

**BERKS COUNTY BOARD OF ELECTIONS
MEETING MINUTES
April 27, 2023 – 12:15 P.M.**

Lucine Sihelnik, Chair
Honorable James E. Gavin, Vice Chair – not present
Honorable Jill Gehman Koestel
Anne Norton, Chief Clerk
Christine M. Sadler, County Solicitor – not present
Cody L. Kauffman, First Assistant County Solicitor
Jeff Bukowski, Special Counsel to the Board of Elections

CALL TO ORDER: 12:25 P.M.

APPROVAL OF THE MINUTES

On the motion of Judge Koestel, seconded by Commissioner Sihelnik, the Board approved the minutes for the April 13, 2023 meeting as presented.

PUBLIC COMMENT ON AGENDA ITEMS

None

Agenda Items

1. Discussion on Undated and Incorrectly Dated Absentee/Mail-in Ballots for the Upcoming 2023 Municipal Primary

Mr. Kauffman explained there were two items for the Board to rule on regarding undated and incorrectly dated absentee/mail-in ballots for the upcoming 2023 Municipal Primary. The first was whether to count undated or misdated ballot, and the second was to determine the definition for an incorrectly dated ballot.

Mr. Kauffman said it was the legal team's recommendation to not count undated and misdated ballots based on the election code and recent rulings from the courts. He noted that while the current state of PA law is to not count undated and misdated ballots, there is ongoing litigation in the Western District about whether enforcing the date requirements violates the materiality provision of the Civil Rights Act. He noted this litigation could affect the future handling of these ballots.

Mr. Bukowski, who is helping to represent the County of Berks in the Western District litigation, provided an update on the case to give the Board further context. He noted that the untimely death of a chief justice left the courts with a 3-3 split on the matter, which lead to the 2 separate lawsuits that are currently pending.

Mr. Kauffman then discussed the time range for incorrectly dated ballots, noting that there were legal arguments that the time range set by the courts for the 2022 General Election was too broad. Specially for Berks, the range was too broad since ballots were only sent out in early October, but the time range set by the courts included date ranges in September and August for mail-in and absentee ballots to respectively be considered as correctly dated. He said moving forward, the courts have given the authority to each county to determine the appropriate date range. He recommended that the date range start with the first day ballots are sent out, until Election Day, and that Election Services continue to segregate and preserve the affected ballots.

Mr. Bukowski added that the County should continue its practice of accounting for individuals who may reverse the order of the date by putting the day before the month.

On the motion of Judge Koestel, seconded by Commissioner Sihelnik, the Board ruled to not count undated mail-in or absentee ballots and to not count incorrectly dated ballots. An incorrectly dated ballot shall be deemed to be one with a date outside of the first day the County mails out ballots until Election Day at 8 p.m. The Office of Election Services shall segregate and preserve the affected ballots and will account for dates that may be written with the date listed before the month.

2. Logic and Accuracy (L&A) Testing

Anne Norton informed the Board that the L&A testing of the ballot-marking machines and tabulators has been completed. The L&A testing for the electronic pollbooks will be held at the South Campus and begin on Monday, May 8. The testing of the high-speed scanners utilized for processing mail-in ballots will be held on Thursday, May 11 at the 19 N. 6th St. location. Notice of the testing dates will be sent to the parties and media.

Election Director's Report

Anne Norton noted that the L&A testing on the precinct voting machines was completed on Friday, April 21, 2023. The delivery of those machines to the various polling locations takes roughly two weeks and would begin on Monday, May 1 and continue until Monday, May 15, the day before Election Day.

She said the Election Services staff was busy staffing the various precincts with poll workers and that some locations had a desperate need for workers. She noted that a Judge of Election (JOE) was needed in the following locations: Amity Township, Hereford Township, Centre Township, Reading (2nd Ward, 1st Precinct – Berks Latino Workforce Development) and New Morgan Borough. Additional poll workers were also needed in the following locations: Amity Township, Colebrookdale Township, Exeter Township, Hereford Township and New Morgan Borough. Those interested in becoming poll workers were encouraged to call Election Services or email pollworkers@countyofberks.com.

Ms. Norton said the first batch of mail-in ballots were sent out earlier that morning (Thursday, April 27). That mailing included more than 15,000 ballots. The last day to register to vote is Monday, May 1 and the last day to apply for a mail-in or absentee ballot is Tuesday, May 9.

Finally, Ms. Norton said that Election Services continues to host poll worker training classes, which are held at the Services Center, SAM building and Ag Center. Commissioner Sihelnik said she attended a few classes and that poll workers receive a very thorough training.

Public Comment

Jeff Wolfe, of Brecknock Township, made comments related to signature verification on mail-in and absentee ballots. He gave his recommendations as to how these ballots should be handled, stating any ballots with signature that is not genuine be set aside and the voter should be contacted and allowed to cure the ballot.

Karl Lampart, of Greenwich Township, submitted a comment online asking if the Board would commit to rejecting and not counting mail-in ballots if the signature on the ballot does not match the signature on file for the voter.

Adjournment: On the motion of Judge Koestel, seconded by Commissioner Sihelnik, the meeting was adjourned at 12:56 pm.