

Scott County Board of Supervisors
December 4, 2023 4:00 p.m.

The Board of Supervisors met pursuant to adjournment with Paustian, Rawson, Beck, Dickson and Maxwell present.

Chairman Ken Beck opened by welcoming everyone to the meeting and reading a prepared statement. "As Board of Supervisors understand, there are supporters for each candidate present who would like to comment to the Board of Supervisors regarding this election and the recount process. Understand, that each supervisor has received numerous emails, and calls, from both candidate supporters and have been kept advised throughout the recount process. It is unfortunate that this recount process has been marred with allegations that the State of Iowa laws have not been followed, and tossing the school district, and the county, into unwarranted controversy, through no fault of our own. As a result, the question at hand is, what legal authority does the Board of Supervisors have regarding the recount report? As with any other canvassing meeting there will not be any public comment period, so that we can hear from our County Attorney, and our Auditor, regarding these allegations of violations of the Iowa voting law, and the options the Board of Supervisors may consider." He also expressed his hope that everyone would show proper decorum. His first question was regarding what authority the Board of Supervisors have regarding canvassing of votes.

Senior Assistant County Attorney Kristina Lyon reviewed that in consultation with the Secretary of State, the understanding is that if two of the recount board had signed the report, and it was clear what their intent was, then the Board of Supervisors "shall" accept the report. If resulting in a tie, then the Board of Supervisors would draw a winner.

Beck reviewed in the interpretation of the word "shall," there is very little room providing the Board of Supervisors the latitude to accept or reject the canvass.

Lyon stated that is correct.

Supervisor John Maxwell reviews that they see the paper, mark received on it and push it along. He reviewed that it is not their place to judge whether lawfully correct, but to receive it and pass it along.

Lyon reviewed if there are at least two of the three signatures on it and the Board understands the intent, the Board shall receive it and take the next steps.

Maxwell asked if then the Board would correct it if they saw a clear mathematical error, and if that was all the latitude the Board had.

Lyon stated correct, clear mathematical error or clerical error, not anything about intent or whether they thought anything had been done wrong.

Maxwell asked, "or not whether it's legal or anything like that?"

Lyon stated Correct, the Board is just to accept the results but may also ask for clarifying information if it was deemed necessary.

Beck asked if by clarify, that meant could not legibly read it. Or something there that was not clear on what final count was?

Lyon reviewed that if the Board could not discern the intent on what the at least two signatures on the report were, then the Board of Supervisors could then ask for further information from the recount board so they could understand.

Beck asked if Attorney Lyon had seen the report.

Lyon stated she had.

Beck asked if it was clear and legible.

Lyon stated that between the report and emails with two of the members of the recount board that the intent was to declare a tie.

Supervisor Ross Paustian asked about consequences if the Board was to vote no.

Lyon stated that under the Iowa code, that did not appear to be an option.

Paustian asked then why the Board was there. He also asked if he voted no, would he go to jail.

Lyon reviewed their roll was not to fact find but to advise on what the code says. The code does not provide what the consequences would be. She reviewed a possibility would be with the district court, with some type of lawsuit.

Beck reviewed he had conversations with many people, and he believed "shall is will". He said that not voting to accept would be breaking the law.

Supervisor Jean Dickson and Attorney Lyon reviewed which sections of code were being looked at regarding the Canvass of the recount.

Beck asked about state law regarding write-in votes and filling in the target.

Lyon reviewed that optical scanning was used in the election, so the target would need to be filled in. She reviewed that the name would need to be written in and a mark must be made on the left, for the machine to read the vote. She stated the rules would be the same for recounting those votes by hand, as they had been counted on election day.

Beck reviewed that a ballot would then need to have been marked to the left of those write-in votes.

Maxwell reviewed it is not their place to review that matter.

Beck wants to know if there were votes counted by the recount board that were not properly filled in.

Lyon said she cannot answer that as she was not present during the entire process. She has been informed, from multiple parties, that may be the case.

Beck and Maxwell both reviewed reading an email that votes were counted without the target filled in.

Dickson also reviewed an email from a recount member that stated that votes were counted without the target being filled in.

Beck reviewed that too much misinformation has been passed around. He wanted to make sure all were properly informed. He asked about the chain of custody of the recount report, and it being turned in.

Auditor Kerri Tompkins reviewed the report was due at the end of the day. She said the recount board members could have it and keep it until due.

Beck reviewed that the Auditor had the report.

Tompkins reviewed that yes, she had the report.

Beck asked Tompkins if she would like to read her prepared statement.

Tompkins stated yes. She read, "The City School election was held on Tuesday, November 7th, 2023, with the votes tallied via optical scan per Iowa law. The official results for Pleasant Valley district six were Jameson Smith 256, with 260 write in votes. The write in votes consisted of 250 for Tracy Rivera with the other 10 votes for 7 other options. On Nov 17th, 2023, Tracy Rivera filed a request form for recounted votes. She identified Arun Pillutla as her designee for the recount board, Jameson Smith was notified via my office and identified Cynthia Dierickx as his designee for the recount board, the third designee must be agreed upon via both parties. Unfortunately, there was not an agreement and the chief judge Henry Latham appointed retired judge Mark Smith as the third designee. Iowa law prohibits the Auditor and the Auditor's office from interfering with the recount process. The Auditor's role is to maintain custody and security of the ballots. On Monday November 27th the recount began at the Scott County warehouse at 10 am to accommodate the board. Scott county Attorney Kristina Lyon presented the process via Iowa law chapter 50 part 48 and answered questions from the board members. At that time the board chose the hand count method. They finished on Monday around 4:30 and returned Tuesday morning at 9. Around 11 am Smith handed me a report and Diercks took possession of the report and continued a discussion with Smith. Some board members were asking questions and were advised that county attorney Ms. Lyon was on her way to respond. Before Ms. Lyon arrived, Smith and Pillutla left the building. When Ms. Lyon arrived, Diercks continued to stay and ask questions. The report was due at the end of the day, midnight on Monday December 4th 2023. The report was never missing and was turned in early on Friday December 1st 2023. In reviewing the document, it is unclear as to the actual count. Through discussion with the SOS, and the attorney's office, I was advised to include

emails from Pillutla and Smith, for supporting documentation of 2 board members supporting the 255 count that results in a tie. The Iowa SOS and the Scott County attorney's office have been consulted and provided guidance during this process. I appreciate the board's time and efforts for the recount process. At this time, please accept the results for the recanvass of Pleasant Valley District 6 as provided via Iowa law. Since there is a tie, a drawing must be held to determine the winner. Thank you."

Beck reviewed if they did not canvass, it would break Iowa law. What was the recommendation?

Lyon reviewed that it is Iowa law that they should pass the canvass.

Maxwell was torn as to the direction to go as the recount board did not follow Iowa law.

Supervisor Rita Rawson reviewed that she also had issue with the recount board counting ballots that should not have been. She also asked about why ballots were counted that should not have been, and ramifications.

Tompkins reviewed that would be a question for the recount board.

Lyon reviewed that ramifications have the full force of the law. She said it could be investigated and it could be brought to district court. Candidates could also contest the results, which could include a recount.

Beck reviewed a statement he prepared, "If it were in the board's authority, I would recommend rejecting the recount and require another recount, with a team that takes an oath to follow the laws of the state of Iowa. As we have been told here, the board does not have the authority to reject the canvass, in its current flawed condition. State code does not address what procedures are to be followed if the canvass of votes is rejected. But I am sure it would expose the county to needless legal action, time that should be spent to the betterment of the citizens of Scott County, and not a selective few. My preference is to have the individuals that broke the law be subjected to civil liberal action and not the county." For this reason, he is ready to go ahead with a vote on the canvass.

Dickson reviewed the law with the word "Shall", and cited case law regarding the canvass and the report. She reviewed that the face of the document does not comply with state law.

Maxwell reviewed that they have people who did not follow Iowa law. He wanted to know about election fraud.

Lyon reviewed the attorney's office's duties were to advise. She reviewed there were areas that could possibly be investigated, but that was not what they were there for.

Tompkins reiterated that her office keeps the attorney's office aware of the entire process.

Lyon reviewed the Attorney General's office would oversee handling any election misconduct.

Maxwell asked about who was present to guarantee ballots were not altered or tampered with during the recount.

Elections Manager James Martin reviewed he was there along with one of the Elections staff. He also reviewed that two cameras were set up and recording the entire time of the recount.

Maxwell asked about the packet they received noting a precinct not being counted.

Tompkins reviewed that the document was from the recount board, she is only passing it along to the board.

Beck reviewed that the information had been published in the Iowa Capitol Dispatch. He believes the Attorney General would be fully aware of the proceedings if there were to be ramifications.

Maxwell reviewed this would be a dress rehearsal for next November and consequences should be handed out for fraud.

Rawson reviewed that this should not have happened, ovals not filled in should not have been counted.

Paustian thanked Attorney Lyon for all her time spent on this. He still thinks the Board should object to the canvass as laws were broken by the recount board.

Lyon asked to read her statement. "I may have opinions that may differ from what the law says, and I may not agree with it, but that's not my role, that's not my job. My job is with the county attorney's office to advise and interpret the laws as they stand, even if they don't account for certain things, and even if we don't like them. So, it is our role to make sure that the procedures, as set out by the law, are followed. We're limited in our actions by what is contained in the laws as they are today. The Iowa code sets out the process by which a recount is to be conducted. The Auditor's office followed those procedures as set out by the code. The Attorney's office has been involved in advising the board of supervisors and the Auditor's office through this process, and that has been done with advice of the Iowa Secretary of States office. The Scott County Attorney's office was present on November 27th, 2023, to brief the recount board members on the process and was made available for consultation during that process. The recount board members were provided materials to aid in the process. A report from the board was due by midnight today and was turned in on Friday. And to our office's knowledge, no allegations exist that the two-page report signed by all three members of the recount board has been altered, changed, or tampered with. I've already reviewed that code section 50.48 sub 5, but that pursuant to this statute the report of the recount board appears binding on the board of supervisors. Since two of the three recount board members have declared that election a tie, the procedure for drawing a winner after declaration should be followed, and if either candidate wishes to further dispute the

election results further, that the Iowa code provides the procedure by which that contest is held.”

Maxwell summarized that the board should vote yes to canvass the vote hoping it will be sorted out down the road.

Lyon reviews there is a process to contest the decision made.

Paustian reviewed that he cares about the process and law. He thought the board should make a stand saying, “this is wrong”.

Maxwell agreed with Supervisor Paustian. He wondered if he voted no, “who knows what happens next”?

Tompkins said no one knows what would happen next, the law does not provide a next step if the board voted no.

First Assistant County Attorney Steven Berger reviewed that a no vote should return to the first canvass of the winning 256 votes. That may allow action in court against the board. He reviewed the attorney’s office recommended a yes vote by the board.

Beck thanked the attorney’s office. He reviewed protecting the county is the board’s responsibility, protecting from further expense. He believed the people involved in the recount should be the ones held responsible.

Paustian wanted to put the legal stuff aside. He wanted to know what sort of message was being sent to the young people as this was a school board election.

Dickson asked if the status quo was resumed upon a no vote.

Berger reviewed that he believed that would be correct.

Maxwell reviewed that a no vote, the prevailing candidate was still in the seat and the other could ask for a new recount board and say do it again and hopefully follow the law.

Berger reviewed the non-prevailing candidate could then sue the Board. He also gave a few possible examples if the non-prevailing candidate followed thru. He reviewed the attorney’s office recommended a yes vote calling a tie, and to draw a name out of a hat.

Beck asked if there were any questions.

There were none.

Called for a vote by Chairman Beck, a motion approving the Re-Canvass of votes for Pleasant Valley Community School District #6. Roll Call: Paustian-No, Rawson-Yes, Beck-Yes, Dickson-No, Maxwell-No. Motion Fails.

First Assistant County Attorney Steven Berger stated he believed that the original canvass stands.

Moved by Dickson, seconded by Maxwell at 4:49 p.m. a motion to adjourn. All Ayes.

Ken Beck, Chair of the Board
Scott County Board of Supervisors

ATTEST: Kerri Tompkins
Scott County Auditor

A video recording of the meeting is available on the Scott County website at:
<https://www.scottcountyiowa.gov/board/board-meetings>.