

June 10, 2013

ERIE COUNTY BOARD OF ELECTIONS – Regular Meeting

Mr. Fatica, Chairman, called to order a Regular Meeting of the Erie County Board of Elections at 12:04 p.m. in the Erie County Council Caucus Room, Erie County Courthouse, Erie, Pennsylvania.

Mr. Smith, Clerk of Elections, called the roll:

Members Present: Mr. Fatica, Chairman
Dr. Foust
Mrs. Loll

Members Absent: Mr. Leone

Also Present: Douglas R. Smith, Clerk of Elections
Kim DeLand, Supervisor of Elections

Minutes

Dr. Foust moved to approve the April 4, 2013 Reorganization Meeting and the April 9 and April 18, 2013 Regular Meetings. Mrs. Loll seconded, and it carried in a unanimous roll call vote.

2013 Primary Election Overview

Mr. Smith reported that last week there were issues regarding recounts. He referred to letters received from Attorney Talarico regarding the Austin-Horton recount, as well as the Zawistoski recount which was not filed in a timely manner.

He asked that these letters be incorporated into the minutes:

June 3, 2013

David F. Dieteman, Esq.
100 State Street, Suite 210
Erie, PA 16507

Re: In Re: Democratic Municipal Primary for Erie County Council, 2nd District,
May 2013, Petition for Election Recount
No. 2013-11465

Dear Mr. Dieteman:

As promised, enclosed please find the Stipulation we discussed this morning prior to the recount. Please have your client sign and yourself witness the Stipulation and forward it to Mr. Filippi for his signature and the signature of Mr. Horton. Thereafter, I would ask Mr. Filippi to return the Stipulation to the Election Board for Chairman Fatica's signature.

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I will ensure that the Stipulation is filed with the Prothonotary and the Election Board and provide you and Mr. Filippi with time stamped copies of the filing. Should you have a question regarding the Stipulation, please do not hesitate to call.

Very truly yours,

/s/ Thomas S. Talarico, Esquire

Mr. Talarico also provided the following letter regarding the Sandy Zawistoski recount:

June 4, 2013

Phil Fatica, Chairman
Erie County Election Board Erie County Courthouse Erie, PA 16501

Re: Petition for Recount/Sandra Zawistoski
No. 11498-13 In the Court of Common Pleas of Erie County

Dear Chairman Fatica:

Earlier this morning you called me after learning that Ms. Zawistoski, a candidate for Summit Township supervisor, filed a Petition for Recount with the Court of Common Pleas at the above term and number on May 30, 2013. I subsequently reviewed the Petition and docket and confirmed as much. For the following reasons, the Erie County Board of Elections cannot entertain Ms. Zawistoski's Recount Petition.

Firstly, the Petition filed by Ms. Zawistoski, was filed with the Prothonotary of the Court of Common Pleas of Erie County, not the Erie County Election Board. Thus, the Court of Common Pleas and not the Erie County Board of Elections has jurisdiction to hear the Petition. The Erie County Board of Elections does not have jurisdiction over the Petition and cannot obtain jurisdiction because the Recount Petition was never filed with the Erie County Board of Elections under Section 3154 of the Election Code (25 P.S. § 3154).

Secondly, even if Ms. Zawistoski had filed her Recount Petition with the Erie County Board of Elections, the latter would not have the authority to entertain the Petition because the time within which to file the Recount Petition had expired by the time Ms. Zawistoski filed her Petition, that is, on May 30, 2013. Under the Election Code, Act of 1937, June 3rd, P.L. 1333, art. XIV, Section 1404, as amended (25 P.S. § 3154(f):

"Returns under this subsection* shall be considered unofficial for five (5) days. ... At the expiration of five (5) days after the completion of the computation of votes, in case no petition for a recount or recanvas has been filed in accordance with the provisions of this Act, or upon the completion of the recount or recanvas if a petition therefor has been filed within five (5) days after the completion of the computation of votes, the County Board shall certify the returns so computed ... in the manner required by this Act ... "

* The computation of votes conducted on the third day following the primary.

25 P.S. Section 3154(f)

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Since the computation of votes was completed by the Election Board on May 24, 2013, Recount Petitions had to be filed with the Election Board on or before May 29, 2013, that is, within five (5) days of the completion of computation of the votes. Ms. Zawistoski did not file her Recount Petition until May 30, 2013, a day late.

Should you have any further questions regarding the Zawistoski Recount Petition, please do not hesitate to call. Otherwise, it is my opinion that the Election Board has no jurisdiction to entertain the Recount Petition filed by Ms. Zawistoski and that the Erie County Board of Elections should proceed to certify the returns and issue Certificates of Election to the successful candidates for all elected offices.

Very truly yours,

/s/ Thomas S. Talarico, Esquire

Mr. Smith noted he was absent last week and thanked Ms. DeLand, Mrs. Drayer who worked an extra day, Mrs. Bruno who did some quarterbacking, and Mrs. Hughes who stepped up and assisted with several matters. There was also a school election last Friday at Collegiate Academy that Mrs. Hughes handled owing to an employee absence on the warehouse side.

Mr. Smith reported that Election Day was a relatively good day overall. There were some issues with machines in Lake City as everyone is aware. He believes the judge in that precinct handled the situation properly by allowing voters to use paper ballots until new machines could be delivered. There were no reported problems after that. Mr. Smith also noted there were a few machine issues where machines were not properly prepared. He plans to work with Mr. Czerpak at the warehouse to solve those problems.

Mr. Smith further reported that he participated in the Records Improvement Committee meeting two weeks ago. A \$4,000 grant was approved to provide an electronic inventory system at the warehouse which has a barcode reader. He explained it is similar to a handheld computer and allows the user to determine what has been done to a machine and provides a more systematic approach. He believes this will cut down on Election Day difficulties in that regard.

Although he was not present, Mr. Smith stated that it sounded like everything went well during the recount. Attorney Talarico was helpful with his presence. Ms. DeLand stated that she also feels that the recount went well. Ms. Austin was able to see the numbers and do a recount on the ballots herself, and Ms. DeLand believes Ms. Austin was satisfied with the results.

Mr. Fatica thanked Mr. Smith for the agenda he provided for the recount as it was very helpful. Both parties were very satisfied with the results showing there was no fraud involved. Mr. Fatica made notes at the time stating "it really showed that the transparency proves that the integrity is there with the checks and balances to ensure that there is no fraud." He noted both sides hugged at the end and there was no animosity. He stated that this is because of the work done beforehand to guarantee that the challenge process works. New candidates should understand the recount process. Ms. Zawistoski did not file properly and the Board was unaware of her request for a recount.

Dr. Foust wished to echo Mr. Fatica's comments. Dr. Foust expressed his disappointment with the newspaper's handling of the election with its focus on what went wrong. Dr. Foust acknowledged that some things did go wrong, but as Mr. Fatica noted, in the end

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what went right is what is important. The error on election night was found when the recount was done. He sympathizes with Ms. Austin who thought she was victorious on election night and then discovered she lost. Dr. Foust commended the staff for their job. The newspaper made comments about training, and that workers should be trained as thoroughly as possible, but these workers are essentially volunteers since they are not paid much. This was an honest mistake; it was caught, and in the end the proper result was established.

Mrs. Loll agreed with Dr. Foust's remarks. She is pleased that the mistake was found and corrected and the final results were proper in the end. Mr. Fatica pointed out that the electronic media can be blamed for not using the correct language in their reporting. Whoever writes the story initially passes it on to the night time anchor, then it is passed on to the morning anchor and the same mistake is made repeatedly. It should be emphasized that these results are not official until they are certified by the Board of Elections. He feels the newspaper focused on the negative.

Mr. Smith stated that he and Ms. DeLand will review the election night process to determine whether other procedures may be better to follow to avoid this type of situation in the future.

Dr. Foust asked whether the PEB used to activate the machines can be marked. Mrs. Hughes replied there is a sticker indicating the polling site. Dr. Foust asked about the yellow and red PEB and finding a way to better identify their proper use. Mrs. Hughes stated the instructions tell poll workers to use the red PEB to open and then put it away in their supplies until closing and then to use it to close. She explained that Mr. Clark's problem was that he used the red PEB as instructed, but it didn't work. He decided to try the yellow one and it worked. She acknowledged that Mr. Clark should have called the office to get permission or advise them of the situation. She plans to reiterate to poll workers that if any protocol changes, the office must be advised.

Mr. Smith advised that there is a small electronic battery inside the PEB's and some failures have been discovered. Those batteries may need to be changed and may cost approximately \$10,000. Mr. Fatica acknowledged that Mrs. Drayer had warned him about this situation. She indicated the cost for all the machines would amount to approximately \$57,000. Mr. Smith believes that may be accurate. Mr. Fatica stated the costs charged for this maintenance is exorbitant. Mr. Smith suggested keeping costs down by doing one-third of the machines over a three year period.

Certification of 2013 Primary Election Results

Dr. Foust moved to certify the 2013 Primary Election Results. Mrs. Loll seconded, and it carried in unanimous roll call vote.

Mr. Fatica the certification by the Board needs to be stressed as the final result.

Adjournment

There being no further business, the meeting adjourned at 12:23 p.m.

Ann M. Bruno, Council Secretary
