

Minutes
State Election Commission Meeting
June 12, 2017

The State Election Commission meeting was called to order by Chairman Jimmy Wallace at 12:09 p.m., Central Standard Time, June 12, 2017. The following members and staff were present: Chairman Wallace; Commissioners Barrett, Blackburn and McDonald; Coordinator of Elections Mark Goins, Assistant Coordinator of Election Beth Henry – Robertson, AES Systems Administrator Steve Griffy and Kathy Summers, Elections Specialist.

Commissioner Barrett made a motion to adopt the minutes as amended from April 3, 2017, Commissioner McDonald seconded the motion and the minutes were unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, and Wallace; No votes: None; Abstention: None.)

Commissioner Blackburn made a motion to adopt the minutes from May 9, 2017, Commissioner Barrett seconded the motion and the minutes were approved unanimously. (Aye votes: Barrett, Blackburn, McDonald, and Wallace; No votes: None; Abstention: None.)

Commissioner McDonald made a motion to adopt the minutes from May 30, 2017, Commissioner Blackburn seconded the motion and the minutes were unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, and Wallace; No votes: None; Abstention: None.)

Commissioner Blackburn made a motion pursuant to T.C.A. § § 2-12-101 and 2-12-106, seconded by Commissioner McDonald 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 Monday, June 12, 2017. (Aye votes: Barrett, Blackburn, McDonald, and Wallace; No votes: None; Abstention: None.)

Old Business

- **Discussion of the status of county election commission members serving on other paying boards** - Commissioner Barrett discussed the appointment process and wants to ensure that the qualifications of county election commissioners are applied uniformly and as legislatively intended. Commissioner Barrett put together a timeline of legislation, Attorney General Opinions and recent actions taken by the State Election Commission regarding appointments.

Commissioner McDonald cited both Attorney General Opinion No. 15-71 and Attorney General Opinion No. 79-59, which state rural electric cooperatives are not governmental agencies. He believes any person serving on a cooperative should be allowed to also serve on the county election commission. Commissioner McDonald also read information received by e-mail from Mike Knotts, Vice - President of Governmental Affairs for the Tennessee Electric Cooperative, which supports his opinion. (See attached email.)

Commissioner Barrett stated that based on research of legislative history done by Beth Henry-Robertson, Assistant Coordinator of Elections, when the legislature wanted an exemption, the exemption was specifically added to T.C.A. § 2-1-112. Commissioner Barrett believes the legislative intent is that appointees to the county election commission should be above-board so that there are no impressions of a conflict of interest. Commissioner Barrett gave the example of how prior to one of the legislative changes, a county election commissioner served as a campaign manager for a candidate. The county election commissioner testified before the General Assembly about how the public had a very negative response to his actions. Commissioner Barrett would like a straight interpretation of what the statute is and for the Commission to adhere to the statute as interpreted.

Chairman Wallace requested Coordinator Goins to draft several suggested pieces of legislation to clarify who can and cannot serve.

Coordinator Goins said it is appropriate for the commission to suggest legislation to the General Assembly, and he will work with Elections staff to come up with several proposals of legislation for the State Election Commission to review and submit to the General Assembly.

Hazel Thornton, representative from the League of Women Voters, spoke and said she agrees with State Election Commissioners members' position regarding non-partisanship. Mrs. Thornton does everything she can to not appear partisan but; she does not see an issue with county election commissioners serving on more than one board.

New Business

- **Everyone Counts – Voter Registration System - Demonstration – Brandon Johnson, Sales Director** - Mr. Johnson spoke and began a presentation of Everyone Counts – Voter Registration System to the State Election Commission.

Fellow Everyone Counts presenters and speakers with Mr. Johnson were as follows:

- Bill Kunz – Chief Financial Officer

- James Simmons – Vice-President of Technology and Operations
- Warren Scott – Product Manager
- Janice Banks – President and CEO of Small Planet Works

Everyone Counts has been chosen as the preferred vendor for Shelby County Election Commission's new voter registration software system, and the company is requesting approval of their voter registration system for use in Tennessee.

Coordinator Goins asked James Simmons about security of the system. Mr. Simmons is the Vice – President of Technology and Operations, and he assured the commission their company has several aspects to security. Everyone Counts has one person who focuses on security of the overall infrastructure of their Technology and Operations group, and that within each product offered, there is an engineering team member who is dedicated to the security of each product. It is a two-layer approach to implementing security within the various systems and there are two employees fully dedicated to implementing security. Everyone Counts also has external contractors who they work with, to do vulnerability and penetration testing. The last vulnerability and penetration test was conducted by Rapid 7, in 2016, and they found low to medium risk. Security is a huge focus for Mr. Simmons' company.

Janice Banks, President and CEO of Small Planet Works, who works with Shelby County Election Commission, advised her company will implement the latest protocols for security with the county election commission to guard against cyber-attacks.

Mr. Simmons stated they have a development team of twenty – four (24) employees who are building the voter registration product. There are a total of seventy-one (71) employees at Everyone Counts. The product is being built to the specifications provided by the Shelby County Election Commission. Everyone Counts and Small Planet Works are working together with the Shelby County Election Commission to implement and ensure the product meets the specifications, requirements, customization and support needed to migrate the data information from the county voter files and to have a successful launch. Small Planet Works, is located in Shelby County, and will be on the ground supporting Shelby County through the complete process.

Commissioner Barrett asked about the services provided in New Jersey. Everyone Counts stated they are maintaining New Jersey's previous system and that they have conducted two (2) major updates to the system.

Mr. Simmons stated New Jersey will go live at the end of the year with the new voter registration platform. Mr. Simmons also stated both Shelby

County and New Jersey's new voter registration systems, will be implemented in parallel by the end of the year.

Warren Scott, Product Manager for Everyone Counts, went over the voter registration system. The voter registration system is designed around efficiency, ease of use for the end user, security, error detection and avoidance of entering errors with autofill and auto correction. Mr. Scott showed how the voter registration would work on the county level and the system has county GIS information, which is updated periodically.

The Shelby County Election Commission did a RFP to replace their current system and Everyone Counts was awarded the proposal. A condition to move forward was State certification of Everyone Counts voter registration system. The system will be built to state regulations. If the commission chooses not to certify Everyone Counts then Shelby County is left without a vendor. If the State Election Commission certifies Everyone Counts and in September they are not meeting the requirements, then the commission could decertify the system. Coordinator Goins believes, based on conversations with Steve Griffy, AES Systems Administrator, Everyone Counts system will be compatible with the state system.

Brandon Johnson said Shelby County would like to go live in January 2018. Everyone Counts will be working with Shelby County prior to September in order to determine their voter registration system needs.

Brandon Johnson stated Shelby County's fiscal year ends June 30, 2017, and the county wants to execute the contract in this fiscal year with funds appropriated. Shelby County will lose the funds if the contract is not executed by the end of June.

Coordinator Goins asked should something happen with the company, and the company changes focus, what protects Shelby County.

Bill Kunz stated their company added escrow language to part of Shelby County's contract. The added language will provide Shelby County the source code, methods and documentation.

James Simmons also stated their company is very committed to the voter registration system. Mr. Simmons stated should their company no longer be able to service the system, or the company chooses not to service Shelby County's system, Everyone Counts has given the county perpetual rights to all software, code, documentation and the county would be able to hire someone else to maintain the system.

Coordinator Goins stated he does not want to put Shelby County in the same situation that they are currently in, and not have service or support for their voter registration system.

Coordinator Goins and State Election Commission expects the voter registration system for Shelby County to be compliant by January 2018. Coordinator Goins also cautioned Everyone Counts that security is Tennessee's focus.

Commissioner McDonald asked what is involved in revocation if Everyone Counts does not comply. Coordinator Goins stated the policy for certifying a voter registration system, in Tennessee, requires the voter registration system must be compatible with the statewide system operated by the Division of Elections.

Commissioner Barrett stated the commission is missing three (3) of its members today, and she regrets those members are not available to hear the presentation and discussions. Commissioner Barrett does not like being a case of first review and Shelby County is the biggest county in the state. Commissioner Barrett believes Shelby County could do something to redirect appropriated funds.

Bill Kunz stated Everyone Counts is under a pretty strict timeline for implementation with Shelby County, and he would hate to lose a month where they cannot do county specific implementation with Shelby County.

Coordinator Goins said having gone through this same process, for the online voter registration system, he understands the time constraints and processes required to issue an RFQ and obtain bids.

Commissioner McDonald asked Coordinator Goins if he believes Shelby County's system is functional. Coordinator Goins says the system is functioning but it is getting difficult to maintain the system.

Commissioner McDonald asked Coordinator Goins if he is recommending the State Election Commission move forward with approving Everyone Counts request.

Coordinator Goins stated he is willing to go forward with this request.

Commissioner Barrett asked if the commission approves the vendor today, could the commission review the vendor again at a specific day.

Coordinator Goins suggested a periodic status update from the vendor, and for the vendor to reappear at the State Election Commission meeting on October 9, 2017. Everyone Counts agreed to this request.

Commissioner Barrett stated that when she was in the Legislature, the state would enter into a contract and the vendor would not be ready, and then there would be delays and extensions. The state ended up losing money on a contractor who could not provide the services. Commissioner Barrett would rather have checks along the way, than finding out the vendor cannot deliver the end product.

Coordinator Goins asked Everyone Counts if they have set the timetable for deliverables.

Brandon Johnson said they have established a deliverable timetable and October would be a good time to provide the State Election Commission an update.

Coordinator Goins asked if there was a penalty if Everyone Counts does not meet the January deadline.

Brandon Johnson said that when they roll out their voter registration system they do it in phases. The first phase implements voter registration and is due in January. The first phase is known as the critical phase. Phase two roll out is in February and phase three rolls out in March. Training is important and is conducted during each phase.

Coordinator Goins asked Everyone Counts to provide him and the State Election Commission with a copy of the deliverables schedules, the protection clause and escrow provisions.

Both James Simmons and Bill Kunz reiterated Shelby County has a complex RFP, and they have confidence their company will be able to deliver the product in the timeframe established.

Steve Griffy, AES Systems Administrator for the Secretary of State, Election Divisions, spoke before the State Election Commission. Mr. Griffy goes through the vendor files to ensure the vendor meets the state requirements. When he did his preliminary evaluation of Everyone Counts, he did not see anything which left him with any concern. Mr. Griffy stated Shelby County's system is old and migrating it off is an option, but no one in the county wants to maintain or develop it for the election commission. Mr. Griffy will be involved with Shelby County and Everyone Counts to make sure transition to the new system is smooth.

Chairman Wallace asked what would happen to Shelby County if the commission does not certify the voter registration system. Steve Griffy responded that Shelby County has two separate systems, a voter registration side and an election management piece. Mr. Griffy says the current voter registration system could still function, but they are not able to get any enhancements on their current system.

Commissioner Barrett asked if the RFP for Shelby County has a list of needs and wants. Steve Griffy stated prior to Shelby County sending out their RFP, he provided them with the information required by the State for the voter registration system. Mr. Griffy said he has not seen the list of their needs and wants, or the RFP for Shelby County.

James Simmons stated the RFP for Shelby County had a set of State requirements and another set of requirements which the county would like

as well. Most of items listed as optional, in the RFP, can be supported by Everyone Counts. There are a few items which are outside the scope of their voter registration system. However, the requests could be a part of a future change order or system enhancement.

Commissioner McDonald referenced the State Election Commission policy on certifying voter registration systems in Tennessee. Specifically, step 3, item II, states: "In the event that the vendor's system is not certified, documentation will be supplied to the vendor outlining system deficiencies." Commissioner McDonald asked Mr. Griffy if he sees any deficiencies and Mr. Griffy stated he does not see any deficiencies.

Commissioner McDonald made a motion to certify Everyone Counts voter registration system for use in Shelby County, Commissioner Blackburn seconded the motion and was unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, and Wallace; No votes: None; Abstention: None.)

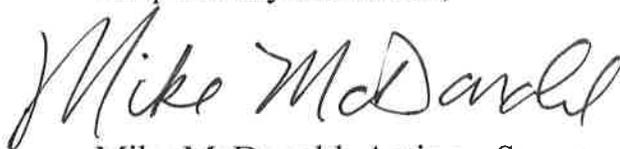
Coordinator Update

- **TACEO Seminar** – The annual education seminar will be given on June 26 -27.
- **Kidd Lawsuit** – Coordinator Goins suggested commission members might want to have an Executive Session at a later date to discuss this legal issue.

The next regularly scheduled meeting is set for July 10, 2017, and will be held in the William R. Snodgrass – Tennessee Tower, Nashville Room - 3rd floor at 12:00 Noon, Central Standard Time.

Chairman Wallace 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, Acting - Secretary
State Election Commission

Subject: Re: electric coops and county election commissions
Date: Friday, May 26, 2017 at 5:13:02 PM Central Daylight Time
From: Mike Knotts
To: Mike McDonald
CC: David Callis, Dick Lodge, Erica Vick

Mike,

Thanks for the call to alert me of this situation.

As you know, an electric cooperative is a private, not for profit corporation and is in NO way, shape, or form a government entity. Nor were cooperatives "formed by government." They were formed by individuals who banded together to establish a corporation - that is why a electric cooperative has "members" and does not have customers. Every customer is a "member" in the legal sense of the word - meaning they have ownership interest.

See the attached attorney general's opinion that clearly states that electric cooperatives are not government entities. The key information is:

Electric cooperatives in Tennessee are incorporated under the **Electric Cooperative Law** (T.C.A. ??? 65???2501, et seq.) as private, not-for-profit corporations for the purpose of supplying electric energy and promoting and extending the use thereof. T.C.A. ?? 65???2503. Nothing in the **Electric Cooperative Law** reflects that an **electric cooperative** is to be considered a department, agency or instrumentality of any governmental unit. That an **electric cooperative** is not to be considered a governmental agency is affirmatively indicated by the fact that the property of **electric cooperatives** is subject to ad valorem property taxation. T.C.A. ?? 65???2530.

Also, electric cooperatives are not considered "public utilities" under Tennessee law. TCA 65-4-101 (6) (A) lists what is to be considered a public utility. Further, 65-4-101 (6)(A)(i through ix) lists entities that are not considered public utilities. Section (v) states that electric cooperatives are not public utilities. Also, note that co-ops are listed separately from government-owned utilities in this section - needing separate exclusion because they are not government owned.

The AG opinion you referenced in our call, <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op13-077.pdf>, has no bearing on electric cooperatives. It references compensation from a government entity as a disqualifying factor in serving on an election commission, and electric cooperatives are not government entities.

I hope this is helpful. For my reference, could you reply with the names of the individuals from Bedford and Clay county you appointed? I was not in a place to write their names down, and would like to be clear about who this affects.

Let me know how else I can help.

Mike

Mike Knotts | Tennessee Electric Cooperative Association | Vice President of Government Affairs
O: 615.515.5520 | M: 615.347.4783
tnelectric.org | twitter.com/tnelectric | facebook.com/tnelectric

On May 26, 2017, at 3:59 PM, Mike M

State of Tennessee

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

Holdover Status

Monday, June 12, 2017

		Appointment	Reappointment
Dyer	R Jimmy Wallace / D Greg Duckett		
	D George L. Mitchell	4/15/2013	4/6/2015
	D Larry G. Williams	6/13/2011	4/6/2015
Hardin	R Jimmy Wallace / D Greg Duckett		
	D David Jerrolds	5/16/2006	6/22/2015
Perry	R Donna Barrett / D Greg Duckett		
	D Lena Jo Kidd	5/4/2015	5/4/2015
Stewart	R Jimmy Wallace / D Greg Duckett		
	D Nellie F. Settle	4/3/1995	5/4/2015
	D Martha A. Vaughn	4/3/1995	5/4/2015
Total Holdovers: 6			

Vacant Status

12-Jun-17

Crockett

D Greg Duckett
R Jimmy Wallace

D

Hardin

D Greg Duckett
R Jimmy Wallace

D

Perry

D Greg Duckett
R Donna Barrett

D

Tipton

D Greg Duckett
R Jimmy Wallace

D

Total Vacancies: 4

State of Tennessee



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

New Appointment Status

Monday, June 12, 2017

		Appointment
Dyer	R Jimmy Wallace / D Greg Duckett	
	D George L. Mitchell	6/12/2017
	D Larry G. Williams	6/12/2017
Hardin	R Jimmy Wallace / D Greg Duckett	
	D Rosa Lynn Morris	6/12/2017
Perry	R Donna Barrett / D Greg Duckett	
	D W. Wayne Swindle	6/12/2017
Total New Commissioners: 4		

Certification Procedures for Voter Registration Systems In Tennessee 2017 Updates

Before a voter registration system may be sold in Tennessee, the Coordinator of Elections and the State Election Commission must certify the voter registration system. These systems include, but may not be limited to, voter registration management and election management systems. In determining whether a voter registration system may be certified, the Coordinator of Elections and the State Election Commission shall consider, at a minimum, the following:

- (1) The compatibility of the voter registration system with any statewide system being operated by the Secretary of State's office;
- (2) The history of ethical conduct in the sales of the voter registration system by the manufacturer or seller; and
- (3) The ability of the manufacturer or seller of the voter registration system to provide adequate professional assistance and service to the counties of Tennessee.

The following are the steps to be followed to certify a voter registration system for purchase and use in Tennessee:

Step 1:

Any interested vendor must submit a written request to the Coordinator of Elections and State Election Commission requesting certification of the voter registration company and system. The request should include documentation to support the company and the system. At a minimum, the vendor must provide to the Coordinator of Elections and the State Election Commission evidence of the following:

- I. **Vendor Documentation** - The vendor must supply background information concerning the parent company. This information must be presented to the Coordinator of Elections and the State Election Commission in written form. The document submitted must include the information outlined below as minimal.
 - A. Company Overview
 1. Description
 2. Form of Business - sole proprietor, partnership, corporation, etc.
 3. Office locations
 4. Size/type of staff
 5. Products and services offered
 6. Financial report
 - B. Client Base
 1. Estimated number of clients served in the last 10 years
 2. List of 3 client referrals (preferably of users of the voter registration system)
- II. **System Documentation** - The vendor must supply information concerning the voter registration system. This information must be presented to the Coordinator of Elections and the State Election Commission in a written form. At a minimal, the document submitted must include the information outlined below:
 - A. Years in production
 - B. Growth of the system
 - C. Functions performed by the system
 - D. Number of installations in production
 - E. Support staff provided for installation and support
 - F. Hardware and software requirements

Step 2:

Following the receipt of the request to certify a voter registration system, the Coordinator of Elections will send to the vendor an "Electoral System Specifications Manual" and preparations for a demonstration of the system will begin.

- I. **Review of the "Electoral System Specifications Manual"** - The vendor must review the requirements found in the "Electoral System Specifications Manual" and ensure that the software and operations system of the voter registration system seeking certification meets the minimum requirements listed in the manual
- II. **Demonstration** - A demonstration of the system must be performed. The system is expected to minimally perform to the specifications outlined in the "Electoral System Specifications Manual." Additional functions, not outlined in the manual, may be demonstrated. The Coordinator of Elections and Elections System Administrator must be present at the demonstration. The demonstration should be held in an office or conference room within or near the office of the Coordinator of Elections. Requests for alternate locations must be approved by the Coordinator of Elections.

Step 3:

After the demonstration, the product must be placed on the agenda for a presentation the State Election Commission. The Coordinator of Elections and the State Election Commission will determine whether the voter registration system may be certified. A vendor's status is considered certified or not certified. Categories of pending or partial certification do not exist.

- I. **Notice of Certification** - The vendor will be notified in writing of the certification. Once a vendor has been certified, all actual purchasing decisions are made by the individual counties rather than the state government.
- II. **Notice of Denial of Certification** - In the event that the vendor's system is not certified, documentation will be supplied to the vendor outlining system deficiencies. Any vendors not certified may request another demonstration. The request for another demonstration may be accepted at the discretion of the Coordinator of Elections and the State Election Commission.

Step 4:

- I. **Required Revisions** - Certification criteria will require modification due to Federal or State Legislative decisions. Vendors are not required to reapply for certification, but are expected to make the appropriate system modifications for all locations within in a reasonable period of time for the counties. Failure to make the required system modifications may result in decertification.
- II. **Evaluations** - Voter Registration systems in use throughout the State of Tennessee will be periodically evaluated to insure compliance to the certification specification requirements and insure continued service and support is maintained to assist County Election Commission offices to perform the system functions defined by the documentation (original and updates) of the system.

Correspondence for the Coordinator of Elections and the State Election Commission must be sent to the following address:

Coordinator of Elections Office
312 Rosa L. Parks Avenue
7th Floor, William R. Snodgrass Tower
Nashville, TN 37243

Any questions may be directed to the Coordinator of Election's office at (615) 741-7956.