

SEPTEMBER 28, 2020

The Cumberland County Board of Elections met in Room 118 of the Cumberland County Courthouse at 2:00PM for a Special Meeting for adoption of an Absentee Process Resolution.

Present: Floyd W. Johnson, Jr., Chairman Linda Devore, Secretary
Bobby Swilley, Member Irene Grimes, Member
Helen Nelson, Member Terri Robertson, Director

Staff: Angie Amaro

Guests: County Attorney Rick Moorfield, Peter Apone

Chairman Floyd Johnson called the meeting to Order at 2:00PM and presented the Agenda.

ACTION: Member Grimes moved to adopt the agenda as presented.
Seconded and passed unanimously.

Secretary Devore presented minutes of the September 8, 2020 Board meeting for approval.

ACTION: Member Nelson moved to approve the minutes of the September 8, 2020 meeting.
Seconded and approved unanimously.

Director Robertson presented to the Board a draft Resolution of Duties that can be delegated to the staff during the Absentee process, which was circulated to board members by email last Friday.

Secretary Devore inquired whether this draft is unchanged from the one circulated before two lawsuits were filed in federal courts over the weekend, seeking to enjoin the Revised Numbered Memo 2020-19, which is referenced as guidance in the draft.

Member Grimes commented that the September 15, 2020, closed meeting of the State Board and the minutes of that meeting that have been released to the public, being the last decisions we have from the five-member State Board before two members resigned on September 22, still stand.

Chairman Johnson commented that we must follow the guidelines set forth by the State Board.

County Attorney Rick Moorfield addressed the Board to explain that all of the Numbered Memos, up to and including NM 2020-25, from the State Board are valid. The county boards have a responsibility to follow state law, but also state law as interpreted by the State Board of Elections, which is what you have right now. Following state guidance protects in the case of a lawsuit, as happened in 2016, when Cumberland was one of three counties sued. In that case the NAACP received an award of legal fees of over \$900,000, and we were indemnified by the State Board. If we fail to follow state guidance, we could be out on our own.

Secretary Devore posed whether it would be more confusing for voters if we follow the Memo that remains the subject of these lawsuits, telling voters that they can cure missing witness information with a form signed by them, and later have to tell them we made a mistake. Perhaps it would make sense to hold off on sending those letters for a few days until we know we are giving out good information.

Moorfield replied that he sees nothing wrong with a short delay as long as the Board is able to meet the time requirements with over 6000 ballots already returned, but there might not be a decision this week or next. Being this far out you have time, but you need to consider how long you wait.

Secretary Devore stated that the issue is not the 6000 ballots we have on our agenda for tomorrow, but the 200 or so letters that we are preparing to send to voters whose ballot envelopes were returned with deficient witness information and signatures. Wake County decided at their Friday meeting to not proceed with witness cure letters, and that seems wise, since they will not run the risk of giving their voters bad information.

Member Nelson inquired whether the letters will inform voters that litigation is pending on this issue.

Director Robertson replied that the form was developed by the State Board, and to her knowledge it does not contain any notice of pending litigation.

Secretary Devore asked how we can in good conscience send out letters to voters now stating that the attached form will cure their ballot deficiency. We have time. Voters have until November 12th to cure their ballot, if needed. The minutes of the September 15th State Board meeting report that the state chairman stated it was not it does not matter whether we get this right—it must be quick. That seems to be how Rev NM19 was published before being signed by a judge, and has placed us in jeopardy with our voters if we send out bad information. Directing a question to the county attorney, is there any downside to waiting to see what we get from the courts?

Attorney Moorfield replied that he does not see a problem if we put it on hold, but we don't know how long it will take to get a decision from the courts. Another thing we could do is put a statement in the letters that litigation may change this. It is up to this Board to decide how to proceed.

Director Robertson reported that we have close to 300 letters prepared for mailing with witness cure affidavits. The envelopes are not yet sealed, so we could put a small piece of paper in them.

Chairman Johnson thanked the County Attorney for his comments and advice.

ACTION: Member Nelson moved that the "Resolution To Delegate Administrative Duties Relating To Absentee Voting To The Director and Staff," as drafted and recommended by our Director, be adopted.
Second by member Grimes.

Member Swilley asked the Chairman for a ten-minute recess for Board Members to consider the proposed Resolution before voting.

Chairman Johnson recessed the meeting at 2:26PM, and called the meeting back to order at 2:40PM.

ACTION: Secretary Devore offered an Amendment to the Motion to change paragraph 3.a. of the proposed Resolution to allow a bipartisan team of Board Members to participate in the Ballot Duplication process.

Member Nelson accepted the Motion as a friendly amendment to her motion on the table.

ACTION: Member Swilley seconded the Motion to Amend by Secretary Devore.
Motion passed.

ACTION: Secretary Devore offered another Amendment to the Motion to change paragraph 1.b. to add the language that "This delegation does not include curing a witness or assistant deficiency by voter certification, but does include administrative duties related to spoiling such a ballot and reissuing a ballot."

Member Grimes stated that she believes this language substantially alters the offered Resolution, and does not follow guidance from the State Board.

ACTION: Secretary Devore offered to withdraw her offered Amendment, and instead offered a Motion to add only the first part of the proposed language, "This delegation does not include curing a witness or assistant deficiency by voter certification."

Attorney Moorfield clarified to the Board that by not delegating something to the staff, it leaves it in the hands of the Board.

Director Robertson clarified that this relates to the 444 [updated number] ballots we have on hand that have a witness deficiency.

Member Nelson stated that we have always delegated to our Director in the past.

Director Robertson reported that this issue came up during a conference call this morning with the State Director, and county directors were instructed to follow the witness cure process in Rev NM 2020-19.

ACTION: Member Nelson moved to close discussion.

Seconded and passed.

Member Nelson declined to accept the Motion by Secretary Devore as a friendly amendment.

ACTION: Secretary Devore moved to Amend the Motion for Resolution by adding an additional category of ballots to be sorted by Staff for those ballots recommended for approval with an attached absentee ballot certification for witness deficiency.
Second by Member Swilley.

Member Nelson inquired whether that would require us to disapprove those ballots.

Attorney Moorfield stated that the board could defer action on some ballots until a time certain.

Secretary Devore clarified that this would allow us to breakdown the witness cure ballot returns into separate categories--those with voter signature cure affidavits and those with witness cure affidavits. It is the witness cure affidavit process that is before the courts.

Director Robertson stated that would not be a problem, as the ballots are currently sorted that way.

Member Nelson expressed her concern that if we do not have clarification from the courts before November 3 or late in the election, we could have a large number of ballots to consider.

ACTION: Motion to Amend by Secretary Devore fails. 3-2

ACTION: Main Motion to approve "Resolution To Delegate Administrative Duties Relating To Absentee Voting To The Director and Staff" with one Amendment passed. 3-2

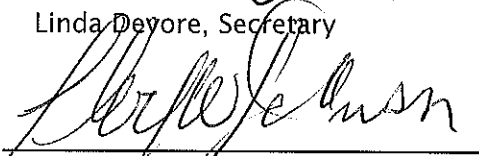
ADJOURNMENT: There being no further business, the meeting was adjourned at 3:12PM.

Next scheduled meeting: September 29th, 9:00AM at the Board of Elections office.

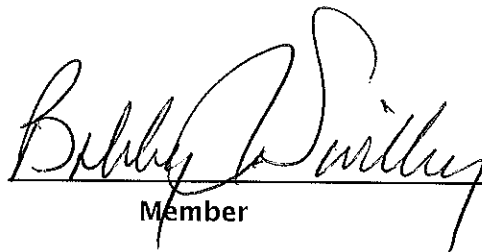
Submitted by,



Linda Devore, Secretary



Chairman



Member

Helena Nelson
Member

Member

J. Friess
Director