

INGHAM COUNTY ELECTION COMMISSION
MINUTES
December 20, 2017

The regular meeting of the Ingham County Election Commission was called to order at 2:30 p.m. by Judge Garcia. The meeting was held in the Board of Commissioners Room at the Grady Porter Building in Lansing, MI.

MEMBERS PRESENT: Barb Byrum, Ingham County Clerk
Richard Garcia, Chief Probate Judge
Eric Schertzing, Ingham County Treasurer

MEMBERS ABSENT: None.

OTHERS PRESENT: Liz Noel, Election/Clerk Coordinator
Greg Talberg, Williamston School Board member
Sarah Belanger, Williamston School Board member
Christopher Lewis, Williamston School Board member
Jonathan Brandt, petitioner

Approval of Minutes:

Moved by Clerk Byrum, supported by Treasurer Schertzing, to approve the minutes of the December 1, 2017 Election Commission Meeting.

MOTION CARRIED UNANIMOUSLY.

Consideration of Recall Petition Language

Jonathan Brandt, petitioner, stated the petitions presented to the Election Commission addressed the feedback from the December 1, 2017 hearing. He further stated two parts of the petition language that addressed Policy 8011 had been found factual at that hearing, and were included in the current petition.

Greg Talberg, Williamston School Board member, distributed a copy of Policy 8011 to the Election Commission. He further stated the petition language that stated he voted "yes" to support Policy 8011, despite the fact that he had publicly stated that the school district would get sued was not factual or clear.

Mr. Talberg stated the petition did not indicate where or when he publicly stated that the school district would get sued, he argued it was unclear. He further stated as it was unclear whether it was stated in a public meeting, in a conversation with a community member, or in written communication, he did not have the opportunity to explain or defend his alleged remarks, should the petition be circulated.

Mr. Talberg stated there was no way to determine whether his fellow School Board members were aware of the alleged comments, as “public” was undefined, and that was unfair because they were also being recalled. He further stated that his assumption was that the petition language was based on a quote published in the City Pulse on October 26, 2017, which read, “Talberg said he expects there will be a lawsuit over the policy. ‘We are going to get sued either way,’ he said. ‘But I would rather get sued for doing the right thing. I think we have a better chance.’”

Mr. Talberg stated if this was the basis of the petitioner’s claim, he would argue that the assertion that he “stated publicly that the school district would get sued,” was not a fact. He further stated that the City Pulse had printed that article for public consumption, but he did not state it publicly, and the article did not accurately quote him.

Mr. Talberg stated during the interview, he never stated that the district will get sued, instead he had stated that the school district could get sued, whether they passed the policy or not. He further stated the word “will,” versus the word “could,” was very significant.

Mr. Talberg stated he had a recording of the interview, if the Election Commission questioned the accuracy of the quote in the City Pulse or his statements. He further stated that the recall petition language was neither factual nor clear, because it did not clarify when and where he made the alleged comment in question; it confused comments made regarding draft policy which was significantly different from the final policy; and if the recall petition language referred to the City Pulse article, it was not a fact that he made those comments publicly, nor was it a fact that he stated the school district would get sued.

Christopher Lewis, Williamston School Board member, read a statement into the minutes. The statement is attached as Attachment A.

Sarah Belanger, Williamston School Board member, read a statement into the minutes. The statement is attached as Attachment B.

Treasurer Schertzing clarified that the recall petition language referred to the comments made in the City Pulse. He asked if the story differed from the transcript in the words that it used.

Mr. Talberg stated that was correct, and that he had not been quoted directly in the article.

Discussion.

Treasurer Schertzing stated that since the City Pulse article was the public statement, it left the Election Commission to interpret what “publicly” meant, and if it was publicly stated in the transcript.

Clerk Byrum stated it was up to the petitioner to prove if something was true. She further stated if the petitioner brought forward the minutes of the meeting, whenever the School Board President allegedly said this, the minutes should reflect the statement.

Clerk Byrum stated in her review of the minutes, she was unable to find where the School Board President publicly said the school district would get sued.

Judge Garcia stated the petition language did not say whether the statement was made in a meeting, and it had been discussed previously by the Election Commission about how the public statement had been made, and it had been determined it had been made in the City Pulse article. He further stated that the article was apparently referenced at the School Board meeting. Judge Garcia stated he thought it would be pressing things to suggest that the phrase “publicly stated” required someone to prove it was stated at the School Board meeting. He further stated the language that was used with the reporter indicated that there was acknowledgement of litigation.

Judge Garcia stated he understood the nuance that was being asserted, but it did not make the statement unclear or untrue.

Clerk Byrum stated that during public comment, if someone quoted the article, boards were not supposed to interact with those individuals making public comment.

Treasurer Schertzing stated it was a question of “could,” versus “will.”

Discussion.

Treasurer Schertzing asked Mr. Brandt why he included the citation of the Michigan Civil Rights (Elliott-Larsen) Act and Title IX in the petition at all.

Discussion.

Mr. Brandt stated the reference to the Michigan Civil Rights (Elliott-Larsen) Act and Title IX reinforced the first line of petition language. He further stated that the community as a collective, in consultation with counsel, had been informed about the decision by the Michigan Civil Rights Commission to strike down the interpretation of the Michigan Civil Rights (Elliott-Larsen) Act to include sexual orientation and gender identity, just weeks before the School Board voted on their policy.

Mr. Brandt stated the Michigan Assistant Attorney General, and the Michigan Attorney General, had made comments that the essence of the request was a legislative matter. He further stated the Assistant Attorney General stated the Commission did not have the legal authority to fulfil the request, and the Attorney General’s spokesperson had stated that the legislature created laws, not commissions.

Mr. Brandt stated they were adding protected classes to the civil rights references Title IX and the Michigan Civil Rights Act that did not exist today.

Treasurer Schertzing asked what Equality Michigan was asking the Michigan Civil Rights Commission for.

Mr. Brandt stated Equality Michigan was asking for an interpretation of the Michigan Civil Rights (Elliott-Larsen) Act, because the Act and Title IX made reference to “sex.” He further stated that advocacy groups were pushing that that reference include gender expression and gender identity, which did not exist.

Mr. Brandt stated the State legislature had struck that interpretation down 11 times since 1999, most recently in 2014.

Judge Garcia stated he believed both parts were clear, and the board policy used these acts as legal references in the published policy, which was referenced in the recall petition. He further stated whether it was aggrieved to or not, it appeared to him to be both clear and factual, and he would vote to approve the recall petition language.

Treasurer Schertzing stated without arguing over the definition of “publicly,” the differences between the transcript and the petition language made it impossible for him to support the petition language.

Clerk Byrum stated she did not find the “publicly stating,” nor the “will” or “could” get sued, clear. She further stated she did not approve of the petition language, as she did not believe the language to be clear.

Judge Garcia stated the petition language failed by a 2-1 vote. He further stated that a denial would be issued by way of the draft minutes.

Public Comment:

Clerk Byrum stated she had spoken to visually impaired individuals about their experience voting in August and November. She further stated that many of their concerns in regards to their voting experiences were a direct result of lack of training of poll workers, and she would be reaching out to all of the local clerks in regards to training their poll workers to make sure those concerns were addressed, and she encouraged everyone to use the touchscreen voting equipment at the next election.

Judge Garcia asked if all polling locations had the ability to facilitate voting if a voter was impaired.

Clerk Byrum stated that all polling locations were required to have the touchscreen voting machine under State law.

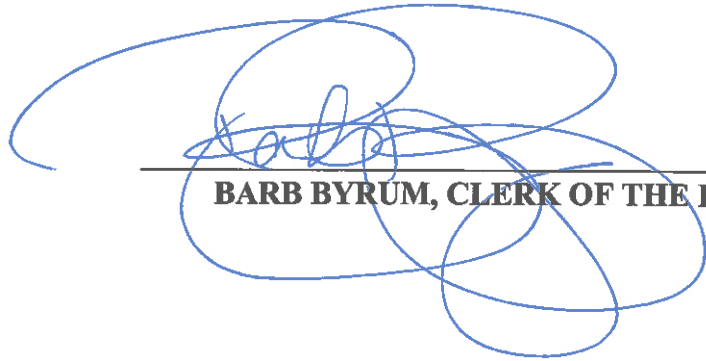
Judge Garcia asked if the issues were a matter of training the poll workers, because the poll workers did not get how to work the machines.

Clerk Byrum stated that some clerks did not train their poll workers. She further stated Meridian Township had been a problem when it came to training for the Voter Assist Terminal.

Clerk Byrum stated that change was hard, and voters in Ingham County were used to voting with the old ballots and the AutoMark Voter Assist Terminal, and the new equipment was different. She further stated she hoped with more elections and additional training, this would not be an issue.

Adjournment:

Judge Garcia stated the meeting was adjourned at approximately 2:49 p.m.



BARB BYRUM, CLERK OF THE BOARD

In the language that was submitted in regards to being clear and factual there are still a few issues that remain both misleading and unclear. First, the language regarding any public acknowledgement that the district will get sued remains misleading and unclear.

This language is unclear in two main ways, first, as a board member I was present at all board meetings regarding this issue and in no public meetings did Greg Talberg ever state that we would get sued if this policy was passed. There were some public comments that a comment like this was made in regards to a different policy but not policy 8011 and as a board member I never heard Greg Talberg publicly state this in person.

Second, as stated, the language in this petition leads individuals to believe that the adoption of this policy has increased the district's liability in a court of law when, in fact, the petitioner refers to a different policy in regards to the supposed public comment, and thus, one could infer that the legal action that is being inferred is not based on policy 8011 but instead a different policy.

Also, in regards to the idea that having a policy will increase the potential for lawsuits, legal precedent shows that having such a policy will serve to DECREASE the district's legal exposure. Based upon input from district legal counsel, which took into account the outcomes of the prevailing court cases and administrative rulings on the matter, the district actually risks greater legal exposure from a transgender student who sues for a civil rights violation as a result of NOT having a policy like this in place than it does from any individual who sues because such a policy is in place. The proposed recall language asserts the opposite.

In all of the court cases that I identified as I researched this the reviewing court very directly and specifically walks the parties through a detailed discussion of privacy rights, arguments regarding safety, Title IX and its implications concerning gender identity, and so forth, and they make it very clear that judicial precedent rests on the side of the

Dear Board of Electors,

I sit on the policy sub committee along with board president Greg Talberg and policy sub committee chairperson Jeff West. As you know, the purpose for any policy is to protect students, teachers, administrators and the district as a whole. Policy 8011 does just that and in fact policy 8011 states in part "Williamston Community Schools fosters an educational environment for all students that is safe, welcoming, and free from stigma and discrimination, regardless of sex, sexual orientation, gender identity, or gender expression. WCS requires compliance with local, state, and federal laws concerning bullying, harassment, privacy, and discrimination."

As I read the recall language that was submitted, "Voted "yes" to pass gender identity policy 8011 on 11/6/2017 after board president said the district would get sued" the language regarding any public acknowledgment that the district will get sued remains misleading and unclear. I have been to every policy meeting and every board meeting since I was elected to the board last January and I have not heard that specific language stated from Greg Talberg on record or at any public meeting. In fact there is no record of Greg Talberg saying this on any public record, including board minutes. What I have heard is that during the public comment portion of board meetings some community members state those words but I have not heard those specific words come from Greg Talberg on public record in any board meeting. If the recall language is referencing the City Pulse article I have heard the full recording and Greg Talberg never says the district "would get sued" I would also reiterate that a newspaper article is not a public board meeting and furthermore I have the part of the transcript recording where the question of ending up in court is asked and answered. I would also point out that the question and response was not even in reference to policy 8011 that the recall language is suggesting. In fact the reporter of the City Pulse Article, Mr. Haywood, does not even reference policy 8011 when asking the question. I have the transcript of the question and answer and a recording if you would like to see or hear that.

Transcript of Greg Talberg/City Pulse Interview

Reporter (Mr. Haywood): "Do you have concerns that you are going to end up in court over this issue?"

Greg Talberg: "Well Yeah, I would be naive if I wasn't worried about being in court but quite frankly we could end up in court either way. So the soonest way for us to end up in court is for us to say that regardless of your gender identity you must use the bathroom that corresponds with your biology. I think that is the soonest way that we would end up in court and most likely way to lose a court case."

Again, I would emphasize that if the recall language, as stands, were to get passed the language is misleading to the community and lacks clarity. The recall language suggests that the Williamston Board of Education knowingly passed policy 8011 that would subject the Williamston School District to getting sued which is arguably and factually untrue.

transgender student; not groups, including school districts, and people who oppose their rights. And, of course, there is the *Lafferty* matter out of the Virginia Supreme Court which, again, provides insight into what the outcome would be should the Williamson Community Schools be sued any time in the near future by a group claiming that this policy violates their constitutional rights (as courts in the past have dismissed these claims with prejudice previously).

In regards to the lawsuits being spoken about there have been over 13 that I found that speak to either student rights or policies in support of recognition of transgender students. To date, all that I found have not been successful and have, more often than not, been dismissed. There were three that specifically should be of note including:

- **Doe v. Regional School Unit 26 (Maine Supreme Court, 2014)**
- **Whitaker v Kenosha Unified School District (DOE OCR Complaint and Federal District court up through the Supreme Court, 2016)**
- **Board of Education of Highland Local School District v. U.S. Dept. of Education (Federal Court, Ohio 2016)**

In light of the very *thorough and binding* 6th Circuit decision of *Highland*, as well as the very persuasive findings outlined in the *Whitaker* matter and the *Doe* case, it is clearly incorrect, and therefore misleading, to assert or otherwise suggest in the recall language that the board's decision to pass such a policy will result in a greater chance of litigation. The words of these three federal courts make it abundantly clear that the legal precedent in these instances is on the side of the transgender student, and is not on the side of any entity claiming that such accommodations are illegal. As such, any district seeking to minimize its litigation exposure as it relates to the issue of transgender student rights will do well to heed the words of these decisions and err on the side of having such a policy.