

MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING

February 3, 2021

The District of Columbia Board of Elections (“the Board”) held its Regular Monthly Meeting on Wednesday, February 3, 2020, telephonically. Board Chairman Michael Bennett, Board Member Michael Gill, and Board Member Karyn Greenfield were present. The Board’s Executive Director, Alice Miller, the Board’s General Counsel, Terri D. Stroud, the Director of the Office of Campaign Finance (OCF), Cecily Collier-Montgomery, and the OCF General Counsel, William SanFord, were also present.

CALL TO ORDER (10:03 am)

ASCERTAINMENT OF QUORUM

- Board Chairman Bennett and Board Members Gill and Greenfield constitute a three-member quorum to conduct business.

ADOPTION OF AGENDA/APPROVAL OF MINUTES

- **BOARD ACTION:** The Board unanimously adopted the amended agenda and minutes from the last meeting held on January 6, 2021.

BOARD MATTERS

- NONE

OCF JANUARY 2021 REPORT (DIRECTOR COLLIER-MONTGOMERY)

The OCF continues to operate under a modified status. All services are being provided remotely via email and telephone (202-671-0547). All candidate and committee reports will continue to be received online at the OCF website on the required deadlines.

Candidates and committees may also contact the office for instructions concerning the registration process and for instructions concerning the mandatory entrance conference.

• Fair Elections Program Division (FEP)

- Authorized Base Amount and Matching Payments
 - As of January 29, 2020, the total sum of \$4,009,449.90 has been disbursed in Base Amount and Matching Payments to the 36 candidates who are certified OCF in the FEP to participate in the June 2, 2020 Primary Election (“the Primary Election”), the June 16, 2020 Special Election (“the Special Election”), and the November 3, 2020 General Election (“the General Election”).
 - During January 2021, the total sum of \$9,429.00 was distributed in matching payments to FEP participating candidates:
 - Martin for Ward 2 on 01/25/21, \$979
 - Vincent Orange 2020 on 01/25/21, \$7,375
 - Karen for 7 SBOE on 01/26/21, \$100
 - Chander for Council on 01/26/21, \$352
 - Let’s Reid 2020 on 01/26/21, \$350
 - There were 20 candidates certified as “participating candidates” in the FEP for the General Election; 12 candidates certified as “participating candidates” in the

Primary Election; and 4 candidates certified as “participating candidates” in the Special Election.

- **Desk Reviews and Other Activities**

- 39 desk reviews of the mandatory December 10, 2020 and amended Reports of Receipts & Expenditures (R&E reports)
- 16 Requests for Additional Information (RFAI) letters were sent.
- \$113,973.14 were the total funds remaining in participating candidates’ campaign accounts remitted for deposit in the Fair Elections Fund from the three elections held in 2020.
 - Funds remitted by committees from the Special Election:
 - Patrick Kennedy for Ward 2 Special Election, \$39,252.38 received on January 11, 2021
 - Jordan Grossman for Ward 2 Special Election, \$20,510.08 received on January 21, 2021
 - Funds remitted by committees from the Primary Election:
 - Evans 2020, \$795.64 received on December 10, 2020
 - Patrick Kennedy for Ward 2, \$30,201.49 received on January 11, 2021
 - Jordan Grossman for Ward 2, \$3,937.94 received on January 21, 2021
 - Funds remitted by committees from the General Election:
 - Chander for Council, \$500 received on August 3, 2020
 - Let’s Reid 2020, \$876.04 received on December 10, 2020
 - Frazier for Ward 4, \$409.58 received on December 10, 2020
 - Friends of Christina Henderson, \$17,457.49 received by on December 29, 2020
 - Karen for Seven SBOE 2020, \$6.50 received on January 21, 2021
- Participating certified candidates from the 2020 Elections are required by the Fair Elections Act to remit any surplus funds remaining in their campaign accounts to the OCF for deposit in the elections fund.

- **December Ongoing Audits**

- Post-Election Audits - Primary Election
 - There are currently ten post-election audits of candidates and committees who participated in the Primary Election of the Campaign Operations of those candidates who did not proceed to the General Election. The audits were initiated on June 19, 2020.
 - The names of the candidates and audit status are posted on the OCF website.

- Initiative/Referendum Committees – R&E Report due February 1st
 - 3 required filers
 - Recall Committees – R&E Report due February 1st
 - 1 required filer
 - Candidates & Treasurers who have completed the OCF Entrance Conference Presentation for January 2021:
 - Samuel Troper/Treasurer, Mayor Muriel Bowser Recall Committee
 - Eric Rogers/Treasurer, DC Black Democratic Caucus
 - 2 referrals to the OGC for failure to file the December 10th R&E Report FEP
 - James for Ward 2 State Board of Education
 - James Harnett, Treasurer
 - Additional referrals were made on January 6, 2021
- **Reports Analysis and Audit Division (RAAD)**
 - 29 desk reviews of R&E Reports filed during January
 - 11 RFAI letters sent
 - 11 matters were resolved by the audit branch
 - January 2021 Audits Issued
 - NONE

OCF OGC JANUARY 2021 REPORT (GENERAL COUNSEL SANFORD)

- **Intake/Output Report**
 - 2 referrals were received by the OGC
 - 22 informal hearings were completed
 - 24 orders were issued
 - 18 orders issued in which no fines were imposed
 - 7 orders issued which vacated Notices of Hearing and Statement of Violations.
 - 2 orders issued pursuant to motions for reconsideration:
 - 1 order resulted in the suspension of the fine
 - 1 order resulted in the reduction of the original fine from \$1,850 to \$500
 - OGC collected a \$50 fine from Aaron Landry.
- **Open Investigations:**
 - NONE
- **Interpretative Opinions**
 - NONE

- **No Show Cause Proceedings**
 - NONE

BOE EXECUTIVE DIRECTOR'S JANUARY 2021 REPORT (EXECUTIVE DIRECTOR MILLER)

- **General Information**
 - **Poll Worker Payments**
 - All poll worker payments are currently with the Office of and Resources Management (OFRM).
 - The BOE has communicated with workers regarding payment status, including stopped payments, processing dates, and the difference between good and canceled checks.
 - On January 29, 2021, the BOE sent nineteen requests for payment to the OFRM for processing.
 - As of February 1, 2021, the OFRM sent the BOE a file containing 229 payments that are en route to election workers. The checks are dated January 8th and 28th, 2021.
 - An e-mail portal was created by OFRM for election workers to communicate directly with the agency regarding the status of their payment.
 - On February 2, 2021, the OFRM sent the BOE a file containing 936 payments that have not been cashed by workers.
 - The OFRM is in the process of placing stop payments on checks and will reissue to workers.
 - The BOE is unaware of the OFRM timeline as to when checks will be reissued.
 - Election Administration and Voting Survey (EAVS) report
 - On January 29th, the BOE submitted the required EAVS report data to the Election Assistance Commission (EAC). The data contained the number of registered voters, voter turnout, technology used, election policies, and other information.
 - The data is assembled from all jurisdictions, compiled by the EAC, then sent to Congress.

BOE OGC JANUARY 2021 REPORT (GENERAL COUNSEL STROUD)

- **Rulemaking**
 - Final Rulemaking
 - Amend Title 3 DCMR Chapters 30 and 38-42 to place the Board's regulations into conformity with the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011, as amended by the COVID-19 Response Supplemental Emergency Amendment Act of 2020.
 - Amendments were submitted in emergency and proposed form during the Board's May 2020 meeting.

- Notice of the proposed rulemaking was published in the DC Register on May 15, 2020, and the Board received no comments during the public comment period.
- The amendment of the applicable subsections of Title 3 of the DCMR would allow candidates and treasurers to fulfill mandatory training offered by the OCF either in-person or online.
- Amendments of subsection Chapter 42 regarding the Fair Elections Act would modify the verification period from five calendar days to five business days.
- The period change would apply to disbursement recommendations made to the Chief Financial Officer by the OCF director for base amounts and disbursements of matching funds.
 - **BOARD ACTION:** Unanimously approved motion to transmit final rulemaking to the Office of Documents and Administrative Issuances for publication in the DC Register.

- **Litigation Status**

- **Hammond v. D.C. Board of Elections**
- **Robin Marlin v. D.C. Board of Elections**
 - This consolidated matter is comprised of appeals of Board Orders 19-32 and 19-33, which upheld the resolution issued by ANC 7B that found that no vacancies existed in the offices of Advisory Neighborhood Commissioner for ANC SMDs 7B04 and 7B05.
 - In each matter, the Board found that the petitioners did not meet the burden of proving that the incumbent commissioners did not meet the residency qualifications to hold the offices they held.
 - On January 13, 2021, the D.C. Court of Appeals asked the parties to show cause as to why the matter should not be dismissed for mootness since incumbents no longer held office as of January 2, 2021.
 - On January 27, 2021, the BOE filed a Motion to dismiss for mootness, which the Court granted on February 1, 2021.
- **Henderson v. D.C. Board of Elections**
 - The plaintiff seeks review by the D.C. Court of Appeals regarding the outcome of the ANC SMD 5D05 contest.
 - This matter was filed on December 9, 2020.
 - On December 15, 2020, the Board filed a motion to dismiss for failure to state a claim upon which relief can be granted.
 - On January 12, 2021, the Court granted the Board's motion.

- **General Matters**

- The Board posted the General Election after-action report on its website on February 1, 2020. It includes all the data required and will be augmented to include information on poll worker feedback and issues observed.
- While the Board is not required to post after-action reports for primary elections, it has consistently done so as part of its policy and practice.

PUBLIC MATTERS

- Dorothy Brizill
 - Raised concerns about the completeness of the 2020 elections After-Action reports and asked whether they would be augmented.
 - General Counsel Stroud reiterated her previous comments
- Stephanie Scott
 - Questioned why the OCF issued FEP payments at a late date if extra funds will be returned by the committees.
 - Asked if there were any outstanding expenses from the Primary or General Elections.
 - OCF General Counsel Sanford responded that the law requires that OCF make payments based upon the last report filed, and if a candidate has submitted evidence that they received qualified small donations during the last reporting period, such disbursements must be made.

ADJOURNMENT (10:54 a.m.)