

April 5, 2018

ELECTION CODE COMMITTEE MEETING

12:00 PM

PRESENT: Stephens, Overbeck, Cunniff, Coldiron, Malarkey, Knoll, Gonzales, Daggett
CITIZENS PRESENT: Robby Overland, Kevin Jones, Colin Garfield

1. CALL MEETING TO ORDER

Councilmember Stephens called the meeting to order.

2. CITIZEN COMMENT

None.

3. APPROVAL OF MARCH 1, 2018 COMMITTEE MEETING MINUTES

Councilmember Overbeck made a motion, seconded by Councilmember Cunniff, to adopt the March 1, 2018 Committee meeting minutes. The motion was adopted unanimously.

4. ELECTION-RELATED CHANGES FOR DISCUSSION

a. Value of Campaign Ads on Websites

Daggett stated it might be beneficial to approach this in a way that encompasses a means of setting a value regardless of the specific nature of the medium.

Councilmember Stephens noted there are ways other than social media to get free publicity, such as writing a letter to the editor.

Daggett discussed the importance of focusing on a certain medium.

Councilmember Cunniff stated the question relates to whether money changed hands and whether the communication would have happened had money not changed hands. He noted it would count as a contribution in-kind if a member of the public would have paid to put up a post. He stated there is no proactive way to track that; it would need to be on a complaint basis.

Councilmember Stephens questioned how an endorsement in a newsletter, for example, would be handled. Daggett replied that would be considered free speech.

Councilmember Cunniff replied if the newsletter normally takes money for ads or endorsements, any endorsement would be considered a contribution in-kind.

Daggett noted the Coloradoan's endorsements are different than an ad. She stated staff can look at current language to identify areas wherein clarifying changes could help embody this discussion.

Councilmember Cunniff stated most of these items are already covered in the Code; the clarification would be related to ensuring the public understands the interpretation.

b. Deadlines for Nomination Petitions, Withdrawal, and Write-in Candidates

Knoll stated the timeframe between knowing the final slate of candidates and mailing ballots is extremely tight. She suggested lengthening the deadlines slightly to relieve that issue somewhat.

Daggett stated there is benefit in using the approach of courts and legislature in terms of using a 7-day increment. This makes things more predictable for candidates as well.

Committee members supported the proposed time changes.

Daggett asked if 28 days post-election is preferable to 35 days, and if 70 days is better than 63 for account closing.

Councilmember Cunniff supported 70 days.

Daggett noted 70 days was also used for the front end.

Councilmember Cunniff asked if taking a week off the potential clock ticking on the statute of limitations would cause any issues. Daggett replied failure to report at the 70th day may result in a reporting violation.

Councilmember Cunniff supported 35 days for the first post-election report.

c. UOCAVA Voters

Knoll stated the Committee had previously not been in favor of changing deadlines to fully implement UOCAVA on the front end; however, now that the date of the canvass has been changed and the 8-day post-election cure of signature discrepancies is included, the back end of the UOCAVA process can be accommodated. This would allow us to accept UOCAVA ballots that were postmarked on Election Day.

Knoll stated the January letter language would be formalized and changes will be made to let UOCAVA voters vote in any way they choose, not just by mail.

Councilmember Stephens supported letting voters vote in as many ways as possible.

Councilmember Cunniff asked if hard copies of electronically received ballots are made. Knoll replied in the affirmative and stated she is currently the only staff member who has custody of ballots received electronically. The ballots are treated like absentee voters and are duplicated to machine-readable ballots.

Councilmember Overbeck asked how long election materials are kept after an election. Knoll replied it is 6 months.

d. Requiring “paid for by” Information on Campaign Materials

Daggett stated staff has been looking at options, and there seems to be a range of statements that could be asked to be included, such as noting if the expenditure was made independently or by a committee and noting whether candidates approved ads.

Councilmember Cunniff supported moving in this direction.

Knoll suggested language such as “not coordinated with the candidate.”

Councilmember Cunniff suggested including this information in the committee and candidate guidelines.

Knoll asked if candidates and committees should be required to file copies of advertising materials with the Clerk’s Office. Daggett replied in the affirmative and suggested a photo may be appropriate rather than a physical item.

Councilmember Cunniff suggested making the retention of all election-related materials part of the audit requirements rather than providing them to the Clerk’s Office.

Committee members discussed which materials should be saved.

Daggett stated staff will draft language for the next Committee meeting and Knoll noted samples of broad categories, such as donation envelopes, magnets, key chains, et cetera should be saved.

(Secretary's Note: Councilmember Ovebeck left the meeting at 12:35 PM)

Councilmember Cunniff stated a legible image of the material should also suffice. Committee members agreed.

Councilmember Stephens asked if all material, such as buttons and stickers, would require a "paid for by" notation.

Councilmember Cunniff stated federal regulations require approval by a candidate and a "paid for by" reference if the opponent is mentioned. He also suggested web pages should include "paid for by" references.

Councilmember Stephens discussed the need for a "not coordinated" note on communication.

Councilmember Cunniff suggested regulations related to the aggregate area of a publication.

Daggett summarized the Committee discussion stating any reportable expenditure by a candidate or committee would require a "paid by" statement.

Daggett discussed the need for a retention requirement for committees which may reach the point of not being a small-scale issue committee.

5. FOLLOW-UP ITEMS

Daggett discussed pending Supreme Court case law about redistricting, noting that does not necessarily relate to the Fort Collins redistricting situation.

Councilmember Cunniff asked if City precincts are still required to align with County precincts. Knoll replied in the affirmative and stated the City is attempting to align its ballot artwork and imaging to be as close to that of the County as possible.

Councilmember Cunniff asked why the City has its own precinct numbers. Knoll replied she does not know the history of that difference; however, some precincts do include City land if not City voters.

Councilmember Stephens asked about the formation of a citizen committee. Daggett replied it may be difficult for a citizen committee to be effective as so many issues relate to legal requirements and constrained processes. She noted this Committee creates an opportunity for public input and, if it meets frequently enough, may be a more effective way to accomplish citizen input.

Councilmembers Stephens and Cunniff discussed when the Election Code Committee should discontinue meetings due to the election cycle. Gonzales stated monthly meetings are currently scheduled through October with the caveat any could be canceled.

Councilmember Stephens expressed concern a citizen committee may become too politicized.

Councilmember Cunniff asked if the concern relating the conduct of investigations has been discussed. Daggett replied a round of investigations has occurred over the past year and there may be room for improvement; however, there is not yet a good example to follow.

Councilmember Cunniff stated there may be a conflict of interest regarding staff investigating its elected boss.

Daggett noted that was written in to the complaint process, given the risk of the City Attorney's Office investigating its boss' campaign finance activities. She noted the Attorney's Office can hire outside legal counsel.

Knoll provided updates on the status of prior committee and candidate files and the City's website changes.

6. NEXT MEETING

Knoll stated the next meeting is scheduled for May 3rd.

7. OTHER BUSINESS

Knoll discussed observations of the recent Estes Park election process.

Daggett discussed the decision tree relating to those getting involved in elections.

8. ADJOURNMENT

The meeting adjourned at 1:03 PM.

MINUTES APPROVED MAY 3, 2018