

State Election Commission
Friday, February 5, 2016 – 2:00 p.m.
Secretary of State's Conference Room
Minutes

Attendees:

Members

Secretary of State Natalie E. Tennant
Gary A. Collias, by teleconference
Vince Cardi, by teleconference

Guests

Joe Reidy
Kent Gates
Brian Messer
Anne Charnock
Caleb Turner
Lyle Sattes
Maryl Sattler
Pat Maroney
Ashley Summitt
Tim Leach
Justin Williams
Dave Nichols
Layna Brown

The State Election Commission met on Friday, February 5, 2016 at 2:00 p.m. in the Secretary of State's Conference Room at the State Capitol Complex. The emergency meeting was called to order and chaired by Secretary of State Natalie Tennant. A quorum of members was established.

Secretary Tennant stated that the purpose of the meeting is to address the certification requests from Brent Benjamin and Bill Wooten. Prior to the process of the certification, she deferred to Tim Leach for anything that needs to be discussed beforehand. She continued that she is aware of the request for a hardship waiver for Brent Benjamin.

Mr. Leach addressed the Commission. He explained that he had received an email request from the Benjamin campaign formally asking for a hardship waiver of the electronic filing requirement for their exploratory reports. Vince Cardi asked for a summary of the issue. Mr. Leach continued that the candidates have a requirement each month to report the carry-over from the previous month's balance. It summarizes all of the activity for the month even if there is not any. That filing requirement, by statute, has to be filed electronically. However, there is a proviso that with the permission of the SEC for unusual hardship reasons, the electronic part of it can be waived. Mr. Leach stated that the Benjamin campaign has advised him that the Secretary of State's electronic reporting software system does not recognize public campaign financing pre-candidate filings. There is no way to get those reports into the system because it was not designed to recognize that unique state of the campaign. Mr. Cardi asked if the facts support the contention that there was no way for the report to be filed electronically because the Secretary of State's software was not set up to receive it. Secretary Tennant responded yes. She asked if there were any more questions. Joe Reidy, Kent Gates and Anne Charnock had a discussion concerning issues related to the differences between exploratory reporting for public financing and a regular candidates pre-candidacy. Secretary Tennant stated

that the issue before the commission is the question of a hardship. Mr. Reidy and Mr. Gates had further discussion relating to the exploratory report for the Benjamin campaign. Secretary Tennant re-stated that the question is does the State Election Commission grant a hardship waiver to the Brent Benjamin campaign. Mr. Cardi asked what code section has allegedly not been complied with. Mr. Leach responded that the electronic filing requirement is in W. Va. Code §3-12-13(b) and (c). Mr. Cardi asked if the Benjamin campaign made a good faith effort to comply with the code section. Mr. Leach responded yes. Mr. Cardi made a motion that the State Election Commission grant the hardship waiver request with Gary Collias seconding. The motion carried with a unanimous vote.

Open discussion was had concerning questions by Mr. Reidy with regards to declarations of intent and the differences between exploratory money raised and required reports to seek public financing and pre-candidacy funds and reports. Mr. Gates questioned the timing of finding the issue with the software. Mr. Reidy asked what is required on the report to be filed by the Benjamin campaign. Mr. Leach referred him to W. Va. Code §3-12-8(a).

Secretary Tennant stated that the Commission will now move on to the certification request of Brent Benjamin. Mr. Leach addressed the Commission. He stated that the Brent Benjamin request would be considered first because the W. Va. Code requires that they be acted on in the order received. He continued that on February 2, 2016, a sworn statement of application for certification to receive public finance was received from Brent Benjamin. The application contained the required elements. He stated that the candidate is eligible to be certified under W. Va. Code §3-12-10(b)(1)(2)(3) and (4). Mr. Cardi asked if the Benjamin campaign had also met the requirement of W. Va. Code §3-12-10(b)(5). Mr. Leach responded that the only issue may be the timeliness of some of their reports. Secretary Tennant asked what has not been met in number 5. Mr. Reidy requested to see the application for certification. He stated that he had been told that the application was not received on February 2nd and questioned the date stamp. Mr. Leach responded that one of the date stamps was his personal stamp based on when he received an email, not the official office filing. The official office filing had also been received on February 2nd but had a different looking stamp. Kent Gates addressed the Commission and stated that before certifying, all of the paperwork must be turned in for the pre-candidacy report. Mr. Cardi asked that since the Benjamin campaign has asked for a hardship extension, is the commission ready today to grant the certification if one of the needed reports has not been filed. Secretary Tennant suggested tabling the discussion until the report is filed. She continued that since there had been challenges to the Benjamin campaign, the commission has 6 days to decide on the certification request. There was discussions concerning what information would be needed from the missing report and if the report is needed in order to certify the candidate. Mr. Cardi made a motion to delay consideration of the request for certification until the extension that has been granted for it to be submitted within the 6 days. It can be considered then or earlier if it's ready. Gary Collias seconded the motion. The motion carried with a unanimous vote. Anne Charnock asked if the Benjamin campaign has to submit a new application to certify. Mr. Leach responded no. Secretary Tennant continued that the certification request is already in place.

Secretary Tennant announced that the next item to be considered by the Commission is the certification request of Bill Wooten. Tim Leach addressed the Commission. He stated that he has received a sworn application for certification to receive public finance from Bill Wooten. The statement is dated February 3, 2016 and contains the required elements. Mr. Leach continued that the candidate is eligible per W. Va. Code §3-5-9. He stated that he has received 2 letters from the Walker campaign dated February 2, 2016 and February 3, 2016. The second letter contains an objection to the qualification based on compliance with all of the article. It states that the candidate has not complied with the provisions of 146CSR5.6.1 which provides that "no later than 2 business days after the close of the qualifying period, a candidate who desires to apply for public financing funds shall file an Application for Certification with the Secretary." The letter states that no such application for condition was filed on or before Tuesday, February 2nd. Accordingly, the candidate has not met the requirements to be a certified candidate. Mr. Leach responded that this issue has been discussed in earlier meetings this week. The qualifying period closed on January 30th which was a Saturday. The first business day was February 1st and the second business day was February 2nd. Mr. Collias asked if this is the same issue discussed earlier where the regulation provided a time limit,

but the statute didn't. He continued that the Commission had been giving people the benefit of the doubt in interpreting the regulation because it conflicted with the statute. Mr. Leach responded yes. He continued that was the same argument made in regards to the Walker's campaign being denied the right to file challenges because they had missed the 2 day deadline. There is no 2 day deadline for filing challenges or the filing for the request for the certification in the statute. Mr. Collias stated that in order to be consistent with an earlier decision, the Commission would have to let the Wooten campaign file 1 day late. Secretary Tennant agreed. Vince Cardi made a motion that the Commission find that the February 3, 2016 request for certification was timely filed on the basis that was just explained. Gary Collias seconded the motion and added that the motion go forward and say therefore, the Wooten campaign should be certified. In discussion on the motion, Pat Maroney stated that the motion should be affirmed based on W. Va. §3-12-10, which states that the candidate shall apply to the Commission for public campaign financing and file a sworn statement. There is no 2 day restriction within the statute. The 2 day restriction is found in a rule. He explained that WV case law is very specific that the rule cannot deny or expand or contract what the statute says. Secretary Tennant called for a vote on the motion. The motion carried with a unanimous vote.

Secretary Tennant asked if there was any other business to become before the Commission. Joe Reidy read a statement on behalf of Beth Walker. In response to the statement, Tim Leach stated that the statute provides that once a candidate is certified for eligibility, the State Election Commission, the Secretary of State's Office and the State Auditor have to deliver a check within 2 business days. There was discussion concerning the statement and any possible changes in procedure as a result of the request contained in the statement.

With no further business, Gary Collias made a motion that the meeting be adjourned with Vince Cardi seconding. The motion carried. The meeting was adjourned.