

BOARD OF ELECTIONS

Linda J. Sutton
CHAIR

Frank M. Dickerson
SECRETARY

Jerry D. Jordan
MEMBER



Robert H. Coffman
Director of Elections

Lamar Joyner
Deputy Director

FORSYTH COUNTY BOARD OF ELECTIONS BOARD MEETING – December 14, 2010

Present: Linda J. Sutton, Chair
Frank M. Dickerson, Secretary
Jerry D. Jordan, Member

Staff: Rob Coffman, Director of Elections
Judy Speas, Senior Office Assistant
Kevin J. McGuckin, Assistant County Attorney

Call to Order

The Chair called the meeting to order at 1:05 PM in the Cooper Cardwell Elections Room.

Approval of Minutes

The Board reviewed the minutes for December 7, 2010. Ms. Sutton requested any additions or corrections to the minutes. Mr. Dickerson moved to approve the minutes. The motion passed unanimously.

Preliminary Consideration Protest Hearing

Ms. Sutton stated that the Board was meeting to hold a preliminary consideration of the amended election protest of Jeffrey Polston, candidate for Clerk of Superior Court, which was received on December 8, 2010. The amended protest, completed on the required Election Protest/Complaint form, contained 19 statements of allegations which would be considered individually. Two previously considered allegations would be included in the hearing. Ms. Sutton stated that public comment would be allowed after the Board had completed their conclusions. Ms. Sutton proceeded to read each protest statement for the Board to consider:

1) During the recount process, the Precinct 404 (East Winston Heritage) sealed Vote box was opened and placed into the count machine, when the tallies were given the total votes were far apart from the election day count. Upon questioning this, Mr. Robert Coffman examined the vote sheets and stated someone must have put blank ballots in this box. He then took the box back to the table and began to take out ballots without assistance. Mr. Coffman then sent the ballots back through the counter and when the numbers were tallied Mr. Jeff Polston lost votes and Ms. Susan Frye gained votes.

Ms. Sutton requested Mr. Coffman to explain the process that occurred during the Precinct 404 recount. Mr. Coffman explained that after the ballots were counted, the total of ballots was 25 ballots higher than the total amount from Election Night. After examining the ballots, it was found that apparently the precinct judge had inadvertently placed blank unvoted ballots in a voted ballot container. When the unvoted ballots were removed from the ballot container for a second count during the recount process, there was no discrepancy from the amount of total ballots on Election Night. Mr. Dickerson questioned Mr. Coffman whether there was a difference in the vote totals for the two candidates from the Election Night counting and the counting after the recount process. Mr. Dickerson also questioned whether the counting proceeded in the open where Mr. Polston was able to view the process. Mr. Coffman stated that there was a minor difference in the vote total for the two candidates after the recount process than after the Election Night counting; and, that the recount did occur in an open room. Mr. Dickerson stated that it was clear what had occurred and that it

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did not rise to the level of probable cause. Mr. Jordan agreed, wondering what violation had occurred. Ms. Sutton stated that this allegation would be marked as no probable cause.

- 2) By allowing votes to be counted, knowing voters were registered illegally.

The Board examined a protest addendum containing a list of voters registered in the college communities. Mr. Dickerson stated that he was not inclined to find any probable cause if no factual allegation was found. Mr. Jordan asked why they were thought to be illegal. Ms. Sutton stated that more information should be given and that there was no probable cause found. Mr. Jordan agreed.

- 3) Persons voting in incorrect precincts and were not properly transferred.

Mr. Dickerson stated that there was no indication of who the persons were and where the precincts were. Mr. Jordan asked Mr. Coffman whether there were any other additional addendums. Mr. Coffman stated that there were none. Ms. Sutton stated that the Board would need more details. Mr. Dickerson and Mr. Jordan stated that there was no probable cause to this allegation.

- 4) Persons living outside the county allowed to vote.

Mr. Dickerson stated that there was no factual information provided for this allegation. Mr. Jordan and Ms. Sutton agreed that there were no names or other information provided for this allegation.

- 5) Polling judges failed to verify registered voters correctly.

Ms. Sutton stated that there was no information of specific judges or precincts. Mr. Dickerson agreed that there was no indication of who did this and where this occurred. Mr. Jordan stated that there was no specific precinct mentioned. All Board members agreed that there was no probable cause to this allegation.

- 6) Chief Judges failed and poll judges provided false information to voters, observers and individuals at polling locations.

Mr. Jordan stated that he would need to review a list of specific precincts with these problems to find any probable cause. Mr. Dickerson agreed and the Board found no probable cause for this allegation.

- 7) Chief Judges failed to follow election rules regarding precinct judges, poll observers and voters.

Ms. Sutton found no probable cause for this statement. Mr. Dickerson stated that the Pam Reynolds email message, contained in the addendum pages, showed some information where a poll observer may have been denied access to Authorization to Vote forms. Mr. Dickerson said that he was willing to question the judge at that **particular** precinct (801-Polo Park Recreation Center). Mr. Jordan agreed with Mr. Dickerson. It was decided that items 7, 8 and 17 should be combined into one allegation. Ms. Sutton disagreed that there was any probable cause for this allegation.

- 8) Poll observers were not allowed access to the ATVs during the voting day.

Mr. Dickerson and Mr. Jordan agreed that the email message from Pam Reynolds showed enough information to present sufficient facts to question the 801 precinct judges at the hearing. It was decided that items 7, 8 and 17 should be combined into one allegation. Ms. Sutton disagreed that these items should be included at the hearing.

- 9) Privacy was not provided for all voters.

All three Board members found no probable cause for this allegation.

- 10) Voters were seated with poll observers.

All three Board members did not find factual information to support this allegation.

- 11) Voters were allowed to see votes cast by other voters.

All three Board members did not find factual information to support this allegation.

- 12) Candidates and/or individuals were permitted to give items of value to voters.

In referring to the Winston Salem State University professor who gave class credit to students, Mr. Dickerson stated that there was no proof that a violation had occurred since nothing of value was given to

students to vote for a **particular** party or a **particular** candidate. Mr. Jordan and Ms. Sutton agreed that there was no probable cause to support the allegation that a violation occurred.

13) Illegal voter registration was allowed at One Stop Voting.

Mr. Jordan stated that the procedure of same day registrations at One Stop Voting would have validated the voters to be legal registrations. All Board members agreed that no probable cause information was found to support this allegation.

14) Poll judges were placed without proper training.

Mr. Dickerson praised the Forsyth County poll worker training. There could always be some poll workers that need additional training; however, this statement does not provide information to find probable cause. Mr. Jordan and Ms. Sutton agreed.

15) Electioneering was allowed inside the polling area.

Mr. Dickerson stated that there was no detailed information to find probable cause for this allegation. Mr. Jordan remarked that the information should include where and what was allowed. Ms. Sutton agreed that more detail was needed. All Board members agreed that there was no probable cause for this statement.

16) Chief Judges turned away voters.

Mr. Dickerson stated that there was no detailed information to find probable cause for this allegation. The Board agreed.

17) Chief Judge not allowing poll observer to move around for proper observation.

It was decided that items 7, 8 and 17 should be combined into one allegation. Ms. Sutton disagreed that these items should be included at the hearing.

18) Forsyth County Board of Elections failed to fulfill obligations of State Code for absentee voting.

Mr. Dickerson stated that there was no factual information included to show probable cause that any violation had occurred. The Board had always been present at the Absentee meetings. Mr. Jordan agreed.

19) Allowing a person to cast a vote for another.

The Board had discussed this matter previously and agreed that no probable cause was found to support this allegation.

Ms. Sutton confirmed with the Board that after reviewing Mr. Polston's 19 allegations under section 6 of the Election Protest/Complaint form, only three of the allegations should proceed to a hearing. Items 7, 8 and 17 would be reviewed as one combined allegation regarding Precinct 801 – Polo Park Recreation Center at the hearing. The protest listed several General Statutes that were violated in section 7. The Board determined that it was unnecessary to review the statutes. Ms. Sutton requested that the Board present a motion concerning the allegations to be presented at a hearing. Mr. Dickerson moved that items 7, 8 and 17 of the protest amendment presented probable cause to believe that a violation may have occurred at Polo Park Recreation Center and that those items should be presented at a hearing. Mr. Jordan seconded the motion. Mr. Dickerson also moved that all other items of the protest amendment should be dismissed. Mr. Jordan seconded the motion. Ms. Sutton disagreed with presenting items 7, 8 and 17 of the protest amendment at a hearing. The motion passed with a majority vote.

Ms. Sutton stated that public comments would be allowed by anyone who had completed a public speaker card. Each speaker would be allowed two minutes. Several citizens spoke showing their concern for the Clerk of Superior Court office and the election process in general. Mr. Jordan spoke of the various discouragements of the speakers. He stated that the Board must follow North Carolina Election Law to achieve integrity in the elections. For example, details must be provided to find reason to replace a poll worker. Mr. Coffman stated that the State Board had recommended Certificates of

Election be issued to all winning candidates except Ms. Frye. Mr. Dickerson agreed that the Board was required by Election Law to hold a hearing to make a determination if protest allegations are presented with specific facts. The Board must move through the required process after a protest is presented. Mr. Jordan stated that the hearing facts would be turned over to the State Board of Elections to make a determination in the next step of the process.

Other Business

Ms. Sutton stated that the Board had received a communication from the County Commissioners' office regarding complaints by a citizen and requested a motion to go into closed session. Mr. McGuckin stated that the motion would be based on G.S. 143-318.11 (a) (6) (closed session to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee). Mr. Dickerson moved to go into closed session. Mr. Jordan seconded the motion. The motion passed unanimously and the Board went into closed session at 2:20 PM. The Board left closed session after discussion ended at 3:28 PM.

Mr. McGuckin stated that he would complete the Order for a hearing to be conducted on December 17, 2010 at 11:00 AM. Mr. Jordan stated that subpoenas must be completed for the witnesses regarding Precinct 801 – Polo Park Recreation Center.

Mr. Coffman informed the Board that a second recount would be conducted tomorrow for the statewide Instant Runoff Voting Court of Appeals Judge office.

Adjournment

Ms. Sutton requested a motion to adjourn the meeting. Mr. Dickerson moved to adjourn. Mr. Jordan seconded the motion. The motion passed unanimously and the meeting was adjourned at 3:30 PM.

Linda J. Sutton, Chair

Frank M. Dickerson, Secretary

Jerry D. Jordan, Member