

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, JUNE 30, 2009
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR HEARING ROOM
NEW YORK, NY 10004

P R E S E N T: Secretary Julie Dent

Commissioners Araujo, Polanco, Sampel, Schacher, Silie, Sipp, Soumas,
Stupp

Marcus Cederqvist, Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Valerie Vazquez-Rivera, Director of Public Relations
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
Rosanna Rahmouni, Coordinator, Election Day Operations
John O'Grady, Chief, Voting Machine Technician
Beth Fossella, Coordinator, Voter Registration
Steven B. Denkberg, Counsel to the Commissioners
Charles Webb III, Counsel to the Commissioners

GUEST: Patrick Synmoie, Executive Agency Counsel, Office of
 the City Clerk
 Prameet Kumar, New York Capitol Newspaper
 Judd Ryan, ES&S
 Gene Seets, ES&S
 Rima McCoy, CIDNY
 Andrea Senteno, Citizen's Union
 Mary Lou Urban, League of Women Voters
 Teresa Hommel, Community Church of New York
 Stewart Armstrong, Voter Assistance Commission

Secretary Dent called the meeting to order at 1:38 P.M.

Secretary Dent expressed that President Umane was on a much desired vacation and that she would be presiding over the meeting this afternoon.

Secretary Dent acknowledged Patrick Synmoie, Executive Agency Counsel from the Office of the City Clerk, and that he was on the agenda to address the Commissioners as it related to verifying signatures on petitions filled with the Office of the City Clerk for a voter's initiative for November 2009.

Commissioner Araujo moved to table the minutes of June 16, 2009 and June 23, 2009. Commissioner Sampel seconded the motion, which was adopted unanimously.

The Executive Director reported that:

- a) Forty minutes ago, he received an e-mail from Anna Svizzero, so he did not have the chance to include it in the agenda package. The State Board Commissioners have approved the use of the updated BMD software and firmware for the upcoming elections and it will solve some of the reported problems with the BMDs in last year's election

cycle, such as long boot-up times. This obviously is good news for the Board and should help with the BMD deployment this year. A copy of the e-mail will be included in the Commissioner's next agenda.

- b) A vacancy has occurred in the 38th Assembly District due to the resignation of Assemblyman Anthony Seminerio. The NYC Board received a certificate of vacancy from the State Board and a copy is included in the agenda packet.
- c) As mentioned briefly in last week's meeting, the Board has received a formal request for assistance from the City Clerk's Office in verifying signatures on petitions filed with the City Clerk's Office for a voter initiative for November 2009. The City Clerk has made a commitment to reimburse costs associated with work by the BOE. He noted that they were joined by Patrick Synmoie, Counsel to the City Clerk, and asked the Commissioners whether they wanted to accommodate this request.

In response to a question from the Commissioners, Mr. Synmoie reported that the petitions were filed with the City Clerks Office on June 24, 2009. Their office is required to send a letter to the New York City

Council within 30 days stating whether 30,000 of the 50,000 signatures submitted are valid. In response to a question from Commissioner Soumas, Mr. Synmoie explained that Section 37 provides for the service of process under the Municipal Home Rule Law. Commissioner Polanco asked for a copy of the Law. A decision would be deferred until later in the meeting.

Commissioner Soumas explained to the public, who may not have understood what just transpired, that his question was intended to determine whether the signatures filed on the petitions in question are presumptively valid as with signatures filed on a Nominating Petition. The presumption of regularity is this and then when an objection is filed the Board of Elections undertakes research to determine the validity of the signature itself and voters registration is proper in all respects. In this instance, if 60,000 signatures are filed are they are in fact presumptively filed, there's no need to waste no resources at all unless there's in fact a objection to the validity of those signatures.

The General Counsel reported on New York State Legislation, sent by e-mail, dated June 2009n from Kathleen O'Keefe. He explained that a total of five (5) bills have passed both houses. A.1436 – "The Popkin Bill"

has passed both houses and has been delivered to the Governor's office. The Governor has until Friday to either veto or sign it into law. Four (4) other bills passed both houses:

- A.2481 to change the date that Information Notices are mailed from August 1 to August 5th.

- A.4967 which codifies the Court of Appeals decision from the Spano Case which says that if you cast an affidavit ballot in the wrong ED but at the right poll site, it's counted. If you cast an affidavit ballot at the entirely wrong poll site, it is invalid.

- A.1559 (the Russian Language bill), and

- A.4959 the clean up of the Independent Nominating Petition bill, this reflects the decision of Chow that we have observed but would change the language of the INP to reflect that fact that the court found it unconstitutional the requirement that you had to live in the subdivision for the candidate. Any registered voter can be a subscribing witness. All four of these bills were initiated in the NYS Senate.

The General Counsel reported that the "Gelb Extender" has passed the NYS Assembly, but has not passed the NYS Senate. Unless the bill is passed and pre-cleared by the Department of Justice the Board would:

- a) Have to provide write-in opportunities on the lever machines for every party position that is contested; and
- b) Require that inspectors to open the rolls at the poll site at the end of the election; remove those rolls and count the paper ballots.

The General Counsel further reported that it has been placed on the agenda for the special session by the Governor as one of the essential extenders. There has been no action taken.

In response to a question, the General Counsel explained that the Commissioners would have a decision to make with regard to the following:

- a) Not to have the physical capacity on the lever machines to put all the party positions particularly with regard to contested judicial delegate and some of the districts with larger numbers of delegates, and
- b) Figure out whether or not the Inspectors, who have never been trained to open the back of the voting machine, will be able to comply with this Rule.

If the “Gelb Extender” does not take place then the responsibility goes back to each Election District’s Board of Inspectors.

The General Counsel reported that last week he, the Deputy Executive Director, the Administrative Manager, the Chief Voting Machine Technician, the Director of Special Projects, the Chief Clerk of Queens, the Chief Clerk of Brooklyn, and the Deputy Chief Clerk for the Bronx attended the New York State Election Commissioners' Association 94th Annual Summer Conference in Geneva, N.Y. Included in the program was:

- The Program Committee of the ECA requested that the Board make a presentation describing the Board's experience when it conducted the February 24, 2009 Special Election for City Council in the 49th District in Staten Island entirely on paper ballots. The General Counsel and Deputy Executive Director made the presentation. It was well received and generated many excellent, albeit nervous, questions. It also provided the Commissioners and staff of the State Board with information on what actually happened.
- It featured extended discussion on State Board Rule 6210, which is the proposed State Board Rules for the new poll site voting systems covering security, maintenance, and the 3% audit. The State Board released draft guidelines, not having the force of law that

will impose significant new obligations on how the State Board wants us to handle the new voting systems.

- The Board staff met with ES&S. The General Counsel reported that they discussed the need to use updated Election Management System software and firmware for the BMDs that would correct some of the problems experienced during the 2008 Primary and General Elections, such as long boot-up times and memory capacity issues.
- The Board staff heard an interesting report on the longest ongoing count for the US Senate seat in Minnesota. The Director and Chief Counsel of the Minnesota Board of Elections were at the conference and did an extensive presentation concerning their ongoing experience with the count. The Minnesota election was conducted using scannable paper ballots and they counted the ballots statewide three (3) separate times.
- The State Office of General Services (OGS) provided an update on how they are going to process the orders for selected systems and what will be available on the State contract upon certification.

- The State Board staff provided information concerning its plans for certification and the timeframe it gave to the Court.

The conference concluded with the election of ECA Officers and members of the Executive and Legislative Committees for the next year.

The General Counsel noted that the City Board staff did not attend the dinner reception that was paid for by Phoenix Graphix, a vendor who does business with the Board. The General Counsel advised that acceptance of the reception may constitute a violation of the New York City Conflict of Interest Rules.

Commissioner Dent thanked the General Counsel for his comprehensive report. In addition, she noted that the overall report presented by the Deputy Executive Director and General Counsel during the ECA Conference was vital and contained important information that was well received by those who attended the conference.

Commissioner Schacher suggested that the Board send a response to the erroneous allegations by the Daily News.

In response to a comment, the General Counsel explained that “Directive 6” governs the number of employees who can attend any particular meeting or training and the number of times a specific employee attends, with discretion to the governing authority of said agency if believed that the public interest will be served. Based on these facts, Commissioner Polanco backed Commissioner Schacher’s suggestion and urged that the Board send a response to the Editor of the Daily News defending the Board’s actions at the Summer Conference.

Commissioner Soumas acknowledged Commissioner Schacher and Commissioner Polanco’s concerns, but argued that it did not make sense to try and reason with the news.

Commissioner Araujo suggested posting a message on the Board’s website explaining why the Board staff attended the ECA Conference.

Secretary Dent opened the floor for brief comments from a member of the public, Teresa Hommel who represents the Community Church of New York.

Commissioner Polanco stated that there seems to be a

misunderstanding regarding communications, especially with the press. He stated that it is clear that the Board cannot control what the Daily News is going to report, and every time they write a bad story the Board throws their hands in the air. Commissioner Polanco suggested that a letter from the Board describing what took place at the ECA Conference is the right course of action considering this terrible article that appeared in the Daily News.

Following the discussion, Secretary Dent asked the Commissioners for a decision:

- A) To send a response to the Daily News article that appeared on Tuesday; or
- B) Ignore the article and the continued violation of the Daily News on the Board.

Commissioner Polanco moved that the Board responds to the news article with a letter to the editor that is comprehensive, and explains the agenda at the ECA Conference. Commissioner Silie seconded the motion, which was adopted by a vote of six (6) in favor (Secretary Dent, Commissioners Araujo, Polanco, Schacher, Silie, Stupp), one (1) opposed (Commissioner Soumas), and two (2) abstentions (Commissioners Sipp

and Sampel).

Commissioner Silie reasoned that stating the Board's position is not fighting. The Daily News may not even print the message, but at least the Board hasn't given up. She expressed that things are going to continue to happen, so at what point does the Board say enough is enough. Commissioner Silie supported a press release, along with Commissioner Araujo's suggestion to post a message on the Board's website.

After a brief discussion, Commissioner Polanco's motion was amended to include a message on the Boards website, which was adopted by a vote of six (6) in favor (Secretary Dent, Commissioners Araujo, Polanco, Schacher, Silie, Stupp), one (1) opposed (Commissioner Soumas), and two (2) abstentions (Commissioners Sipp and Sampel).

The Commissioners directed the Executive Director to write a brief statement and include the General Counsel's report outlining the Board's actions at the Elections Commissioners' Association Conference.

Secretary Dent recalled the Counsel to the City Clerk. The General Counsel read that a petition to Amend NYC Charter, under § 37 of the

Municipal Home Rule Law,

§ 5. *Such petition shall conform to provision of section 24 of this chapter in relation to petitions, “it shall be examined and reported on the city clerk as prescribed therein and objections thereto shall be disposed of by the Supreme Court.”* The General Counsel noted that there is no formal objection process at the City Clerks office similar to what the Board’s of Elections Commissioners has.

§ 24. *“the clerk shall examine each such petition so filed with him and no later than 30 days after the date of its filing shall transmit to the legislative body a certificate that he has examined it and has found that it has complied or does not comply as the case may be with all the requirements of the law.*

Commissioner Polanco moved that the Executive Director’s request to have Board staff assist the City Clerk with this process be approved as provided for in the City Clerk’s letter with reimbursement for the cost. Commissioner Soumas seconded the motion, which was adopted unanimously.

The Coordinator of Election Day Operations provided the Commissioners with a copy of the Draft Equipment and Staffing Allocation

Plan for New Poll Site Voting Systems for their review and approval.

The Finance Officer provided the Commissioners with the Vacancy Report dated June 30, 2009 and gave an overview of the FY 2009 report.

Commissioner Dent announced that there will be no Executive Session.

Commissioner Stupp moved to adjourn the meeting. Commissioner Silie seconded the motion, which was adopted unanimously.

The next Commissioners' meeting is scheduled for Tuesday, July 14, 2009 at 1:30 P.M.