



MINUTES OF THE BOARD OF ELECTIONS REGULAR MEETING
May 4, 2016

The District of Columbia Board of Elections (“the Board”) held its Regular Monthly Meeting on Wednesday, May 4, 2016 in the Board’s Hearing Room, located in Suite 280 North, One Judiciary Square, 441 4th Street, N.W., Washington, D.C. 20001. The Board’s Chairman, Michael Bennett, was present, as were Board Members Dionna Lewis and Michael Gill. Also present on the dais were Kenneth McGhie, the Board’s General Counsel, Cecily Collier-Montgomery, the Director of the Office of Campaign Finance (“OCF”), and Terri Stroud, the Board’s Acting Executive Director.

Chairman Bennett called the meeting to order at 10:40 a.m.

The meeting agenda was approved and adopted.

The minutes of the last regular meeting on April 6, 2016 were moved for approval and adopted without objection.

Ms. Stroud gave the Acting Executive Director’s report.

- On April 12, the Board posted notice of the contests to appear on the primary election ballot.
- Poll worker training began Monday April 18, for early voting workers, and Monday April 25 for Election Day workers. All Ballot access challenges were resolved on April 18.
- The Board conducted the ballot lottery on April 22, and ordered the ballots in sufficient time for the election. The voter guide was mailed April 25 to each registered voter registered with one of the District’s 3 major parties: the Democratic, Republic, and Statehood Green Parties.
- On April 29, the Board complied with the MOVE Act by sending absentee ballots to each voter who validly requested one at least 45 days before the election.
- Logic and accuracy testing of the voting equipment was conducted on April 30 and open to the general public via notice posted to the Board’s website on April 22.
- May 2nd, 2016, the Board published District and ward-based registered voter listings in the District’s public libraries, and the Board also published sample ballots on its website.
- May 16 is the deadline for postmarked voter registration applications, electronically transmitted military and overseas registration applications, and it is the last day to update party registration.
- Early voting begins at One Judiciary Square on May 31, and city-wide on June 4, and ends on June 11.
- The Board is launching a vigorous public information campaign, with radio and TV spots, and posting information on the website, so that the public is aware of what is going on in connection with the June election.

- As of April 30th, there are a total of 434,961 voters, and 361,473 of those voters are eligible to participate in the June primary.

Mr. McGhie presented the General Counsel's report.

- The first thing on his agenda was a proper subject matter determination on an initiative entitled the "Limited Gaming Initiative of 2016."
 - The following opponents of the measure testified in opposition:
 - Marie Drissel testified that any attempt to define the measure as limited would be fatally flawed as casinos would pop up all over Washington and the title would be misleading.
 - Norman Smith testified with background and experience as a gambler. He believes the proposed measure would appropriate funds, and conflicts with the Home Rule Act.
 - Dorothy Brizill was troubled that although notice was sent through the proper statutory channels, neither the Chief Financial Officer nor the ANC 8A, where the proposed gaming site would be located, were informed of the hearing. She believes that this initiative is not a proper subject because it would appropriate funds and would negate or limit a budget act.
 - Anthony Muhammad concurred with Ms. Brizill's assessment that the measure would appropriate funds and would negate or limit a budget act.
 - Mary Buckley testified that her neighborhood has no knowledge of the proponent's intentions, and that the measure should not be considered until the residents have an opportunity to review the proposal, but even then she generally objects to the proposal.
 - Paul Tranton testified as the ANC Commissioner for 8B01. He asserted that the proposal would affect the SMD, and bring an element of crime.
 - Chairman Bennett commented that the record would be left open until close of business on May 11.
 - Staff Attorney Rudolph McGann presented the position of the Office of the General Counsel. The former iteration of the Lottery Control Board is defunct, and every reference to said Board would require formation of a new board necessitating appropriations. The measure recommends revenue allocations, which have been found to be permissible by the Court of Appeals because the measure does not mandate allocation of said revenues. There is an unfunded mandate that would thwart the purpose of the measure because it has no mechanism to pay for the expanded powers and duties of the Gaming Board. In conclusion, the Gaming Act presents an improper subject for initiative because it improperly appropriates funds by establishing an unfunded program that cannot function as intended without forcing the Council to appropriate for an unknown expense.
 - Mr. McGhie summarized the opinion of the Attorney General and requested it be a part of the record: "We conclude that it is not a proper subject because it would violate the Home Rule Act. In addition, the measure would raise a significant Fifth Amendment concern. "
 - Mr. Jeffrey Robinson testified on behalf of the proposer. He asserted the initiative merely authorized a new program subject to Council funding as found to be a proper use of the Initiative. Mr. Robinson presaged an evisceration of the

voters' right to initiative if the Board accepted the opponents' contentions. He elaborated by noting that any prospective initiative involving government action would necessarily be deemed invalid because any requisite funding would preclude a proper subject finding. Mr. Robinson went on to request an opportunity to respond fully in writing to the opposition's contentions.

- Board member Lewis inquired how a defunct Board would carry out the regulatory function of the measure without funding. Mr. Robinson replied that the fact that there might be subsequent funding necessary to make the measure work in practice is not reason to claim that it's not a proper subject.

Mr. McGhie presented the litigation status of cases involving the Board:

- ***Wingo v. D.C. Board of Elections*** concerns a qualified elector challenging the short title and summary statement of Initiative Measure No. 76, "The District of Columbia Minimum Wage Act of 2016." On April 4, 2016, Judge Ross issued an order granting the Defendant's motion for reconsideration in favor of granting ballot access for Initiative Measure No. 76. The Plaintiff filed notice of appeal on April 22, 2016, and we are currently awaiting a briefing schedule from the court.
- ***John Cheeks v. the Board*** concerns an appeal of the Board's decision to deny the proposed PASS Act initiative as not a proper subject of Initiative. The Board denied the measure on February 9, 2016, and Mr. Cheeks filed in the Court of Appeals on March 9, 2016. The Board is waiting for a briefing schedule from the court.

Ms. Collier-Montgomery announced the statistics for OCF as follows:

- During the month of April in the Office of the Campaign Finance, there was the April 1st reporting date for the filing of Reports of Receipts and Expenditures for Constituent Service Programs. There were 12 required filers; 11 filers timely filed; and 1 late filer was referred to the office of the General Counsel to initiate enforcement proceedings. There was also the April 1st reporting date for the filing of Reports of Receipts and Expenditures for Senator/Representative Statehood Funds. There were 3 required filers; all 3 filers timely filed.
- 1 Committee registered to participate in the 2016 election cycle during April: Manley Collins, MMC Foundation for Mayor. Registered on April 12, 2016. He subsequently withdrew on April 28, 2016.
- OCF held two entrance conferences for new registrants in April.
 - **April 7, 2016** and **April 20, 2016**. The names of the participants will be posted at OCF's website.
- OCF Audit Branch conducted 24 desk reviews of financial reports that have been filed.
- The ongoing full field audits of newly elected officials are as follows: LaRuby May 2015; Brandon Todd for Ward 4; Brianne for D.C.; and there is one ongoing periodic random audit of Local 25 General Political Account.
- OCF has ongoing periodic audits of the following committees: Potillo for Council, 2016; Trayon White for Ward 8 2016; Robert White At-Large 2016; Re-Elect Vincent Orange 2016; and Grosso At-Large 2016.
- OCF has ongoing periodic audits of the following two Constituent Service Programs: The Office of Ward 8, Council Member LaRuby May, CSF; and the R-4, Our Ward for constituent service fund.

- The audit branch issued 4 final audits. Elissa 2016 was issued on April 25, 2016; Local 25 General Political Account was issued on April 5, 2016; Our Ward 5 was issued on April 21, 2016; and Phil's Fund for Citizen Service was also issued on April 28, 2016.

Mr. Sanford presented the statistics from the Office of the General Counsel of OCF.

- The General Counsel received 6 referrals: 1 from the Public Information Division, and 5 from the Reports, Analysis and Audit Division.
- The Office completed 5 informal hearings and issued 23 orders including: 11 orders for failure to timely file reports in which no fines were imposed; and 11 orders for failure to timely file a report in which fines totaling \$18,300 were imposed; and 1 order regarding a motion for reconsideration in which a fine of \$300 was imposed.
- OCF collected fines from the following respondent: \$500 from the Ward 5 Democrats.
- The OGC carried a total of seven open investigations and no new investigations were opened during the month.

Ms. Dorothy Brizill requested the Board make Election Night viewing for observers less cumbersome and more transparent. She also raised the fact that a staffer made a disparaging comment about her at an outreach event within earshot. Chairman Bennett was aware of the occurrence and apologized on behalf of the Board for whatever was said that was offensive. The Chairman also assured Ms. Brizill that the Board will take her comments under advisement and try and make sure that those matters are addressed.

There being no further business before the Board, the meeting adjourned at 12:01 p.m.