

**Meeting of the WV State Election Commission
8:00 AM on Friday March 11, 2022
Microsoft Teams Meeting**

State Election Commission Members in Attendance:

- Matthew Chapman (Chair) - Present
- Caleb David - Present
- Anthony Delligatti – Present
- Benjamin Sullivan – Present
- Mac Warner, WV Secretary of State - Present

Others in Attendance:

- Nathan Martin, WVSOS Elections Specialist
- Brittany Westfall, WVSOS Elections Director
- Chuck Flannery, WVSOS Chief of Staff
- Donald Kersey, WVSOS General Counsel

1. Call to Order:

- Meeting called to order by Mr. Chapman at 8:05 AM
- Quorum established

2. Approval of Minutes

Previous minutes will be taken up at a later meeting.

3. Legal Matter Briefing – 153 CSR 13 Early Voting In-Person Satellite Precincts Legislative Rule (executive session anticipated)

Mr. Kersey addressed the SEC stating that this matter of first impression for the current administration, which pertains to recent comments made by the Kanawha County Commission regarding the establishment of an early voting location under 153 CSR 13.

Mr. David notified the SEC that he represents the Kanawha County Commission for certain projects funded by American Rescue Plan. Mr. Kersey stated that where conflicts are present the appropriate action is for recusal. Mr. Kersey state that he does not believe Mr. David’s participation at this time would result in a conflict, but if at any time new information suggests recusal is appropriate it would be recommended and noted on the record. No SEC member objected with Mr. David’s participation.

Mr. Kersey stated that the matter is in regard to the alleged willful violation of a legislative rule establishing procedures for selecting an early voting location. The SEC is being consulted to advise the Secretary of State to determine the appropriate response if any under WV Code Chapter 3.

Mr. Kersey stated that the issue is the legislative rule was not updated after a law change in 2010 which removed certain provisions from statute or has different timeframes, and therefore the rule has been superseded by statute.

Mr. Kersey read from a February 18, 2022 news article quoting a Kanawha County Commissioner stating that the commission cannot follow a law if it is being used for political reasons or to disenfranchise certain voters, and the Commissioner made a motion to add an additional early voting location.

Mr. Kersey stated that the Secretary of State is unconcerned with reason or proposed location to add an early voting location, but that the office is concerned with the fact that a rule was intentionally violated, and concern with uniformity for all other Secretary of State legislative rules.

Mr. Kersey stated that he believes the rule has the force and effect of law because it was passed by the legislature in a bill in 2019 and that the amendments made to the law in 2020 pertained only to electioneering prohibition. Mr. Kersey also stated that he believes the Secretary of State's rule making authority in statute includes a mandate to establish criteria to ensure the neutrality and security of early voting locations, and that criteria to ensure neutrality include allowing political party representatives to participate in the discussion and decision making.

Mr. Chapman asked whether executive session is appropriate to discuss the legal issues. Mr. Kersey stated that it is an appropriate time to discuss legal issues and considerations in executive session upon motion.

- a. Motion to enter Executive Session for legal matters at 8:20 AM.
 - i. Mr. Delligatti motions
 - ii. Mr. Warner seconds
 - iii. All in favor. Motion passed.

- b. Leave Executive Session at 8:50 AM.
 - i. Mr. Chapman motions
 - ii. Mr. Sullivan seconds
 - iii. All in favor. Motion passed.

Mr. Chapman requested that Mr. Kersey memorialize what was discussed during executive session into the record. Mr. Kersey stated that after consulting with the SEC the Secretary of State will request a formal Attorney General opinion on whether 153 CSR 13 remains in effect following a statutory amendment, noted that voting begins April 27 so the request will be for an expedited opinion, and that the SEC will meet again on March 24, 2022 at 8:00am.

4. Other Business

None.

5. Adjournment

- a. Mr. Delligatti motions
- b. Mr. Warner seconds
- c. All in favor. Motion passed and meeting ends at 8:52 AM.

Minutes Taken By: Nathan Martin