

APPROVED # 1053

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, JULY 1, 2008
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR HEARING ROOM
NEW YORK, NY 10004

P R E S E N T: President James Sampel
Secretary Frederic Umane

Commissioners Dent, Graham, O'Connor, Polanco, Soumas, Yennella

Marcus Cederqvist, Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Ward, Finance Officer
Steve Ferguson, Management Information Systems
John Owens Jr., Campaign Finance Enforcement
Barbara Conacchio, Chief Clerk, Queens Borough
Katherine James, Deputy Chief Clerk, Queens Borough
Beth Fossella, Coordinator, Registration Unit
Steven Denkberg, Counsel to the Commissioners
Charles Webb III, Counsel to the Commissioners

GUEST: Marjorie Shea, Women's City Club
Mary Lou Urban, League of Women Voters
Teresa Hummel, Community Church of New York
Andrea Senteno, Citizens Union

President Sampel called the meeting to order at 1:46 P.M.

President Sampel moved to table the minutes of the May 6th, May

13th, May 20th, May 27th, June 3rd, June 10th, and June 24th meetings until next week. Secretary Umane seconded the motion, which was adopted unanimously.

The Executive Director reported that:

- A) There had been significant changes since the previous weeks Commissioners' meeting concerning the problems with the Auto MARK Device that ES&S believed required corrections to the system's firmware and therefore would require recertification as well. After further testing and program review, ES&S has stated that the problem causing the machines to crash is in the EMS software and therefore will not require recertification. A few BMDs that have already been acceptance tested by the State Board of Elections and will be delivered next week for the EMS work stream to conduct extensive testing using the corrected EMS. If they do not experience problems during testing, the BMDs can be delivered in a few weeks for acceptance testing by NYC Board staff.
- B) He provided the Commissioners with a draft of the 2008 Plan B Implementation that the staff had produced which significantly

reduces BMD staffing and cost over the previous proposal. He asked the Commissioners to please review it, advise of any suggestions or corrections, and issue a determination at the next meeting.

C) The Budget for Fiscal Year '09 that the City adopted the previous night is under review. He said that he will work with the Finance staff to review the line by line appropriations when they become available but that it did not appear that any additional funding was provided that would allow the Board to recruit and assign BMD-specific poll workers or conduct local registration for the 2008 Presidential election.

After discussion, Secretary Umane moved to direct:

- A) The General Counsel to draft a letter to the State Board of Elections and copy Justice Sharpe advising that necessary funding has not been provided for HAVA implementation. He asked that he include the budget line-by-line items for their review.
- B) Board staff to issue a press release that would give a detailed explanation of the various work that is affected by the lack of funding; and

C) The Senior Managers to instruct the Borough Chief Clerks and Deputy Chief Clerks to commence the normal Poll Worker Training procedures and start recruiting employees for future employment should monies become available to hire them.

President Sampel seconded the motion, which was adopted unanimously.

The Executive Director reported that Notices of Intent to Cancel were mailed under §5-402 of the Election Law. He was notified that there was a case where a voter received the Notice of Intent to Cancel and adamantly refused to return the enclosed form because he or she believed the error was made by a Board of Elections. He provided the Commissioners with a copy of the Draft Procedure for resolving a narrow range of similar situations and asked for a determination.

Secretary Umane moved to adopt the Draft Procedure for Resolving Errors as recommended. Commissioner O'Connor seconded the motion, which was adopted unanimously.

The General Counsel provided the Commissioners with a copy of the Draft Calendar for the filing of Independent Nominating Petitions for the November 4, 2008 General Election and recommended that the Commissioners convene the Hearings and their weekly meeting (in place of Tuesday, September 2, 2008) for Thursday, September 4, 2008 at 1:30 P.M.

Secretary Umane moved to approve the General Counsel's recommendation to hold the meeting of the Commissioners of Elections in the City of New York on Thursday, September 4, 2008 to conduct Hearings on Independent Nominating Petitions for the 2008 General Election. Commissioner Dent seconded the motion, which was adopted unanimously.

The General Counsel provided the Commissioners with a Decision and Order of the New York State Supreme Court, Kings County and the Appellate Division of State Supreme Court for the 2nd Judicial Department in the matter of Barron et. al. v. & the Board of Elections in the City of New York [Index No. 700000/08]. The General Counsel explained that this proceeding was commenced to compel the Board of Elections in the City of

New York to conduct a second election for Member of Assembly, 40th Assembly District, Kings County in light of the conviction by the prior incumbent which occurred on April 8th, after the statutory deadline for the Governor to call a Special Election. Kings County Supreme Court Judge David Schmidt granted the petitioner's relief on Monday, June 30, 2008 and on June 27th issued an order directing the petitioner to serve all Kings County Chairpersons of the Democratic, Republican, Independence and Conservative Parties as well as the New York State Chairperson of the Working Families Party and other candidates and/or their representatives that could be identified. The Court determined that the statute does require the Board of Elections to hold two elections:

- A) One for the term ending December 31, 2008; and
- B) Another for the full term, January 1, 2009 to December 31, 2010.

To ensure fairness, the Court directed that petitions for the interim term, which would be the date of certification for the December 31, 2008 election, only be conducted from July 3rd – July 10th. The General Counsel advised that he will continue to represent the Board of Elections in this matter and to take appropriate action to uphold the NYS Election Law.

The General Counsel reported that the Legislative Secretary to the Governor requested the Board's analysis, comments and recommendations with respect to S.5162/A.9911. The bill requires that whenever any proposed constitutional amendment, other statewide ballot questions or a candidate for statewide office appears on a ballot, the County BOEs shall submit a facsimile of the ballot to be used to the State Board of Elections for approval before printing.

Secretary Umane moved to direct the General Counsel to convey the Commissioners opposition to S.5162/A.9911 noting the challenges that the legislation presents. President Sampel seconded the motion, which was adopted unanimously.

The General Counsel reported that he and John Owens Jr. attended the State Board of Election's HAVA Complaint Hearing regarding McFeeley v. the Board of Elections in the City of New York. Mr. McFeeley and his Attorney were present. Mr. McFeeley's complaint solely concerns the Board's failure to do list maintenance within the City of New York, chiefly Staten Island. Based on their findings, the State Board's staff will make a recommendation for action by the NYS Board Commissioners at their

meeting on July 22, 2008.

The Finance Officer John Ward provided the Commissioners with the Comparative Expenditure Report dated July 1, 2008.

Chief Clerk Barbara Conacchio and Deputy Chief Clerk Katherine James presented the Commissioners with the Poll Worker Training Program for Queens. Secretary Umane thanked the Queens Borough staff for their dedication and hard work.

President Sampel suggested that a Chief Clerk and/or Deputy Chief Clerk from each borough attend the Commissioners' regular meeting which was agreed to unanimously.

The Director of MIS gave a follow-up report concerning King TeleServices, a telemarketing firm that DOITT has a contract with and that they suggested might be helpful in handling the high volume of calls on Election Day. He described the technical process about how calls are routed the week before Election Day using an Automatic Call Distribution (ACD) System. He asked the Commissioners for a determination whether

to pursue further potentially allowing King TeleService to hire additional staff to assist the Board with Election Day calls. The Supervisor of the Phone Bank noted that the Phone Bank Unit received 200,000 calls during the 2000 election and could use the additional support.

The Administrative Manager reminded the Commissioners that during the 2004 General Election the Board's website received an excessive amount of hits which exceeded its capacity and the phone bank received a high volume of calls which resulted in technical problems.

After discussion, the Commissioners unanimously agreed to continue to use 311 as a back-up to the NYC Board's phone bank and not pursue the additional support from King TeleService due to the lack of appropriated funding cited previously in the meeting.

Commissioner Graham moved to reconsider the Commissioner's action at their last meeting to take away the ½ hour for Board employees to cash their paychecks on payday. Commissioner Dent seconded the motion, which was adopted by a vote of 6 in favor (President Sampel, Secretary Umane, Commissioners Dent, Graham, Polanco, Yennella) 2

opposed (Commissioners O'Connor and Soumas).

Commissioner Graham moved to restore the prior policy that allows employees a ½ hour to cash their paychecks. Commissioner Polanco seconded the motion. Commissioner Dent suggested that the respective Commissioners asked the Borough Managers to monitor their staff to ensure that this policy is not being abused. The Queens Borough Chief Clerk and Deputy Chief Clerk asked the Commissioners to consider the hardships they would be placing on individual employees should they vote not to restore this policy.

Following discussion, Commissioner Graham moved to restore the Board's prior policy that provides employees with a ½ hour to cash their paychecks and that it is adhere to and monitored closely by the Borough Managers. Commissioner Dent seconded the motion, which was adopted by a vote of 6 in favor (President Sampel, Secretary Umane, Commissioners Dent, Graham, O'Connor, Polanco) 2 opposed (Commissioners Soumas and Yennella).

The President opened the floor for brief comments from a member of the public:

A) Alan Flacks

President Sampel moved to convene an Executive Session to discuss personnel matters. Commissioner Polanco seconded the motion, which was agreed to unanimously.

The President reported that no action was taken in Executive Session.

President Como moved to adjourn. Commissioner Graham seconded the motion, which was adopted unanimously.

The President announced that the next meeting will be held on Tuesday, July 8, 2008 at 1:30 P.M.