

CHATHAM COUNTY BOARD OF ELECTIONS REGULAR MEETING

Chatham County Board of Elections Office

984 Thompson Street, Suite D

Pittsboro, NC 27312

GoToMeeting

February 16, 2021 – 5:30 P.M.

The Chatham County Board of Elections met at the Chatham County Board of Elections office at 984 Thompson Street Suite D, Pittsboro, NC 27312 on February 16, 2021, at 5:30 p.m. via GoToMeeting. Citizens were given the opportunity to submit comments or concerns via email to the Director by 5:00 p.m. to be addressed during citizens input on the agenda.

The following people were present: Chair Laura Heise, Secretary Charles Ramos, Member Amy Meek (remotely), Member Frank Dunphy II, Member Mark Barroso, Director Pandora Paschal, Deputy Director Steve Simos, and Election Specialist Chance Mashburn.

Call to Order

Chair Laura Heise called the meeting to order at 5:30 p.m. and welcomed the public. There was no public input for this meeting. Secretary Charles Ramos led everyone in a moment of silence and the Pledge of Allegiance to the flag. Chair Heise informed the board that she invited County Attorney Robert Hagemann for a question-and-answer session to address any concerns other board members or staff may have pertaining to any unclear information pertaining to the Beasley Protest Hearing or any other items pertaining to elections, and their role as a board member.

Question and Answer Session with County Attorney

(See attached questions and answers)

Approve Minutes

The Director presented the minutes for September 15, 2020 - October 6th, 9th, 13th, 16th, 20th, 22nd, 27th, 30th, 2020 - November 2nd, 3rd, 13th, December 3rd, and 15th, 2020 meeting minutes for approval. Member Frank Dunphy II requested minor changes October 16, 2020 minutes and the November 3, 2020. Mark Barroso made the motion to approve all the minutes presented with amendments as prescribed by Member Frank Dunphy II. Member Frank Dunphy II seconded the motion. All board members were in favor. Director Paschal amended the minutes, and Secretary Charles Ramos finalized the approval by applying his signature.

Election Schedule

Chair Heise requested the Director to provide the board with the election schedule for the upcoming Municipal Elections for 2021. The schedule was presented as laid out by the State Board of Elections. The Director advised the board that this schedule may change due to the delay in receiving 2020 census information, stating that any municipality which votes by district their elections could be postponed to the Primary in March of 2022. This could also cause delays for other municipalities and Congressional Districts.

List Maintenance

Director Pandora Paschal gave the board information about the list maintenance process, which is done monthly, biennially, and semiannually. Secretary Charles Ramos requested the statistics from the biennial list maintenance that took place in January of 2021.

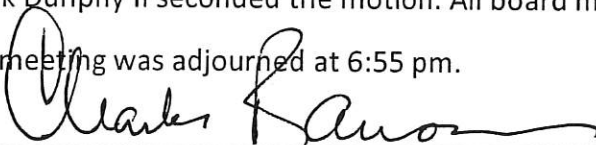
The following tasks were completed:

- **Remove Inactive Voters – January 6, 2021**
After each statewide general election, this task involves removing all voters who have remained in inactive status for two consecutive general elections. There were 1,530 voters removed.
- **No-contact procedures – January 13, 2021**
After each statewide general election, these tasks involve sending a “No-contact” mailing to all active voters who have not had any contact with a board of elections for two consecutive general elections. 1,980 voters were sent mailings.

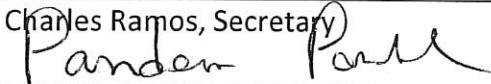
Meeting Adjournment

Chair Heise stated to the board if there was no further business for discussion the meeting would be adjourned. Member Mark Barroso made the motion to adjourn the meeting. Member Frank Dunphy II seconded the motion. All board members were in favor.

The meeting was adjourned at 6:55 pm.



Charles Ramos, Secretary



Pandora Paschal, Attest

**CHATHAM COUNTY BOARD OF ELECTIONS VIRTUAL
QUESTIONS AND ANSWER SESSION
WITH COUNTY ATTORNEY ROBERT HAGEMANN
February 16, 2021 – 5:30 P.M.**

Below are the questions asked by board members and staff; also included are the answers given by County Attorney Robert Hagemann.

1. **Question - Chair Laura Heise** -- One question to address specifically -Evidentiary hearing Process – Beasley attorneys looked at how the staff interpreted the law and applied the law to the 15 individuals that were being challenged.

Answer - Attorney Robert Hagemann - Preliminary hearing to determines if you should go to a full-blown hearing or not. I think the board handled it correctly.

Quasi-judicial hearing – sort of like a judicial proceeding – court like processes – had we gathered the next week – evidentiary proceeding any facts staff presented, party presented to supplement the staff –would question staff on information – the board of elections would be allowed to ask questions – and then heard arguments – board would have made finding of facts. – if there were facts in dispute - what is true and correct facts – with the County Attorneys help the Board of Elections would have applied the law –made conclusion of law to either uphold the decision to not count the votes – or reverse the decision to count the votes that were being questioned.

What is important for quasi-judicial board is that decision makers come into the matter without a predisposition, without bias, without having undisclosed ex-parte communications. What that means is like a jury you Come with an open mind not having attempted on your own to investigate the matter beforehand, but instead receive the evidence at the hearing, listen to questions that may be asked – arguments over the evidence, questions you may have had. It is a due process. It is a constitutional issue that the folks whose rights you are adjudicating have the right to an unbiased, not predisposed panel of individuals to hear their case. You sit back and wait until the actual formal hearing to receive the evidence, process it and make finding of fact. if there is a dispute over the facts, then apply the law to reach a decision.

2. **Question - Member Mark Barroso** - Could you go into more details about ex-parte communications, and give some examples of what we should avoid doing?

Attorney Robert Hagemann - Judges are trying to find out what you know about the case already, have you read about in the newspaper, have you seen stuff on t.v., do you know any of the parties involved, all of this is to see if whoever is on the jury panel can be trusted to make decision totally on the evidence presented in the court.

3. **Question - Member Mark Barroso** – More specifically would it be appropriate or inappropriate for us to contact staff the next day and say, what can you tell us about this and that? Is that appropriate or inappropriate?

Answer - Attorney Robert Hagemann – I Highly recommend against that. You are not really the investigator so you should not be going outside of the legal process to try to figure out the case. Do not engage. I should have given you guys some instructions on that. I apologize for not doing it. I did not realize that this was something new to you. The law is set up so you decide the case solely based on the evidence which is presented to you at the hearing.

4. **Question - Deputy Director Steve Simos** - In the process of what we were doing, were we correct in giving the Beasley Attorneys and the Republican Party the evidence that we had, or should we have held off to the hearing?

Answer - Attorney Robert Hagemann - A - It was permissible, but very wise. Time was saved by not coming to a hearing, that would have probably resulted in the same thing that happened with their withdrawal. Nothing was inappropriate with having communications with staff and the other parties. Gave this analogy by trial to a jury. The lawyers are not supposed to talk to the jurors other than in the court room under the supervision of a judge, but the lawyers can, but are required to communicate with each other in preparation for the trial by sharing information by stipulating as many facts that are not in dispute as they can, so that when they go into the trial in the courtroom it is as efficient as possible. Ex-parte communications do not apply to staff by helping the parties so they can make a judgement on whether they want to go forward with a hearing.

5. **Question - Director Pandora Paschal** - Just to be clear, If we had given the information that was given to the Beasley Committee to one of our board members would it have caused the board member to be recused from the hearing if there had actually been a hearing, if information was received prior to the hearing which was scheduled on December 11, 2020?

Answer - Attorney Robert Hagemann – I do not know if it would have necessitated an automatic recusal and particularly with small boards because you do not want to recuse to the point where there is nobody left. It would have been problematic. It definitely would have been appropriate for the parties to ask questions of the board member or members to try to ascertain whether giving those communications to the board member could still be fair and unbiased. It is a due process. It is a right to a fair proceeding before a neutral and non-predisposed tribunal. If a party believes that the folks who are hearing their case are not fair and if they had bias and had predisposition and could prove it that could put the board's decision into question. They could bring a lawsuit claiming they were denied due process by being deprived of a fair hearing and therefore a violation of their own due process rights.

6. **Question - Member Frank Dunphy II** – Page 34 of the N C Election Law Book G.S 163-35 (d) that Mrs. Paschal gave me addresses quasi-judicial proceedings. If there is information flowing out of this office to opposing attorneys are members responsible for that information that is flowing out of this office?

Answer - Attorney Robert Hagemann What do you mean about information flowing out, are you talking about potential liability? The answer is no. If this is based on the questions that has been asked my assumption of what was being shared with attorneys for both the Republican and Democratic candidate again there is no liability. As I said before, it is perfectly appropriate for staff to share that with the parties. The first part of non-delegation of quasi-judicial that is

correct. The quasi-judicial function is what you all would have performed if we would have had that quasi-judicial evidentiary hearing, and what that is saying is you can't delegate your role to hear the evidence, make finding of facts, and conclusions of law when responding to a protest. That cannot be delegated, and it was not delegated. You retained all that authority and would have been exercised if we met on that Friday.

7. **Question -- Member Frank Dunphy II**– What was the preliminary meeting we had on December 3, 2020?

Answer - Attorney Robert Hagemann - Probable cause – You were to look at the actual protest to determine 3 things. You were not determining whether the allegations was true, but if the allegations was true, was they sufficient enough to warrant a full blown hearing, , testing the information and then applying the law? I think you guys did that right.

8. **Question - Member Frank Dunphy II** – We took 3 sets of votes. - One on timeliness because they were delayed because documentation on the SBOE website was erroneously displayed, so they got in behind the deadline for application, but we gave them a pass. We had compliance with forms we took a vote on that. Lastly we took a vote on probable cause and whether or not to move forward. On all three occasions we took a vote. Was that in membership authority and responsibility?

Answer - Attorney Robert Hagemann – Yes.

9. **Question** - Frank Dunphy II – Then we moved forward and moving forward was mining through the data of 15 contested voters and that information was flowing out of this office to opposing attorneys. Are we responsible for information flowing out of the office to opposing attorneys?

Answer - Attorney Robert Hagemann – I am not sure Mr. Dunphy what you are getting at. As I said earlier it was appropriate to share this information with those attorneys to help them prepare for the hearing.

10. **Question – Deputy Director Steve Simos** – the information that came out of this office to the opposing attorneys was information that was approved by the board, so basically what the opposing attorneys wanted to know was how the board came to the conclusion of why we accepted or did not except certain votes. The board had already done this in previous board meeting, which were open to the public, so whatever information we gave, sure we are responsible for it, but it is information already approved by the board. There was nothing we gave out that was not new. Any information given to opposing attorneys were approved by the board. I explained to the attorneys how we came to the conclusions and how the board voted yes or no to accept votes on the absentees that were contested. The same information I gave the attorneys was the same information presented to the board at the absentee meetings.

11. **Question - Member Frank Dunphy II** – Mr. Hagemann there was a black box that this member was not privy to between the December 3, 2020 preliminary hearing and in preparation for the grand finale, which was to be the protest hearing on December 11, 2020. Less than 24 hours before the protest hearing I did not have information that the opposing attorneys had.

Answer - Attorney Robert Hagemann – I don't know what you had or what you didn't have what was shared and what wasn't shared, but I will repeat there is nothing inappropriate and it

is quite useful for staff to be sharing information to the attorneys to help everybody prepare for the hearing , but it is not appropriate for any board member to receive ex-parte , which means outside of the hearing, outside the other party seeing it , even the same information. The parties will decide how to put on their case for the board at the meeting and the quasi -judicial board is supposed to make their decision solely on the information presented at the hearing and should not be trying to acquire information in advance of the meeting for fear there could be predisposition, which is something we try to avoid in a quasi-judicial process.

12. **Question - Frank Dunphy II** – So information flowing out of this office would bias this board member from participation in a quasi-judicial process?

Answer - Attorney Robert Hagemann – Potentially yes.

13. **Question - Frank Dunphy II** – So, there is a tension between in what you say and on page 34 of the law book which says we have policy making duties and authority and the board is responsible for the Director’s action. So, we have all the responsibility, but none of the authority?

Answer - Attorney Robert Hagemann – Mr. Dunphy I am not sure what point you are trying to make I do not want to labor this or repeat myself. It is in the context of a quasi-judicial hearing you wear a different hat than you do at other times. You put on the hat of a member of a quasi-judicial board. In a quasi-judicial proceeding, you process the rights of those who are affected by your decision and those rights must be protected and respected. One of the ways we protect and respect their right is guarantee they have a board that decides the case solely on the evidence presented at the hearing and that the board is not predisposed or biased and does not have undisclosed ex-parte communication. This is built into the doctrine of procedural process. You wear a couple of different hats just like say the board of county commissioners or city council they wear a legislative hat. They campaign on issues that are a matter of law. They wear the quasi-judicial hat on the notion when due process comes in and try to protect it by the ways I described.

14. **Question – Chair Laura Heise** – On the Duties and Responsibilities of the Director, which the board signed in 2017, I noticed down at number 22 there is information saying that the director is to keep minutes of the board meeting with the secretary’s approval. It seems to me that over the last year our minutes have gotten longer and longer, and I would argue too long, too detailed, and they take a lot of the Director’s time. The process has been the director has sent out the minutes for fact checking and editing and so forth, so we end up with additional paragraphs, and reworking of what was said. I am kind of wondering if you have any recommendations for how we might and what the vital parts are of keeping minutes and what is appropriate in terms of informing the public of what we are doing. Also thinking about the Director’s time, where should we go with minutes? When do we amend minutes? Does the Secretary amend the minutes after the Director has written the minutes or is this something we do as a board together at our meetings, any thoughts you can give us on that would be useful?

Answer - Attorney Robert Hagemann – The only thing required to be in the minutes are the things that reflect legal action, and by that, I mean the minutes need to reflect who is in attendance, so that we know we have a quorum, motions made, second motions (not required),

votes cast, who voted for the motion and who voted against the motion, and when the meeting was adjourned. The legal minimal requirements for minutes are information that reflect actions of the body and that those actions were properly taken. Beyond that it really is a matter of preference and practice. I will illustrate where I worked in Charlotte, they did verbatim minutes. Before we had streaming in video, they recorded the minutes for the city council. It was one person in the clerk's office called the minutes clerk. The minutes clerk would listen to the tape and as best as they could do verbatim minutes. They are extremely detailed. Should not be prepared by a board member. It is typically not a good idea for a couple of reasons, it creates an invitation when there are disputes among the board members that the person drafting the minutes are slanting them in their direction. Suggest it is better to have a non-board member doing the minutes, trying to do minutes and participate in the meeting is distracting.

Not sure what keeping minutes of board meeting with secretary's approval – I am not sure what that means – you may want to revisit that and determine how you want your minutes. Does that mean the first draft is done by the Director and the secretary completely rewrites them? I think that is problematic in terms of ascertaining for the paper what the boards intent was when they did that delegation. I will tell you what the statues say when dealing with local boards of election. It says the county board of elections shall keep minutes. What does it mean to keep minutes? Does that mean to write them? I don't think the board should write minutes – You must have minutes recorded of all proceedings and findings at each meeting. The minutes shall be recorded in a book and kept in the board office and it shall be the responsibility of the secretary elected by the board to keep the required minute book current and accurate. Secretary can designate the Director to record and maintain the minutes under the secretary's supervision.

The board should decide who drafts the minutes, what role if any the secretary has. The person drafting minutes should not run the minutes by any one member for that board members review, amendment, or approval prior to sending the proposed minutes to the entire board. The standard practice who ever drafts the minutes, whether it's the secretary or Director draft minutes should be presented at the same time to the full board, and then the board can propose to amend them by making the case through a motion why what has been drafted is not an accurate reflection of what happened at the meeting. Then the board can debate that and like anything else a majority vote controls. That is my view of best practice. You do have some flexibility here the way the states statue is written. You need to agree on what keeping minutes of board meeting with secretary's approval mean and if there is a disagreement about what it means my recommendation is to write something that at least most of you thinks is the right thing and you all can agree on what it means.

15. **Question - Member Frank Dunphy II** – Take a slight disagreement with Chair Heise that the minutes are getting longer and longer, and I am going to specify two meeting minutes were longer and longer. I reviewed all the minutes that we are approving today, and they were all succinct except for September 15, 2020, and December 15, 2020 minutes. On both of those occasions we had major debate and differences of opinions on this board that were expressed. What do we do about the minutes when we have differences of opinions and a robust debate, do we not enter that, or should that be entered as posterity as some members of the group feel one way and the other members of the group feel another way?

Answer - Attorney Robert Hagemann - I would never discourage robust debate. I think robust debate is a healthy thing, but in terms of the mechanics of what is reflected in the minutes and the level of detail you can see there is this broad spectrum from what I described as the legal minimum and the other end which is verbatim. Where you want to be in that continuum. You need to figure out as a board where you want to be. I would suggest ideally you are not spending a lot of your time arguing about the minutes. I think that is not a good use of your time. I would encourage the board to get comfortable with whatever direction you want to give the person drafting the minutes on the level of detail and what is reflected should be mutual if we are going to reflect this level of detail the level of detail should be equally applied on all side of the arguments such that the minutes are not slanted or disproportionately driving one side of that robust debate that you are engaging.

16. **Question - Member Frank Dunphy II** – I look at it though sometimes it can be a painful, verbal disagreement is part of the role. Vote counting is easy, but when we get to policy sometimes, we have had some conflict and we have had different sides of the debate in this room. I look at that as it should be. It should be documented. I would suggest both sides of the argument. If you do not mention it no one ever knows it happened. They will think everything is roses and rainbows.

Answer - Attorney Robert Hagemann – All I can tell you is you have this vast continuum from every word spoken and down to just actions taken. Where in that you as a body want your minutes to fall, I think that is a legitimate discussion for you all to have, but if the majority of the board decides here is where we want to land on that continuum those are the marching orders for whoever is drafting the minutes.

17. **Question - Member Frank Dunphy II** – The reason I bring this up is five years from now or ten years from now I may be dead. What is going to happen is when people go back and review the minutes of this body, they will think there was not conflict and everything is unanimous and that isn't the truth. Sometimes we have disagreements and brisk discourse. One side say no we should do it this way and myself and our side say no we should do it that way. I think that should be documented when we have disagreements into the records for perpetuity in my book.

Answer - Attorney Robert Hagemann – That is the board working through a board's prerogative.

Remarks - Member Mark Barroso – I agree with Frank somewhat, as a former journalist I imagine reading about it the next day in the newspaper. I want to know what happened. I think a brief summary of discussion is appropriate and warranted. I think that whoever is taking the notes keep themselves as a neutral newspaper reporter and not use adjectives to describe things. I think we can accomplish what Frank wants. I agree with him that some succinct summation of what we are talking about could be one or two sentences included in the minutes.

Remarks – Chair Laura Heise - I totally agrees with that. I'm reminded of when this board goes into closed session, I think the requirements are that when you write the minutes you don't go into extensive detail you have to at least let the world know in general what you were talking about. You cannot just say we went into closed session and not explain what happened. This is certainly not closed session, so more details seem appropriate. I was really hoping though that we could not have pages but lay out

what the issue was that would be sufficient in terms of sparing the director and sparing the board from getting into arguments about the details of the minutes. Talk about number 22 in the Directors Duties and Responsibilities to give Pandora better direction what we are expecting of her.

Remarks – Member Frank Dunphy II – I took 10 modules or more on the SBOE board member trainings and one of the modules was on minutes they said for closed sessions and quasi-judicial sessions minutes should be much more detailed, and they could not be just attendance, motions, and votes. Number 22 on the Director’s Duties and Responsibilities keep board members informed of matters requiring their attention. I want to suggest to this group I wanted to know what information was flowing out of this office. I have already expressed how I feel about this. Robert, I know how you already feel about this.

Remarks – Director Pandora Paschal – I just want to say when I do write the minutes, I do give a summation of what was discussed in the meeting, and obviously when there is disagreement you can see it by the vote. If it’s a unanimous vote obviously you agreed, If it’s not you will see you had a difference of opinion. What else do you need?

Remarks – Member Frank Dunphy II – You need an outline of the opinions succinctly on both sides, and you need more than one line. You may need four lines. Four lines one way and four lines for the opposing opinion.

Remarks – Director Pandora Paschal – This will be a decision that the board will make. I am not going to argue about it. I will do what I am asked to do, but I do have an opinion.

Remarks –r Member Mark Barroso – I think that is a great thing to have a discussion.

Chair Laura Heise closed the Q & A session by thanking Attorney Robert Hagemann for joining the meeting and for answering questions today we might need to get you back with more questions.

Attorney Robert Hagemann made one last comment to the Chair Heise and Member Frank Dunphy II you both are correct. State law says closed session you must give a general account and legislation says you should have more than the bare minimum as I described for open sessions.