

Approved # 2099

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, MARCH 29, 2011
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR COMMISSIONERS' ROOM
NEW YORK, NY 10004

PRESENT: President Juan Carlos "J.C." Polanco
Secretary Gregory C. Soumas

Commissioners Araujo, Barrera, Dent, Ryan, Schacher, Sipp, Stupp

Dawn Sandow, Deputy Executive Director
Steven H. Richman, General Counsel
John Owens Jr., Director, Campaign Finance Enforcement
Dorothy Delayo, Director, Personnel
Valerie Vazquez-Rivera, Director, Communications and Public Affairs
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Alex Camarda, Citizen's Union
Kate Doran, LWV
Jerome Koenig
Joseph Garber
Marjorie Shea, Women's City Club
Rima McCoy, CIDNY
Cathy Gray, 936 President
Todd Urosevich, ES&S
Juan Michelen, for Assembly Member Brian Kavanagh
Paul Griego, Omaha, UA
John D. Smith
Stewart Armstrong, CFB
Teresa Hommel, Wheresthepaper.org
Alan Flacks, Member of NY County Democratic Committee
Geneva Butts

President Polanco called the meeting to order at 1:30 P.M.

Secretary Soumas moved to table the minutes of February 22, 2011, March 1, 2011 and March 8, 2011 meetings. President Polanco seconded the motion, which was adopted unanimously.

Ms. Vazquez-Rivera presented the Privacy Curtain feedback for the DS 200 Scanner. Ms. Vazquez-Rivera received a total of eighteen (18) email responses. She stated that eleven (11) were positive, seven (7) were negative and one (1) was neutral. She distributed copies of the emails to the Commissioners. Ms. Vazquez-Rivera recited some of the negative public comments as follows:

- “I don’t see that any sort of curtains would alleviate most, or indeed any of these problems, and would just cost a lot of money for little or no positive results. There is a learning curve here, but I don’t think curtains are the answer.” – Voter
- “We believe this purchase is unnecessary inasmuch as the Board already owns Privacy Screens which were available at all poll sites for the 2010 Primary and General Elections. Between the Primary and the General Election the Board of Elections did an exemplary job of retraining poll workers, special instructions emphasized the use of the privacy screens and also “Wait Here” signs. After the 2010 General Election, the League

recorded far fewer privacy complaints regarding the scanners. We have read and heard comments of the disability rights advocates who have examined the curtains under consideration and share their reservations.” – President of The League of Women Voters

- “It is expensive when the City does not need the additional expense.” – Voter
- “This procedure will only complicate the jobs of the poll workers.” – Voter
- “Silly, unnecessary and a waste of money. If there is some voter hysteria over this non-issue, purchase one for each voting place. No more.” – Voter
- “The scanner only accepts the piece of paper that was filled out before - the ballot slides into the scanner - why does that have to be private?” – Voter

Secretary Soumas suggested that the Board should consider one (1) curtained scanner per poll site.

Ms. Vazquez-Rivera recited some of the positive public comments as follows:

- “I prefer the black curtain, however, there are some suggestions that I would like you to consider. The black curtain is too long, too thick, and too dark that made me feel drowsy while I was inside. The color of the curtain should be lighter so that it would not block light. The area should be big enough to accommodate 2-3 people comfortably including the translator or 2 different party Coordinators.” – President of Chinese American Voters Association of USA
- “The least expensive option. The floor model by United Election Supply.” – Voter
- “The United Election Supply. It looks like it can do the job and the price is competitive.” – Voter
- “I prefer the cheaper version of the three (The United Election Supply). It seems to do the job just fine.” – Voter

Ms. Vazquez-Rivera reported that a voter suggested for the Board to host public demonstrations of the Privacy Curtains in the five (5) boroughs.

President Polanco noted that Commissioner Stupp joined the meeting.

Ms. Vazquez-Rivera reported that four (4) voters preferred the self-contained model by Pivot International, one (1) voter preferred the cart model by C.R. Daniels, and four (4) voters preferred the floor model by United Election Supply.

Ms. Delayo reported on the regulations for the Advance of Time (Grant of Time). She distributed copies of the draft regulations to the Commissioners. Ms. Delayo reported that she used the text from the DCAS Personnel regulations. She requested approval from the Commissioners. Commissioner Dent moved to accept the new procedure as it relates to the Advance of Time. Commissioner Stupp seconded the motion, with Secretary Soumas abstaining. The motion was adopted. Commissioner Araujo asked if Ms. Delayo will be emailing the Board staff of the new procedure. Ms. Delayo stated that she will email staff and a hard copy of the new procedure will be distributed with the staff's paychecks. Secretary Soumas inquired if these procedures apply to all City agency employees. Mr. Richman replied that they apply to the City's Mayoral agencies.

President Polanco asked the Commissioners if they will vote on the Privacy Curtains. Commissioner Araujo stated that they did not notify the

public that they will be voting on the curtains. Mr. Richman stated that the vendors are attempting to secure a place on the OGS contract. President Polanco thanked Ms. Vazquez-Rivera for her presentation concerning the Privacy Curtains.

Commissioner Stupp requested to discuss a Queens personnel matter in Executive Session.

Ms. Delayo requested to discuss a personnel matter in Executive Session.

Ms. Fossella presented the draft interim procedures for the verification of a deceased voter. She distributed copies of the procedures to the Commissioners. Ms. Fossella stated that according to Mr. Richman, the Statewide Voter Registration List is unconstitutional because the Board does not use bi-partisan teams to add or remove voters from the list. The City Board does not participate in the list. Many voters who are deceased have remained in the database as active voters. Currently, the City Board requires a copy of a death certificate or a certified letter stating that the voter is deceased. The Queens Borough Office staff has requested for the Public Administrator to assist in the verification of a deceased voter.

Ms. Fossella requested for the Commissioners' approval of the draft interim procedures regarding the cancellation of a deceased voter pending resolution of the legal status of the Statewide Voter Registration List. Commissioner Araujo stated that this interim procedure would be an added source for the Board. Commissioner Sipp was concerned that not every deceased person is logged into the Office of the Public Administrator. Commissioner Araujo stated that the Public Administrator will capture some deceased people which will aid in the Board's tasks. Commissioner Sipp indicated that the family of the deceased person would still have to notify the Board. Secretary Soumas suggested sending a letter to the Department of Health (DOH) asking if the voter is deceased and then sending that information to the State Board. Mr. Richman stated that the DOH, for both the City and State, provided the City Board with the deceased people lists in the past. The legislature directs the DOH to provide the list only to the State Board. The State Board will only provide the lists if the City Board participates in the NYS Voter System which creates the problem of operating in an unconstitutional matter.

Ms. Sandow stated that this matter arose after the election when the Poll Books were returned and "deceased" was written next to some voters' names. This interim procedure would help Board staff search the voters' names to find out if they are deceased and to be removed from the voter

registration list. Commissioner Sipp recommended asking the State Board for the deceased people list, whether or not the City Board participates in the NYS Voter System, because it is delaying the City Board's tasks. Commissioner Araujo suggested submitting a FOIL request to the State Board.

President Polanco recognized Jerry Koenig, a member of the public, who spoke about the Social Security Death Index website.

Commissioner Araujo stated that the Board is being active by using the Social Security Death Index website and the draft interim procedures.

President Polanco noted that Commissioner Barrera joined the meeting.

President Polanco moved to accept the new interim procedure as presented by Ms. Fossella. Commissioner Araujo seconded the motion. In a roll call vote with six (6) in favor (Araujo, Dent, Schacher, Sipp, Stupp, Polanco), one (1) opposed (Soumas), and one (1) abstention (Barrera), the motion was adopted.

Commissioner Sipp inquired why the City Board does not have standing to obtain the deceased people list from the State Board regardless of their position concerning the NYS Voter System. Mr. Richman recited Section 5-708-1 of the NYS Election Law. Commissioner Sipp noted that the law does not state that the City Board is not required to receive the deceased people list unless it participates in the State Board's NYS Voter System. He stated that the City Board and the people of New York are still entitled to the death certificates. Commissioner Sipp requested for Mr. Richman to create a memorandum to the Commissioners explaining why the City Board has no standing to seek relief to receive the deceased people lists from the State Board. Mr. Richman added that the Commissioners could issue a subpoena.

President Polanco recognized Teresa Hommel, a member of the public, who suggested for the Board to submit a FOIL request to the DOH.

Secretary Soumas stated that the City Board serves the voters. He does not believe that the law states that the State Board can not give the City Board the deceased people list unless it participates in the NYS Voter System. The State Board is the distribution system for these lists. Secretary Soumas asked for the State Board's obligation to communicate

the database provided by the DOH to the various counties. Mr. Richman recited Section 5-614 of the NYS Election Law. Secretary Soumas stated that the Board has standing to raise this issue with the State Board. Commissioner Araujo stated that the City Board has to explore the FOIL request, subpoena, and Article 78 until the Board receives a definitive answer from the courts stating which Board is violating the law. Commissioner Araujo suggested for this item to be further discussed at next week's meeting.

President Polanco noted that Commissioner Ryan joined the meeting.

President Polanco recognized Alan Flacks, a member of the public, who suggested for the Board to research the State's Health law concerning death certificates.

Mr. Richman requested for authorization to solicit bids for temporary legal services from July 1, 2011 to June 30, 2012 for the 2011 Primary and General Elections as well as for preparation of the 2012 Presidential Primary. A copy of his memorandum to the Commissioners is in the agenda. Mr. Richman recalled that for the last decade, the Board contracted for two (2) temporary attorney positions to assist the

Office of the General Counsel during each election cycle. The total estimated cost will not exceed \$100,000 for the entire term. President Polanco recalled that since 2007 he has requested for two (2) additional permanent attorneys. Mr. Richman stated that there is an Assistant General Counsel line funded for an annual salary of \$75,000. The Commissioners chose not to fill the line until the second position is created. President Polanco stated that he hopes the City will allow the Board to hire two (2) new permanent attorneys. Commissioner Sipp moved to authorize Mr. Richman's request to solicit bids for temporary legal services from July 1, 2011 to June 30, 2012. Commissioner Araujo seconded the motion, which was adopted unanimously.

Mr. Richman reported that Ms. Perkins informed him that at the previous meeting there was discussion and questions concerning the Records Access Policy. He distributed copies of materials relating to the Records Access Policy of the Board to the Commissioners. In 2002, the Commissioners transferred the responsibilities to the Director of Personnel. Mr. Richman asked if the Commissioners would like to vote on any changes in the policy. Commissioner Schacher recommended tabling this item for one (1) week. Secretary Soumas asked if the Board employees saw this policy. Mr. Richman replies yes; the information is in the Board's

Policies and Procedures Manual and it is posted on the Board's website. President Polanco tabled this matter for one (1) week. Mr. Richman requested for the Commissioners to review his submitted materials and to provide comments.

In the absence of Mr. Ward, Ms. Sandow presented the Vacancy Report dated March 29, 2011. A copy of the report is in the agenda. Ms. Sandow reported that the Board received a request from the Office of Management and Budget (OMB) yesterday afternoon and it is due tomorrow. She stated that Mr. Ward and his staff are currently working on a response. Secretary Soumas requested for copies of the OMB request for the Commissioners.

Commissioner Dent inquired if the Board received any additional resumes as it relates to the position of the Executive Director. Ms. Delayo replied no.

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

Following the Executive Session, the open public meeting resumed and President Polanco reported on the actions taken in Executive Session:

- I. Biaggio Ragusa, an Administrative Assistant in the Queens Voting Machine Facility (VMF), will be removed from the Board's payroll in late September 2011 at which that time Philip Ragusa, a Voting Machine Technician in the Queens VMF, will be appointed to that title and the outgoing salary of an Administrative Assistant in the Queens VMF, at an annual salary of \$43,459.
- II. The Commissioners approved the temporary transfer of Norman "Buzz" Lindros from the Executive Office to the Brooklyn Borough Office, effective immediately.

President Polanco moved to adjourn the meeting. Commissioner Dent seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, April 5, 2011 at 1:30 P.M.