

# RHODE ISLAND STATE BOARD OF ELECTIONS

## MINUTES OF MEETING

**TUESDAY, AUGUST 25, 2015**

The Rhode Island State Board of Elections convened at 3:35 P.M. at the Rhode Island Board of Elections, a quorum included, Acting Chairman William West, Commissioners Stephen Erickson, Martin Joyce, Richard Pierce and Frank Rego. Executive Director Robert Kando and Legal Counsel Raymond Marcaccio were also in attendance.

The meeting was called to order by Acting Chairman William West.

1. The Board received the resignation of Richard Pierce as Chairman of the Board. Commissioner Stephen P. Erickson moved to accept the resignation with regret. Acting Chairman West and other Board Members thanked and commended Richard Pierce for his service as Chairman. Voting to accept Richard Pierce's resignation as Chairman were, Acting Chairman William West, Commissioners Stephen Erickson, Martin Joyce and Frank Rego, motion passed 4-0.
2. Commissioner Martin Joyce moved to elect Acting Chairman William West as Chairman. After discussion the motion was withdrawn.
3. The Board voted to approve the minutes of the Board meeting held on July 23, 2015. Voting to approve were Acting Chairman William West, Commissioners Stephen Erickson, Martin Joyce, Richard Pierce and Frank Rego, all voting in the affirmative, motion passed 5-0.
4. A motion was made to meet in executive session to discuss and/or vote upon a personnel matter, pursuant to R.I.G.L. § 42-46-5(a)(1). Commissioner Stephen P. Erickson questioned the placement of this item on the agenda. Commissioner Stephen P. Erickson moved to place the item at the end of the agenda. Dissenting votes to place the item at the end of the agenda, were Acting Chairman William West, Commissioners Martin Joyce and Richard Pierce, voting in the affirmative were Commissioners Stephen P. Erickson and Frank Rego, the motion was defeated 3-2. Commissioner Stephen P. Erickson moved to enter executive session for discussion only. Dissenting votes to enter executive session for discussion only were Acting Chairman William West, Commissioners Martin Joyce and Richard Pierce, voting in the affirmative were Commissioners Stephen P. Erickson and Frank Rego, motion defeated 3-2. Commissioner Richard Pierce moved to enter executive session for discussion and vote. After discussion, the motion was withdrawn.
5. Representing the Town of North Smithfield on the discussion of the mail ballot certification process under R.I.G.L. § 17-20-1, *et seq.*, as it relates to the North Smithfield Non-Partisan Town Council Special Election were Debra Todd, Town Clerk and Paul Laprade, Chairman of the Board of Canvassers. Ms. Todd stated that the town charter requires that new officeholders are to be

sworn into office within ten days of the election, and that although mail ballots hadn't been counted, the winning margin exceeded the number of mail ballots received, and in accordance with the charter the winning candidate was sworn into office. During the Board discussion it was stated that state law supersedes local charters when certifying elections. The Board explained that even though the number of mail ballots would not have changed the outcome, the board of canvassers must adhere to the laws of the State of Rhode Island, and certify an election only after all certified mail ballots have been counted. Ms. Todd and Mr. Laprade agreed going forward, the Town of North Smithfield would adhere to state law regarding election certification.

6. Richard Thornton, Director of Campaign Finance, presented the report requested by the Board at the July 23, 2015 meeting, regarding fines, waivers, appeals, denial of appeals and reasons for each during 2014 thru 2015. Mr. Thornton fielded questions from the Board about the fines, waivers, and appeals process and the complexity of the campaign filing. After a lengthy discussion the Board suggested that perhaps candidates should become more educated about the importance of campaign finance filings.
7. The Board heard the request of the Stephen Hopkins Center for Civil Rights on behalf of Dr. Daniel Harrop, former candidate for mayor of the City of Providence requesting an advisory opinion relating to the annual aggregate limit of \$10,000.00 for political contributions, set forth under R.I.G.L. § 17-25-10.1(a)(1), and its enforceability in light of the United States Supreme Court decision in *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434 (2014). Attorney Giovanni Cicone, representing the Stephen Hopkins Center for Civil Rights, appeared before the Board. The Board received the opinion of its legal counsel, Raymond Marcaccio, who stated that due to the United States Supreme Court decision in *McCutcheon v. Federal Election Commission* invalidating federal aggregate limits, that the state aggregate limits under R.I.G.L. § 17-25-10.1(a)(1) were in his opinion unenforceable. After a brief discussion the Board voted to approve the draft advisory opinion (AO 15-01, see attachment) that the Board would not enforce the aggregate limit in R.I.G.L. § 17-25-10.1(a)(1). Voting to approve the advisory opinion were Acting Chairman West, Commissioners Stephen Erickson, Martin Joyce and Richard Pierce. Commissioner Frank Rego recused himself. No dissenting votes. Vote passed 4-0.
8. Rob Rock, Director of Elections, from the Office of the Secretary of State presented the Board with an update on the procurement of new voting equipment. He reported that a Task force had been formed which included Robert Rapoza, Director of Elections from the Board of Elections. He stated that the task force met 4 times to brainstorm the equipment purchase and make recommendations in preparation of the RFP (request for proposals). He confirmed that the RFP will be released soon and he will continue to give the Board updates. He commended Robert Rapoza for his valuable input into the procurement process.
9. Robert Kando, Executive Director, presented a copy of the Policies, Procedures and Guidelines for Affirmative Action Plans in Rhode Island to the Board to adopt in connection with all hiring and promotions within the agency. After discussion concerning board hiring policies and practices, a motion was made to table this item until a future meeting. Voting to table the

adoption were Acting Chairman William West, Commissioners Stephen Erickson, Martin Joyce, Richard Pierce and Frank Rego. Motion passed 5-0.

10. Robert Kando, Executive Director, stated that there were 2 vacancies at the Board of Elections. Mr. Kando informed the Board that his intentions were to post the positions on the State of Rhode Island's website. Mr. Kando also noted that the positions are included in the fiscal year budget.
11. The Board heard a request by former candidate for Lieutenant Governor, Daniel McKee relating to the return of 50 percent of surplus campaign funds under R.I.G.L. § 17-25-25 of the Matching Public Funds program. Mr. Edward Galvin, his current treasurer and Mr. E. Craig Dwyer, his former treasurer appeared before the Board. Mr. Galvin stated that the Board ordered then candidate McKee to hold funds raised prior to two years before the start of the matching public funds period in a separate account, which was not to be used in the race for lieutenant governor due to the provisions of the Matching Public Fund regulation. He reasoned that since those funds were not to be used in the Matching Public Funds program due to a Board regulation, the funds should not be subject to the return of 50% of surplus funds under R.I.G.L. § 17-25-25 of the Matching Public Funds law. After a discussion, the Board voted that the funds excluded from the Matching Public Funds program were not subject to the return of 50% of surplus campaign funds under R.I.G.L. § 17-25-25. Voting in the affirmative were Acting Chairman West, Commissioners Stephen Erickson, Martin Joyce, Richard Pierce and Frank Rego. No dissenting votes. Motion passed 5-0.
12. The Board agreed that their decision on item 11 explained the Matching Public Funds regulation #01-01, as it relates to different eligibility requirements for incumbent general office-holders and those persons who were candidates for a public office during the first two years of the four-year election cycle and that the regulation should be rewritten per the Administrative Procedure Act (APA).

Commissioner Stephen P. Erickson moved to adjourn and set the date for the next meeting to be Tuesday, September 22, 2015 at 3:30 p.m. All agreeing to the motion were Acting Chairman William West, Commissioners Stephen P. Erickson, Martin Joyce, Richard Pierce and Frank Rego. Motion passed 5-0.

Meeting Adjourned at 5:10 p.m.

