

DeKalb County Board of Registration and Elections

Meeting Minutes

May 31, 2022

*via zoom platform

Start Time: 12:00 p.m.

End Time: 1:42 p.m.

Board Attendees: Chair Dele Lowman Smith
Vice-Chair Nancy Jester
Anthony Lewis
Susan Motter
Karli Swift

Other Attendees: Keisha Smith, Executive Director
Tiffani Gilbert, Elections Supervisor
Terry Phillips, Deputy County Attorney
Shelley Momo, Senior Assistant County Attorney
Irene Vander Els, Assistant County Attorney
Tristen Waite, Assistant County Attorney

APPROVAL OF AGENDA

Chair Lowman Smith called the meeting to order at 12:00 p.m. Ms. Austin read the roll by calling each board member by name. All members were in attendance.

Motion by Ms. Swift and seconded by Ms. Motter to approve the agenda. Motion by Ms. Swift to add discussion of the scheduled 4:30 certification to the agenda. The motion carried by a unanimous vote.

APPROVAL OF MINUTES

Motion by Vice-Chair Jester and seconded by Ms. Motter to approve the minutes for the April 14, 2022 and April 22, 2022 Special Called Meetings. The motion carried by a unanimous vote subject to the clarification of Chair Lowman Smith's comments during the April 22 meeting.

PUBLIC COMMENTS

Ms. Austin read the rules for public comment:

Public comments of two minutes or less may be made live via the teleconference. For those joining the meeting by telephone, please be aware that your phone number may be displayed to the public viewing or participating in the online meeting. Citizens who attend the meeting via the Zoom link above may join the public comment queue by raising their hand in the Zoom application, while citizens who attend the meeting via telephone may join the comment queue by pressing # followed by 2. There will be no comment cards, so when you are called upon, please state your name for the record. Also, please be conscious of speaking time so that everyone has an opportunity to provide input in the allotted time. Abusive, profane, or derogatory language will not be permitted.

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The following citizens provided public comment:

- Jenine Milum
- Michelle Long Spears
- Dan Whisenhunt
- Rahul Bali
- Marilyn Marks
- Marshall Orson

ITEMS FOR DECISION

A) Advance Voting Times and Locations

Director Smith requested approval for a list of advance voting sites for the June 21 runoff.

Ms. Motter asked if these were the same locations as the last election. Director Smith responded that New Birth and Ellenwood had been removed and that Stonecrest Library was taking the place of Browns Mill Recreation Center.

Director Smith proposed the following schedule:

Saturday, June 11: 9 a.m. – 6 p.m.

Sunday, June 12: 12 p.m. – 5 p.m.

Monday, June 13 – Friday, June 17: 7 a.m. – 7 p.m.

Chair Lowman Smith and Ms. Motter expressed support for opening two sites at Memorial Drive. Mr. Lewis recommended working in shifts for the benefit of the staff.

Motion by Ms. Swift and seconded by Ms. Motter to approve the times and the following final list of sites:

Dunwoody Library
North DeKalb Senior Center
Tucker Library
Briarwood Recreation Center
Bessie Branham Recreation Center
South DeKalb Mall
Stonecrest Library
Memorial Drive (Two sites)
Berean Christian Church
Emory University

The Motion carried unanimously.

PUBLIC COMMENT

The Board agreed to reopen public comment for the benefit of a citizen who had been unable to use the raise hand feature. The following citizens provided public comment:

- Garland Favorito

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ITEMS FOR DISCUSSION

A) Discussion of Certification

Ms. Swift requested time for each member to ask questions relating to the scheduled certification.

Director Smith related that counting of the ballots was complete and keying of the tabulation was ongoing, but that progress was slower than expected due to the necessity of separating the ballots by precinct.

Ms. Swift asked if the office had been in communication with the Secretary of State's office relating to the possibility of excluding the Commission District 2 race from certification or not certifying at all.

Mr. Phillips responded that the Law Department had communicated with the Secretary of State and that the situation would be difficult given the Board's goal of certifying the most accurate possible result. He confirmed the statutory deadline of 5 p.m. for certification.

Ms. Swift asked if failing to certify would affect the runoff. Mr. Phillips offered to respond one-on-one after the meeting.

Ms. Swift asked how a hand recount of all races could be conducted. Mr. Phillips responded by citing O.C.G.A. 21-2-495 and offered to research the matter further if requested.

Ms. Swift asked about the consequences of refusing to certify the election in whole or in part. Mr. Phillips responded that any delay in certification would be the Board's decision but offered to discuss the matter later.

Ms. Swift asked if Director Smith could share details about the voting machine issues in Commission District 2. The Director responded that the investigation was ongoing.

Ms. Swift asked if a court order would be necessary to delay certification. Mr. Phillips responded that the Law Department was researching the issue and would respond offline.

Mr. Lewis reiterated Ms. Swift's request for information about the possibility of a court order. He also asked Director Smith if the Secretary of State had offered the opportunity to conduct a Risk Limiting Audit. The Director responded that the State had offered to facilitate an audit for interested counties and that DeKalb County had agreed to participate. However, no further instructions had been received to date. Mr. Lewis recommended pursuing an RLA without the State if necessary.

Mr. Lewis asked for clarification on the rules about photographing ballots during the hand count. Mr. Phillips responded that the press could bring video equipment but was requested not to film ballots; and that the public and others were not allowed to use recording equipment.

Mr. Lewis asked about Judge Boulee's order regarding photography. Mr. Phillips responded that the Law Department was aware of Judge Boulee's order when they provided their guidance.

Mr. Lewis requested more detailed information. Mr. Phillips agreed to respond later.

Vice-Chair Jester asked for information about the Election Management System and the Center for Election Services' role in configuring it.

Ms. Gilbert responded that CES creates the ballots in response to each county's request. The county then proofs the ballots and receives the election project back from CES.

The Vice-Chair asked about Logic and Accuracy testing of the voting machines. Ms. Gilbert responded that the equipment had passed its L&A tests.

The Vice-Chair asked if CES had issued a new program to correct the blank question that had appeared on touchscreens at the beginning of early voting. Ms. Gilbert responded that CES had provided instructions on how to fix the issue but had not issued a new database.

The Vice-Chair asked if a new round of Logic and Accuracy testing had been performed after this change. Ms. Gilbert responded that to her knowledge, the machines had been retested when necessary.

The Vice-Chair asked to be provided with the L&A results. She then asked if the scanners had been updated. Ms. Gilbert responded that there had been no need to retest the absentee ballot scanners since they were not affected. She was almost certain that the in-person scanners were retested but offered to follow up with confirmation.

The Vice-Chair asked if public notice of the retest had been provided. Ms. Gilbert responded that a second notice had not been published because the testing was still being done on the same database. The Vice-Chair disagreed with Ms. Gilbert's interpretation.

The Vice-Chair then asked about the second set of voting machines created to address the redistricting error in five precincts. Ms. Gilbert responded that a second database had been created to address the issue on May 1. The Vice-Chair asked if the problems with zero votes in the District 2 count appeared on the first set of machines. Ms. Gilbert responded that they did. The second set of machines using database 2 did not show the zero vote anomalies but were still being investigated.

The Vice-Chair asked how some voting machines came to report zero votes for a candidate. Ms. Gilbert responded that on some touchscreens all four candidates were displayed, and on others only three appeared. The Department had not been instructed to reprogram the scanners to account for this difference. The results from touchscreens with only three candidates were misaligned with scanners expecting four, leading to a misinterpretation of the results.

The Vice-Chair asked why some touchscreens displayed three candidates and others displayed four. Ms. Gilbert responded that she did not know, since all the machines were updated at the same time.

The Vice-Chair asked to reconfirm that the machines had undergone another round of Logic and Accuracy testing after the update. Ms. Gilbert reiterated that she believed they had but would verify that.

The Vice-Chair asked if the scanners had been reprogrammed. Ms. Gilbert responded that there were two separate issues that had been corrected. The scanners had not been updated in response to the blank question on the first day of advance voting. On the next day, sites reported that certain ballots were not scanning properly. The scanners had been updated in response to that issue.

The Vice-Chair commented that she was unsure if it was possible to trust the results from the races outside of Commission District 2 given the changes made to the voting equipment.

Chair Lowman Smith noted that a timeline of events involved was still being constructed but that the Board was not attempting to withhold information. She then requested the remaining Board members to keep their questions at a high level in deference to members of the public who had not been told that a detailed discussion would take place.

Ms. Motter commented that construction of the timeline alluded to by the Chair required information about organizations outside the Department and the outcome of that investigation was still uncertain. She noted that the technical issues involved were challenging.

She asked for future communications with outside organizations to be done in writing for documentation purposes.

Ms. Swift asked about the problems with redistricting. Director Smith responded that the correct maps had not been received from the Reapportionment Office until after redistricting had been completed.

Ms. Swift asked if the problems observed in the District 2 race came from flaws in the second database created to correct the redistricting issue. Director Smith responded that the two situations were not related as far as she could tell.

Mr. Phillips advised that in reference to their earlier questions, the Board had three options for certification: they could choose to certify the election; they could choose to delay certification; or they could choose to certify only part of the results. The latter options could cause issues with the State Elections Board, but delay could be justified if it proved necessary to ensure accurate results. However, he did not see authority for a court to order a delay.

He also commented in response to Mr. Lewis's question that Judge Boulee's order was not applicable to the situation in question, but that the Law Department would continue to review its photo rules.

Ms. Swift asked if the Board could receive guidance on its next steps after a possible delay. Mr. Phillips responded that the Law Department would continue to work on the issue.

Ms. Swift asked Director Smith if a delay would impact the schedule for issuing absentee ballots for the runoff. The Director offered to respond at 4:30.

BOARD COMMENTS

Mr. Lewis thanked the staff and volunteers for their work on a holiday weekend.

Ms. Motter echoed Mr. Lewis's comments.

Ms. Swift echoed the previous comments and thanked the public for its interest. She also stated that the staff had acted in accordance with directions by the Secretary of State and cautioned against any assumption that they had acted negligently or in bad faith.

Chair Lowman Smith's comment was not audible.

Vice-Chair Jester echoed everyone's comments and gave her appreciation to the Director and the staff.

ADJOURNMENT

Motion by Mr. Lewis and seconded by Ms. Motter to adjourn the meeting. The motion carried by a unanimous vote. The meeting was adjourned at 1:42 p.m.