

MINUTES

Erie County Council

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2-27-23 BOE MEETING MINUTES

Pledge of Allegiance

The Pledge of Allegiance was recited.

Roll Call

Members Present: Charlie Bayle, Andre Horton, Ellen Schauerman (via Zoom), Brian Shank, and Jim Winarski (via phone)

Others Present: Julie Slomski, Megan Moore, and Tonia Fernandez

Hearing of the Public

Freda Tepfer, Erie: Ms. Tepfer recalled how, as a Judge of Elections, she had to change the precinct she worked at because she was on the ballot in the last election, and was happy to do so. She stated that it was customary for candidates or potential candidates not to be on the Elections Board, and hoped they would conduct themselves with the highest integrity. She expressed her hope that her friend would be able to vote using the touch pad and audio device, as she had not been accommodated the last three elections.

Sam Talarico, Erie: Mr. Talarico stated that two members of Council (Rennie, Scutella) had recused themselves already, and that the other two members of Council up for reelection should declare themselves at this meeting, and recuse themselves if running for office. He noted that the idea that, because a person has not declared yet they should be able to participate was still a distinction without a difference. He stated everything decided at the meeting had some bearing on the election in the fall, and they should recuse themselves. He stated election integrity was paramount, and those running for re-election should recuse themselves.

Review and Discussion of Board Guidelines

Mr. Shank stated that there were no county guidelines on when you became a candidate.

Mr. Horton stated there was no written policy, but there was precedence. He noted he had recused himself last election when running for a minor role as a committeeman. He proclaimed that election integrity matters, and anything that called that into question should come to an end.

Mr. Bayle stated there was a brief discussion with Solicitor Talarico regarding past practice. He maintained that a definition of candidacy should be clearly defined, but that there was an implied intent as well, and at this point everyone knew if they were running or not. He stated as a group they should come up with a clear definition.

Mr. Horton stated there was the law, and then there was the spirit of the law. He

explained that with it being black history month, they could look to the past, and while some things may be lawful, they were not right. He stated that people should do the right thing, live up to the spirit of the law, and recuse themselves if running.

Ms. Slomski announced that Mrs. Schauerman had to leave the meeting; she was at work.

Mr. Shank stated they had asked the Solicitor to help define candidacy, and his legal opinion was there were no real rules in the Home Rule Charter that states when a person is a candidate. He stated that anyone can pull petitions, and that doesn't make them a candidate. He remarked that he could announce he was running, but that didn't make him a legal candidate. He stated that until petitions were signed, notarized, and submitted, that was when you were a candidate, and even then there was an out because you could withdraw seven days after the last day to submit petitions.

Mr. Horton stated it was a fair question when a person became a candidate, but the question at hand was not about the general public becoming a candidate, but about integrity as a member of the Board of Elections. He questioned when one should cease to participate in Election Board materials. He stated that under the spirit of the law it should be when one has an inkling that they would run for office. He concurred that this office, this body, and this board, above all others, should be above reproach, and should, exemplify leadership and integrity at its highest form. He stated that in today's political dispensation all manner of doubt should be removed.

Ms. Slomski reported that, as requested by Mrs. Schauerman, the Department of State's position from Deputy Secretary Marks was that when membership on the Board of Elections was a clear conflict, and based on other counties' opinions, the last possible day would be when they file petitions as they are candidates under even the tightest definition of the term; it varies from county to county depending on how strict their Solicitor's opinion was.

Mr. Shank stated even the Secretary of State was stating you were not a candidate until you turned in petitions.

Mr. Horton countered that was inaccurate, that was one interpretation but others recused sooner.

Ms. Slomski stated that according to the Department of State, it varies throughout the state, but depends on the Solicitor's reading of the law.

Mr. Shank stated that the Solicitor said it was up to the Board of Elections.

Ms. Slomski stated he did say that, but then the guidance she received was different, which is why she wanted to define when a candidacy was declared.

Mr. Shank stated the state's opinion was what he said, and there was no conflict of interest.

Mr. Bayle stated that as long as they had set in stone what the day was, there should be no appearance of impropriety. He emphasized that someone running should not influence board decisions, knowing they are going to have a part in the election process. He stated he was fine with a clear definition being when you file your petition, and that issues could be discussed regarding recusal when relevant.

Ms. Fernandez questioned how a board member running for County Council, that submitted a petition, would be allowed to vote on it.

Mr. Bayle stated if they were filing a petition, then they would not be on the Board of Elections at that point.

Ms. Fernandez questioned if a candidate's petition who was running for County Council needed Board of Elections approval would the sitting board member be able to vote.

Mr. Bayle stated he thought no because it had direct bearing, and that would be an issue for recusal.

Mr. Horton stated it was a horrible look to know you intend to run and not recuse one's self. He noted although there was a quorum, he felt uncomfortable setting policy without the Solicitor, and believed that there should be something done with the entire Board of Elections after the election.

(Short pause for technical difficulties as the Solicitor was joining the Zoom link.)

Mr. Bayle questioned what obstacles this erected for the office.

Ms. Slomski stated the integrity of the office and the election were her foremost worries, and issues that could come before the board.

Mr. Bayle questioned if they could at least vote on the organization to conduct business.

Mr. Horton stated that he thought that there would still be a question about the policy, because if you could vote on that, you could vote on anything.

Solicitor Talarico attended the meeting via phone.

Mr. Bayle asked the Solicitor if there would be any issue voting on the organization of the board. Mr. Horton added as composed that day to the question.

Solicitor Talarico read the definition of candidacy in the Administrative Code, Article II, Section 5, 2(b)(vi), and then explained each section. He stated it was a difficult standard, and the individual must be relied upon to decide on their own that there would be a conflict. He noted previously, including last year, the board had used the first date to file for an application, which would have been February 14, 2023. He drew attention to the fact that the Board of Elections would not want to look as though it, or its members, were politically motivated. He explained that the Board of Elections had the power to tighten, tailor, or broaden the definition, and there was no state rule.

Mr. Bayle questioned if that meant Mrs. Rennie and Mr. Scutella should not be included as they had announced their candidacy.

Solicitor Talarico stated they should not be included on the board having declared their candidacy, but policy change would be better served by a majority of the entire board.

Mr. Horton stated they should continue with past practices until the time when there is a full board again.

Mr. Shank stated he offered Mrs. Rennie the Chair position, and kept everything the same as the previous year.

Mr. Horton stated it was hindsight that they had not had the meeting previously, but no matter what side of the isle one was on, the election integrity should be above reproach.

Mr. Shank referred to the email that had been read previously, that there had to be clear conflict and when petitions were returned.

Mr. Horton stated that it referred them back to the Solicitor's reading of the law.

Mr. Shank said he felt when petitions were filed you were a candidate.

Mr. Horton said they should follow the Solicitor's advice and follow past practice until a time when the entire board could meet, and follow the February 14th date. Mr. Shank said they could table the talk about changing policy and move on to the nominations.

Mr. Horton replied that the agenda should not be continued with but if it had to be done at that time, that anyone that intended to become a candidate should recuse themselves. He made a motion to suspend the meeting until the board was composed of members not seeking reelection. The motion was not seconded.

Mr. Horton left the meeting.

Mr. Shank asked for a nomination for a board chair.

Nomination of Election Board Chair

Mr. Winarski motioned for Charlie Bayle to be the Chair of the Board of Elections, which was seconded by Mr. Shank.

Ms. Slomski questioned if Mr. Shank could second the motion as acting Chair.

Mr. Shank replied that he could.

Mr. Talarico said there needed to be two votes for a majority.

Mr. Talarico said Mr. Shank should recuse himself from the vote.

Mr. Shank stated we have a first and second so that was two votes so we have a Chairman, that was what Tom said.

Ms. Slomski questioned the Solicitor, if that was what he stated.

Mr. Talarico stated there was a motion and second, but that he suggested Mr. Shank recuse himself for the vote.

Ms. Slomski started to question. and was cut off by Mr. Shank who proclaimed that Andre walked out of the meeting.

The motion passed 2-0, with Bayle and Winarski voting.

Nomination of Election Board Vice-Chair

Mr. Bayle nominated Mr. Winarski, for Vice Chair of the Board of Elections, was seconded by Mr. Winarski. Passed 2-0.

Comments from the New Board Chair/Vice-Chair

Mr. Bayle stated there had been a steep learning curve, including with elections. He noted that Erie County does a great job with elections. He wanted to continue to strive for a high standard, and he had worked with Julie and Tonia and did not think there were any issues there, or at least hopefully not. He stated he would do his best to move forward in a positive direction. He stated they may need to adjust the organization process, but wanted things to be as smooth as possible. Mr. Winarski stated he echoed Mr. Bayle's comments and hoped for a good

year.

**Questions and Comments
from the Board**

Adjournment

Mr. Bayle motioned for adjournment at 11:55am.