

Minutes
State Election Commission Meeting
August 26, 2016

The State Election Commission meeting was called to order by Chairman Donna Barrett at 12:21 p.m., Central Standard Time, August 26, 2016. The following members and staff were present: Chairman Barrett; Commissioners Blackburn, Duckett, McDonald, Wallace, Wheeler and Younce; Coordinator of Elections Mark Goins and Kathy Summers, Elections Specialist.

Commissioner Blackburn made a motion to adopt the minutes from July 11, 2016, Commissioner Wallace seconded the motion and the minutes were unanimously approved. (Aye votes: Barrett, Blackburn, Duckett, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

Commissioner McDonald made a motion pursuant to T.C.A. § § 2-12-101 and 2-12-106, seconded by Commissioner Wallace and unanimously approved to accept the nomination(s) for county election commission appointments as submitted, and to leave the nomination process open until 4:30 p.m. Central Standard Time Friday, August 26, 2016. (Aye votes: Barrett, Blackburn, Duckett, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.) **(See attached list of appointments made.)**

Old Business

- **NONE**

New Business

- **ES&S – Wendell Moore – Internal Box Liner** – Mr. Moore discussed the certification given to ES&S, in November 2015, for their EVS 5.2.0.0 voting machine. When the State Election Commission approved the EVS 5.2.0.0 machine, the commission also required the internal box liner be sold with the machine. The use of an internal box liner is an additional cost to the county and this puts ES&S at a competitive disadvantage. Mr. Moore asked the State Election Commission to amend the certification and to make the use of the internal box liner an option and not a requirement.

Commissioner Wheeler made a motion to defer Mr. Moore's request until the next meeting and to have staff contact other Tennessee voting machine vendors to see if they have a similar box for their certified or pending machines. The motion to defer approval was seconded by Commissioner Blackburn and unanimously approved. (Aye votes:

Barrett, Blackburn, Duckett, McDonald, Wallace, Wheeler and Younce;
No votes: None; Abstention: None.)

- **Pursuant to TCA §2-12-101(b) Discussion regarding violations of TCA §2-1-111 and 2016 Public Chapter No. 1069 and potential removal of Sevier County Election Commissioner Michael Fitzgibbons for cause.**

Michael Fitzgibbons, Sevier County Election Commissioner, was not present for the show cause hearing. Attorney Ben Gastel, of Branstetter, Stranch and Jennings, represented Mr. Fitzgibbons. Information presented by Attorney Gastel is attached. Attorney Gastel stated that Commissioner Michael Fitzgibbons is requesting to remain on the Sevier County Election Commission, as the chairman. Mr. Fitzgibbons believes that he has followed all state and federal laws and has acted in accordance to his oath of office. Mr. Fitzgibbons disputes the constitutionality of Public Chapter No. 1069, and that the law does not specifically address reorganizing during mid-term.

Public Chapter No. 1069 took effect on July 1, 2016, and requires the following:

The chair of the county election commission shall be a member of the majority party, and the secretary shall be a member of the minority party.

Coordinator Goins spoke before the commission and stated TCA § 2-12-101(b), allows the removal of a commissioner who becomes unqualified or is disciplined for cause. At the annual training seminar, all counties were made aware of Public Chapter No. 1069, and were advised if this was the case, in their county, that the situation would have to change on or before July 1, 2016. Members of the Sevier County Election Commission tried to address this issue with Mr. Fitzgibbons but he refused to relinquish the chairmanship. The law requires the chairman of the county election commission to be a member of the majority party. Coordinator Goins stated that while this piece of legislation was going through the General Assembly there were no grandfather clauses placed on the bill.

Chairman Barrett recognized Commissioner Mike McDonald, who asked Attorney Gastel if he was aware an Attorney General's Opinion was requested on August 16, 2016. Mr. Gastel said he was aware of the request, and knows there is no formal opinion by the Attorney General's office. Commissioner McDonald believes there are some constitutional issues regarding Public Chapter No. 1069, and he requested the commission to wait for a formal Attorney General's Opinion or until October to take action on this show cause hearing.

Chairman Barrett indicated that an Attorney General's Opinion could take time and there is no guarantee that the AG was or was not going to review the request.

Chairman Barrett recognized Commissioner Greg Duckett, who indicated the same concerns of whether or not the AG would address the issue. Commissioner Duckett asked Attorney Gastel if Mr. Fitzgibbons is willing to stay on the county election commission and not be chairman. Attorney Gastel stated that Mr. Fitzgibbons would prefer to stay on the commission if the SEC were to remove him from the chairmanship. However, Mr. Fitzgibbons preference is to serve out the term of his office which he was duly appointed and elected to serve, as chairperson.

Attorney Gastel agreed the act, on its face, would prevent Mr. Fitzgibbons or any chairperson, of the minority party, from serving as chairperson beginning at the next duly organized and elected county election commission appointment in 2017. He argued the law would not apply to Mr. Fitzgibbons current term.

Commissioner Duckett explained to Attorney Gastel that in 2008, when the General Assembly changed majority Democrat to majority Republican, there were three (3) Democrats and two (2) Republicans on the State Election Commission at the time. The members on the commission at that time made a decision to follow the spirit of the statute and agreed a Republican would be made chair. Commissioner Duckett explained that commissions are appointed on a partisan bases, but they are to be administered on a non-partisan bases, and that calmer heads should prevail otherwise no one wins. Commissioner Duckett stated that Mr. Fitzgibbons could have allowed the reorganization of the commission.

Chairman Barrett clarified Public Chapter No. 1069, was signed by the Governor on May 20, 2016, and the bill was introduced in January 2016. Hearings regarding this legislation would have been held prior to passage and Attorney General Opinions could have been requested as the legislation was going through the General Assembly. To request an Attorney General's Opinion in August right before the SEC meeting, is an attempt to delay the issue.

Chairman Barrett recognized Commissioner Tom Wheeler. Commissioner Wheeler stated the legislation which brought about Public Chapter No. 1069 was a caption bill, and an amendment made the bill late in session.

Commissioner Blackburn made a motion to remove Michael Fitzgibbons from the Sevier County Election Commission, pursuant to TCA§2-1-111

and Public Chapter No 1069, the motion to remove Commissioner Fitzgibbons was seconded by Commissioner Wallace.

Commissioner Wheeler amended the motion to remove all five (5) members of the Sevier County Election Commission and the amendment was seconded by Commissioner Duckett.

Chairman Barrett asked if there was any discussion on the amendment. Commissioner McDonald asked Commissioner Wheeler to explain why all members should be removed. Commissioner Wheeler stated Commissioner Fitzgibbons was not elected to chairman by himself, and that nobody did anything after the enactment of the law to change the chair position on the commission. All five (5) commissioners were aware of the law. Neither the Secretary nor the Chair resigned.

Chairman Barrett recognized Coordinator Goins. Mr. Goins stated the majority members on the Sevier County Election Commission attempted to change the chair position and Commissioner Fitzgibbons would not allow the issue to be addressed. Commissioner Blackburn went to the Sevier County Election Commission meeting and witnessed Commissioner Fitzgibbons refusal to recognize the Republican Commission members to vote on reorganizing. Coordinator Goins believes if you remove all members of the county election commission it causes more of a disruption to the election, and the other four (4) commission members have attempted to do the right thing.

Commissioner Wheeler indicated the other four (4) commissioners allowed Mr. Fitzgibbons to continue to serve as chairman.

Commissioner Wallace called for previous question on the amendment.

Chairman Barrett took the vote to remove all five (5) county election commission members from the Sevier County Election Commission. The vote was as follows: Aye votes: McDonald and Wheeler; No votes: Barrett, Blackburn, Duckett, Wallace and Younce; Abstention: None. The amendment to remove all commission members from the Sevier County Election Commission was not adopted to the motion.

Commissioner Wallace called for previous question on the original motion.

Chairman Barrett took the vote on the original motion to remove Commissioner Fitzgibbons from the Sevier County Election Commission. Aye votes: Barrett, Blackburn, Duckett, Wallace and Younce; No votes: McDonald and Wheeler; Abstention: None. The motion to remove

Commissioner Fitzgibbons from the Sevier County Election Commission passed.

- **Review State Election Commission Policy for Certified Administrator of Elections**

Chairman Barrett discussed the current State Election Commission policy set in place for certified Administrators of the Elections, to maintain certification after removal or resigning from office. The current policy adopted was done on July 13, 2011. Chairman Barrett would like to set up a subcommittee to look into how this policy was set up and to determine if the State Election Commission wants to change the current policy. The following members were appointed to the subcommittee:

- Chairman Barrett
- Commissioner Wallace
- Commissioner Wheeler

Commissioner McDonald would like to see about modifying TCA § 2-1-112 (a) (1), to allow certain governmental employees to sit on county election commissions. Commissioner McDonald would like the full commission to support the idea. Commissioner Barrett suggested the subcommittee add this to their review and added Commissioner McDonald to the subcommittee. The subcommittee is as follows:

- Chairman Barrett
- Commissioner McDonald
- Commissioner Wallace
- Commissioner Wheeler

The subcommittee is to come up with recommendations regarding maintaining certification status for Administrators of Elections no longer working in elections and TCA § 2-1-112 (a) (1)

- **Discuss Cancellation of October 10, 2016, State Election Commission Meeting**

Commissioner Blackburn made a motion to cancel the October 10, 2016, State Election Commission, Commissioner Wallace seconded the motion. The motion to cancel the meeting was approved. (Aye votes: Barrett, Blackburn, Duckett, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

Coordinator Update

- **Minor Party Lawsuit** – Coordinator Goins updated the commission regarding the Constitution and Green parties' lawsuits. The lawsuit was heard in federal court and the court ruled the Constitution and

Green parties will not have their party label listed on the November General ballot.

The next regularly scheduled meeting is set for January 9, 2017, and will be held in the William R. Snodgrass – Tennessee Tower, Nashville Room - 3rd floor at 12:00 Noon Central Standard Time.

Chairman Barrett adjourned the meeting.

Respectfully submitted,

A handwritten signature in black ink that reads "Mike McDonald". The signature is written in a cursive, flowing style.

Mike McDonald, Secretary
State Election Commission

Vacant Status

26-Aug-16

Cannon

D Mike McDonald
R Kent Younce

D

Crockett

D Greg Duckett
R Jimmy Wallace

R

Dickson

D Greg Duckett
R Donna Barrett

D

Grundy

D Mike McDonald
R Donna Barrett

R

McMinn

D Tom Wheeler
R Judy Blackburn

R

Total Vacancies: 5

New Appointment Status

26-Aug-16

		Appointment
Cannon	D Mike McDonald / R Kent Younce	
	D Joan Banks-Shirley	8/26/2016
Grundv	D Mike McDonald / R Donna Barrett	
	R Wayne Harris	8/26/2016
Total New Commissioners: 2		

ES&S

Miscellaneous Information

Regarding

Internal Box Liner

State Election Commission

Meeting

October 12, 2015

State Election Commission

ES&S Voting Machine Approval – October 12, 2015

Old Business

- **ES&S – EVS 5.2.0.0 – Request for certification of voting machine reviewed in Pottawattamie County, Iowa on September 8, 2015.** Steve Pearson spoke on the behalf of ES&S. Commissioner Barrett, Commissioner McDonald and Coordinator Goins reviewed the election in Pottawattamie County, Iowa. Commissioner Barrett discussed the review and indicated the machine should have a ballot box and pre-numbered ballot stubs.

Commissioner McDonald made a motion to approve the EVS 5.2.0.0 voting machine, seconded by Commissioner Blackburn and unanimously approved by all commissioners present. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

- **ES&S – Express Vote 5.2.0.0 – Ballot on Demand – Request for Approval.** Steve Pearson, Ben Swartz and Mac Beeson of ES&S demonstrated the ballot on demand feature for the EVS 5.2.0.0. Commissioner Barrett indicated the ballot on demand machine should have pre-numbered ballot stubs.

Commissioner McDonald made a motion to approve the ballot on demand feature for the EVS 5.2.0.0 voting machine, seconded by Commissioner Barrett and unanimously approved by all commissioners present. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

Tre Hargett, Secretary of State

State of Tennessee



Division of Elections
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-0305

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

November 17, 2015

Steve Pearson
Vice President, ES&S Voting Systems
11208 John Galt Boulevard
Omaha, NE 68137

Dear Mr. Pearson:

This letter is to inform you of certification of the ES&S EVS 5.2.0.0 voting machine, bearing the EAC Certification Number: ESSEVS5200, by the State Election Commission (SEC) on October 12, 2015. Your voting machine was made available before the SEC in 2014, for demonstration and was reviewed in an election in Pottawattamie County, Iowa on September 8, 2015. As you know during the SEC meeting Commissioner Barrett stated that, for any Tennessee county using this machine, the SEC specifically, requires the use of the DS200 ballot tote bins and serially-numbered ballots with ballot stubs.

Also, reviewed and approved, was the use of the Express Vote as a ballot on demand system. Again, detachable serially-numbered ballot stubs are required for use.

Thank you for your cooperation in the certification process.

Sincerely,

A handwritten signature in black ink that reads "Mark Goins".

Mark Goins
Coordinator of Elections

Cc: Benjamin Swartz, State Certification Manager

Attachment: EAC Certification Number ESSEVS5200



DS200(i) Tote Bin Quick Start Guide

Technical Bulletin	FYIDS2000014
Date	<i>May 14, 2010</i>
Product Name	DS200(i)
Version	All
Distribution	Internal/External

Follow the steps below when setting up, installing, and removing the DS200(i) Tote Bin from the DS200(i) Ballot Box during Election Day.

Confidential and Proprietary Information
Election Systems & Software, Inc.

This document, as well as the software described in it, is furnished under license and may be used or copied only in accordance with the terms of such license. The content of this manual is furnished for informational use only, is subject to change without notice, and should not be construed as a commitment by Election Systems & Software, Inc. Election Systems & Software, Inc., assumes no responsibility or liability for any errors or inaccuracies that may appear in this documentation. Except as permitted by such license, no part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, recording, or otherwise, without the prior written permission of Election Systems & Software, Inc.

Preparing the DS200(i) Ballot Box to Receive the DS200(i) Tote Bin



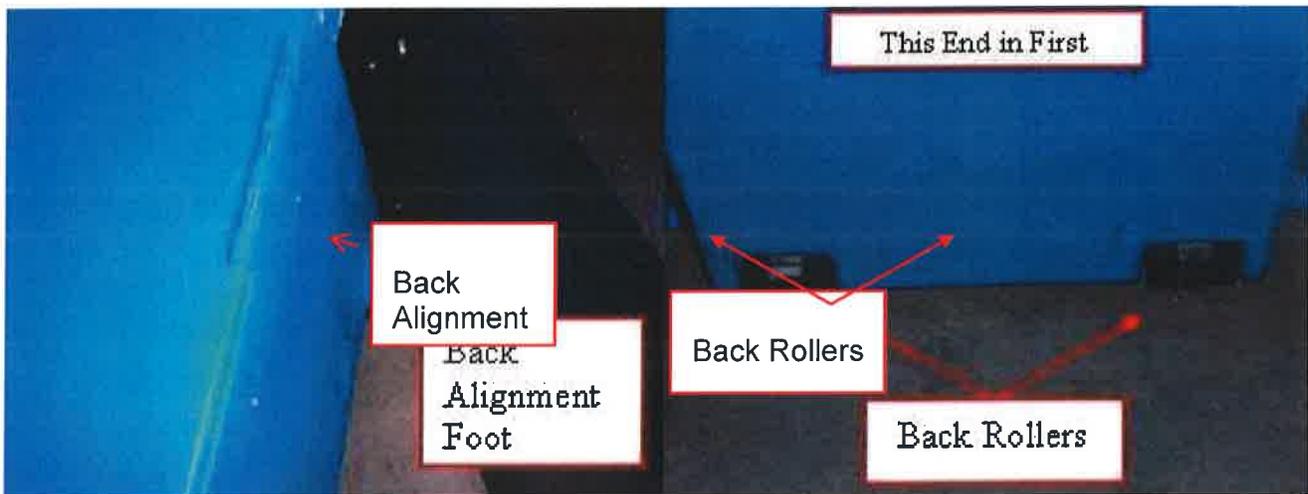
- Step 1) Insure that the front locking casters are pointing out the side of the Ballot Box to reveal the locking mechanism. Gently step on the locking mechanism tab to securely lock the caster in place. This will insure that the Ballot Box does not move when the Tote Bin is inserted or when it is removed from the Ballot Box.



Inserting the DS200(i) Tote Bin into the DS200(i) Ballot Box



Step 3) Before inserting the Tote Bin into the DS200(i) Ballot Box Lower Bin, unlock both locks located on the Top Front and Top Back on the Tote Bin Doors.



Step 4) Align the backside of the Tote Bin so that the Back Alignment Feet are between the Inside Guide Rails.



Step 5) Use the Strap Handle on the front of the Tote Bin to lift up and slide the Tote Bin completely into the Lower Bin. The Tote Bin should slide in until the front of the Tote Bin is even with the opening of the Lower Bin.



Step 6) Once the Tote Bin is completely inside the Lower Bin, open both lids to expose the inside of the Tote Bin. The lids should rest on the inside of the Lower Bin.

Note: Both Lids must be opened fully in order for Ballots to properly fall and stack inside the Tote Bin.

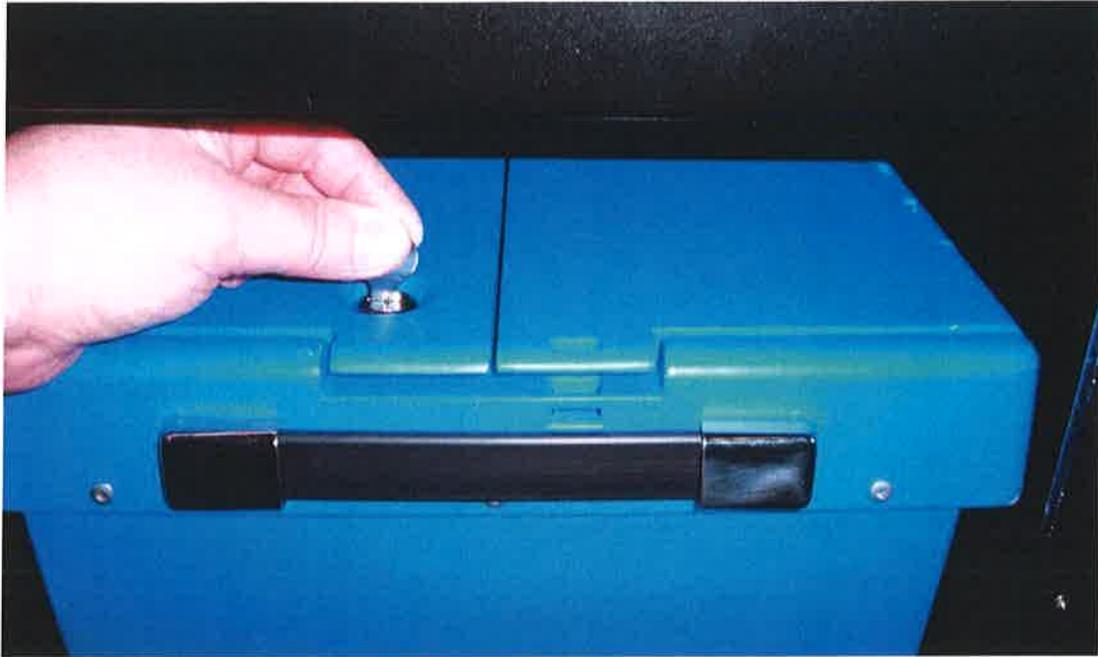
Closing and Removing the Tote Bin from the DS200(i) Ballot Box



Step 7) Once the Counted Ballot Capacity has reached 1500 ballots, the Tote Bin has to be changed out. Remove the seal from the Lower Bin Door and record the number.



Step 8) The Tote Bin must be closed before it is removed from the Lower Bin. Start closing the Tote Bin by closing the right side first.



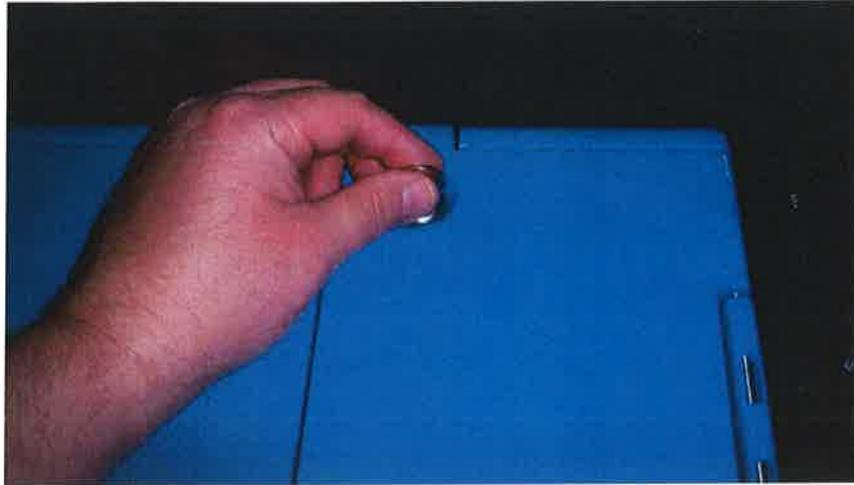
Step 9) Once both lids are closed and while the Tote Bin is still inside the Lower Bin, lock the Top Front Lock.



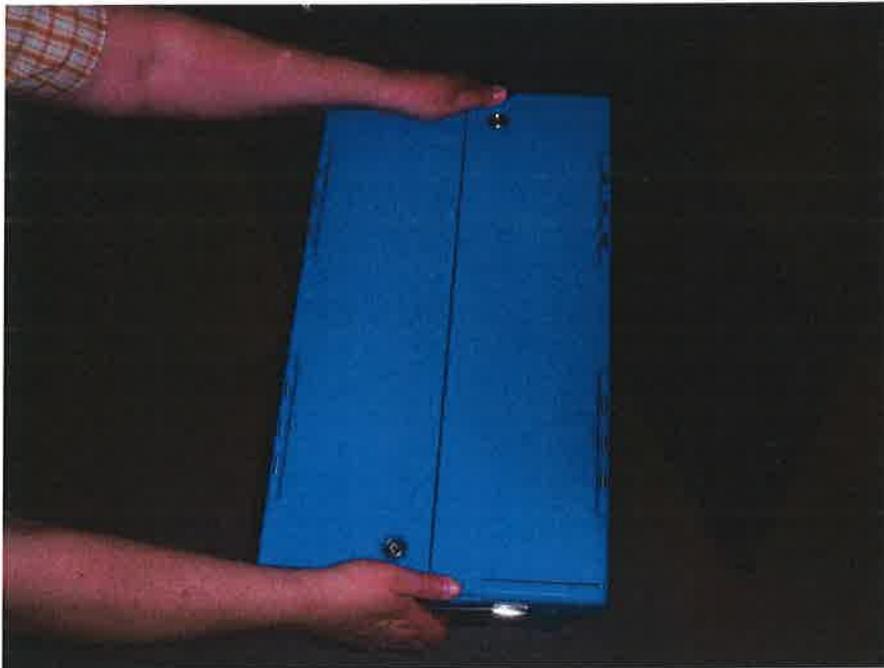
Step 10) Using the Strap Handle on the Tote Bin, pull the Tote Bin out enough to leave the backside still in the Lower Bin.

Caution: Do not pull the Tote Bin out completely as this will drop the backside onto the ground. This action could result in cracking and/or breaking the back Tote wheels.

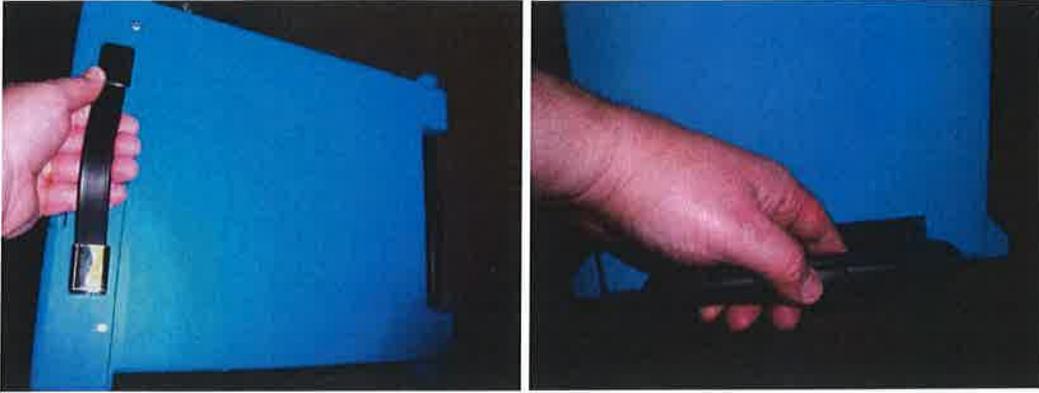
Do not deploy the Telescoping Handle as this could result in bending of the Handle to where it would not retract correctly.



Step 11) Once the backside of the Tote Bin has been exposed, lock the Top Back Lock.



Step 12) After both locks have been locked and the seal is applied, continue lifting the Tote Bin out of the Lower Bin by grasping the Strap Handle and the lip on the backside.



Step 13) While grasping the Strap Handle, tilt the Tote Bin back slightly so that the Telescoping Handle can be deployed. To insert the new Tote Bin, repeat Steps 1-6.

State Election Commission

August 26, 2016

Show Cause Hearing

Michael Fitzgibbons

Sevier County

Donna Barrett
2225 SE Broad Street
Murfreesboro, TN 37127
(615) 896-5571

Judy H. Blackburn
1011 Heykoop Drive
Morristown, TN 37814
(423) 586-5828

Gregory M. Duckett, Esq.
350 N. Humphreys Blvd
Memphis, TN 38120
(901) 227-5233

Michael R. McDonald
1695 A.B. Wade Road
Portland, TN 37148
(615) 888-3081

State of Tennessee



State Election Commission
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Jimmy Wallace
428 Wiley Parker Road
Jackson, TN 38305
(731) 668-2700

Tom Wheeler
1196 Blockhouse Valley Road
Clinton, TN 37716
(865) 548-6159

Kent D. Younce
423 Fairway Drive
LaFollette, TN 37766
(423) 871-0245

August 19, 2016

Michael Fitzgibbons, Commissioner
Sevier County Election Commission
4299 S. Boogertown Road
Sevierville, TN 37876

RE: State Election Commission Meeting on August 26, 2016

Dear Commissioner Fitzgibbons,

As you have repeatedly been made aware, the General Assembly adopted Public Chapter No. 1069 during this legislative session, which amended Tenn. Code Ann. § 2-12-103(b)(2). As of July 1, the law now requires that “[t]he chair of the county election commission shall be a member of the majority party, and the secretary shall be a member of a minority party.”

As a result of the following series of events, the State Election Commission has added the following item to its agenda for Friday, August 26:

- Pursuant to TCA § 2-12-101(b) Discussion regarding violations of TCA § 2-1-111 and 2016 Public Chapter No. 1069 and potential removal of Sevier County Election Commissioner Michael Fitzgibbons for cause.

An agenda for the meeting is included with this letter.

As an election official, you took the following oath pursuant to Tenn. Code Ann. § 2-1-111: “I, Michael P. Fitzgibbons, do solemnly swear (affirm) that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Tennessee, and that I will faithfully and impartially discharge the duties of my office.” I understand that you do not agree with the law, but as the provision has been added to the law, it is your duty to act in accordance with the law.

The bill was signed by the governor on May 20. The new law was covered at the summer training seminar on June 20, which you attended. The commission took no action before July 1 as a result of your unwillingness to call a meeting to reorganize.

Since July 1, you have continued to act as chairman in violation of the law and have refused attempts by other members of the commission to address the situation. Pursuant to Tenn. Code Ann. § 2-11-202(a)(3) and (4), which gives the coordinator of elections the authority to advise election commissions and authoritatively interpret the law, Coordinator of Elections Mark Goins advised you by the attached letter on August 4 that the current structure of the Sevier County Election Commission was in violation of the law and that the commission needed to meet to reorganize immediately.

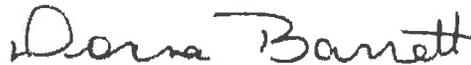
On August 12, Commissioner Ray Mull requested via the attached e-mail that “a call for nominations for officers of our commission” be placed on the agenda for the August 18 meeting. Coordinator Goins sent the attached memo to the commission at that point emphasizing the need for action as a result of the law and requesting notice after the August 18 meeting of the commission’s new officers. Rather than placing the item as requested on the agenda, you instructed Administrator of Elections Ed Kuncitis via the attached e-mail to place the item on the agenda as “Announcement: Public Chapter No. 1069 (House Bill No. 726) - County Election Commissions.”

On August 18, based on the account of State Election Commissioner Judy Blackburn, Commissioner Mull nominated Commissioner Jack Ogle as the new chairman, which was seconded, voted on and passed. In response, you spoke disparagingly of the other commissioners, dismissed the motion and vote as out of order, and refused to acknowledge the new chairman.

On August 19, in response to the request of Coordinator Goins on August 12, you e-mailed Kathy Summers an updated list showing the organization of the commission. Despite the action of the majority of the commission and the statutory provision, you have again listed yourself as chairman in violation of the law.

Therefore, the State Election Commission will meet on August 26 at 12:00 p.m. Central Time to discuss the violation and potentially remove you for cause. You or your representative are welcome to attend and address the State Election Commission meeting at that time to present any evidence as to why you should not be removed for this violation. Should you have any questions, please let me know.

Sincerely,



Donna Barrett
Chairman

Attachments:

- August 26, 2016 – State Election Commission Agenda
- 2016 Public Chapter No. 1069
- Excerpts from 2016 Summer Election Law Seminar
- Copy of your Oath of Office
- Letter from Coordinator Goins on August 4
- E-mail from Commissioner Mull on August 12
- Memo from Coordinator Goins on August 12
- E-mail to Ed Kuncitis on August 15
- E-mail to Kathy Summers on August 19

Kathy Summers

From: Mark Goins
ent: Friday, August 19, 2016 5:41 PM
To: Mike Fitzgibbons
Cc: Joe Newman; Tom Wagner; Carl Ray Mull; 'sevierelect@yahoo.com'; Kathy Summers; Beth Henry-Robertson
Subject: Noon Aug 26th SEC Meeting to Discuss Law Violation and Removal of Mike Fitzgibbons for Cause From the Sevier County Election Commission
Attachments: 2016 - Fitzgibbons - Notice of Removal for Cause.pdf

Mr. Fitzgibbons,
Please read the attached correspondence from State Election Commission Chairman Donna Barrett.
Thank you,
Mark

Mark Goins
Coordinator of Elections
Division of Elections
Office of Tennessee Secretary of State Tre Hargett
312 Rosa L. Parks Ave., 7th Floor
William R. Snodgrass Tower
Nashville, TN 37243
(615) 741-7956
(615) 741-1278 (fax)

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Kathy Summers

From: mpfitz@aol.com
ent: Friday, August 19, 2016 10:36 AM
To: Kathy Summers
Subject: Sevier County Election Commission

Good Morning Ms. Summers,
Per Coordinator Goins request, as of the close of the Sevier County Election Commissions called meeting yesterday, August 18,2016, here is the list of the the Sevier County Election Commissions Officers and Members:

Michael P. Fitzgibbons, Chairman
Jack Ogle, Secretary
Joe Newman, Member
Carl Ray Mull, Member
Tom Wagner, Member

Please let me know if I can be of further assistance,
Michael P. Fitzgibbons
Chairman, Sevier County Election Commission

From: mpfitz@aol.com [mpfitz@aol.com]
Sent: Monday, August 15, 2016 10:38 AM
To: Ed Kuncitis
Subject: Meeting Agenda

Good Morning Ed.

Please add the the following, as witten below, to the Agenda for this Thursday's Election Commission Meeting:

Announcement:

Public Chapter No. 1069 (House Bill No. 726) - County Election Commissions

Thank you for your assistance.

Sincerely,
Michael P. Fitzgibbons
Chair, Sevier County Election Commission

P.S. Please reply to this e-mail to confirm your receipt of this request.

On Friday, August 12, 2016 11:07 AM, ray mull <leasegroup@att.net> wrote:

Mike and Ed,

I would like to add to the agenda for the up-coming meeting on the 18th. Please place a call for nominations for officers of our commission.

Thank you

Ray Mull, commissioner

Tre Hargett, Secretary of State
State of Tennessee

COPY



Division of Elections
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-0305

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

To: Sevier County Election Commission
From: Mark Goins, Coordinator of Elections *Mark Goins*
Date: August 12, 2016
Subject: TCA§2-12-103(b)(2)
Attachment: Public Chapter 1069

I have been informed that Commissioner Mull has requested that Commissioner Fitzgibbons place the nomination of chairman and secretary on the agenda at the next meeting in order to comply with Tenn. Code Ann. § 2-12-103(b)(2). My understanding is that this request is for the action to occur at the August 18, 2016 meeting.

As you know, the law has been in effect for more than one month, and this action should have already happened. Please notify Kathy Summers in writing on August 19, 2016 of the new officers so we will know that the Sevier County Election Commission is in compliance with the law. A copy of the law is included with this correspondence.

You may contact Kathy Summers by email at: Kathy.Summers@tn.gov.

COPY



State of Tennessee
PUBLIC CHAPTER NO. 1069

HOUSE BILL NO. 726

By Representatives Pody, Van Huss, Carr

Substituted for: Senate Bill No. 787

By Senator Beavers

AN ACT to amend Tennessee Code Annotated, Title 2; Title 4; Title 5; Title 6 and Title 7, relative to elections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-12-103(b)(2), is amended by adding the following sentence at the end of the subdivision:

The chair of the county election commission shall be a member of the majority party, and the secretary shall be a member of a minority party.

SECTION 2. This act shall take effect July 1, 2016, the public welfare requiring it.

Tre Hargett, Secretary of State
State of Tennessee



Division of Elections
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-0305

Mark Goins
Coordinator

615-741-7956
Mark.Goins@tn.gov

August 4, 2016

Michael Fitzgibbons, Chairman
Sevier County Election Commission
4299 S. Boogertown Rd.
Sevierville, TN 37876-89

RE: Political Party Affiliation of Chairman and Secretary of Sevier County Election Commission

Dear Chairman Fitzgibbons:

As you are aware, the General Assembly adopted Public Chapter No. 1069 during this legislative session. The 2016 Public Chapter No. 1069 amends Tenn. Code Ann. § 2-12-103(b)(2) by adding the provision that "the chair of the county election commission *shall be* a member of the majority party, and the secretary *shall be* a member of a minority party." (Emphasis added) This language took effect on July 1, 2016 and does not contain any language which grandfathers the organization of an existing election commission which does not have the specified party affiliations of the chair and secretary.

Briefly, the current organization of the Sevier County Election Commission (SCEC) violates the mandatory language of Public Chapter No. 1069. Therefore, in order to comply with the current statutory provision, the SCEC must meet and reorganize immediately.

Please let me know when you call the reorganization meeting in order to comply with the current language of Tenn. Code Ann. § 2-12-103(b)(2). If you have any further questions regarding the election process, please do not hesitate to contact me.

Thank you for your service as the Chairman of the SCEC and as a member of the SCEC.

Sincerely,

A handwritten signature in black ink that reads "Mark Goins".

Mark Goins
Coordinator of Elections

c: Sevier County Election Commission members
Ed Kuncitis, Administrator of Elections

2016 Summer Election Law Seminar

Presented by the Tennessee Department of State and
Tennessee Association of County Election Officials



Tre Hargett
Secretary of State

Mark Goins
Coordinator of Elections

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Tennessee 109th General Assembly- Public Acts

Chapter Number	Subject	Abstract	Bill Number
<u>0827</u>	Election Laws	As enacted, makes various revisions to election laws such as when a deficient voter registration may be corrected, the timing of delivery of poll books and records to the counting board, and prohibiting the appointment of a candidate's spouse on the ballot to serve as a poll watcher.	<u>SB1945</u>
<u>0579</u>	Constitutional Amendments	As enacted, requires a summary of a constitutional amendment to precede the question on the ballot instead of requiring a summary for only those questions exceeding 300 words in length.	<u>SB1219</u>
<u>0604</u>	Public Officials	As enacted, allows a person to challenge a candidate's qualifications for the office of chief administrative officer of the highway department to the Tennessee highway officials certification board.	<u>SB1689</u>
<u>0650</u>	Election Laws	As enacted, eliminates the early voting period for a special general election if there is no opposition for any office in the election, including no write-in candidates have qualified and there are no other items on the ballot.	<u>HB1475</u>
<u>0696</u>	Pigeon Forge	As enacted, creates seat designations for commissioners; allows voters to vote for one commissioner for each open, designated seat.	<u>SB2087</u>
<u>0768</u>	Election Laws	As enacted, allows Rutherford County to participate in a pilot project for establishing convenient voting centers for use on election day upon super majority vote of the county election commission.	<u>SB2101</u>
<u>0831</u>	Education	As enacted, encourages public high school students to participate voluntarily in at least 10 hours of community service each semester; requires the student's public high school to recognize the student's achievement at graduation in a suitable manner in certain circumstances.	<u>SB2165</u>
<u>0936</u>	Election Laws	As enacted, establishes an online voter registration system beginning July 1, 2017.	<u>SB1626</u>
<u>0954</u>	Election Laws	As enacted, authorizes the exclusion of residents of correctional institutions from being considered in reapportionment.	<u>SB1811</u>
<u>1016</u>	Political Parties	As enacted, redefines, for purposes of the Election Code, "statewide political party" to mean a political party at least one of whose candidates for an office to be elected by voters of the entire state has received a number of votes equal to at least 5 percent of the total number of votes cast for gubernatorial candidates in the most recent election of governor.	<u>HB2079</u>
<u>1069</u>	Election Laws	As enacted, specifies that the chair of the county election commission must be a member of the majority party, and the secretary must be a member of a minority party.	<u>HB0726</u>



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Information Obtained at <http://tnsos.org/acts/PublicActs.109.php?showall>



State of Tennessee
PUBLIC CHAPTER NO. 1069

HOUSE BILL NO. 726

By Representatives Pody, Van Huss, Carr

Substituted for: Senate Bill No. 787

By Senator Beavers

AN ACT to amend Tennessee Code Annotated, Title 2; Title 4; Title 5; Title 6 and Title 7, relative to elections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-12-103(b)(2), is amended by adding the following sentence at the end of the subdivision:

The chair of the county election commission shall be a member of the majority party, and the secretary shall be a member of a minority party.

SECTION 2. This act shall take effect July 1, 2016, the public welfare requiring it.



STATE OF TENNESSEE

Sevier

County

I MICHAEL P. FITZGIBBONS, do solemnly swear (affirm) that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Tennessee and that I will faithfully and impartially discharge the duties of my office.

I further swear or affirm that the information below is true and correct.

*Check the applicable statements. Do you work for a governmental agency?

Yes No

If yes, where:

I am employed by: GH I am retired.

I serve on the following board(s) or commission(s).

*If additional space is needed, please use the reverse side of this oath.

Table with 4 columns: NAME OF BOARD OR COMMISSION, APPOINTED BY, PAID (YES/NO), AMOUNT PAID MONTHLY. Row 1: Sevier E.C.

Mailing Address: 4299 SOUTH BODGERTOWN ROAD, Sevierville, TN 37876

Daytime Phone #: 865-654-9349 Email: MTFITZ@AOL.COM

*Note: Pursuant to T.C.A. §10-7-503 all information on this form is public record.

Notary Seal

Commissioner's Signature

State of Tennessee County of Sevier

Sworn to before me this 16th day of April, 20 15

Cheri A. Brackins

Notary Public

My Commission Expires: 9-20-2019



Persons appointed to the county election commission shall qualify within twenty (20) days after their appointment by filing their oath of office with the Secretary of the State Election Commission. FAILURE TO QUALIFY SHALL VACATE THE OFFICE OF THE PERSON FAILING TO FILE THE OATH. Within the twenty (20) days after their appointment, the county election commission shall organize by the selection of a chairperson and secretary of different political parties from them. The commission shall, within ten (10) days thereafter, report to the state election coordinator the names and addresses of the officers and other members of the commission.



To the members of the State Election Commission,

The State Election Commission alleges in an August 19, 2016 letter that I am not following the law. But the truth is, I have done everything I can to fulfill the oath I took by ensuring I am following *all state and federal laws* and to impartially discharge the duties of my office despite undue influence on the commission from outside political forces.

I dispute the allegations and assert that the series of events in that letter are inaccurate.

I learned of Public Chapter No. 1069 in a seminar at the TACEO event on June 20, 2016 that announced an array of new legislation. The announcement regarding Chapter No. 1069 contained no directives to the body of attendees that any commission with a minority party chairman must reorganize mid-term. Neither did the state election commission issue any directive to me to do so. The wording of Public Chapter No. 1069 makes no provisions to do so. Knowing that state and federal laws prohibit retroactive laws, I would not take it upon myself to reorganize the commission mid-term when our commission had fulfilled the requirements of organization as required by Tenn. Code Ann. § 2-12-105.

Soon after the TACEO event, I had questions about the constitutionality and potential retroactive enforcement of Public Chapter No. 1069. Because I am not an attorney, I took it upon myself to begin the process of seeking out a legal opinion from the state's attorney general to ensure I follow all state and federal laws.

In mid-July, Coordinator Goins contacted Sevier County Administrator of Elections Ed Kuncitis to inquire if the commission had held a reorganization to install a Republican chair. The commission had not. During that phone call, Goins told Kuncitis that the reorganization must take place prior to the upcoming election and claimed it must occur because Goins could not accept the Certification of that election from the existing minority chair based upon Public Chapter No. 1069. That same day, Goins subsequently called State Election Commissioner Tom Wheeler and stated the same.

Kuncitis contacted me that day to discuss the call from Goins. I told Kuncitis that I would like any directive regarding reorganization due to Public Chapter No. 1069 in writing. Goins sent a letter dated August 4, 2016 with a directive to reorganize and I received it shortly after.

On August 12, 2016, I did receive an email from Member Mull requesting to "Place a call for nominations for officers of our commission" on the agenda of the August 18, 2016 meeting. The announcement for that meeting, which included the purpose of the meeting, had already been publicly distributed. The tardiness of Mull's request

did not allow for proper public notice for an event of that magnitude to take place at the August 18 meeting, as required by the Open Meetings Act. In consideration of Mull's request, I decided the commission should announce Public Chapter No. 1069 to the public by reading the text of the law, along with the directive from Goins, and placed that announcement on the agenda accordingly.

At the August 18, 2016 meeting, the text of Public Chapter No. 1069 was read. Goins directive was read. I addressed the pending request for written opinion submitted to the attorney general by House Minority Leader Craig Fitzhugh and distributed a copy of that request to each commissioner. I also made a statement that due to the pending attorney general request, and because I wanted to ensure that the commission was acting in accordance with all laws, no further action or discussion would take place until that answer was received.

State Election Commissioner Judy Blackburn was in attendance at the August 18 meeting. Her account of the reorganization at the meeting described in your August 19 letter is inaccurate. I have included a transcript of the exchange between commissioners during what she considered a vote, taken from an audio recording and notes from witnesses.

In an action that was not in accordance with any rules of order by which meetings are conducted, Member Mull made an attempt to reorganize the officers of the commission by nominating Jack Ogle for the chair. The motion was out of order and not recognized by the chair. There was no call for other nominations. Mull continued, calling for a second, twice, before Member Newman finally seconded, and then Mull called, "All in favor?" Only Mull and Newman voiced Aye. No other members voiced a vote. Two is not a majority of five. There was no call for those opposed. There was no Secretary elected. As chair, I calmly kept order in the meeting by not recognizing motions that were out of order. No reorganization took place.

At no time did I disparage any members of the commission.

I conducted the remainder of the meeting, called for any other business; announced the next meeting and its purpose; and adjourned the meeting.

Ladies and gentlemen, the current members of the Sevier County Election Commission have worked remarkably well together in the operation of elections and made many advances for the office. All actions we have taken as a commission have been the result of unanimous votes. That voting record speaks for itself. The sole issue of contention on this commission has been the extreme pressure placed on republican commissioners from exterior partisan efforts demanding them to take control of the chair position. Even threatening their jobs. That represents an undue influence on this commission. There is simply no place for partisan politics in any county election commission.

For the past five and a half years that I have been a commissioner, I have fully supported the Constitution and laws of the United States and the Constitution and laws of the state of Tennessee. I have faithfully and impartially discharged the duties of my office. Even as I am now the subject of this state election commission meeting, I assert that I have acted in accordance with my oath of office.

Sincerely,

A handwritten signature in cursive script that reads "Michael P. Fitzgibbons". The signature is written in black ink and is positioned above the typed name.

Michael P. Fitzgibbons
Chairman, Sevier County Election Commission

MEETING AGENDA

Sevier County Election Commission
1145 Dolly Parton Parkway
P.O. Box 4690
Sevierville, TN 37864

Date: 8/18/2016

Meeting Description: CALLED Time: 4:30 PM Location: ELECTION COMMISSION OFFICE

Scheduled Time:	Actual Time:	Stop Time:
-----------------	--------------	------------

Persons Attending :

- Michael Fitzgibbons, Chairman
- Jack Ogle, Secretary
- Joe Newman, Member
- Thomas Wagner, Member
- Ray Mull, Member
- Election Staff/ Machine Technicians
- Media
- Visitors

Items To Be Discussed:

1. Call to order and open meeting. Show of hands of anyone present who would like to speak during the public comment portion of the meeting- 5 minute limit per individual.
2. Reading of the Minutes from previous meeting.
3. New business
 - a. Certification of August 4, 2016 Election results
 - Federal and State Republican Primary
 - Federal and State Democratic Primary
 - Sevier County General
 - State Judicial Retention
4. Old business
5. Announcement
 - Public Chapter No. 1069 (House Bill No. 726) - County Election Commissions
6. Adjourn.

Sevier County Election Commission
August 28,2016
Called Meeting to the Public

Chairman Fitzgibbons Exact statement/Directive during this meeting

In regard to Coordinator Goins directive for the Sevier County Election Commission to reorganize its' officers by saying that TCA 2-12-103(b)(2) was not written with a grandfather clause:

2016 Tenn. Pub. Acts Ch. 1069 amended TCA 2-12-103(b)(2), which admittedly became law on July 1st of this year was not presented nor written as an Exo-Facto Law. Currently there is no provision in Tennessee Election Laws Title 2 supporting a mid-term reorganization of a County Election Commission. In addition,as both the State of Tennessee and the Federal government expressly prohibit retroactive law it can then only be assumed that anyone that this new law could or would immediately affect upon its signature into law would have to be grandfathered through the remainder of their existing term based on the law as it was written at the time of their appointment or election.

Let us be clear. let us imagine that the legislature passed a new law changing the requirements of eligibility to be elected as a State representative, congressman or otherwise. The state would not and could not remove all current elected officials mid term of their seats who did not meet these new requirements at the time they were elected before the new law was put into place.

While there are some that may say I am not following the law here to today...

That fact is that I/we have already fulfilled our duties for our two year terms in regard to officers election as written in 2-12-105. Organization.

Which states:

Within twenty (20) days after their appointment, the county election commissioners shall organize by the selection of a chair and a secretary of different political parties from among them. The county election commission shall within ten (10) days thereafter report to the secretary of the state election commission and to the coordinator of elections the names and addresses of the officers and other members of the commission.

And as there is no provision in Title 2 for a mid term officers reorganization I would be violating the law were I as Chair to allow an officers reorganization at this time or anytime prior to the completion of our term.

With this knowledge, The Chair will not recognize any motions made mid-term pursuant to newly signed into law TCA 2-12-103(b)(2). or the reorganization of this Commissions Officers. No further discussion on this matter will be heard today as it would be dilatory to the progress of this Commission.

82nd LEGISLATIVE DISTRICT
CROCKETT, HAYWOOD & LAUDERDALE
COUNTIES

135 S. ALPINE STREET
RIPLEY, TENNESSEE 38063
(731) 635-1230

33 LEGISLATIVE PLAZA
NASHVILLE, TENNESSEE 37243-0182
(615) 741-2134
1-800-449-8366 EXT. 12134

rep.craig.fitzhugh@capitol.tn.gov



House of Representatives State of Tennessee

CRAIG FITZHUGH
House Democratic Leader

FINANCE
EDUCATION ADMINISTRATION &
PLANNING
GOVERNMENT OPERATIONS
FINANCE SUB
CALENDAR AND RULES
JOINT PENSIONS AND INSURANCE
HOUSE RULES

August 16, 2016

The Honorable Herbert H. Slatery III
Attorney General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207

Dear General Slatery:

It has been brought to my attention that 2016 Tenn. Pub. Acts Ch. 1069 amended TCA § 2-12-103(b)(2) and would require the chair of the county election commission be a member of the majority party and the secretary would be required to be from the minority party. It was stated in multiple committee meetings hearing House Bill 726, as well as on the House floor, that this was pretty much done across the state at that time. This was not correct as the chair of the Sevier County Election Commission was from the minority party.

In light of this exception, I have been asked to request a formal written opinion of your office on the following:

1. Is it legal to apply this law retroactively?
2. Does Public Chapter 1069 violate the Constitution of the State of Tennessee?
3. Does Public Chapter 1069 violate the Constitution of the United States?

Thank you for your service. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Craig Fitzhugh".

Rep. Craig Fitzhugh
House Minority Leader

Enclosures:

Relevant Tenn. Code
Brief (2)
Guiding Principles of Ethical Conduct for Public Officials
HB726/PC1069
Knox News Sentinel Article

RELEVANT TENN. CODE

2-12-101. Commissioners -- Appointment -- Removal -- Legal representation.

(a) The state election commission shall appoint, on the first Monday in April of each odd-numbered year, five (5) election commissioners for each county, for terms of two (2) years and until their successors are appointed and qualified. The five (5) commissioners shall be the county election commission.

BACKGROUND

These are 2-year appointments. The physical make up of commissioners serving every county election could and often has changed every two years. This means that a county election commission could be made up of 1, 2, 3, 4 or even 5 brand new commissioners (with 5 new commissioners being very unlikely as having at least one commissioner reappointed would be logical to keep experience flowing from one Election Commission to the next).

2-12-103. Political division of commission.

- (a) Three (3) members shall be members of the majority party and two (2) members shall be members of the minority party.
- (b) (1) The members of the majority party on the state election commission shall appoint the persons who are required to be members of that party on county election commissions.
- (2) The members of the minority party on the state election commission shall appoint the persons who are required to be members of that party on county election commissions.
- (3) When members of another statewide political party are required to be appointed to a county election commission, they shall be nominated by the party's state primary board.
- (4) Before appointing county election commissioners, the members of the state election commission shall consult with the members of the general assembly serving each of the counties as to the persons to be appointed to the county election commissions.

2-12-105. Organization.

Within twenty (20) days after their appointment, the county election commissioners shall organize by the selection of a chair and a secretary of different political parties from among them. The county election commission shall within ten (10) days thereafter report to the secretary of the state election commission and to the coordinator of elections the names and addresses of the officers and other members of the commission.

BACKGROUND

This allows a knowledge base to be maintained in all of our County Election Commissions by permitting the appointed Commissioners to make a conscious choice of whom they feel is most qualified to lead and serve as Chair. The Sevier County Election Commission, along with the other 94 County Election Commissions, is currently mid-term of a two (2) year term. The Sevier County Election Commission is the sole election commission in the state to have a minority party member elected as the Chairman of its commission, by a majority vote in which all five commission members participated.

PUBLIC CHAPTER NO. 1069 AS SIGNED INTO LAW BY GOVERNOR HASLAM ON MAY 23, 2016 READS:

State of Tennessee

Public Chapter No. 1069

House Bill No. 726

By Representatives Pody, Van Huss, Carr

Substituted for Senate Bill No. 787

By Senator Beavers

AN ACT to amend Tennessee Code Annotated, Title 2; Title 4; Title 5; Title 6; and Title 7, relative to elections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-12-103(b)(2), is amended by adding the following sentence at the end of the subdivision:

The chair of the county election commission shall be a member of the majority party, and the secretary shall be a member of a minority party.

SECTION 2. The act shall take effect July 1, 2016, the public welfare requiring it.

BRIEF

BACKGROUND

The Sevier County Election Commission, along with the other 94 County Election Commissions, is currently mid-term of a two (2) year term. The current Sevier County Election Commission and all others have fulfilled their requirements of reorganization in the manner in which they are all required to do so under 2-12-105. The Sevier County Election Commission is the sole commission in the state to have a minority party member elected as Commission Chair.

POSITION

Statute 2-12-103 fails to make provisions for additional reorganization beyond that required by statute (2-12-105) and thus to do so would constitute an extrajudicial activity not authorized nor enshrined at law and as such would be unwarranted.

Retroactive laws are frowned upon by our traditions and are generally regarded by the judiciary as beyond the authority of the legislature.

For example: Let us pretend new bill was introduced that changed the term of open carry gun permits from 6 years to 4 years and subsequently passed and signed into law. Would the State then tell tens of thousands of existing permit holders whom were somewhere in their 4th to 6 years that their permit terms were no longer valid because of the new law? The State would not. Though this example suggests disenfranchising thousands of citizens vs. Public Chapter No. 1069 seemingly have been conjured up to affect just one citizen of the great state of Tennessee, the principle is accurately the same.

BRIEF

The ethics of Public Chapter No. 1069 are questionable and the Constitutionality of Public Chapter No. 1069 is worrisome.

Public Chapter No. 1069 is arbitrary and capricious by enshrining in code that a commissioner of a specific political party must hold the Chair seat on County Election Commissions, regardless of prior experience or willingness to serve. In doing so, this law shall easily and likely prove to be disastrous to the operations, accuracy and integrity of our elections.

As commissioners are appointed every two years and an appropriate and controllable political division is historically specified by Tenn. Code 2-12-103(a), 3 members by the majority party and 2 by the minority party, it is quite possible that as many as 4 commissioners are brand new to the commission and bring no prior election experience. Therefore, Public Chapter No. 1069 may result in a majority party commissioner required to be the Chair and guiding the operation of elections, even if that commissioner has zero experience on an election commission, or knowledge of election procedures.

While the Sevier County Election Commission is currently the sole commission with a minority party member serving as Chair, in 2011 when Tennessee came under the control of the new supermajority, it was a year for county election commissions to reorganize by law and there were more than a handful of those commissions that chose a minority party member as Chair to lead them because that person was the most experienced, mainly due to tenure. In these cases, the considerations of the appointed commissioners provided for an appropriate election of a chair than a mandatory party line decision that may not fulfill the duty they owe to the public.

Enshrining in the code that one political party must run an appointed commission is an abomination of our legal system and democracy and certainly not in the best interest of the public. Given the supermajority control currently in the great state of Tennessee and the fact that members of that supermajority introduced and passed Public Chapter No. 1069, it does not instill public trust in elections to require the majority political party of a two-party system must run our elections rather than the will of the appointed commissioners themselves.

This brings into question whether the introduction of Public Chapter No. 1069 is unethical and violates the public trust.

The Tennessee Ethics Commission's Guiding Principles of Ethical Conduct for Public Officials states, "All citizens of the State of Tennessee have the right to expect that government will be administered and managed with the highest degree of professionalism void of undue influence by any individual or group. It is, thus, the obligation of every public official to conduct himself or herself in a manner that will not violate the public trust."

We are aware that in 2015, Representative Carr also took it upon himself to personally contact each Republican Sevier County Election Commissioner on multiple occasions, including calling them into his office for a meeting, where he instructed them that they must replace the Democrat chairman of their county election commission with a Republican. This in itself is a gross violation of the rules of ethics to which he is bound. When those directives were unsuccessful, he subsequently proposed Amendment 2 (HA1094) to HB0726.

Representative Carr's Amendment 2 (HA1094) to HB0726 became the entirety of the bill after replacing the original legislation text by Pody that solely concerned public notification of election meetings. The

amendment was adopted on the same day HB0726 was placed up for vote and failed to receive adequate publication for public consideration.

Representative Carr wrote this legislation to affect only the county-level election commissions that operate the elections and more specifically, to address a minority party commissioner serving as Chair in Carr's home district of Sevier County where Carr hoped to influence decisions such as the appointment of a new Sevier County Administrator of Elections.

The state election commission was not in the purview of this legislation. Public Chapter No. 1069 makes the division different for the state vs. the county (Reference 2-11-106 and 2-12-105, both of which remain unchanged). However, the rules for both the county and state election commission reorganization are identical under the law as it precedes this legislation. This law was written against the welfare of the public in order to specifically give control of our election operations to one party, violates the public trust and constitutes an attempt at undue influence in the operation of elections.

Neither is such a law part of the organization of commissioners on the Federal Election Commission (FEC). The Federal Election Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by the President, by and with the advice and consent of the Senate. No more than 3 members of the Commission may be affiliated with the same political party. *52 U.S. Code § 30106(5) - Federal Election Commission states:* "The Commission shall elect a chairman and a vice chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of one year. A member may serve as chairman only once during any term of office to which such member is appointed. The chairman and the vice chairman shall not be affiliated with the same political party. The vice chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in such office." Federal law that dictates the manner in which these commissioners elect their officers should serve as a benchmark of best practices for the Great State of Tennessee.

Section 2 of Public Chapter No. 1069 states act shall take effect July 1, 2016, the public welfare requiring it. However, it cannot be applied to the current office holders due to a lack of transitional provisions for the transfer of the offices. To adjust commission(s) at this time would violate the laws concerning the election and appointment of officials already in place.

In a July 4, 2016 article in the Knoxville News Sentinel, Rep. Carr acknowledged that Sevier County was the only county with a Democrat chairman of the election commission and that the amendment targeted that. See attached article.

There is no place for partisan politics in the operation of elections. While the five election commissioners may be appointed by party affiliation, public policy demands and ethics rules require they must work together in a non-partisan manner to ensure the fair and accurate elections for the public.



GUIDING PRINCIPLES OF ETHICAL CONDUCT FOR PUBLIC OFFICIALS

ARTICLE 1 STATEMENT OF PURPOSE

Under T.C.A. § 3-6-106, the Tennessee Ethics Commission (“Commission”) was given the responsibility to recommend guiding principles of ethical conduct for consideration and adoption by the legislative and executive branches. Hence, the purpose of this Guide is to provide the officials listed in § 3-6-106, for their consideration, these suggested standards of ethical conduct when serving the State of Tennessee.

The Commission was established to secure and enhance the integrity of the processes of government and to sustain the public’s confidence in government by increasing the integrity and transparency of State and local government. All citizens of the State of Tennessee have the right to expect that government will be administered and managed with the highest degree of professionalism void of undue influence by any individual or group. It is, thus, the obligation of every public official to conduct himself or herself in a manner that will not violate the public trust.

ARTICLE 2 DEFINITIONS

- (1) “*Compensation*” means any salary, fee, payment, promise, forbearance, reimbursement, or other valuable consideration, or any combination thereof, whether received or to be received.¹
- (2) “*Gift*” means any payment, honorarium, subscription, loan, promise, advance, forbearance, rendering, or deposit of money or services, unless consideration of equal or greater value is received. “Gift” does not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person’s immediate family or from a relative within the third degree of consanguinity of the person or of the person’s spouse, or from the spouse of any such relative. “Gift” does not include the waiver of a registration fee for a conference or educational seminar.²
- (3) “*Immediate Family*” means a spouse or minor child living in the household.³
- (4) “*Public Official*” includes:

¹ T.C.A. § 3-6-301(7)

² T.C.A. § 3-6-301(11)

³ T.C.A. § 3-6-301(12)

- a. Members of the General Assembly; and
- b. The Governor, Secretary of State, Treasurer, Comptroller of the Treasury, members of the Governor's Cabinet, and Cabinet level staff within the Governor's Office.⁴

(5) "*Solicit*" means to entreat, to implore, to ask, to attempt, or to try to obtain.⁵

ARTICLE 3
CONFLICTS OF INTEREST

(1) SECTION 1. *Independence of Judgment.* Public officials should be independent and impartial, and should avoid conflicts of interest and the appearance of conflicts of interest when performing their duties. In addition, all public officials should be elected, appointed, hired and promoted based upon their qualifications, integrity, honesty, competence, and dedication to fulfilling the public policies of the State. A public official should not act in conflict with the proper discharge of his or her duties in the public interest by

- (a) failing to disclose any financial or other interest, or
- (b) engaging in any business or transaction or professional activity, or
- (c) incurring any obligation of any nature

which would create such a conflict.

(2) A public official should not accept another position, whether compensated or not, which

(a) either will impair, or is likely to impair, the public official's independence of judgment as to the public official's duties or employment, or

(b) will require or induce the public official to disclose confidential or inside information acquired in the course of and by reason of the performance of the official's duties, other than as permitted or required by law.

(3) A public official, a member of the official's immediate family, or a business, in which he or she is an officer, director, or holds more than a minimal interest, should not bid on, or otherwise respond to, a request for proposal or information, or seek any contract with the State, other than a contract of employment as a public official or pursuant to a court appointment, unless the contract has been awarded through an open and public process or as otherwise permitted by law.

(4) A public official, who is involved in making decisions relating to the awarding of State grants or contracts, should not ask any officer, director, employee, or agent of any current or prospective contractor or grantee or contractor to reveal: (a) the party affiliation of the

⁴ T.C.A. § 3-6-106(a)(1)(A-B).

⁵ T.C.A. § 3-6-301(22).

individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual or entity voted for any elected official or candidate for elective office.

(5) A public official should not take part in any contracting decision relating to:

(a) a member of the public official's immediate family; or

(b) any entity in which a member of the official's immediate family is an officer, director, or partner, or in which a member of the official's immediate family holds more than a minimal interest, except as otherwise permitted by law.

(6) A public official, in the performance of his or her official duties, should not request or demand that any other person or entity make or offer to make any monetary contribution or in-kind contribution to any campaign or to any political campaign committee in exchange for, or as a condition of, receiving some benefit from the State of Tennessee or any department, agency or official thereof, to the person or entity whose contribution is requested or demanded, or to the person making the request or demand.

(7) A public official should not, by his or her statements or conduct, give reasonable basis for the impression that any person can improperly influence him or her, or receive favoritism in the performance of his or her official duties, or that the official's decisions are affected by the kinship, rank, position, or influence of any political party, entity or person. A public official should be prepared to disclose the conflict or the potential conflict of interest or relationship and, if necessary, recuse himself or herself in order to negate any appearance of improper influence.

SECTION 2. *Integrity of the Processes of Government.* The integrity and reputation of the government and its processes should at all times be maintained. Government employment is a privilege rather than a right, and is based upon the trust and confidence placed in the State by the public. All public officials should act in a manner consistent with the public trust.

(1) A public official, in the performance of his or her official duties, should not use or attempt to use his or her official position to secure or create unwarranted privileges, exemptions, advantages, or treatment for himself or herself or others. A public official, alone or through others, should not use or attempt to use improper means to influence a department, agency, board, or commission of State government.

(2) A member of the General Assembly should not vote on or influence legislation in committee or on the floor of either house, where he or she has a personal interest in the matter being considered, debated or voted upon, unless the official makes it abundantly clear that the member's decision or vote was not the result of any personal interest, but rather that it was through deliberative processes based solely on the member's views of the merits of the matter and/or the interests of the public. This disclosure may be accomplished by making a public statement using the following, or similar, words: "It may be considered that I have a personal degree of interest in the subject matter of the bill, but I declare that my argument and my ultimate vote answer only to my conscience and my obligation to my constituents and the citizens of the State of Tennessee."⁶

⁶ Derived from TN Senate Rules-85, Art. II, § 2(a)(1).

(3) A public official should not willfully and knowingly disclose, directly or indirectly, for personal gain, confidential information acquired by him or her in the course of and by reason of his or her official duties or employment, unless such disclosure is required or permitted by law.⁷

(4) A public official should not receive anything of economic value or any compensation besides the official's regular salary and benefits, other than as required or permitted by law or in the performance of his or her official duties, for any service which is significantly related to the duties, programs, or operations of the public official's position.⁸

(5) A public official should not hire or supervise a member of the public official's immediate family in carrying out official State duties. However, nothing in this section is intended to prohibit the continued employment of a member of the official's family who currently works for or is supervised by the official. Furthermore, this section is not intended to hinder normal promotional advancements for such employee if that employment predates the election, employment, or appointment of the public official. A public official should recuse himself or herself from any decision involving the promotion, discipline, discharge, or assignment of work to his or her immediate family member.

(6) A public official should not use public funds, time, personnel, or other state-provided resources for the private gain or political purpose of the official or that of another person, unless otherwise authorized by law.

(7) A public official should not request, receive, or agree to receive anything of value based upon any explicit understanding, or any reasonably inferred understanding, that his or her vote, opinion, judgment, or action will be influenced thereby.⁹

ARTICLE 4 **COMPENSATION AND GIFTS**

(1) A public official should not accept any gratuity or compensation for the performance of his or her duties, other than his or her official salary and allowances or as otherwise authorized by law.¹⁰

(2) A public official should not solicit, receive, or accept a gift, favor, or service from any entity or individual which has a matter before the public official or the public official's direct authority, under circumstances where it could reasonably be inferred that such gift would influence the official in the discharge of his or her duties.¹¹

(3) A public official, pursuant to T.C.A. §§ 3-6-304 and 305, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, as defined in T.C.A. §§ 3-6-301(8) and (17), unless there is a clear exception prescribed elsewhere by law. It is the

⁷ Derived from TN Senate Rules-85, Art. II, § 2(c)(4).

⁸ Derived from TN Senate Rules-85, Art. II, § 2(c)(1).

⁹ Derived from TN Senate Rules-85, Art. II, § 2(a)(3) & (4).

¹⁰ T.C.A. § 2-10-123(a) and TN Senate Rules-85, Art. II, § 2 (a)(2).

¹¹ Derived from TN Senate Rules-85, Art. II, § 2 (a)(3).

HOUSE BILL 726

By Pody

AN ACT to amend Tennessee Code Annotated, Title 2;
Title 4; Title 5; Title 6 and Title 7, relative to
elections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-1-110, is amended by deleting the section and substituting the following language:

(a) This section shall be known and may be cited as the "Voters Right to Information Act."

(b) When a commission or board established under this title is required to convey notification of any meeting by United States mail:

(1) The commission or board shall notify all registered voters by United States mail in the county or municipality, as applicable, in which notice is to be given;

(2) Notice shall be mailed not less than two (2) weeks prior to any meeting to give notice effectively to the qualified voters of the area in which notice is to be given; and

(3) Notices that require the same time frame for notification may be combined in the same mailing.

SECTION 2. Tennessee Code Annotated, Section 2-1-117, is amended by deleting the section.

SECTION 3. Tennessee Code Annotated, Section 2-2-114, is amended by deleting the language "in a newspaper of general circulation" where it appears in subsections (a) and (b) and substituting the language "by United States mail pursuant to § 2-1-110 to each registered voter".

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August 26, 2016

Michael Fitzgibbons
4299 S. Boogertown Road
Sevierville, TN 37876

RE: Removal from Sevier County Election Commission

Dear Mr. Fitzgibbons,

The State Election Commission voted to remove you in a bipartisan 5-2 vote for cause from the Sevier County Election Commission at its meeting on Friday, August 26, 2016. This action was a result of your violations of Tenn. Code Ann. § 2-1-111 and 2016 Public Chapter No. 1069.

As a result of this decision, you are no longer a member of the Sevier County Election Commission effective immediately.

Sincerely,

A handwritten signature in cursive script that reads "Donna Barrett".

Donna Barrett
Chairman

State Election Commission

Current Policy for Certified AOE's to Maintain Certification Adopted - June 13, 2011

- The State Election Commission discussed whether a terminated AOE or an AOE who has resigned / retired is still certified after they are no longer employed by an election commission.

Motion was made, seconded and unanimously approved to conditionally certify previous Administrators' of Elections (AOE's) who either resigned, retired or were replaced, but who returned to the position of AOE within three (3) years of separation; provided such AOE, within six (6) months of rehire attends four (4) days of training given by the Coordinator's office and takes a non-binding mock exam. After three (3) years of not attending the State seminar the AOE is no longer certified.

2016 – TACEO Attendance Records

94 – Administrators
of Elections in
Attendance

Excused
Haywood County

Former Administrators of Elections Attending

Tristan Arnold
Molly Bailey
Ray Barrett
Nicole Lester
Tammy Smith

2015 – TACEO Attendance Records

91 – Administrators
of Elections in
Attendance

Excused
Jefferson County
Johnson County
Lake County
Not Present and Not
Certified
Davidson County

**Former
Administrators of Elections
Attending**

Nicole Lester
Tammy Smith
Suzanne Smith

2014 – TACEO Attendance Records

93 – Administrators
of Elections in
Attendance

Excused
Greene County
McMinn County

**Former
Administrators of Elections
Attending**

Ray Barrett
Tammy Smith