

INDIANA RECOUNT COMMISSION

MINUTES OF THE MAY 11, 2004 MEETING

MEMBERS PRESENT: Todd Rokita, Chair of the Indiana State Recount Commission ("the Commission"); Gordon Durnil, Member; John Griffin, Member.

MEMBERS ABSENT: None

STAFF ATTENDING: Heather Willis, Recount Director; J. Bradley King, Majority Counsel; Kristi Robertson, Minority Counsel; Phil McGovern, State Board of Accounts; and Lt. Colonel Michael Medler, Indiana State Police.

ALSO ATTENDING: Norman E. Cox, WRTV-6; Linsey Davis, WTHR; Lesley Stedman Weidenbener, The Courier-Journal.

1. CALL TO ORDER AND DOCUMENTATION OF MEETING NOTICE:

The chair called the May 11, 2004 meeting of the Indiana State Recount Commission to order at 4:05 p.m. in State House Room 201, 200 West Washington Street, Indianapolis, Indiana.

The chair recognized Mr. King, who stated that the required notice for an emergency meeting of the Commission under the Open Door Law (Indiana Code 5-14-1.5-5). A copy of the meeting notice is incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying in the Office of the Secretary of State.]*

2. INTRODUCTION OF COMMISSION MEMBERS AND STAFF:

The chair introduced himself as the Secretary of State of Indiana and an ex officio member of the Commission. The chair introduced Mr. Durnil, and noted that Mr. Durnil's oath as a member of the Commission was administered in 2002, and is on file with the previous minutes of the Commission.

The chair introduced Mr. Griffin, and noted that he would be serving as a new member of the Commission. The chair proceeded to administer the oath of office to Mr. Griffin. A signed and attested copy of the oath is incorporated by reference in these minutes.

The chair said that, in the interest of transparency and full disclosure in the Commission's work, he wished to state for the record that he had made a contribution of \$100 to Senator Borst's primary campaign.

The chair introduced Mr. King and Ms. Robertson as counsel to the Republican and Democratic members of the Commission respectively.

The chair introduced Mr. McGovern of the State Board of Accounts and Lt. Col. Medler of the Indiana State Police.

The chair indicated that sign-in sheets had been circulated and asked everyone to complete the sheet and include contact information if they wished to receive notice of future Commission meetings.

3. DOCUMENTATION OF FILING OF RECOUNT PETITION AND CASH DEPOSIT FOR THE REPUBLICAN PARTY NOMINATION FOR INDIANA SENATE DISTRICT 36:

The chair recognized Mr. King, who referred members to the Verified Petition for Recount by Lawrence M. Borst, Jr., for the Republican Party nomination for Indiana Senate District 36. Mr. King noted that this petition had been filed before noon on May 11, and since Indiana Code 3-12-11-12(a) required both proof of service of all notices to other candidates for that nomination, and the expiration of the period under IC 3-12-11-4 for filing a cross-petition, that this petition was being presented to the Commission at this time solely for its information. A copy of the petition is incorporated by reference into these minutes.

The chair noted that the period for filing a cross-petition would expire at noon seven days after the date of this meeting (meaning Tuesday, May 18, 2004).

Mr. King noted that Mr. Borst had presented a cash deposit in the form of a check for One Thousand Two Hundred Sixty Dollars (\$1,260) with this petition. A copy of the check is incorporated by reference into these minutes.

4. APPEARANCE AND WITHDRAWAL BY COUNSEL:

The chair recognized Mr. King, who noted that earlier this afternoon, Mr. Bryan H. Babb of Bose McKinney & Evans LLP had filed a request for the withdrawal of his appearance and that of Bose McKinney & Evans on behalf of Mr. Borst. A copy of this request is incorporated by reference into these minutes. The chair moved, seconded by Mr. Durnil, that this request be granted. There being no discussion, the chair called the question, and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay", the motion was adopted.

Mr. King also stated that earlier this afternoon, Mr. Lawrence M. Reuben had entered an appearance on behalf of Darryl Brent Waltz, Jr., the respondent. A copy of this appearance is incorporated by reference in these minutes.

5. ADOPTION OF IMPOUNDMENT ORDER 2004-01

The chair recognized Mr. King, who presented Order 2004-01 to the Commission. Mr. King stated that this Order provided for the immediate impoundment of ballots, voting systems, tally sheets, canvass sheets, and poll lists within Senate District 36.

Mr. King noted that under Indiana Code 3-12-10-5 and 3-12-10-6, the Commission was authorized to order the impoundment of election material before a recount petition was filed, or in this case, before a recount petition which had been filed was granted.

Mr. King stated that the definition of “ballot” and “voting system” under Indiana Code 3-5-2 was very broad, and would apply to the optical scan ballot cards used in Marion County and to direct recording electronic voting systems used in Johnson County.

The chair recognized Mr. Reuben, who asked if part of the second paragraph of the Order should read “currently in the possession of the Johnson County Election Board, *and* the Marion County Election Board...”

Mr. King responded that any particular ballot or voting system would be in the possession of either the Johnson County Election Board or the Marion County Election Board, but not both. The chair asked Lt. Col. Medler if it was clear to the Indiana State Police that the impoundment order would apply to both Johnson County and Marion County. Lt. Col. Medler responded that it was.

Mr. Durnil moved, seconded by Mr. Griffin, that Order 2004-01 be adopted. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay”, the motion was adopted.

6. APPOINTMENT OF RECOUNT DIRECTOR:

The chair noted that, although this item of business was not on the agenda, since Mr. Griffin had been appointed and all members of the Commission were present, he would like to proceed with the appointment of a Recount Director.

The chair moved, seconded by Mr. Durnil, that Heather Willis, deputy Secretary of State and a member in good standing of the Indiana bar, be appointed as Recount Director.

There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay”, the motion was adopted.

7. ADJOURNMENT:

The chair inquired whether there was any additional business to come before the Commission at this time. There being no further business, Mr. Griffin moved, seconded by Mr. Durnil, that the Commission do now adjourn. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay”, the motion was adopted. The chair then adjourned the meeting at 4:20 p.m.

APPROVED,

Todd Rokita, Chair