

INDIANA STATE RECOUNT COMMISSION MEETING

INDIANA STATE HOUSE
200 WEST WASHINGTON STREET
ROOM 233
INDIANAPOLIS, INDIANA 46204

DECEMBER 10, 2006

1:30 P.M.

WM. F. DANIELS d/b/a
ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel, Indiana 46032
(317) 848-0088

A P P E A R A N C E S**BOARD MEMBERS:**

Todd Rokita, Chairman
Gordon Durnil
Ed Delaney

ALSO PRESENT:

Bradley W. Skolnik, Esq.
J. Bradley King, Esq.
Kristi L. Robertson, Esq.

December 10, 2006

1:30 p.m.

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4 CHAIRMAN ROKITA: I'll call the meeting of the
5 Indiana Recount Commission to order. Please stand
6 and face our flag, please.

7 (Pledge of Allegiance.)

8 CHAIRMAN ROKITA: Thank you and welcome,
9 everyone. I'll try to get you back to regularly
10 scheduled programming as soon as possible, whether
11 you're a Bears fan or a Colts fan. I note for the
12 record that we have properly noticed meeting
13 information here that was posted December 6th at 1:30
14 conforming to the Open Door Law, so I'll note that
15 for the record.

16 And moving right along, consideration of matters
17 pending before the Recount Commission. We were due
18 to start the House District 15 hearing today, which
19 would have been a hearing on the disputed ballots
20 that were recounted in House District 15. I'll turn
21 it over to Bradley Skolnik, our recount director, for
22 a report.

23 MR. SKOLNIK: Thank you, Mr. Chairman. As you
24 indicated, we were to begin a recount today, the
25 formal recount by this commission, in connection with

1 House District 15. That matter, as you noted, was
2 properly noticed and the proceedings were scheduled
3 to begin at this time, at approximately 1:30 p.m.
4 Yesterday, however, a motion to dismiss the verified
5 petition for recount was filed by the petitioner,
6 Terri Pasierb, who filed this petition in her
7 capacity as the chairperson of the Newton County
8 Democratic Central Committee. A copy of that motion
9 has been distributed to the members of the
10 commission.

11 In addition, shortly thereafter, the respondent,
12 Donald Lehe, through his counsel, filed a motion to
13 join in the motion to dismiss the recount
14 proceedings. So those are the matters that are
15 before this commission at the present time.

16 CHAIRMAN ROKITA: Thank you. Any questions from
17 commission members or comments? Hearing none, advice
18 of counsel, we have no choice, I would imagine, but
19 to grant the dismissal.

20 MR. KING: Mr. Chairman, members of the
21 commission, under Indiana Code 3-12-11-12,
22 Subsection (e), whenever the petitioner and each
23 cross-petitioner or respondent file a joint motion of
24 the sort that Mr. Skolnik described to dismiss a
25 recount, the commission shall rule on a motion to

1 dismiss before ordering or continuing with a recount
2 or contest.

3 MR. SKOLNIK: Mr. Chairman, I will note that the
4 State Board of Accounts has -- had prepared its
5 report, pursuant to statute, in anticipation of
6 today's hearing. A copy of that report has been
7 distributed to the members of the commission and
8 majority and minority counsel. In addition,
9 representatives of the State Board of Accounts are
10 here today if there are any questions or any inquiry
11 that this commission may have. I should note that
12 I've been advised by counsel, and I totally agree,
13 that because of the fact that a joint petition for
14 dismissal has been filed, that the initial tally as
15 reflected by the canvass of the counties is what will
16 forever be the official record in this case.
17 Possibly counsel could elaborate on that.

18 MR. KING: Mr. Chairman, commission members,
19 that's basically correct. Ms. Robertson and I,
20 wearing our co-directors of the Election Division
21 hat, performed the official canvass for state
22 legislative offices on November the 28th setting
23 forth the figures each of the candidates received in
24 this district. If the commission grants the joint
25 motion to dismiss, then that official canvass will

1 stand as the final count that the candidates received
2 in this race.

3 CHAIRMAN ROKITA: So there's a motion to
4 dismiss. Any other comments or questions from the
5 commission members? Hearing none, all in favor of
6 granting that motion -- well, can I have a second?

7 COMMISSIONER DELANEY: I'll move that we grant
8 the motion.

9 COMMISSIONER DURNIL: Seconded.

10 CHAIRMAN ROKITA: All in favor?

11 COMMISSION MEMBERS: Aye.

12 CHAIRMAN ROKITA: Hearing no opposed, so moved.
13 That's unanimously granted. Now I'd like to just
14 very briefly recognize the State Board of Accounts
15 for their report here. As a matter of election
16 administration, it might help to have on record the
17 reason for the difference in the vote count and what
18 was the difference in the vote count, to see if
19 there's anything that would help improve elections in
20 the future in District 15.

21 MR. ROGINA: I think the net difference of what
22 we tallied --

23 MR. SKOLNIK: Mike, you may want to --

24 MR. ROGINA: Mr. Chairman, commission members,
25 as you can see from our tally, there was 7 votes

1 added to Donald Lehe and 8 to Myron Sutton totals.
2 Those were a result of absentees, as far as I can
3 tell at this point. We actually counted more than
4 what they had. The tally certified by the county
5 included everything that they thought should be
6 included by the ending date, but when we verified the
7 totals and actually had the ballots, we wound up with
8 that difference, which was a net difference of 1.

9 CHAIRMAN ROKITA: Net difference of 1, and
10 that's 8 more for Mr. Lehe and 7 more for Mr. Sutton?

11 MR. ROGINA: 7 more for Lehe and 8 for Sutton.

12 CHAIRMAN ROKITA: Okay. And they were all in
13 the absentee recount?

14 MR. ROGINA: Yes.

15 CHAIRMAN ROKITA: Was it simply a matter of a
16 miscount or were there more found or --

17 MR. ROGINA: I suppose you could say that. We
18 had some provisional ballots, but I didn't have a
19 chance to run through this before coming in.

20 CHAIRMAN ROKITA: Okay. Any questions from the
21 commission members? Hearing none, thank you very
22 much. We appreciate the State Board of Accounts'
23 work not only on this recount but the other ones that
24 you've been involved in. Thank you very much.

25 MR. ROGINA: Thank you.

1 CHAIRMAN ROKITA: Also, for the record, I'd like
2 counsel to explain why we needed to meet in person
3 today to do this dismissal. I don't want to put you
4 any more on the spot there, but in the future
5 process, if there's a way that we can do this by
6 sending around a motion for the three of us to sign
7 or not.

8 MR. KING: Mr. Chairman, I can address that.
9 The Recount Commission is covered by the Open Door
10 Law, as any other state agency is. And the Open Door
11 Law requires, with the exception of the Indiana Bond
12 Bank, the physical presence of a quorum of commission
13 members, in this case, to transact business. The
14 further complication or further aspect of this is
15 that although the commission acted under Order 2006-1
16 to delegate a large amount of authority to the
17 recount director, one of the items that cannot be
18 delegated by the commission to the director is the
19 final determination of a recount contest. And I'd
20 view a motion to dismiss as falling into that
21 category.

22 CHAIRMAN ROKITA: Thank you, Counsel.

23 MS. ROBERTSON: And I agree with Brad.

24 CHAIRMAN ROKITA: Okay. We will have a
25 continued meeting now, unless you two want to propose

1 legislation. One final matter on District 15. I am
2 very pleased, seeing the State Board of Accounts'
3 numbers, that the process worked. The vote count was
4 fair and it was accurate. I understand there have
5 been some changes, but when you have that many people
6 in that many counties looking at the ballots, I think
7 what -- the results we're seeing here are relatively
8 around what we call being human. And I'm proud to
9 see that the process worked, the law worked, and
10 because of the great work of the people in this room,
11 the recount process worked here.

12 I'm also pleased that the parties recognize that
13 in Indiana, because of our election laws and recount
14 laws, they saw the mountain to move here, so to
15 speak, and I do believe they did the right thing in
16 the interests of the taxpayers. Any comments? Thank
17 you very much. I'll turn it over now to Mr. Skolnik
18 for scheduling.

19 MR. SKOLNIK: Thank you. Mr. Chairman, members
20 of the commission, as you know, there are still a
21 number of recount and contest petitions still pending
22 before this body. A formal notice of meeting has
23 been issued for this commission to reconvene on
24 Tuesday at 1:00 p.m. in Conference Room A of the
25 Government Center. That's located in the Government

1 Center South. Again, that will be at 1:00 p.m.

2 At that time, it is my understanding that this
3 body will take up the recount and contest petition
4 that has been filed in Indiana House District 97. It
5 is our anticipation that pursuant to -- as you will
6 see when the agenda is distributed for that meeting,
7 we will note House District 97, as well as the other
8 pending matters, which include the count and contest
9 in House District 31 and the contest proceeding in
10 House District 69.

11 In addition, the formal tally has yet to be
12 initiated in connection with the U.S. Senate race
13 where Mr. Osborn has requested there be a recount in
14 ten districts -- I'm sorry -- in ten precincts. It
15 should be noted that this commission is not
16 statutorily required to conclude the recount and
17 proceedings in that U.S. Senate race by the December
18 19th deadline. So in terms of setting scheduling
19 priorities, obviously, with regards to the State
20 Board of Accounts, as well as this body, we're
21 obviously taking the House districts in order.

22 As I noted, the agenda will be kind of an
23 omnibus agenda that will reflect all the pending
24 matters -- the consideration of matters by this body
25 will include all of these recounts in the various

1 House districts. It is my anticipation that this
2 body will proceed from day to day and recess at the
3 end of the day so that they can begin their
4 deliberations immediately the very next day.

5 As I indicated, we will begin with House
6 District 97 on Tuesday afternoon at 1:00 p.m. The
7 next matter that this body would consider would be
8 House District 31. I will keep counsel for both
9 parties advised of the progress we're making in House
10 District 97 so that they will be ready to go. If I
11 had to project, I would assume we will not get to
12 House District 31 until later in the week. Probably
13 Thursday at the earliest and most likely probably on
14 Friday. But it's always very hard to predict the
15 time that will be necessary in order to conduct the
16 hearing in House District 97.

17 I also want to bring you up-to-date on
18 developments in connection with the petition for
19 recount and contest that was filed in House District
20 69 by the petitioner Mr. Bright. During the
21 recount -- during the tallying by the State Board of
22 Accounts, we were informed by Mr. Bright and his
23 counsel that they were dismissing or will be
24 dismissing the recount component of their petition.
25 They have not formally filed that yet, but they will

1 be, I'm sure, doing that shortly.

2 In House District 69, the petitioner has not
3 dismissed the contest component of it. They are
4 still assessing whether they want to proceed with
5 that. No final determination has been made in
6 connection with whether they will be proceeding with
7 the contest portion of this matter. I will keep the
8 commission members apprised of developments in
9 connection with that matter. Obviously, if they
10 continue to pursue -- the petitioners continue to
11 pursue the contest in House District 69, the hearing
12 in connection with that would follow the
13 deliberations in House District 31.

14 COMMISSIONER DELANEY: Has the State Board of
15 Accounts done the reports in all the districts?

16 MR. SKOLNIK: They have the report on this one
17 completed because of the fact that the hearing was
18 scheduled to commence today. They will be completing
19 their reports and I'll let Mr. Rogina speak to that
20 if he would like. It's my understanding they will be
21 completing the reports this week in connection with
22 House District 31 and House District 97. And
23 that's -- House District 97 proceedings commence at
24 1:00 p.m. on Tuesday, so I'm sure you'll have that to
25 us in plenty of time.

1 MR. ROGINA: I'll have that by the morning of
2 Wednesday.

3 MR. SKOLNIK: Or Tuesday?

4 MR. ROGINA: Or Tuesday. Or tomorrow.

5 COMMISSIONER DURNIL: Did the count in 69 stop
6 when they said they were --

7 MR. SKOLNIK: The count in 69 did stop when
8 they --

9 COMMISSIONER DURNIL: But they haven't filed
10 a --

11 MR. SKOLNIK: They have not formally filed it
12 yet, but they asked us to stop --

13 CHAIRMAN ROKITA: Brad, would you ask them that
14 the commission would like to see that dismissal?

15 MR. SKOLNIK: I will direct them to do so. I'll
16 let them know that the commission is a little -- more
17 than a little bit concerned that it has not received
18 a formal filing on that.

19 CHAIRMAN ROKITA: The commissioners and I were
20 talking before we commenced the meeting, and I want
21 to put that on record, too. We were wondering if
22 it's better to start in these races where we have a
23 contest and a recount or if it's better to start with
24 the recount and that would resolve some -- may
25 resolve some contest issues, and/or is it better to

1 start with the contest side first. And I wondered if
2 counsel, for the record, could comment.

3 MR. KING: Mr. Chairman, to speak from my own
4 personal opinions, it's fact-sensitive. Depends on
5 the nature of the contest allegations. If a contest
6 allegation proven on its own would require the remedy
7 for a contest, meaning a special election, then it
8 might make sense for the contest portion to proceed
9 first. However, if the recount portion involves
10 enough ballots so that the mistake alleged in the
11 contest would be rendered but would not change the
12 result, then it makes sense to do the recount first.

13 CHAIRMAN ROKITA: Kristi.

14 MS. ROBERTSON: The only thing that I would add
15 is that I think in the past when we've had recount
16 contests, a lot of times we have started with a
17 recount because it may -- the contest portion may
18 become irrelevant if --

19 MR. KING: Right. And I'd add that that has
20 been the past practice of the commission, to
21 generally begin recounts first.

22 CHAIRMAN ROKITA: Mr. Skolnik, what's your
23 advice for 97?

24 MR. SKOLNIK: Based on counsel's advice and
25 their comments today, I would recommend that we begin

1 with the recount, especially in a matter such as
2 House District 97 where the margin is rather narrow,
3 and I suppose it's always conceivable that once the
4 recount is completed, that the request for a contest
5 may be mooted. I don't know that for sure.

6 One thing I will do, and I think it would be
7 beneficial if the commission will authorize me to do
8 so, is I can consult with counsel for both parties to
9 try and get a better feel for the issues that will be
10 presented, as well as what their preferences may be.
11 Obviously, it's up to this commission to make the
12 determination as to whether to start with the recount
13 first or with the contest. I think, based on what we
14 know now, it would be my recommendation that we begin
15 initially with the recount. If I find, based on my
16 inquiry, that my opinion and recommendation would
17 change, I will contact the commission members
18 immediately.

19 CHAIRMAN ROKITA: Is that all right? Okay.
20 Please proceed that way, Brad. Thank you very much.
21 Any additional matters before the commission?

22 COMMISSIONER DELANEY: What's our time schedule
23 on Tuesday? How long are we going to run?

24 MR. SKOLNIK: We begin Tuesday at 1:00 p.m. I
25 think certainly it's up to this commission to

1 determine how long to run with the proceeding on that
2 day. Based on the fact that a contest, as well as a
3 recount, can be a time-consuming endeavor, I would
4 certainly encourage this commission, if at all
5 possible, to be willing to go into the evening hours
6 and not necessarily recess at the close of the
7 business day.

8 COMMISSIONER DURNIL: How many challenged votes
9 are there in 97?

10 MR. SKOLNIK: I don't know what the number is at
11 the present time. I don't know if the State Board of
12 Accounts has formally tallied that --

13 MR. ROGINA: We are still in the process of
14 tabulating our results.

15 MR. SKOLNIK: And Commissioner Durnil, there
16 are -- I know there were several entire precincts
17 challenged. As we know, as parties go through the
18 process, sometimes they exercise what I'll call an
19 abundance of caution and make sure they formally
20 challenge a precinct or a large number of votes that
21 they may not necessarily present to the commission
22 for a final determination.

23 CHAIRMAN ROKITA: Any other questions for the
24 commission? Thank you. I'll entertain a motion
25 to --

1 MR. SKOLNIK: Just one final note. I will be --
2 and I assume that I'll have the blessing of this
3 commission -- I will be rescinding the order of
4 impoundment in House District 15 now that this matter
5 is concluded.

6 CHAIRMAN ROKITA: Do you need an order to do
7 that?

8 MR. SKOLNIK: I'm empowered to do that based on
9 your enabling order.

10 CHAIRMAN ROKITA: Then I'll need a motion to
11 adjourn this one and recess the other one?

12 MR. SKOLNIK: That is correct.

13 COMMISSIONER DURNIL: So moved.

14 CHAIRMAN ROKITA: Seconded?

15 COMMISSIONER DELANEY: Second.

16 CHAIRMAN ROKITA: So moved.

17 COMMISSION MEMBERS: Aye.

18 CHAIRMAN ROKITA: Hearing no opposed, so moved.

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20 (Proceedings adjourned.)
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STATE OF INDIANA)
)SS:
 COUNTY OF BOONE)

I, Tavi L. Fraga, RPR, a Notary Public in and for the State of Indiana, do hereby certify that the foregoing proceedings were taken down in stenographic notes and afterwards reduced to typewriting under my direction, and that the typewritten transcript is a true record of the proceedings to the best of my ability;

I do further certify that I am a disinterested person in this matter, that I am not a relative or attorney of any of the parties, or otherwise interested in the event of this matter, and am not in the employ of any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 19th day of December, 2006.

 Tavi L. Fraga, RPR, Notary Public
 Residing in Boone County, Indiana

My Commission Expires:
 February 8, 2010

 TAVI L. FRAGA
 Printed Signature