

September 12, 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 4:42 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. Cleaver  
Mr. Fatica, Chairman  
Mr. Giles  
Mr. Leone  
Mrs. Loll

Members Absent: Dr. Foust

Also Present: Douglas R. Smith, Clerk of Elections  
Kim DeLand, Supervisor of Elections  
Thomas Talarico, Board Solicitor

Minutes

Mr. Giles moved to approve the minutes of the June 10, 2013 Regular Meeting; Mr. Cleaver seconded, and it carried in a unanimous roll call vote.

Discussion concerning recounts after May 2013 Primary Election

Mr. Smith stated Mrs. Zawistoski and Ms. Austin had incurred costs for their recounts though the Election Code does have another provision which allows for such a petition to the Election Board without cost. Since Mrs. Zawistoski had no recount, because her petition to the Prothonotary Office was late, and Ms. Austin's recount took very little time, the Board ought to consider some refund as recommended by Solicitor Talarico in his memo. He then suggested Solicitor Talarico elucidate the issue. Mr. Fatica stated that some costs may have been incurred by the County for the recounts, including Mrs. Drayer working a day beyond her retirement date and Attorney Talarico being present that day, as well as staff time for the event. He indicated approval for a small charge to offset these costs. Mrs. Loll indicated her concern about a precedent being set by the Board's actions today.

Solicitor Talarico took the floor pointing out the bond posted by the individuals was different than fees or costs. He further stated the time of the employees would have been incurred in any case and thus shouldn't be charged to these petitioners. Talarico explained that any three people can request a recount by filing a petition with the Election Board claiming error in the count. This method has no costs attached.

The other method is to petition the Court of Common Pleas and claim fraud. He also added that the Board should expect more petitions for recounts in the future. Talarico stated the provision for costs hasn't caught up to technology. It's not that expensive anymore. If both parties had proceeded to the Election Board in the first place there would not have been any costs. This matter, though filed under the fraud statute ended up in front of the Board anyway. Talarico had asked them to withdraw their petitions to avoid any further costs by all parties. Mr. Leone agreed with the idea of a refund of their bond. Mr. Giles said since they had proceeded through the court system---if there were any expenses they should be recuperated. He was willing to consider a refund but not a total refund since they had filed. Solicitor Talarico pointed out the filing fees involved should not be refunded. Mr. Fatica asked what the costs were less the filing fee. Mr. Smith stated the bond costs were \$1350 for Ms. Austin and \$450 for Mrs. Zawistoski. Mr. Giles made a motion to refund the costs of the bond to the petitioners but not the filing fees; seconded by Mr. Leone. The vote was unanimous in favor of the motion.

Chairman Fatica asked Ms. DeLand to create a document which explains the recount issues to candidates. Solicitor Talarico warned that such a document might amount to legal advice and should not be given out by representatives of the Board. Mr. Fatica agreed but still thought some information could be given out which does not meet the definition of legal advice. Mr. Leone agreed with Solicitor Talarico that the Board should be wary about giving out information. He reminded the Board that the Republican Party had been sued by some individuals the previous year and in their filings the Board of Elections had been accused of giving out incorrect legal advice.

Chairman Fatica reminded all that Roosevelt School holding Erie 6-9 in past elections was no longer available due to its condemnation.

Adjournment

There being no further business, the meeting adjourned at 5:03 p.m.

Douglas Smith, Clerk of Elections

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