

CITY OF CRANSTON
BOARD OF CANVASSERS
Regular Meeting of June 6, 2018 – APPROVED MINUTES

The Cranston Board of Canvassers met on June 6, 2018, in a meeting advertised in accordance with the Rhode Island Open Meetings Act on May 30, 2018. The meeting was called to order by the Chairperson, Randall Jackvony, at 3:36 p.m. It was held in the Canvassing Office at Cranston City Hall, Room 100.

MEMBERS PRESENT: Randall Jackvony, Gary Vierra, Fred Joslyn

MEMBERS ABSENT: None

NON-MEMBERS PRESENT: Nicholas Lima (Registrar), Theresa Bucci (Canvassing Aide) David Igliazzi (Assistant City Solicitor)

The chair declared a quorum present.

AGENDA

- I. CALL TO ORDER
- II. APPROVAL OF THE AGENDA
- III. APPROVAL OF MINUTES – 5-8-18
- IV. PUBLIC COMMENT
- V. CHAIRPERSON'S ANNOUNCEMENTS – RANDALL JACKVONY
- VI. NEW BUSINESS
 - A. PROVISIONAL BALLOT DISPOSITION – RANDALL JACKVONY
 - B. RECESSING MEETINGS – FRED JOSLYN
 - C. ELECTIONS CALENDAR REVIEW – NICHOLAS LIMA
- VII. UPDATES AND REMARKS
 - A. REGISTRAR – NICHOLAS LIMA
- VIII. COMMENTS OF BOARD MEMBERS
- IX. ADJOURNMENT

APPROVAL OF THE AGENDA

MOTION: By Mr. Vierra and seconded by Mr. Joslyn to approve the agenda as posted.
PASSED ROLL CALL VOTE – 3-0

APPROVAL OF MINUTES

Mr. Jackvony said the minutes of the May 8 meeting were attached to the agenda.

MOTION: By Mr. Vierra and seconded by Mr. Joslyn to approve the meeting minutes of 5-8-18.
PASSED ROLL CALL VOTE – 3-0

PUBLIC COMMENT

There were no members of the public present who appeared to speak.

CHAIRPERSON'S ANNOUNCEMENTS

CHAIRPERSON – Randy Jackvony

Mr. Jackvony had no announcements.

NEW BUSINESSA. PROVISIONAL BALLOT DISPOSITION

Mr. Jackvony asked Mr. Lima to explain the background on this issue. Mr. Lima said that Ms. Bucci had noted at least two voters who were properly registered and qualified, but attempted to cast a provisional ballot in the last election, and had their ballot disqualified because they failed to check a citizenship box on the provisional application form. Mr. Lima said the issue has come up for several elections, and the consistent response from the Board of Elections has been to disqualify ballots of voters who failed to properly complete the form. Mr. Lima said he reviewed the Help America Vote Act (HAVA), Rhode Island law, and the Board of Elections' rules and regulations on provisional voting, and felt that, for the specific category of voters who are in their proper location, and properly registered to vote, it didn't make sense to disqualify them for failure to mark a checkbox on a form, and further noted that the regulations, state, and federal law did not explicitly require those checkboxes to be filled out in order for a provisional ballot to count.

Mr. Lima said the form is essentially requiring voters to provide more information than is required by law to cast a provisional ballot, and penalizing those voters for missing a checkbox on an otherwise complete and valid form. He noted the checkboxes can be missed due to a combination of voters being unfamiliar with the form and pollworker error for failing to see the voter missed the checkbox before submitting the application at a busy polling place. The cases that Ms. Bucci noticed involved voters who had signed the provisional ballot application affirming they were qualified, and previously affirmed their citizenship, had voted in the past, and had multiple valid voter registrations on file. Mr. Lima said in past elections, he learned from Mr. Jackvony that the Board of Canvassers was uncomfortable disqualifying voters on such a technicality, but had to abide by the Board of Elections' guidance. Mr. Lima presented all of this information to the Board of Elections staff, and in their response, they softened their previous position, possibly leaving the door open for local boards to exercise discretion in such clear cases, and also noted that the Board of Elections is working with the Center for Civic Design to improve and redesign the provisional ballot application form.

Mr. Jackvony said that while reviewing provisionals the day after the election in 2016, the Board felt obligated, but uncomfortable, in following the guidance from the Board of Elections to disqualify ballots that had applications that were not fully completed. He said he does not feel a ballot should be disqualified just because the voter missed filling out a box, especially if they have already affirmed they are a citizen.

Mr. Lima distributed a copy of the pollworker training guide, which includes a highlighted copy of the provisional ballot application, that is handed out by the Board of Elections to pollworkers. He noted that, while some sections are stressed as important, the checkboxes are not highlighted.

Mr. Vierra asked whether the Board of Elections had changed their position on this, as the response to Mr. Lima's question seems to differ from past practice. Mr. Lima said that's how he reads it, although it could depend on how you interpret their response.

Mr. Joslyn said that if the Board has discretion here, it is very narrow, as the statute is in derogation of the common law and has to be strictly construed. He said if the statute grants the Board of Elections the authority to promulgate regulations, and if as part of those regulations, they publish a form that is required to attain a provisional ballot, then the form is presumptively legal and needs to be completed in its entirety. On the contrary, Mr. Joslyn said there's a common-sense element that, if the signatures match up and the voter is qualified, there really is no violation.

Mr. Lima posed a hypothetical, in which, given that state and federal law are silent on what needs to be on the provisional ballot application form, if the Board of Elections added a poll-tax fee, a full social security number, or a strict verification of residence to the provisional ballot app, wouldn't that overreach be in violation of the principle of the law?

Mr. Joslyn responded that the first instance would be a constitutional issue; he said that the question was whether it's legal or whether it's material. Mr. Joslyn said it's immaterial, but it is legal, and that's the conundrum we're dealing with.

Mr. Jackvony said that state law does not require a reverification of all that information, although it does grant the Board of Elections power to generate the form. Mr. Jackvony wondered if state law granted latitude to the Board of Canvassers in this; Mr. Lima said the statutes related to the Board were written before provisional ballots even existed.

Mr. Joslyn said he's comfortable with the language the Board of Elections staff used in their May 30 response to Mr. Lima, as it seems to grant the Board of Canvassers more discretion.

Mr. Iglizzi asked for clarification on the issue being discussed. Mr. Lima said the question really is: is the form prescribed by the Board of Elections making voters who are already qualified jump through extra, unnecessary hoops in order to have their provisional ballot counted? Mr. Lima said these arguments are irrelevant to voters who are not properly registered or in the wrong polling place; the discussion only applies to whether to disqualify a signed provisional ballot application from a voter who is registered, signs the form, but – likely inadvertently – misses a checkbox. Discussion ensued.

The Board deliberated a hypothetical posed by Mr. Joslyn in which a person may move out of the country and renounce their citizenship, but later return, thus necessitating a citizenship question. Mr. Lima said the statute requires a person to be a citizen in order

to be eligible to vote, and by signing the provisional form, the voter is affirming that they are eligible. Mr. Igliazzi and Mr. Joslyn asked about the various categories of provisional voting, and Ms. Bucci explained what they are and how the provisional process works the day after the election. She said pollworker error is a factor in the process, and that the provisional form needs to be redesigned to prevent these issues from occurring.

Mr. Igliazzi asked if there was a process to request an official advisory opinion from the state Board of Elections beyond what was provided to Mr. Lima in the May 30 email. He said the Board of Canvassers does not want to disenfranchise an otherwise eligible voter, but they need clarification from the state Board on what authority they have. Mr. Lima added that, out of hundreds of provisional ballots, this specific issue only pertains to the very small number in one category who fail to check a box, numbering fewer than two or three in most elections. Mr. Lima said the state Board has regulatory authority over the local boards, so the Board could request an advisory opinion from the state Board on this issue. Mr. Igliazzi said that as the Board believes every vote is important, it would be prudent to request such an opinion.

Mr. Lima asked if the existing email from the state Board staff sufficed and whether a formal directive from the state Board was necessary. Mr. Igliazzi said that it would be wise to still seek the opinion now, in advance of the upcoming elections, rather than have an issue arise during an election and not have authoritative clarification. Discussion took place on the state Board's currently underway effort to revise the form, but the Board members felt that there was no guarantee that effort would be complete prior to the next election. Mr. Jackvony said asking for an advisory opinion now could positively influence the ongoing redesign process by ensuring the state Board fully considers the issue. Mr. Igliazzi said it was his recommendation that the Board seek an advisory opinion as soon as possible, and Mr. Joslyn concurred.

MOTION: By Mr. Joslyn and seconded by Mr. Vierra to direct legal counsel to frame a question to the Rhode Island Board of Elections to seek an advisory opinion on the provisional ballot application matter.

Under discussion, Mr. Jackvony asked that it be made clear that the Board was seeking an official opinion from the state Board of Elections, and not just the staff of the state Board. Mr. Lima said the new leadership of the state Board are very pro-voter rights and, while he is not positive how the request will be received, his best guess is they will be supportive of the argument.

PASSED ROLL CALL VOTE – 3-0

Mr. Igliazzi asked for clarification on whether the letter should be drafted and sent, or the Board should review it first. Mr. Jackvony said he was OK with the former. Mr. Lima cautioned waiting until the July meeting to send the question, as the September primary is rapidly approaching. Mr. Joslyn suggested it be circulated to the Board prior to being sent to the state Board. Mr. Igliazzi said he can do that, and if any Board member objects to Mr. Lima about the language Mr. Igliazzi drafted, it will not be sent, and the matter will automatically be brought up for further discussion at the next meeting. By consensus of the Board, the Board agreed to follow that procedure.

B. RECESSING MEETINGS

Mr. Joslyn said he requested this be on the agenda as the new statute requiring posting of final minutes within 35 days of a meeting, thus necessitating a meeting every month to approve those minutes even if there is no other public business to discuss, is burdensome on the members of the Board and those of other committees and boards that previously did not need to meet monthly in the other 38 cities and towns. Mr. Joslyn wanted the Board to consider using continuance or recessing of meetings in order to get around this, as if the meeting hasn't concluded, the minutes are not yet final, and the Board would not need to meet every month.

Mr. Joslyn noted that this would not be necessary at this time in the elections calendar, as the Board meets regularly anyway, but could be used in non-election years when, often, several months pass between meetings. He feels it is a waste of time for the Board to meet every 35 days under those circumstances to discuss no public business except the approval of minutes from the previous meeting. He said he researched Title 17 and Roberts Rules of Order in formulating this proposal. He asked for support on a motion for legal counsel to deliver a written opinion on whether recessing meetings would be a procedurally permissible mechanism under the law to reduce the number of unnecessary meetings.

Mr. Vierra was concerned that it could be argued that concept violates the spirit of the law by circumventing the requirement to file minutes. Mr. Lima said it would be a bad public perception.

Mr. Iglizzi said he did some preliminary research, and noted that in the case of public hearings, the meeting must be readvertised and reposted unless it is continued to a date certain. He said that, although he agrees with Mr. Joslyn's opinion on Roberts Rules, the Open Meetings Act ultimately supersedes and directs compliance. He said that the definition of a public meeting is very broad, and only speaks of convening a meeting, not necessarily concluding it, so he does not believe recessing a meeting would serve the purpose that Mr. Joslyn is seeking. He said recessing is not referenced in that section of the Act, and on definitions alone, minutes need to be filed within 35 days in accordance with the language in the statute. With all due respect to Mr. Joslyn, he said he doesn't feel comfortable bootstrapping principles of Roberts Rules of Order onto the statute.

Mr. Iglizzi said the Board is assuming that every time the Board meets, another meeting is needed to approve minutes. He said that minutes, under the statute, are only required to have very basic information on the date, time, location, attendance, and record of votes taken, and that there is no obligation to include discussion unless a member states they wish for it to be recorded.

Mr. Lima said even the most minimalistic minutes, absent any summaries of discussion, still need to be presented to the Board in a form that the Board can approve to be inserted as the official record, as if not, it is the Registrar and not the Board verifying that the information in the minutes submitted are an accurate record of what took place.

Mr. Igliazzi countered that the statute actually says the Board shall have “approved and/or official minutes,” and if there is no discussion included, they could just be submitted after the meeting without being approved by the Board at a subsequent meeting. Mr. Igliazzi said, ultimately, there is no explicit requirement in the law that the minutes be approved by the Board in order to be official.

Mr. Jackvony said the law makes a designation between official and unofficial minutes, and asked what the transformation process is. Mr. Igliazzi said unofficial minutes could include the discussion, but the official, submitted minutes could include just what is required under the statute. Mr. Lima said that would be very unorthodox.

Mr. Joslyn asked if the Board could theoretically meet, and towards the end of the meeting, break for a few minutes so Mr. Lima could type up minimalistic minutes, and the Board could then approve those minutes as official prior to adjourning. Mr. Igliazzi wondered if that would be practical, and Mr. Lima said even if just the minimum of what the law requires with the minutes were to be included, he always takes his time with them, as he double checks everything for accuracy before submitting them. He said he sees the point, but he has never heard of any board approving the minutes of that day’s meeting within the context of that meeting.

Mr. Igliazzi said he advises towns to only include in minutes what is required under the law, as providing detailed minutes affords no legal protection, although he noted most boards push back and want context included, and don’t always follow his advice. Mr. Vierra agreed with Mr. Igliazzi, and noted he has received similar legal advice in other contexts to minimize what is included in the minutes of meetings.

Mr. Lima said that, regardless of what the statute requires, there needs to be a balance between legal protection and serving the public interest, and it’s important to have a detailed record of not only the decisions the Board makes, but why the Board made the decision it did, not just for the public but for future Boards to understand and avoid repeating past mistakes or duplicating effort. He said there’s a swinging pendulum, where on one hand there’s restrictive, legally protective minutes that do not offer any context, and on the other is a verbatim transcript, and somewhere in the middle is a record of discussion that took place at the meeting and is in the public interest for both transparency purposes and for future Boards to look back on.

Mr. Igliazzi said if the public wants to know the discussion, they can always come to the meeting. If they want to know what actions the Board took and who voted to take them, they can review the minutes. Mr. Lima said that’s the inherent difference between the strict legal angle and the public’s right-to-know standpoint. Discussion ensued.

The Board reviewed the Attorney General’s opinion on the matter, and Mr. Igliazzi pointed out that the Attorney General’s office said that they do not read the Open Meetings Act to require a public body to convene in order to post official minutes. He said Mr. Lima could post today’s meeting as official minutes, unless the Board instructed him not to post them until the Board approves them.

A lengthy discussion took place about whether the Board needed to have detailed minutes, and whether the Registrar can submit official minutes without the Board first

reviewing them. The Board asked legal counsel what the difference was between official and unofficial minutes. Mr. Vierra said he is more comfortable approving minutes if they are going to be detailed to ensure that what he said in the meeting is quoted correctly and in the correct context. Mr. Iglizzi said that's precisely why only the basics under the law should be included in the minutes, but if there is a substantive meeting that should be more documented, that meeting can have official minutes approved later. Mr. Lima was concerned the Board was discussing creating different categories of minutes, creating a more complex solution to the existing problem of needing to meet monthly.

Mr. Iglizzi explained that, under the law, a template form could be drawn up by the Registrar, filled out with the most basic information required under the law, and submitted as the official minutes. He said the law requires a basic record of the meeting, and if the minutes are filed with just the basic information, the Board does not need to review or approve them beforehand. He said the choice before the Board was whether to have contextual minutes and meet every 35 days, or to utilize a minimalistic form and simply have the Registrar file it as the official record.

Mr. Joslyn asked how many of Mr. Iglizzi's clients use such a form, and he said very few do. Mr. Iglizzi said many feel their comments have legal effect, when in fact, they can do legal damage, but the only thing that has legal effect is the motion itself. Mr. Iglizzi said everyone does approve their minutes, but the act does not say that is necessary. He said he's not arguing to take this route, however, the Board is fixated on eliminating the requirement to meet every 35 days, and he believes this is the only method to do so if they want to go down this road.

Mr. Lima said there are complete Board minutes records going back over 100 years, and throughout that entire span of time, they are not of the nature Mr. Iglizzi is suggesting. He said he is concerned that changing that long-standing practice of including discussion in the minutes would be stopping the record of including not just what the Board did, but why it did what it did, as well. Mr. Joslyn and Mr. Iglizzi said that an unofficial record of what was said at the meetings could be kept separately by Mr. Lima, and that record would be separate from what the law requires to be submitted as official minutes.

Discussion ensued about the nature of official versus unofficial minutes, and whether the Board could keep separate records of each and still be in compliance with the law.

Mr. Jackvony said the Board should reflect and consider what was discussed today.

MOTION: By Mr. Joslyn and seconded by Mr. Vierra to table the discussion until the next meeting and to discuss the creation of a form to reflect official minutes of meetings.

PASSED ROLL CALL VOTE – 3-0

C. ELECTIONS CALENDAR REVIEW

Mr. Lima reviewed the entirety of the 2018 Elections Calendar produced by the Secretary of State with the Board, and noted numerous key dates and deadlines the Board should be aware of and mark in their calendars.

Mr. Lima said there are various times during the emergency and mail ballot periods, as well as during the time candidates turn in nomination papers, where Board members should be coming into the office on a daily basis to affix their signatures.

The Board members and Mr. Lima set tentative dates for several meetings that will need to be held as part of the 2018 elections cycle.

Mr. Vierra asked Mr. Lima if he could summarize these dates in a memo to the Board, and Mr. Lima said that would not be a problem, and he would send a list of the dates discussed out to the members.

UPDATES AND REMARKS

REGISTRAR – Nicholas Lima

Mr. Joslyn asked what the next meeting date would be, and Mr. Vierra responded that it is set for July 11 at 3:30 p.m.

Mr. Lima said at the last state Board of Elections meeting, Diane Mederos was elected as the Board's first ever chairwoman, and Judge Stephen Erickson was elected as vice chairman. Both have served on the Board for several years and are strong advocates for improving election laws and voter rights.

Mr. Lima said the Canvassing Department is hiring seasonal staff to assist the office staff as we head into the busier part of elections season. He said that Councilman Trent Colford's resignation from the Ward 4 seat on the City Council was anticipated, and that Edward Brady is expected to be appointed to replace him. Mr. Lima said the Board of Canvassers has no role in the matter at this point in the term, other than checking Mr. Brady's eligibility to serve in the position as consistent with the City Charter, which he is.

Mr. Lima said the office had published, at no cost to the City, notification in the Cranston Herald, Patch, and on the city website about the primary voter disaffiliation deadline. Mr. Lima asked which Board members planned to attend Monday's state Board of Elections summit; Mr. Jackvony said he planned to attend in the morning, and Mr. Joslyn was unsure.

Mr. Lima said he and Ms. Bucci participated in a trial run of an elections preparedness and cybersecurity tabletop exercise with the Department of State's Elections Division last Monday; he said the exercise was quite enlightening, and will be expanded upon and take up the bulk of the afternoon session at the upcoming summit.

Mr. Joslyn asked if anyone in the office was bilingual in English and Spanish, and Mr. Lima said the seasonal staff the office is hiring in the next few days are fluent in Spanish.

Mr. Lima noted that the Board of Elections had just come out with official recommendations on the number of pollworkers who should be assigned to each polling location, and the initial indication is that they are suggesting the maximum staffing levels

for the upcoming elections. Mr. Lima said the office did budget and prepare for this eventuality. It is likely that the numbers will be adjusted by the state Board of Elections over the course of summer.

COMMENTS OF BOARD MEMBERS

Mr. Joslyn noted partisan gerrymandering that can go on in the redistricting process, which is next slated to begin following the 2020 Census, and has been a discussion point around the country. Mr. Joslyn made the Board members aware of a recent news article on the subject.

ADJOURNMENT

MOTION: By Mr. Vierra and seconded by Mr. Joslyn to adjourn.
PASSED UNANIMOUSLY – VOICE VOTE

The meeting was adjourned at 5:43 p.m.

Respectfully Submitted,

Nicholas J. Lima
Registrar
Cranston Board of Canvassers

APPROVED by the Cranston Board of Canvassers: July 11, 2018