

Davidson County Election Commission

September 25, 2020 2:30 p.m.

The Davidson County Election Commission (DCEC) met at 2:30 p.m. at the Howard Office Building in the Sonny West Auditorium. All five (5) Commissioners were present: Chairman Emily Reynolds, Jim DeLanis, AJ Starling, Tricia Herzfeld, and Jesse Neil. DCEC staff present were Administrator of Elections (AOE) Jeff Roberts, Joan Nixon, and Kelley Harrison. Nicki Eke of the Metropolitan Department of Law and Bob Cooper, Director of the Metropolitan Department of Law, were also present.

Chairman Reynolds convened the meeting.

Approve minutes from August 27, 2020 meeting

Motion stated: Commissioner Starling made a motion to approve the minutes from the August 27, 2020 meeting as presented.

Seconded by: Commissioner Neil

Outcome of motion: Passed unanimously

Discussion and action on Charter Amendment referendum based on 4GoodGovernment petition

AOE Roberts provided procedural background on the petition filed by 4GG, the versions of the petition, the signatures verified, and the petition's certification. Bob Cooper, Director of the Metropolitan Department of Law, provided background to the Commission on its authority and responsibilities in addition to outlining options available to the Commission in its consideration with regard to the petition and a referendum election.

An extensive discussion among the commissioners followed, which included questions addressed to Director Cooper.

Chairman Reynolds asked commissioners if the Public Comment portion of the meeting might be taken up earlier in the agenda, and all agreed. Six public comments were received, five of which pertained directly to the 4GG petition.

Public Comment

Lindsey Smith
Jim Roberts
Kenny Ames
Jim Garrett
Michelle Toty
Bob Mendes, Metro Councilman at Large

Following the public comments, discussion continued.

Motion stated: Commissioner DeLanis made a motion to place the petition on the ballot, removing the preamble (the two paragraphs at the beginning), removing the boldface on headings, and removing argumentative language. Commissioner DeLanis further moved to sever the bond section from the petition and place the remainder of the language on the ballot.

Seconded by: None

Outcome of motion: Failed for lack of a second

Commission discussion continued.

Motion stated: Commissioner Neil made a motion that in order to avoid the cost of holding an election on an invalid petition, the Commission proceed with seeking a declaratory judgment on an expedited judgment from Chancery Court, and to receive guidance as to whether the Commission has a duty to place the petition on the ballot. He further moved that the Commission ask its counsel to name all interested parties who might be defendants in the litigation.

Seconded by: Commissioner Starling

Discussion ensued. AOE Jeff Roberts was asked about the challenges of a December 5 election date, which he said might be substantial, particularly given the November 3 presidential election. In addition, he noted that a Saturday election was unusual for a Metro election. Further, Mr. Roberts provided a potential timeline for a Tuesday, December 15 election date, noting that a Tuesday is more customary for a Metro election.

The Commission also discussed the possibility of hiring outside legal counsel to assist should a declaratory judgment be sought. Former Supreme Court Justice Bill Koch was retained by Metro Legal to provide an independent evaluation, or second opinion, to the Commission. Chairman Reynolds reported that she had spoken with Justice Koch that morning to ascertain his interest and availability to represent the Commission, if needed.

Outcome of motion: Passed 3-2 (Chairman Reynolds and Commissioners Neil and Starling voted for the motion. Commissioners DeLanis and Herzfeld voted against.)

Discussion then resumed about setting a conditional date for the referendum election.

Motion stated: Commissioner Herzfeld made a motion to conditionally set the referendum election for Tuesday, December 15.

Seconded by: Commissioner Neil

Outcome of motion: Passed unanimously

The Commission then returned to the discussion of hiring outside legal counsel.

Motion stated: Commissioner Herzfeld made a motion to hire Bill Koch and authorize him to seek additional lawyers and/or a firm to provide research and other assistance.

Seconded by: Commissioner Starling

At the request of Commissioner DeLanis, Chairman Reynolds clarified that Justice Koch was open to suggestions from commissioners about additional counsel and would seek the Commission's approval of his recommendation.

Outcome of motion: Passed unanimously

Discussion and action on Charter Amendment referendum based on Council Substitute Resolution RS 2020-480

AOE Jeff Roberts was asked to explain the procedure to certify the Council's Substitute Resolution. Councilman Mendes spoke regarding the Metro Council's action on its Substitute Resolution.

Motion stated: Commissioner Herzfeld made a motion to conditionally set the second referendum for December 15, 2020, should an election occur.

Seconded by: Commissioner Starling

Outcome of motion: Passed unanimously

AOE Report

- 21,000 Absentee ballots requested to date
- 3,100 ballots returned
- As of 9/22/2020, 3K online voter registrations received on National Voter Registration Day
- Past two weeks, 800 Poll Officials have completed paperwork to work the election

Set date and time for next meeting

The Commission set its next meeting for Tuesday, September 29 at 9 a.m., location TBD.

Adjournment

With no further election business to discuss, Commissioner Herzfeld made a motion to adjourn the meeting.

Seconded by: Commissioner Neil

Outcome of motion: Passed unanimously

Tricia Herzfeld, Secretary