

INDIANA STATE RECOUNT COMMISSION

MINUTES OF THE MAY 2, 2012 MEETING

MEMBERS PRESENT: The Honorable Connie Lawson, Chairman of the Indiana State Recount Commission (“the Commission”); Gordon Durnil, Member; Bernard L. Pylitt, Member

MEMBERS ABSENT: None

STAFF ATTENDING: J. Bradley King, Majority Counsel; Leslie Barnes, Minority Counsel

OTHERS ATTENDING: Jeff Arthur, State Board of Accounts (SBoA); Sara Bellamy, SBoA; Michael Rogina, SBoA; Captain Ron Schumaker, Indiana State Police; Mr. Philip A. Sicuso.

1. CALL TO ORDER:

The chair called the meeting of the Commission to order at 2:00 p.m. at Room 201 of the Indiana State House, 200 West Washington Street, Indianapolis, Indiana.

2. COMMISSION BUSINESS:

The Commission transacted the business and took the official actions set forth in the Transcript prepared by Rhonda C. Hobbs, Connor + Associates, Inc., which is incorporated by reference into these minutes.

The Commission approves the Transcript, with the following corrections:

Page 2, line 9, replace “ELECTION DIVISION” with “RECOUNT COMMISSION”.

Page 4, line 20, replace “Belamy” with “Bellamy”.

Page 7, line 3, replace “?” with “.”.

Page 19, at the end of line 5, add “in”.

Page 19, line 7, replace “. If” with “and if”.

3. ADJOURNMENT:

There being no further business before the Commission, the Commission adjourned at 2:20 p.m.

APPROVED:

Philip A. Sicuso,
Philip A. Sicuso *by [Signature]*
Pursuant to Order 2012-02 of
The Indiana State Recount Commission

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INDIANA STATE RECOUNT COMMISSION
PUBLIC SESSION NOTICE

Conducted On: Wednesday, May 2, 2012

Location: The State House
200 West Washington Street, Room 201
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:
Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

CONNOR REPORTING, INC.
1650 One American Square
Indianapolis, IN 46282
(317) 236-6022

A P P E A R A N C E S

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INDIANA RECOUNT COMMISSION:

Ms. Connie Lawson - Madam Chair

Mr. Bernard L. Pylitt - Commission Member

Mr. Gordon Durnil - Commission Member

INDIANA ELECTION DIVISION STAFF:

Ms. Leslie Barnes - Minority Counsel

Mr. Bradley King - Majority Counsel

1 MS. C. LAWSON: Well, this meeting of the
2 Indiana State Recount Commission is called to
3 order, and it looks like all three members of
4 the Commission are present. I would like to
5 introduce myself. I'm Connie Lawson, Secretary
6 of State, and Chair and member of the
7 commission, and I'm joined by Mr. Pylitt and
8 Mr. Gordon Durnil as commission members.

9 I would like to make sure that I do make note
10 that notice for this meeting was posted outside the
11 office more than 48 hours ago, and as a result, we
12 have had proper notice, according to the Open Door
13 Law. So since all three members of the commission
14 are present, we do have a quorum, and we'll call
15 the meeting officially to order.

16 I would like to recognize Mr. Durnil, if he
17 would like to make any comments, or Mr. Pylitt, if
18 you would like to make any comments?

19 COMMISSION MEMBER B. PYLITT: I'll defer to
20 Commissioner Durnil.

21 COMMISSION MEMBER G. DURNIL: I have no
22 comments.

23 MS. C. LAWSON: No comments, okay.
24 Obviously, we have members of the Election
25 Division Staff here. We have Brad King who is

1 the Majority Member, and Leslie Barnes, who is
2 the Minority Member of the Commission -- welcome
3 both of them, and we have representatives from
4 the State Board of Accounts here as well.

5 I'd like to recognize Mr. Rogina to introduce
6 your staff, if you would?

7 MR. M. ROGINA: Jeff Arthur sitting up here
8 on my right, and Sara Bellamy who's sitting
9 beside me.

10 MS. C. LAWSON: Okay.

11 MR. M. ROGINA: Co-supervisors of the
12 recounts.

13 MS. C. LAWSON: Great. Thank you.

14 MR. B. KING: Could you ask Mike to speak
15 up?

16 MS. C. LAWSON: Mike, I think we need to
17 have you speak up for the court reporter here,
18 if you would? If you could stand up and...

19 MR. M. ROGINA: This is Jeff Arthur with
20 our department, and Sara Belamy, and I'm Mike
21 Rogina, and we're co-supervisors of the
22 recounts, when they take place.

23 MS. C. LAWSON: Okay. So the Indiana State
24 Police also, obviously, provide assistance to
25 the Commission if we have to impound election

1 material subject to a recount and in serving
2 process. So Captain Ron Schumaker. He's new to
3 these duties this year. So we welcome you,
4 Captain Schumaker to the meeting as well. I'd
5 like to make note that our court reporter is
6 Rhonda Hobbs from Connor & Associates. We
7 welcome you, Rhonda. Thank you for being here.

8 And before I begin, I want to remind everyone
9 on behalf of the court reporter to identify
10 yourself when beginning to speak, spell your name
11 when identifying yourself, speak clearly, and do
12 not speak at the same time that others are speaking
13 in order that we may get the minutes of this
14 commission meeting recorded properly.

15 Our first order of business is Order 2012-01
16 which deals with the Adoption of Amendment to
17 Recount Guidelines. I think everybody has received
18 a copy prior to the meeting; is that correct?

19 COMMISSION MEMBER B. PYLITT: Yes.

20 MS. C. LAWSON: Okay. And I'll recognize
21 Brad King and then Mr. Rogina to present this
22 order.

23 MR. B. KING: Thank you, Madam Chair,
24 Members of the Commission. In your packets also
25 is a copy of Order 2012-01, Adoption of

1 Amendments to Recount Guidelines. Indiana Code
2 3-12-10-5 permits the Recount Commission to
3 regulate the course of its hearings and
4 proceedings, and in the past the Commission has
5 done so by adopting guidelines to address the
6 proceedings here and also the proceedings
7 conducted in the field by State Board of
8 Accounts with State Police supervision.

9 From time to time, it's necessary to amend the
10 guidelines to reflect changes in state law, and so
11 Section 2 of the two sections in this Order
12 reflects a change with regard to School Board
13 Elections, which now must be conducted in the
14 general rather than the primary so we no longer
15 have school board only ballots. So Section 2 of
16 the Order simply strikes a reference to school
17 board only ballots.

18 Section 1 of the Order deals with another
19 document, the State Board of Accounts Manual,
20 which goes into another layer of detail
21 regarding how the State Board of Accounts
22 conducts recounts in the field and when
23 presenting disputed ballots to this commission.
24 Mike Rogina is here, but I believe he indicated
25 that Jeff Arthur will be able to talk about this

1 year's changes with the addition of the manual.
2 So with your permission, Madam Chair, I would
3 defer to Jeff Arthur?

4 MS. C. LAWSON: Yes. Please. Mr. Arthur.

5 MR. J. ARTHUR: Yes. My name is Jeff
6 Arthur. I'm with the Indiana State Board of
7 Accounts. As part of this, we've kept all of
8 our same forms as we did in the last recount.
9 We tried to clean them up a little bit, maybe
10 streamlined them, hopefully, make them a little
11 better and easier to read and easier for our
12 people to work with. So I'll go over the
13 highlights, if that's okay, of the different
14 changes.

15 On Page 10 of this blue bound book starts our
16 Form No. 1. This is the Precinct Tally Sheet. And
17 one of the main changes there is that we added
18 early votes and optical scan to those line items, 1
19 through 8, so that in case we had any of those in
20 the past, we've adjusted our forms, but hopefully,
21 we've got all the different types of votes that we
22 will see in a recount.

23 You know, each county, we might not have all
24 of these line items, but at least it's already
25 there in the form, and then Line 8 is our total,

1 it's where we total that.

2 MS. C. LAWSON: Okay.

3 MR. J. ARTHUR: And then back on Page 11,
4 we start our reconciliation and we put those in
5 the same order as 1 through 8 and we also added
6 the early voting optical scan to that, so that
7 would agree with that. And you know, like I
8 said, we had some cosmetic changes. I don't
9 know if anybody has got questions on Form 1.

10 MS. C. LAWSON: Are there any questions?
11 Brad, obviously, you've seen it, and you helped
12 present the order?

13 MR. B. KING: Yes.

14 MS. C. LAWSON: Miss Barnes, do you have
15 any questions on the order?

16 MS. L. BARNES: I don't. Thank you.

17 MS. C. LAWSON: Okay. Thank you.

18 MR. J. ARTHUR: And on Form 2, we had
19 originally under electronic, had I-Votes. We
20 haven't seen those in the recent years. We took
21 that out.

22 MS. C. LAWSON: What page -- excuse me,
23 Jeff, what page is that?

24 MR. J. ARTHUR: Oh, I'm sorry. Page 14,
25 it's Form 2, the SBoA Summary Tally Sheet, and

1 so we've got two sections, electronic all paper
2 ballots, and then total, those three columns.
3 In the electronic -- we just have one line item
4 in electronic, but under the all paper ballots,
5 we once again added the early vote and optical
6 scans so that those would agree with Form 1.

7 MS. C. LAWSON: Are there questions?

8 *(No response.)*

9 MR. J. ARTHUR: And Form 3, it's the same
10 form other than adding columns for early vote
11 and optical scan for all the different
12 categories, the valid ballots, invalid ballots,
13 disputed ballots, and the disputed invalid
14 ballots so...

15 MS. C. LAWSON: Are there questions?

16 *(No response.)*

17 MS. C. LAWSON: Okay.

18 MR. J. ARTHUR: Okay. And then on 4, we
19 might have had just a little bit of cleanup on
20 the lines, but really no changes to that
21 document. Now on Form 5, that is the same,
22 other than we have a question in there that
23 says, "How were the absentee voter's identified
24 on the poll book?"

25 On our last recount, we had some questions,

1 and it seemed like even within an county, one
2 precinct might have indicated an absentee in a
3 certain way, different than other. We had a lot of
4 questions on that. So hopefully, with this form,
5 you know, we'll be able to answer that later on
6 so...

7 MS. C. LAWSON: Okay. No questions?

8 *(No response.)*

9 MS. C. LAWSON: Okay.

10 MR. J. ARTHUR: And then on Form 6, we
11 have -- on Page 18 we have a note that's to our
12 examiners how to handle -- how the exhibits
13 should be stamped. We changed the wording
14 slightly with that, and that is the only change
15 on that form.

16 MS. C. LAWSON: And where would that be?

17 MR. J. ARTHUR: The note says, "The
18 original exhibit should be stamped and numbered;
19 only the first page of a poll book need be
20 stamped and numbered," and we added, "If the
21 entire precinct is challenged," because
22 sometimes they might challenge Page 1 and then
23 Page 27, so then that way we know that we
24 definitely need exhibit numbers, if it's
25 multiple pages, but if it's the entire poll

1 book, we'll just put the exhibit on that and
2 have all the pages with that exhibit.

3 MS. C. LAWSON: Okay. Are there questions
4 on Form 6?

5 (No response.)

6 MR. J. ARTHUR: I think that's all of our
7 changes so...

8 MS. C. LAWSON: Okay. Is there further
9 discussion?

10 (No response.)

11 MS. C. LAWSON: So for purposes of
12 discussion, is there a motion to approve the
13 order as presented?

14 COMMISSION MEMBER G. DURNIL: So moved.

15 COMMISSION MEMBER B. PYLITT: I'll second.

16 MS. C. LAWSON: The motion's been made and
17 seconded, is there further discussion?

18 (No response.)

19 MS. C. LAWSON: With no further discussion,
20 the questions on the adoption of Order 2012-01
21 is presented, all in favor say aye?

22 THE COMMISSION: Aye.

23 MS. C. LAWSON: Opposed, nay?

24 (No response.)

25 MS. C. LAWSON: The ayes have it and the

1 order is approved. So next we will be dealing
2 with Order 2012-02 which is the designation of
3 recount director and authorization of the
4 director to act on behalf of the commission.

5 Has everyone received a copy of order 2012-02?

6 *(No response.)*

7 MS. C. LAWSON: As I said, it does concern
8 the designation of the recount director in his
9 authority to act on behalf of the Commission,
10 and I will recognize Mr. King to present this
11 order.

12 MR. B. KING: Thank you, Madam Chair,
13 Members of the Commission. Order 2012-02 does
14 two things: First, it employs a recount
15 director, which the Commission is required to do
16 by Indiana Code 3-12-10-2.5, and in Chapter 2,
17 Section 4 of the guidelines.

18 The Commission was served for many years,
19 since 2006, by Bradley Skolnik, who subsequently
20 has been appointed to the Board of Law Examiners
21 and was unable to continue service. Mr. Mark
22 Palmer served with regard to a contest proceeding
23 conducted last year, but his appointment terminated
24 when that matter was concluded, and so there's
25 currently a vacancy in the position of recount

1 director.

2 Indiana Code 3-12-10-7 also permits the state
3 recount commission to designate a person to
4 exercise any of the Commission's powers other than
5 a final adoption of rules, termination of a
6 recount, determination of a contest.

7 In the past, recount directors have been given
8 the authority to act on behalf of the Commission
9 often because requests for impoundment orders or if
10 a recount proceeding is ordered, changes have to be
11 made and schedules and consultation on a daily
12 basis with the parties and their attorneys. So
13 it's impractical to call a commission meeting to
14 deal with those daily questions as they arise.

15 Order 2012-02 would provide for the
16 appointment of Mr. Philip A. Sicuso as recount
17 director and vest him with the authority permitted
18 under state statute to exercise the powers
19 permitted on the behalf of the State Recount
20 Commission.

21 State law also requires the Commission to set
22 the salary for employment of Mr. Sicuso, which
23 Section 2 provides, in an hourly amount, with any
24 additional amount necessary to cover documented
25 expenses. Section 3 provides that the employment

1 takes effect immediately and will continue until
2 otherwise ordered by the Commission.

3 Section 4 provides that the delegation of
4 authority to Mr. Sicuso, applies to all powers of
5 the Commission; specifically, mentions the order of
6 impoundment of election records, material and
7 equipment, and Section 5 provides the order would
8 take effect immediately upon its approval.

9 MS. C. LAWSON: Okay. Thank you, Brad.
10 Leslie, Miss Barnes, do you have any further
11 remarks or questions about the order?

12 MS. L. BARNES: I guess just the one
13 comment, that if the recount director is given
14 the permission to exercise all of the authority
15 of the Commission, it would be done in a
16 non-public setting. I guess I would just make
17 the commission members aware of that, so
18 impoundment or any discovery orders or subpoenas
19 would be issued by a single individual, and it
20 would not -- would not be in public, and I guess
21 I would just bring that to the Commission's
22 attention.

23 In the past, the Commission has limited the
24 recount director's authority. This proposed order
25 would give him all the authority of the Commission,

1 except to issue a final judgment, which by law you
2 cannot delegate to an individual. You, the
3 Commission, has to make the final order in a
4 recount or contest, but thank you for the
5 opportunity.

6 MS. C. LAWSON: Sure.

7 MR. B. KING: Madam Chair, I believe Mr.
8 Sicuso is present, and the Commission has also
9 been provided with documents from Mr. Sicuso as
10 part of the record of its proceedings today.

11 MS. C. LAWSON: Right.

12 MS. L. BARNES: Madam Chair, I hate to
13 interrupt. I have one more thought, if I may?

14 MS. C. LAWSON: Sure.

15 MS. L. BARNES: In addition to issuing
16 impoundment orders and/or any discovery orders,
17 the recount director in the past has also
18 amended the guidelines, which today the Recount
19 Commission heard testimony and entertained
20 discussion, if there was any, on amending
21 guidelines.

22 But in the past on recounts, the recount
23 director has amended the guidelines without
24 consultation of the commission members, and again,
25 in a -- in a non-public setting, and that was the

1 other point that I wanted to make the Commission
2 aware of.

3 MS. C. LAWSON: Okay.

4 MS. L. BARNES: Thank you.

5 COMMISSION MEMBER G. DURNIL: When did that
6 happen -- I mean, not in the middle of a
7 recount?

8 MS. L. BARNES: It did, Mr. Commissioner.
9 During the 2008 recount, the guidelines were
10 amended twice to deal with two issues that came
11 up in the middle of a recount. One was with
12 provisional ballots and whether or not
13 provisional ballots could be recounted and which
14 members of the parties could or could not
15 observe or take notes on the provisional
16 ballots, and then the other issue dealt with
17 vote centers. The 2008 recount was held
18 partially in Tippecanoe County, and it was a
19 vote center county, and so the guidelines did
20 not address how to conduct a recount in a vote
21 center setting.

22 COMMISSION MEMBER G. DURNIL: Okay. Thank
23 you.

24 MS. L. BARNES: Certainly.

25 COMMISSION MEMBER B. PYLITT: This is

1 Bernard Pylitt. Mr. King, do you contemplate
2 that if those issues came up again that Mr.
3 Sicuso would be dealing with them separate from
4 the Commission or...

5 MR. B. KING: Madam Chair, Mr.
6 Commissioner, I think that would depend upon a
7 couple of items. First, the importance of the
8 particular issue. There may very well be minor
9 changes that would be useful to implement as
10 part of an actual recount.

11 And then if it were a significant change that
12 could be considered by the Commission without
13 delaying the completion of a recount, it's up to
14 the director to decide whether or not to exercise
15 those authorities or to defer.

16 I know in the past, that Mr. Skolnik certainly
17 kept the members of the commission aware of the
18 actions he had taken with regard to amendments of
19 the guidelines and also consulted with both of the
20 parties to the recounts and didn't necessarily
21 obtain agreement on every point but did involve
22 them in the process.

23 MS. C. LAWSON: If there's no further
24 discussion, there is a motion to approve the
25 order as presented.

1 COMMISSION MEMBER G. DURNIL: I'll make
2 that motion.

3 MS. C. LAWSON: We have a motion?

4 COMMISSION MEMBER G. DURNIL: I move that
5 we accept the order, 2012-02.

6 MS. C. LAWSON: Do we have a second?

7 COMMISSION MEMBER B. PYLITT: I'll second
8 that motion.

9 MS. C. LAWSON: We have a motion and a
10 second, all those in -- is there further
11 discussion?

12 COMMISSION MEMBER B. PYLITT: Madam Chair,
13 just for the record. I've dealt with Mr. Sicuso
14 when he was at the gaming commission and found
15 him to be very competent and reasonable and have
16 no reason to believe that he wouldn't be in
17 assisting the Commission here.

18 MS. C. LAWSON: Okay. I would like to give
19 Mr. Sicuso an opportunity to introduce himself
20 before we make the final motion. So if you
21 would like to do that, I'd appreciate you coming
22 forward, Phil.

23 MR. P. SICUSO: Sure. Thank you. My names
24 is Philip Sicuso, S-I-C-U-S-O. I'm an attorney
25 at Bingham Greenebaum Doll here in Indianapolis,

1 very much appreciate the consideration I'm given
2 today to serve in this capacity.

3 It's an area of law that I'm familiar with or
4 getting more familiar with through some of the
5 clients of the firm, which I have tried to lay out
6 my disclosure letter for you and will certainly
7 keep those issues at the forefront. If any
8 conflicts arise, to bring them forward. My
9 attention would be to serve in this role in a most
10 upfront and fair sort of way, and so I appreciate
11 the trust that you would be giving me.

12 MS. C. LAWSON: Are there questions for Mr.
13 Sicuso?

14 COMMISSION MEMBER G. DURNIL: I have none.

15 COMMISSION MEMBER B. PYLITT: I have none.

16 MS. C. LAWSON: Okay. If there is no
17 further discussion, then the question is on the
18 adoption of Order 2012-02 as presented, all
19 those in favor say aye?

20 THE COMMISSION: Aye.

21 MS. C. LAWSON: Opposed, say nay?

22 *(No response.)*

23 MS. C. LAWSON: The ayes have it and the
24 order is approved. Is there any other business
25 to come before the Commission at this time?

1 (No response.)

2 MS. C. LAWSON: If not, is there a motion
3 that the Commission do now adjourn?

4 COMMISSION MEMBER B. PYLITT: So moved.

5 MS. C. LAWSON: We have a motion --

6 COMMISSION MEMBER G. DURNIL: Second.

7 MS. C. LAWSON: -- and a second, the ayes
8 have it, the meeting is adjourned. Thank you
9 everybody.

10 (Time noted: 2:20 p.m.)

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1 STATE OF INDIANA)
2 COUNTY OF MARION) SS:

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I, Rhonda J. Hobbs, RPR, and a Notary Public and Stenographic Reporter within and for the County of Hendricks, State of Indiana at large, do hereby certify that on the 2nd day of May, 2012, I took down in stenograph notes the foregoing proceedings;

That the transcript is a full, true and correct transcript made from my stenograph notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 7th day of May, 2012.



NOTARY PUBLIC

My Commission Expires:
August 24, 2017
County of Residence:
Hendricks County