

November 23, 2015

ERIE COUNTY BOARD OF ELECTIONS – Regular Meeting

Mr. DiMattio, Election Board Chairman, called to order the 2015 Regular Meeting of the Erie County Board of Elections at 9:15 a.m. in the Erie County Council Caucus Room.

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

Members Present: Mr. DiMattio
Mr. Horton
Mr. Breneman

Members Absent: None.

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

Hearing of the Public:

None.

Approval of Minutes:

Mr. Horton moved to approve the minutes from the October 1, 2015 regular meeting of the Election Board. This was seconded by Mr. Breneman and carried in a unanimous roll call vote.

Other Business:

Mr. Smith read the following report regarding the 2015 General Election:

“The municipal election cycle is the most difficult of all election years including the Presidential, owing to the large number of candidates, contests and rules. 2015 was no exception to that canon with 11 county wide races, a Home Rule question and 153 races in the other 36 municipalities in Erie County.

That said the Election Department performed well in many areas with a relatively young staff. Our VR Supervisor and most experienced Clerk and our Warehouse Manager have been with us 2 ½ years. One other VR Clerk has just over one year of experience. That said, assistance to candidates, absentee applications and absentee ballot processing were several areas where we performed well. The

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effort of the staff remained high even during the very difficult last three weeks of the cycle.

The Voting Machine Warehouse under Mr. Czerpak had another strong year in terms of maintaining the schedule of machine testing and maintenance; management of our polling place inventory; equipment inventory and delivery to and from the warehouse.

As the Board is aware there were several large issues, some of which put the Board and the Department in a bad light for which I can only apologize and change the process going forward.

On October 15, 2015 it was discovered our ballot lacked instructions to voters in Millcreek required by the Home Rule Charter law:

“Regardless of your vote on the formation of a government study commission, you may exercise your right to vote for the members who would serve on the commission.”

After discussion with Solicitor Talarico, remedies such as handouts or vocal admonitions would fail to keep us out of court or have the election voided. Ms. DeLand added the instructions to our machines and created new absentee ballots over a weekend. Ms. DeLand’s skill in this area prevented a whole scale change of all absentees which would have necessitated a larger hand-count than what eventually occurred with Millcreek ballots.

This instruction is peculiar to Home Rule and is not found even in the Optional Plan Law which governs most all of the processes related to the change of governments. Even Mr. Talarico’s early involvement in this issue failed to uncover this particular requirement. There were no complaints related to this issue on either side. Many Millcreek residents called to ask about it only to stay with their initial ballot; eschewing the new one. 313 replacement ballots were sent out; there were 440 total Millcreek ballots sent out; 381 were returned. County-wide there were 1253 absentees sent out; received 1052 back by the deadline.

On October 21, Erin Pasinger from the Corry Journal called to inquire about Amanda Cox not being on the ballot for Corry Area School District. Mrs. Cox had been a candidate in the spring in four districts of Corry, Albion, Concord, and Wayne. Mrs. DeLand checked her count sheet and discovered that an error had been made by the County which placed Steven Drake as a winner on the

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Republican side of the ballot. At that time, there were five candidates all with the D/R designation, including Mr. Drake.

- October 21 - Doug gives Kim the okay to change ballots to include Mrs. Cox. Kim discusses the situation with Warren and Crawford Counties which begin the same process.
- October 22 – Attorney Jenifer Gornall calls on behalf of Mr. Drake and other incumbents inquiring about information that Mrs. Cox is being placed on the ballot.
- October 22 – Contact Attorney Talarico to discuss the situation in detail.
- October 23 - Attorney Talarico indicates that placing Mrs. Cox on the ballot would not be appropriate; that a period of challenge exists in the Election Code which had passed.
- October 24 - Contact the other counties about removing Mrs. Cox from the ballot or halting any work to place her on the ballot.
- October 24 - Staff works to undo her placement on the ballot.
- October 24 – Attorney John Persinger calls on behalf of Mrs. Cox requesting information about what happened and when.

Attorney Talarico initially cited Section 3456 of the Election Code:

“The commencement of proceedings in the case of contests, of the second, third, fourth and fifth classes shall be by petition, which shall be made and filed, as herein required, within twenty (20) days after the day of the primary or election, as the case may be. The petition shall concisely set forth the cause of the complaint, wherein it is claimed that the primary election is illegal, and after filing may be amended with leave of the court, so as to include additional specifications of complaint...”

Attorney Talarico also discussed this position with the solicitors from Warren and Crawford before the final decision was reached.

- October 29 – It is discovered that Mrs. Cox and Mr. Drake both received certification from Erie County.
- October 30 - Judge Garhart requests a meeting for Monday (11/2/15) apparently having been alerted by Attorney Tom Pendleton about a filing on behalf of Mrs. Cox.
- November 1 – Attorney Talarico, upon finding out that in fact both candidates had been certified, determines that Erie County cannot avoid placing Mrs. Cox on the ballot.
- November 2 – Meeting with Judge Garhart, Attorney Talarico, and Mr. Smith results in a decision to create paper ballots for the seven affected districts.

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- November 2 - paper ballot procedure is worked out over the phone with Crawford and Warren.
- November 2 - ballots are printed and distributed to all Judges of Election in the seven districts. Ballot pick up by Erie County deputies.

Election Day in the affected districts and elsewhere was relatively quiet. There were no complaints regarding the paper ballots by any of the candidates at that time. In other areas of the County, we had few issues, a tribute to the on-going training of Judges and poll workers, in which we engage. In comparison around the state, our office doesn't have near the issues or problems on Election Day that other counties encounter. The hand count of paper ballots and around 300 absentee ballots slowed our efforts somewhat. Given the closeness of the Court of Common Pleas contest between Attorneys Connelly and Mead, this became a pressure point for local media. The department in spite of that pressure performed at a high level. Because the office took its time and had hand counters in on Election Night made it very transparent for everyone involved. In retrospect, confidence expressed by both judicial campaigns showed in the lack of challenge to our process or to the final results.

Changes going forward will include a formal paper trail process of election results exchange between Crawford, Warren, and Erie to allow for greater oversight by all counties in any multi-county race. This process would have caught the issue in the spring. The process by which candidates are certified in the spring will change so that documents clearly indicate which candidates have won and which candidates have not, something that was somewhat couched in legalistic terms on our notices.

While these large issues created some unfortunate publicity for the Election Board and the department, overall the internal response was excellent and the challenges will be used as teaching points going forward.”.

Chairman DiMattio suggested that a meeting be held to see if there is anything the Board could be doing on their end to make sure things like this do not occur in the future. He stated that the school districts that spill over into other counties are definitely a concern during election time and it is hoped that this is not an issue going forward. With the presidential election coming in 2016, the spotlight will be on every Election Office. He commented that he understands that mistakes happen and that this was handled the best way possible. If nothing else, the paper ballot increased voter turnout by nearly 10% more than what it is in the Corry area.

Chairman DiMattio commented again that if there are any concerns or anything that the Election Board can do to help, he can set up a meeting with Mr. Smith and Ms. DeLand.

Mr. Breneman felt that the error actually increased voter turnout. Mr. Horton followed up by asking if there is anything that could be done to increase voter turnout locally and/or make it easier for voters to participate. Mr. Horton felt it is important for the Board to chart their own ideology to make it easier for citizens to participate. Mr. Smith stated that No Fault Absentee Ballots have been considered for a long time would provide a form of early voting that the State could somewhat easily do, and if the Board wanted to send something urging the State Legislature to pass this, a resolution of some sort could be done. The Board was in agreement with this and Chairman DiMattio asked Mr. Smith to draft a resolution for review.

Ms. DeLand then went on to discuss the on-line registration issue. She explained that there is a concern with the last date for registration and some timing issues regarding on-line registrations not making the deadline as a result of issues at the State level. People would register on the last date, but if the information is verified on that date, it is not a valid registration. Mr. Smith followed up stating that there are issues with how slow the US mail is now and he would like to encourage people to come in to the office to do absentee ballots due to the possible delay with the return of the absentee ballot via US mail.

Mr. Horton brought up a concern regarding to two districts that merged, and the fact that there were two committeewomen that were elected in each of the merged districts. His question was whether they both remain as committee members. Attorney Talarico stated that the Election Board has nothing to do with that, it would be a Party issue and possibly have an election at the Party level.

Discussion then turned to the certification of the 2015 Municipal General Election results. Mr. Smith stated that both Eddie Whiteman and Bill Beeman are not able to be certified. Mr. Whiteman did receive enough write-in votes for constable in McKean, but his residence is still listed as Millcreek. Mr. Beeman received enough write-in votes for auditor in Waterford Township; however, he is unable to hold office.

Mr. Breneman then made a motion to certify the 2015 Municipal General Election results, except for Mr. Whiteman and Mr. Beeman. This was seconded by Mr. Horton and carried in a unanimous roll call vote.

There being no further business, the meeting adjourned at 9:44 a.m.

Deneé M. Breter, Council Secretary