

MINUTES OF A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, HELD IN THE CITY HALL, 3RD FLOOR CONFERENCE ROOM, 100 NORTH U.S. #1, FORT PIERCE, FLORIDA, AT 4:00 P.M. ON THURSDAY, NOVEMBER 5, 2009.

Mayor Benton called the meeting to order.

The Pledge of Allegiance was recited.

Upon Roll Call, those present were: Mayor Robert Benton; Commissioners Rufus Alexander, Edward Becht, Christine Coke, and Reginald Sessions; City Manager David Recor; City Attorney Robert Schwerer; and City Clerk Cassandra Steele. Those absent: None.

The purpose of the Special Meeting was to Canvass the Returns of the **Municipal Election** held on November 3, 2009 and Presentation of Certificate of the Board of City Canvassers.

City Clerk Steele read the following Certificate:

CERTIFICATE OF THE BOARD OF CITY CANVASSERS
FORT PIERCE CITY ELECTION
HELD ON NOVEMBER 3, 2009

STATE OF FLORIDA)
ST. LUCIE COUNTY)

WE, THE UNDERSIGNED, Cassandra Steele, City Clerk; Gertrude Walker, Supervisor of Elections; and Robert J. Benton, Mayor-Commissioner, constituting the Board of City Canvassers of Elections in and for the City of Fort Pierce, do hereby certify that we met in the City Hall, 3rd Floor Conference Room, 100 North U.S. #1, Fort Pierce, Florida, on the 5th day of November 2009 in accordance with Section 67 of the City Charter, and as shown by the returns on file in the office of the City Clerk and the Supervisor of Elections, we do hereby certify solely, exclusively, and entirely from said returns that:

For the election of City Commissioner, District 2, Seat 4, the whole number of votes cast was 2,796, of which number:

Curtis Boyd	received	706
Christine Coke	received	986
Tom Perona	received	758
Rick Reed	received	346

Total Cards Cast: 3,904 (District 1 and District 2)
(19.07% of Total Registered Voters: 20,467)

BOARD OF CITY CANVASSERS
CITY OF FORT PIERCE, FLORIDA

/s/ Cassandra Steele
City Clerk

/s/ Gertrude Walker
Supervisor of Elections

/s/ Robert J. Benton
Mayor-Commissioner

(CITY SEAL)

The next item on the Agenda was Status Report on Case No. 56-2009-CA-008682 (Judge William Roby, 19th Judicial Circuit): Jones Calvin Peace III, Plaintiff, v. Thomas K. Perona, Gertrude Walker, and Cassandra Steele, Defendants.

City Attorney Schwerer said at the Court hearing (on November 5, 2009), the Judge lifted whatever restraining order was placed against the City from certifying the election results; and in fact ordered that they go ahead and certify. The Judge then indicated he was going to allow the Plaintiffs to amend their case to now bring an action - if they so choose - which is more in the nature of an election contest as opposed to a disqualification from the ballot. The Judge didn't say anything about the election, he did not restrain the election. It is presumed then that the City follow its Charter and hold a Runoff Election in accordance with the Charter. That is their status right now.

Commissioner Alexander asked what is the statute they have to deal with as far as disqualification or qualifying? What does the statute state? What is the statute on that?

City Attorney Schwerer said Florida Statute Chapter 102, which was written extensively by the Legislature subsequent to the Bush/Gore 2000 court case, as he understands it. That statute controls when and how and the procedure to be utilized for persons, candidates, and all other interested parties to challenge elections. So there is a multitude of folks that can bring such a challenge under the law. Certainly an elector can, but another candidate could choose to do that as well. That is an action to set aside votes that have already been cast or relief for an election that has already been held. That is the law they are going to be operating under. In his opinion, Mr. Peace's attorney, Mr. Vocelle, in essence should have brought his action to have Mr. Perona stricken from the ballot 30 or more days before the election actually was scheduled to occur, before the absentee ballots were mailed out. That would have been the best timing, because then the Court could have dealt with the issues. By the time the case was presented to the Court, it was too late for the Court to do anything.

Commissioner Alexander asked was he eligible?

City Attorney Schwerer said that is a question the Judge is going to have to determine.

Commissioner Alexander asked what does the statute say? A person called and told him there is a statute such and such. Does anyone know what that statute is?

Ms. Gertrude Walker, St. Lucie County Supervisor of Elections, said it is the Resign to Run Law. The Resign to Run Law is open

to interpretation. There are more rulings on the Resign to Run Law than any other Florida Statute because of the difficulty in determining if an individual falls under the purview of that statute based on the duties they are required to perform in that office. So for that reason, it is the most difficult to determine if someone falls under that purview. And everyone seems to have a different opinion. Numerous judges have had different opinions on it. It has been in the Circuit Court - it has been upheld, it has been overturned. So they can't just say they know the law. The law says "if" it applies to you. The "if" situation is where they are at. They do not know for sure if it applies to an individual. They do not know that until a judge or a court determines that. So it is going to take the court to determine the issue here.

Commissioner Alexander said so they won't have this problem in the future ever again.

Ms. Walker said yes, there is a very good possibility they might.

Mayor Benton said unless the Legislature addresses this problem. They thought they had after the Bush/Gore election. But when the Florida Governor had the possibility of running for Vice-President, the Legislature changed the rules so someone could hold state office and run for national office.

Commissioner Alexander asked so there is no policy and procedures the City has to govern their Charter? Their Charter is different from everybody else's?

City Attorney Schwerer said every city can make its own charter to govern certain things pertaining to city elections. Other things are left to state and national rules. In this case, the State has stepped in, it has an extensive Election Code. And unless the City Charter calls for something different that it can call for legally, the State Statutes control. This case that is being brought against Mr. Perona is being brought pursuant to State Statutes, not the Election Code. Their Election Code does not address whether one has to resign from office to seek a City Commission office. That is the State Statutes.

Commissioner Alexander asked so that means this reelection is on Ms. Walker's budget? Who is going to have to pay for that?

Ms. Walker said a citizen can contest it to the Circuit Court.

Commissioner Alexander asked they are going to have to have another election?

City Attorney Schwerer said that is a possible remedy of the Court. Even if the Court finds a violation occurred, the Court has certain discretion in whether or not to remove Mr. Perona or not, or declare him ineligible, according to some opinions he has looked at. One of the remedies the Court can fashion at the end of this case, if it is filed... They don't even know if it is going to be filed. Right now they don't have an election

contest pending. They will certify the results and proceed to have a run-off. It is going to be up to whoever wants to challenge this to file. They may not file.

Commissioner Alexander said he just wants clarity. They are having a November 17th run-off election with Ms. Coke's and Mr. Perona's names placed on the ballot.

City Attorney Schwerer said until a judge rules that Mr. Perona is not eligible, they have to have that election under the Charter. They have a presumptively valid election that occurred on November 3rd. They have a Charter that says based on that presumptively valid election, they now have to have a runoff because no candidate for District 2 got a majority vote. They cannot do anything other than order an election to occur.

Commissioner Alexander said all this because they got lawyers involved.

City Attorney Schwerer said no, the State Legislature wrote that law. If he had written the law, it would say anybody could run for office, and wouldn't have to resign until actually got elected to another office.

Mayor Benton said there were a whole bunch of lawyers in the courtroom yesterday.

Commissioner Alexander said he did not hear anything from Mr. Schwerer last night. He was surprised he did not update him on what went on. Where are they at now?

City Attorney Schwerer said he was extremely busy last night and was going to wait until today to give them a report. Since this meeting was scheduled for the very next day, he thought this was the best opportunity for him to give a report to all of them.

Ms. Walker said Mr. Schwerer said they are to proceed with the election. That would mean she would have the ballots printed and she would mail out the 1,200 ballots for the requests on file shortly thereafter. She wants to know if that is the intention, to move forward with the election? She would mail out the ballots to anyone who requested the ballots and that would take place immediately. The election would take place November 17th.

City Attorney Schwerer said right, she needs to do it as if a case is not looming, because right now... Ms. Walker needs to do what she needs to do, as if this case wasn't there.

Ms. Walker said move forward like there is no case.

Mayor Benton said there isn't a case. After they certify this election, then someone has the opportunity to either move forward with a case or not.

City Attorney Schwerer said the City Charter says they need to have the runoff. It says the City shall schedule a runoff election two weeks after the election. That is a Charter provision. If they certify today, how long is it going to take

her to print the ballots?

Ms. Walker said they print absentee ballots in-house. They order the other ballots. They could have them printed today.

City Attorney Schwerer said she should do it as quickly as possible and drop them in the mail as soon as possible.

Ms. Walker said the issue is to make sure they give everyone every possibility of getting those back. They do mail ballots to individuals who live out of State.

Commissioner Sessions said what she is saying is, this situation has somewhat imposed a handicap on her in terms of getting the ballots out in a timely fashion in light of the time frame. Is that what she is saying?

Ms. Walker said no. She just wants to have clear direction that she is to proceed with the election, print the ballots, mail out the absentee ballots, and just move forward to the November 17th election. She wants clear direction before she moves forward. Because once 1,200 ballots gets in the mail...

City Attorney Schwerer said they have lost one day essentially from normal...

Ms. Walker said that is not a problem. The timing is not an issue.

City Attorney Schwerer asked those would have gone out the day after the election, which was yesterday?

Ms. Walker said most likely, after the certification.

City Attorney Schwerer asked the earliest those will be going out is tomorrow morning?

Ms. Walker said tomorrow.

City Attorney Schwerer said he talked to Ms. Steele this morning at 9:00 a.m. and asked her to call Ms. Walker to tell her to proceed to print the ballots.

City Clerk Steele said she did.

Ms. Walker said they are proceeding. They are printing the envelopes probably as they speak. They are printing the ballots. They are moving forward. She just wants to understand correctly that she do place those ballots in the mail tomorrow and move forward.

City Attorney Schwerer said yes. They brainstormed last night and this morning, and it was the unanimous consent of himself and his two most experienced lawyers that the City has no option but to fulfill its duty under the Charter to have this election two weeks from the day that the general election was held. They can't sit here and speculate on what the Judge might do or order, or the Plaintiff might file an amended lawsuit. The

Charter says what they have to do. He wants it clear, he and his legal staff are not telling them this has to be done, it is the Charter that says it has to be done.

Commissioner Sessions said since Mr. Schwerer is relying on his staff, were they able to look into it and find out if there is some case law out there for these types of situations, and how they dealt with it?

City Attorney Schwerer said the only thing they found was, under the State law the only way to stop an election from happening is for a court to issue a valid injunction.

Ms. Walker said that is true.

City Attorney Schwerer said unless there is a valid issued injunction stopping her from having a Charter-mandated or Statute-mandated election, she has to have it. They don't have an injunction today issued against them. They have to do what the Charter says.

Mayor Benton said that was the reason he called this meeting as quick as he did. He gave six hours written notice to the Commissioners and to the Press. After yesterday's ruling, this was the earliest he could call a meeting. He felt the sooner Ms. Walker had the ability to do her work for the candidates and the system, the better.

City Attorney Schwerer said he wants to make sure that everybody understands that they could have to go back through another election, that is one of the remedies, certainly that could happen. But they just don't have any control over that. If something is filed, if the challenge is sustained, if the Judge orders that as a remedy. There are a number of remedies. Time will tell where they are going.

Commissioner Sessions said it all boils down to Judge Roby's interpretation of the statute. So until they find that out, they are in limbo. So let's abide by the Charter and move forward.

Motion was made by Commissioner Sessions, seconded by Commissioner Becht, that the results of the November 3, 2009, City Election be certified as follows: For the election of City Commissioner, District 2, Seat 4, the whole number of votes cast was 2,796, of which number: Curtis Boyd received 706; Christine Coke received 986; Tom Perona received 758; and Rick Reed received 346; and that no candidate received a majority of the total votes cast for such office and that a Run-Off Election be held on November 17, 2009, and the names of Christine Coke and Tom Perona be placed on that ballot.

Those voting in favor of the motion were: Commissioners Becht, Sessions, and Benton. Those opposed: Commissioner Alexander.

There being no further business, Mayor Benton declared the meeting adjourned at 4:20 p.m.

Special Meeting

November 5, 2009

Adjournment .

ATTEST :

CITY CLERK

MAYOR COMMISSIONER

