

State Election Commission
Tuesday, April 24, 2018 – 4:00 p.m.
Secretary of State's Office
Minutes

Attendees:

Members

Gary Collias, Chair
Mac Warner, Secretary of State
Vince Cardi (By Teleconference)
Taylor Downs (By Teleconference)

Others Attending

Donald Kersey, Director of Elections and Deputy Legal Counsel
Chuck Flannery, Deputy Secretary of State and Chief of Staff
Steve Connolly, Deputy Secretary of State and Chief Legal Counsel
Steven Adams, Assistant Communications Director
Darrell Shull, Secretary of State's Office
Maureen Lewis, Secretary of State's Office
Keith Lowery by teleconference
Jane Tabb by teleconference
Jake Jarvis, State Journal
Phil Kabler, Gazette-Mail

The State Election Commission met on Tuesday, April 24, 2018 at 4:00 p.m. in the Secretary of State's Office at the State Capitol Complex. The meeting was called to order and chaired by Gary Collias. A quorum of members was established.

The second item on the agenda was the approval of minutes from the March 6, 2018 and March 12, 2018 meetings. Vince Cardi made a motion to approve the minutes with Secretary Warner seconding. The motion passed with a unanimous vote.

The third item on the agenda was consideration of a Code of Fair Campaign Practices complaint. Donald Kersey addressed the Commission. He verified that Keith Lowery as the complainant and Jane Tabb were present. He continued by reading the statement received on March 25, 2018 from Keith Lowery alleging potential violations by Jane Tabb of the Code of Fair Campaign Practices and referenced three social media screen shots that were also submitted. He explained that the Code of Fair Campaign Practices is a voluntary signed agreement by a candidate to uphold certain ethical standards during a campaign for public office. Ms. Tabb verified that she signed the agreement on January 8, 2018.

The complaint included quotes from Ms. Tabb the same day that the Jefferson County Republican Executive Committee voted to request an investigation of potential violations that were published in the Herald-Mail newspaper and the Facebook post of Liz Cook that urges Democrats to switch their party affiliation to Independent for the primaries in order to support Ms. Tabb. The Facebook post includes the quote, "we do NOT need another hate mongering commissioner in office". According to the complaint Ms. Tabb "liked" the comment and posted a comment thanking the writer for the support. In addition, Mr. Kersey referenced another Facebook screen shot of a post from Patsy Noland that was found by an investigative analyst. The post also urges a party affiliation change in order to support Ms. Tabb along with a picture of her own voter registration change application. Another Facebook screen shot shows that Ms. Tabb shared Patsy Noland's post on her official campaign Facebook page. Mr. Kersey asked Mr. Lowery if there was anything additional in the complaint that was not presented.

Taylor Downs asked for clarification on the intent of the meeting as it relates to W. Va. Code §3-1B-4. Is the Commission determining if there is a likelihood of violations in order to proceed to a hearing at a later date or is the hearing being conducted today? Mr. Kersey responded that because it is so close to the election, the candidate requested a hearing. Gary Collias stated he would like to hear from Mr. Lowery in an effort to determine whether the issues presented by the complainant constitute a violation of the Code of Fair Campaign Practices.

Mr. Lowery addressed the Commission. He stated that there are two relevant facts that explain the alleged violations. The first is the provision in the Code of Ethics regarding name calling. The Jefferson County Republican Executive Committee felt that liking the post referring to "hate mongering" could be a violation. The second is a candidate in a primary election calling for others to switch parties to influence the opposite parties primary election. He asked if it was appropriate to call the two items violations. He stated that the Executive Committee brought this to the SEC for guidance.

Gary Collias asked for Ms. Tabb's response. He asked her if she disputed any of the allegations. Ms. Tabb responded that she did like the referenced post, but it has since been removed. Mr. Collias asked Ms. Tabb if it was true that she encouraged others to switch political parties in order to support her. Ms. Tabb stated that was true. She continued that the voter registration in Jefferson County is split approximately 1/3 Republican, 1/3 Democrat and 1/3 Independent. She considered it a reasonable way to win an election by informing voters of their rights.

Gary Collias stated that the question is whether or not either action represents a violation of the Code of Fair Campaign Practices. He asked Mr. Kersey if there is any reference in Code to name calling. Mr. Kersey responded no, not specifically. The language on the signed form is the language from W. Va. Code §3-1B-5. Mr. Collias then asked if there anything in Code regarding encouraging people to switch political parties. Mr. Kersey responded not specifically. He continued that there could be some broad interpretations of the bullet points on the signed form. Taylor Downs stated that the Code does say that any violations have to be proven on clear and convincing evidence. Gary Collias responded that Mr. Lowery and Ms. Tabb agree on the facts, but he has concerns that simply liking a Facebook post represents name calling. She didn't say it, she just liked it. He continued that with regards to asking Democrats to change their party affiliation, it seems to be a part of politics for all parties to encourage voters to switch to their party. He questioned the problem with either action, especially because the Code does not specifically condemn them. Taylor Downs added that it has to meet the standard of clear and convincing evidence. Vince Cardi stated that he agrees with what Mr. Collias and Mr. Downs have said. He does not find a violation of any campaign rules in the Code of Fair Campaign Practices by the alleged conduct. Secretary Warner stated that he understands why Mr. Lowery felt that the conduct may have been unethical, but he agrees with the analysis that has been laid out by the Commission members. This is not a time to say that there has been a violation by clear and convincing evidence.

Gary Collias asked Mr. Lowery if he had a response. Mr. Lowery thanked the Commission for their time and stated that he respected their guidance. Mr. Collias then asked Ms. Tabb for a response. She also thanked the Commission for their time and requested a written statement about the findings. Donald Kersey responded by reading a provision in W. Va. Code §3-1B-4 that allows the Commission to issue a public opinion that they did not find by clear and convincing evidence that a candidate has violated a provision of the code.

After a brief discussion, Vince Cardi made a motion that the Commission has reviewed the evidence and listened to witnesses, and has determined that there is no reasonable likelihood that a candidate, Ms. Tabb, who has subscribed to the Code of Fair Campaign Practices has violated a provision of the Code. Gary Collias seconded the motion. The motion passed with a unanimous vote. Mr. Collias added that they would release a public statement and send a copy to Ms. Tabb as evidence.

Gary Collias asked if there was any other business.

With no further business, Taylor Downs made a motion that the meeting adjourn with Gary Collias seconding. The motion was approved with a unanimous vote. The meeting was adjourned at 4:31 p.m.