor Sawyer said that Steve Rapson asked that he be made aware of these requests and we should also consult with the interim legal counsel, Dennis Davenport, on this open records issue.

Chairman Lester said it is his understanding from Scott Bennett that we need to respond in three days and Member Hicks concurred with this. Further, that you don't have to tell them a certain date; you tell them you will provide it when it becomes available.

Supervisor Sawyer said it is his understanding these open record requests would all go through Floyd Jones in the Clerk's office.

Supervisor Sawyer stated he is working to get all these minutes complete. He has spoken with the requestor for the records and he seems good with that response. All of the agendas have been sent to the requestor.

Member Watts reiterated that the requestor had not been responded to in three days and that he has been given a portion of what he has asked for and there has been no communication since then.

Member Hicks asked if there is a penalty involved with this lack of response.

Mr. Davenport said he had spoken with Steve Rapson, who told him he wants Mr. Davenport to tell him how different department heads are supposed to respond to open records requests. He told him the law is changed every year and the only two departments he can think of that don't need any help with this is Planning and Zoning and probably Tax Assessors. With every department you have an area that's a problem. You don't know it's a problem until it's too late.

Prior to last year's amendment, there were criminal liabilities issues associated with responding incorrectly. If you responded incorrectly, you could be held criminally liable and it was that way for about eight years. Before that, you did not have the three days and you didn't have the criminal liability. It's good to know the context of how we have evolved to know what's coming down the pike.

Mr. Davenport further stated that when the criminal liability started attaching, he told Fayette County then as well as all his government clients, that if you get an open records request, send it to him. If you want to handle it yourself, you can go ahead but there is a criminal liability attached if you don't do this correctly. That was enough motivation for them to send it to him. He said "we had a system in place, we handled it and that's what we did". He still does that for his other government clients. The law has now changed. In addition to criminal liability, there is civil liability. Now the problem that creates for you as a government is the criminal liability had a higher standard that somebody attacking you would have to meet. There would have to be intent to violate the law. Well, that's no longer there. It's simple negligence that will get you civilly liable. You could be liable with up to a \$500.00 or \$1,000 fine. If you want to face that risk, that's your liability. He said if you want me to be a part of this process, that's what he does and he'll be happy to do so. It's the Board's choice.

Mr. Davenport said that he told Steve Rapson, that he could not create a one size fits all template. He reiterated we have three days to respond. Your response is: I will have this available for your inspection or examination – not that I will be giving you what you asked for. The law has also changed in that if it takes more than \$25 or \$50 to do this, do you want me to

continue. They have then got to respond “no I don’t” or “yes, I do”. If you don’t hear back from them at all, forget about it. If you do hear back from them, then you have the letter in the file and they will pay for it. They are responsible for the cost. It’s 10 cents per page and man hours. You get to a different threshold and it might be \$100 or \$150. It’s an objective standard in the law. If they reach that amount, then you don’t have to do anything if they don’t want to pay it.

If you get a request that asks for a lot of information, we go to the department and say I am not going to ask you to say how long it will take you with precision. Give me a ballpark. Can you do this in fifteen days, thirty days ... what are we talking? I respond back that your request is too voluminous to have ready for inspection and examination. However, we believe this can be accomplished in the next week to ten days. If we find this is not possible, we will let you know. Otherwise, contact so-in-so at this number between the hours of 8:30 and 4:30, Monday through Friday, excluding holidays. That’s how we handle that. It’s a lot of issues from start to finish. Volume doesn’t scare us ... what scares us is not being involved. With the criminal and civil liabilities that you are facing, that’s what we are facing. I don’t want Fayette County to be a test case for the Attorney General’s office.

Member Watts asked if that liability would be on this Board. Mr. Davenport responded: Whoever responded to this request could be opening themselves up to a potential criminal and civil liability.

Member Hicks asked if the individual be liable to cover it. Mr. Davenport said the County would end up covering it.

Member Watts questioned about minutes that should have been approved and in the file. Mr. Davenport said that once they have been approved, they are public record. He also stated that a lot of people just post these on their website which is the easiest thing to do and basically this eliminates these requests. This also is a big cost saver.

Mr. Davenport further said the following: One more big change in the law, you should be aware of, is addressing your question about how to be aware of how the departments respond in different ways. You can create the office of Official Open Records Responder, or however you want to term it. The law says you can do that. That’s critical because it requires everything to be funneled to one place. However, there are some drawbacks to that, principally, even though Floyd (Jones) might be your official responder, if it sits over in a department office for 3 days and Floyd doesn’t know about it, you can’t claim the defense. As soon as you get it, provide me evidence of when you received it. In other words, take out your stamp and stamp it. If you don’t have a stamp, write on top of it “Received January 24th or whatever day that is and what time it is”. I have got to be able to say when you received it, with certainty. I do not respond by email; I respond by business mail. They are not going to get it on that 3rd business day. They are going to get it on the 4th, 5th, or 6th day. I can’t control the mail but I am not going to respond to something in 24 or 48 hours, if I don’t have to.

Chairman Lester asked Supervisor Sawyer when he is shooting to have all these back minutes produced.

Supervisor Sawyer responded “as soon as possible”.

Member Watts said that we have had open records request before and she guessed at that time they may have gone to the county attorney.

Supervisor Sawyer said that he has received none.

More discussion between Member Watts and Supervisor Sawyer about this request and the fact the minutes did not exist when they were requested.

Chairman Lester asked for a target date to be set up so all these things will be done by the February meeting. He said we need to follow up with the requestor and let him know what’s available and tell him when we anticipate having the remainder of his request completed and when we can respond.

Mr. Davenport suggested we should provide him with his request over and above anything he has asked for.

Member Watts stated the requestor had contacted her because he did not get a response.

Supervisor Sawyer indicated he could email the requested minutes. Mr. Davenport said he would not have a problem with that in this instance. Normally, he would not agree to that.

Chairman Lester said that we should follow up with him this week and Supervisor Sawyer agreed that he would do that.

The Board thanked Mr. Davenport for his attendance as he had another meeting to attend.

C. OLD BUSINESS

3. MINUTES OF PREVIOUS MEETINGS

Member Watts and Chairman Lester had discussion about the minutes needing to be “cleaned up” grammatically and consistency was needed with names. The substance was okay.

Member Hicks said he had no problem with the minutes for September and November being approved and Member Watts and Chairman Lester agreed.

Chairman Lester made motion to approve September and November, 2012 meeting minutes. Member Watts seconded that. Motion carried 2-0. 1 abstaining.

Supervisor Sawyer said he will clean up the August 13, 2012 hearing minutes.

D. NEW BUSINESS

4. SPECIAL ELECTION – HOUSE DISTRICT 71

Supervisor Sawyer spoke about House District 71 which only involves precincts 18 and 31. There are 6 people who have qualified for that special election to be held on February 5, 2013. Robert Stokely, who won that seat, resigned before he officially took office. Supervisor Sawyer passed out a list of the people who qualified with the Secretary of State. There are approximately 11 precincts in Coweta County that are involved. We have approximately 3,000 people who could possibly vote. Supervisor Sawyer expressed the fact that a very low percent is expected to vote. Additionally, since there are 6 people running, there is very likely to be a run-off which would be held March 5, 2013. Member Hicks asked about partisanship of this special election. Member Watts stated it is not a partisan election even though they have declared their party because it is a special election.

5. ELECTION & VOTER REGISTRATION CALENDAR - MUNICIPAL ELECTIONS

Member Hicks asked about other elections this year and next year and wanted further information about municipal elections. Supervisor Sawyer said the only other elections scheduled for this year will be municipal elections. They are always on odd years. There was more discussion about the cities doing their own qualifying and that we do the elections. Mr. Sawyer said he will meet with the city Clerks next month. February 1st is the deadline for the cities to post what their qualifying fees are. Supervisor Sawyer will provide Member Hicks with an updated list of seats that will be up for reelection.

Supervisor Sawyer said November 5, 2013 is the date for the municipal election with October 7, 2013 being the registration cut-off. These are the only elections scheduled for this year. The funds that we spend will be billed to the cities.

There was further discussion about different municipal seats that are up for reelection for the cities in Fayette County as well as state seats.

6. FAYETTE STATE COURT JUDGE APPOINTED TO STATE COURT OF APPEALS

Supervisor Sawyer spoke about Carla McMillian's appointment to State Court of Appeals and leaving her office as Fayette State Court Judge. Supervisor Sawyer said her position will be appointed by the governor per the state constitution.

7. RECALL PETITION OF DR. BOB TODD

Mr. Sawyer passed out a letter he sent to Dr. Todd saying that Melissa Hill came and asked for an additional application. She had asked for a petition before and did not have enough names. She provided another one with 104 signatures. He has not heard from her since she realized she had to have 21,000 signatures. This number that is required for the petition is equal to 30% of the registered voters that were eligible to vote in the election when Dr. Todd was last elected.

She has 45 days from the day she picks up the form for a recall. So, no action is required on that at this time.

8. NEW VR SYSTEM TRAINING - MARCH 25-28, 2013, ATHENS, GA

Supervisor Sawyer informed the Board about the new voter registration system that is replacing our current data base system for voters in the State of Georgia. The schedule for training has been changed because of our having to do this upcoming special election. The only training that will work for our office will be in Athens, GA on March 25, 26, 27, 28, 2013. Mr. Sawyer will ask for funding for this. When the budget was done, there was no knowledge of this.

9. CONFERENCES

Supervisor Sawyer spoke about upcoming conferences. This year will be the GEOA on May 5 – 8, 2013 in Savannah and the VRAG will be in August 12 – 14, 2013 in Athens, GA. Important topics are on the agendas for these conferences.

10. COUNTY TO RECEIVE PRORATED QUALIFICATION FEES PAID TO THE SECRETARY OF STATE

Supervisor Sawyer said that all the qualifying fees that are being paid to the Secretary of State are being prorated to the different counties.

E. OTHER BUSINESS

Member Watts brought up the topic of the consolidation of precincts and suggested a workshop for the Board to sit down and analyze which precincts to combine. She said it's time to revisit this issue. Since we now have over 50% of the people early voting, we don't need as much staff in the precincts. Chairman Lester said it should be done before the 2014 election. Supervisor Sawyer is doing some research on this with the GIS department. Consolidating precinct lines for the cities will also be addressed, as well as possibly more early voting sites for the next presidential election.

Chairman Lester asked that Supervisor Sawyer follow up with the GIS department and go forward with setting a work date.

Supervisor Sawyer explained the legalities of doing this consolidation and we need to work toward completing that by the end of this year. Voters have to be notified of these changes. The consensus of the Board was to have this completed before the end of the year. The cost of all this was discussed as it relates to our budget.

Supervisor Sawyer stated the number of our registered active and inactive voters has gone up to approximately 84,000.

F. OTHER BUSINESS

NONE

G. OTHER ITEMS FOR CONSIDERATION

NONE

H. ADJOURNMENT

Since there were no additional items for discussion, Chairman Lester moved that the meeting adjourn. Member Watts seconded. Motion was carried 3-0.

I. REOPEN THE MEETING TO VOTE ON POLL WORKERS FOR SPECIAL ELECTION

Chairman Lester made a motion to reopen the meeting to vote on poll workers for the February 5, 2013 Special Election. Member Watts seconded the motion. The motion carried 3 – 0. Member Watts moved to approve the list of poll workers for the Special Election to be held on February 5, 2013. Member Hicks seconded the motion. Chairman Lester asked for a vote on the motion and it carried 3 – 0.

J. ADJOURNMENT

Chairman Lester moved to adjourn the meeting. Member Hicks seconded the motion. The motion carried 3 – 0.