

**MINUTES, LENOIR COUNTY BOARD OF ELECTIONS, 4:10 P.M. ON 21 FEBRUARY 2013, AT ELECTIONS HEADQUARTERS, 110-C SOUTH HERRITGE STREET, KINSTON, NC 28502** (File: BOEMinutes21Feb2013)

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**Present:** Chairman Sharon L. Kanter, Secretary Oscar E. Herring, Board Member Kimberly B. Allison, Dana W. King, Elections Director

**Others in Attendance:** Wes Wolfe, Free Press

At 4:10 p.m. Chairman Sharon L. Kanter called the meeting to order and at 4:11 p.m. and on a motion by Oscar E. Herring, a second by Kimberly B. Allison, and unanimous approval to go into closed session in accordance with sub-paragraph (6) of N.C.G.S. 143-318.11(6) to discuss a personnel issue. Mr. Wolfe was excused from the meeting.

**N.C.G.S. 143-318.11: A public body may hold a closed session and exclude the public only when a closed session is required.**

**(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body may not consider or fill a vacancy among its own membership except in an opening meeting. Final action making an appointment or discharge or removal shall be by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.**

***Calling a Closed Session.*** – *A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.*

The Board took no action in closed session and the Board reconvened in open session at 4:13 p.m. Mr. Wolfe rejoined the meeting.

Mrs. Allison asked the Elections Director to clarify that she ***“gave the Board a copy of her Reply to the Petition to Terminate Dana W. King in an open meeting so the Board would be required to place the Reply to the Petition on the LCBOE website”***. Mrs. King’s response was ***“yes, I do not want to make copies”***. Chairman Kanter called Mr. Bartlett and he advised Chairman Kanter that the Board did not have to take any action on Mrs. King’s Reply to the Petition and that her Reply is on the NCSBOE website. If Mrs. King wants the Reply on the LCBOE website the Board should comply. Mr. Bartlett also stated that the Board could adopt the Response to the Reply to the Petition and make it an official document and post it on the website. Following this guidance, and on a motion by Sharon L. Kanter, a second by Oscar E. Herring and unanimous approval to adopt the Board’s Response to the Reply to the Petition to Terminate Elections Director Dana W. King. The available copies of the document were signed by all three board members. Chairman Kanter stated that she would scan and email the Response to the Reply to the Petition to the NCSBOE Executive Director Gary Bartlett and to the NCSBOE

General Counsel Don Wright. The Board will send the Board's Response to the Reply to the Petition to Terminate Elections Director Dana W. King to Joey Bryan, the County IT Department Manager, and request that it be placed on the LCBOE website.

The meeting was adjourned on a motion by Kimberly B. Allison, a second by Oscar E. Herring, and unanimous approval at 4:30 p.m.

These minutes have been electronically approved by the board members.

Attachment

Board's Response to the Reply to the Petition to Terminate Elections Director Dana W. King

**APPROVED:**

Sharon L. Kanter  
Chairman

Kimberly B. Allison  
Board Member

Oscar E. Herring  
Secretary

## **LCBOE Response to Reply, Lenoir County Board Of Elections Petition to Terminate Elections Director Dana W. King**

Paragraph 1: Mrs. King's reference to "previous conversations" with Mr. Bartlett regarding cooperation with Board directives is troublesome. This board's understanding is that, after a petition is filed, the judge in the proceeding (in this case, Mr. Bartlett) can have no communication with either petitioners or subject of the petition. Is this a reference to conversations that took place prior to submitting the Petition to Terminate?

In reference to the accusation that board members have been unwilling to work as a team with each other: This board, in the 19 months these three members have served on the board, has taken exactly three (3) votes, two of which were on clearly partisan issues, that were not unanimous. That record speaks directly to our functioning as a team.

1. The Lenoir County Director of Human Resources, Mr. Jack Jones, is developing a standard management performance review instrument for use by the County. Mr. Jones became LCD HR Director in 2010 or 2011, and this board had been serving for 8 months; those are ample times for both to understand a job. Lacking a completed instrument, he provided the board with numerous examples of different review instruments used in public agency management performance reviews, suggesting elements from those examples would be applicable to a review instrument for the Elections Director. Mrs. King's previous performance review, conducted 7 years prior to this board taking office (the only prior performance review for Mrs. King to which this board had access), was conducted using a generic review instrument that was not specific to Elections Directors. The review instrument adopted by the board and used in Mrs. King's reviews was based on an instrument used by the Lenoir County Commission in reviewing the County Manager's performance approximately five years ago, and incorporated elements from the review instruments provided by the Department of Human Resources. Mrs. King's job description, entitled "Duties of the Director of Elections", adopted October 7, 1997, was used as the basis to create a review instrument that mirrored the Election Director's duties and responsibilities in that job description.

Mrs. King's claim that "it is not possible that the LCBOE board members could know enough about my job duties after only 8 months in their position to be able to evaluate" her performance demonstrates her misunderstanding of both basic management tools and her board members' backgrounds. Her repeated references to this board's "inexperience" are baseless: All three board members have backgrounds in management, albeit not specifically in Elections Board management. Chairman Kanter has 15 years' retail business management experience; 9 years as an executive director and 3 years as a director of development in the nonprofit sector; and 18 years' experience managing a private organizational development consulting practice working with dozens of nonprofits across the state. She has also served on and chaired numerous nonprofit boards on the local, regional, and state-wide level. Secretary Herring, a 6-year veteran of this BOE, retired from a long and successful military career in which

he served largely in administrative capacities; served as Supervisor in the Business Office at Lenoir Memorial Hospital; and has served on many boards in the County and Region,, including the County Commission and the School Board. Mr. Herring has taken and passed the certification exam given by the SBOE. Mrs. Allison has not only had a lengthy professional career in the North Carolina courts system; she has also been a recent candidate for County office and became, in that capacity, very familiar with the Board of Elections' and the State's policies, requirements, and responsibilities. She has been a small business co-owner with primary responsibilities for supervision, accounting and managing day to day operations. She has served on several county and state-wide boards, and was president of the Lenoir County State Employees Association. Mrs. Allison also satisfactorily completed mandated training from the SBOE on Campaign Finance.

Characterizing this board as "inexperienced" is laughable. The claim demonstrates Mrs. King's lack of interest in learning anything about her board members' backgrounds and being open to bringing their wide experience to benefit the BOE's operations.

1.1. This claim is particularly astonishing. Mrs. King has cavalierly betrayed the meaning of a closed session by supposedly revealing the content of that session and "revealed" the contents of a closed session at which she was not present. Unless she was recording that closed session by means of a device of which the meeting participants were not aware, which would make such recording illegal, she cannot "reveal" what happened in it because *she does not know what happened*. In fact, Mrs. Kanter was *not* asked to "step down from her position as board chair," nor did she "refuse to comply." Mr. Herring and Mrs. Allison, who were both more familiar than Mrs. Kanter with what the general expectations and the culture of this specific Board of Elections were, had legitimate questions as to whether she was willing/able to meet those expectations. They sought guidance from SBOE Executive Director, Mr. Gary Bartlett, and convened that meeting. After discussing the issues at length, Mrs. Kanter assured her colleagues that, now knowing what her lapses had been and what was expected of her, she would do the job to the best of her ability. She also *asked if they would like her to resign the position as chair*. They replied that they did *not* want her resignation, and we have moved on to become a strong and capable team. Had Mrs. King provided Mrs. Kanter, as a new board member with no background in the Board of Elections, even a general orientation that included LCBOE expectations that are not part of the General Statutes, or a simple job description, that meeting would have never been necessary.

At the next board meeting following that closed session, on November 1, 2011, the Official Minutes state, "King acknowledged the fact that she had never had two new board members at the same time and she was unaware of the protocol. However, she acknowledged that she dropped the ball when it came to the orientation for the two new board members " (LCBOE Official Minutes Book page 1443).

Contrary to Mrs. King's secondary claim in this paragraph, this board did – for the first time in LCBOE history – did set a regular date, in consideration of Mrs. King's schedule: the third Wednesday of each month at 10:00 AM, as its regular monthly meeting time. Meetings that were called on an as-needed bases were generally called to deal with either a crisis or a last-minute need for a board decision.

*(Response from Sharon Kanter, Chair)* I am stunned that Mrs. King stoops to cite my absence from the NCSBOE mandatory training in September 2011 at which she apparently thought that, two full months after I was sworn in, my training needs would finally all be addressed. I missed that meeting because I was out of the state to be with my dying mother, a fact of which Mrs. King was and is well aware.

By her own admission, Mrs. King considers a One-Stop Voting Plan that was developed ten years ago to be perfectly acceptable, a simple cut-and-paste task. That view does not take into account that this county, and this state, are different from what they were ten years ago – and so, in fact, is voting, which now includes county variations *as determined by each county's board*, such as extended poll opening hours and Saturday/Sunday voting. The “trivial and unnecessary” changes the board requested included making the points in the One-Stop Plan responsive to the points in the NCSBOE memo requesting the plan, along with corrected grammar, spelling, and punctuation. The plan with which the board was initially presented was simply unprofessional.

- 1.2. Mrs. King again absolves herself of any responsibility for even orienting, let alone training, new board members – even new members who have little or no prior experience with the board to which they have been appointed. She clearly considers that to be the exclusive province of the NCSBOE.
- 1.3. It is interesting to learn, at this late date, that Mrs. King follows “the NCSBOE calendar and guide as our work plan.” To our knowledge, this board has never seen an example of either the calendar or the guide; if they are used by LCBOE as a work plan, it would have been helpful at the time of Mrs. King's first review, when the subject of a work plan was first raised, for the board to know that there was something resembling a plan in use. Instead, Mrs. King never mentioned it. Having now seen these documents as attachments to Mrs. King's response, it seems to us the calendars and voter guide provide benchmarks which would serve as the basis for a work plan; they are not substitutes for an actual plan of work.

The August 10, 2011 minutes cited by Mrs. King do, indeed, indicate the dates and place of the poll worker trainings. She neglected to mention that each board member is expected to attend at least one of the trainings. The General Statutes do not speak to board members attending trainings.

The board requested that poll worker trainings be held more than one week in advance of elections in response to hearing that request repeatedly from the poll workers themselves.

1.4 Secretary Herring took over the posting of the minutes on the Web site after repeated request to Mrs. King failed to achieve that task. As previously stated in the Petition, only two sets of minutes had been posted to the website by the time of Mrs. King's second performance review in September, 2012.

Living in rural Lenoir County, Board Secretary Herring does not have high-speed internet – only dial-up, which presents difficulty in communicating electronically. There has never been an issue with the minutes until the 1/22/2013 minutes. When the board decided to place the minutes on the website, Secretary Herring wrote the minutes and sent them to Kanter and Allison for review. Mr. Herring sent an informational copy of the minutes to Mrs. King to review, to ensure that Herring had recorded the technical part of the minutes correctly. Mrs. King was requested not to print the minutes until he had received approval from both other board members. The process did not work because there were changes from Mrs. Allison and Mrs. Kanter, and because Mrs. Kanter was vacationing out of the state in an earlier time zone, with limited internet access. Mr. Herring discontinued sending draft minutes to Mrs. King and waited for responses from Mrs. Kanter and Mrs. Allison. When Herring received their responses and suggestions, he made the changes to the minutes. As agreed on by consensus in a board meeting, Mr. Herring added the statement to the minutes that were to be placed on the website: *"These minutes have been electronically approved by the members of the board"*. Then the minutes were sent to Mrs. King for her to print and have available for the board to officially approve and sign at the next board meeting. During early fall Mr. Herring had a Malware virus and additional computer problems which caused a delay in transmitting the minutes to Mrs. King. All the minutes that pertain to training, with the names listed, were held waiting for Mrs. King to provide Herring with a list of names of the individuals working at the One-Stop sites. In the minutes, Herring placed a bullet point by each name to justify why they did not attend the required training. Mr. Herring never received the list of One-Stop poll workers, but he placed a bullet point beside the names of poll workers he knew personally. Withholding these minutes while waiting for Mrs. King to produce the One Stop poll workers list delayed the transmittal of the other minutes, because they are printed in chronological order to go in the official book of minutes.

During this period, Mr. Herring noted that some of the emails transmitting the minutes to Joey Bryan, County IT Department Manager and to Mrs. King were not being received. However, his computer did not provide a rejection so he resent the minutes. Mr. Herring sent Mrs. King an email requesting that she withhold printing the minutes until Mr. Herring and Mrs. King could meet and go through the minutes she had received, and to compare her minutes with the minutes that Mr. Herring had in his notebook. Some were missing. Mr. Herring questioned whether Mrs. King had received the minutes that he had sent, and she stated that she found them in the Quarantine Summary file. This information sent up a red flag. On 2/5/2013, Mr. Herring emailed Mrs. King, "my records show that I sent you and Joey the 1/15/2013 minutes on 1/18/2013. Do you have these minutes? Mrs. King

responded “I just got your email through the Quarantine Summary again. Yes, I have minutes for the January 15<sup>th</sup> meeting.” I talked with the County IT Manager, who stated he would contact the company that maintains the spam file for the county and will make sure that my emails will not be sent to the spam file. On 2/4/2013 Mr. Herring sent minutes to Mrs. King (Herring’s computer indicated that the email was not rejected). Mr. Herring requested that Mrs. King acknowledge receipt of the minutes, but received no response; so the next day Herring stopped by the LCBOE and he left Mrs. King a note to verify her receipt of the minutes. Mrs. King responded on 2/5/2013 that she found the minutes in the Quarantine Summary file. Mr. Herring contacted the County IT Manager and shared the problem with him. He responded that he would fix Mrs. King’s computer so it would not happen again.

Mr. Herring has been very attentive to the task of preparing the minutes as the public record of this board’s actions.

Electronic approval of minutes is a widely-accepted administrative practice. Mrs. King knows that all original minutes of the LCBOE are physically signed by all board members and inserted in the LCBOE official minutes book, which remains in her custody at the BOE offices.

1.5 February 15, 2012 is six weeks after January 1, 2012. A calendar – or a budget report -- which is delivered a month and a half after an event is scheduled is useless to its intended users. Similarly, a calendar which is delivered in February is virtually useless by August or September, when schedules and events have inevitably changed.

Since it had no budget reports, by Mrs. King’s admission, for September through December 2012, the board was rendered entirely dependent on her repeated and already documented assurances that the budget was adequate to cover the election expenses. Line by line budget explanations are useless if they can’t be seen by the people responsible for the oversight of their administration. No board member recalls a single instance of a “board member having lost or misplaced their original copies,” when they were provided, of either resource. That claim is both specious and undocumentable.

The use of a ten-year-old template for LCBOE’s One-Stop Voting Plan has already been addressed in point 1.1 above. Mrs. King is apparently confusing the One-Stop Voting Plan for the May, 2012 primary election with that for the November, 2012 general election. The board initially required changes in the plan for the May primary; when she presented that same plan for the board’s approval at the August 8, 2012 board meeting, we had just finished adopting a One-Stop schedule that differed from the May schedule, which was obviously not in the plan at that point. The plan Mrs. King presented also included a One-Stop site which was no longer available to the BOE, having been rented the previous week. These are hardly “trivial” details. Mrs. King, when asked about the memo from SBOE regarding the One-Stop Voting Plan, actually excused herself for a few minutes, went to her office to look for the memo, and returned to the meeting to state that she couldn’t find it –

at her computer. Mrs. King, not the board, appears in this instance not to know the requirements of the One-Stop Plan.

2. The changes to the LCBOE Web site made by Mrs. King consisted of changing, after this board had been in office for six weeks, the names of the board members. Mrs. Allison met and collaborated at length by email with Lenoir County Information Technology Director Joey Bryan throughout January 2012 to effect, within the limitations of the overall County Web site, such additions to the Web site as removal of outdated information, expanded voter information, various maps of interest to voters, and so forth. Emails we have retained will attest to Mrs. Allison's involvement in this process.
3. Mrs. Kanter called Secretary Herring on Sunday night and stated she had a personal medical emergency and was en route to Duke Hospital, and requested that Herring attend a meeting, along with Mrs. Allison, at the BOE to hear a poll worker's complaint. The complaint was heard in closed session and, in compliance with NCGS, the details of the discussion in the closed session were not included in the minutes; no action was taken in closed session. However, the board maintains confidential notes of what occurred in the meeting which are filed in each board member's personal book of minutes. These confidential minutes were not provided to the Elections Director because they involved her personally. Upon her return, Mr. Herring briefed the chair on the meeting and stated that he had never felt so helpless, that there was no way to console this distraught individual except to apologize on behalf of the board and the citizens of Lenoir County. The documentation submitted as Exhibit 3 of the Petition is true and factual.

Wikipedia's definition of "strong-arm" is interesting in this context: strong-arm (strông' ärm') *Informal adj.* Using physical force or coercion: strong-arm tactics.

*tr.v.* **strong-armed, strong-arm-ing, strong-arms**

1. To use physical force or coercion against.
2. To rob by force.

The accusation of Mrs. Allison "strong-arming" Mrs. King into hiring the poll worker is patently untrue. The victim is more than willing to speak to Mr. Bartlett regarding this incident and is watching this matter very closely. Mrs. King and [REDACTED] both made the statements as indicated in the petition and the supporting documentation.

4. (*Response from Sharon Kanter, Chair*) I expressed my gratitude to the IT Director because, in response to the board's request, he provided the first written technology instructions Lenoir County poll workers had ever received. The poll workers' trouble implementing the instructions, of which a single copy was provided to each precinct, has more to do with the quality of their training than with the instructions, which are clear.

In the November 15, 2011 election, 11 of the 11 precincts involved in that election reported computer problems on startup (LCBOE Official Minutes Book pages 1446-1447). One of two problems was present in each precinct: the computer booted to a different program or an error message, or the voting machine printer returned an "out of paper" message although new rolls

of paper had been installed by Mrs. King or the Supervisor of Elections in all machines. IT staff, LCBOE staff, and rovers were dispatched to the precincts; the paper rolls in the voting machines had for some unknown reason come loose from their mounts, and functioned properly once the paper roll was reinstalled.

The problems encountered in the May 8, 2012 primary were different. In that case, when the computers booted up, multiple printer icons appeared on the ATV computer screen. Each attempt by a precinct official to reboot added another printer icon. Again, County IT personnel, staff, and rovers were dispatched to deal with the problem. More than 5 precincts were involved in the printer errors, and there were poll opening delays.

In our experience, few voters and even fewer poll workers will go to the trouble of filing a written complaint. Voters simply view filing a written complaint as a waste of time; poll workers are protective of their jobs.

The point here is that even if one polling site does not open on time, that's an issue. Whether it's 5 or 22 is irrelevant. One is enough to be an issue.

5. The curbside voter alert bells were purchased in 2010 and apparently have not worked since shortly after they were purchased. They were purchased in response to precinct workers' expressed need for some kind of alert system. Mrs. King went as far as contacting the vendor regarding the curbside bells, but when told the bells were out of warranty, she did not follow up with an alternative. She simply expressed that they were not fixed. She had no plan – and there was no follow up. In a perfect world, each precinct would have adequate staff to be able to detail one official to stand watch for curbside voters. This is not a perfect world, and few precincts have the ability to assign one of their officials to just this task. The precinct workers have a real need for a working alert system, for the reasons set forth in the Petition.
6. Mrs. King appears to have a short memory. After the very late posting of returns for the 11-precinct Democratic primary on September 13, 2011 this board did, indeed, implement a system to help the precincts get their returns into the BOE more quickly. Mrs. King was asked to identify the precincts that historically had problems at poll closing; a staff member or a rover was assigned to be at those precincts at closing to trouble-shoot any problems, and to return the signed totalized tape and flash card, in the appropriate bag sealed by the Chief Judge, to the BOE. That got the returns to the BOE more quickly and freed the precinct officials to finish closing the poll and allowed the Chief Judge to complete his/her other duties without the pressure of needing to get the returns in. The system was implemented in the November 8, 2011 election and was successful, as reflected in the LCBOE minutes of November 15, 2011 (Official Minutes Book page 1450).

While Mrs. King is correct that the LCBOE minutes of May 11, 2012 (Official Minutes Book page 1493) do not reflect the criticism referred to in the Petition, board members were in the public meeting room where election results are displayed fielding that criticism from voters and the

media, while Mrs. King struggled with the Unity computer in her office. Since she didn't deal with the irate citizens, apparently she considers their very vocal complaints not to have happened. Secretary Herring is to be commended for keeping controversy out of LCBOE's official minutes. Several sets of minutes refer to Mrs. King's problems with the Unity system.

7. *(Response from Sharon Kanter, Chair)* After realizing belatedly that, as chairman, I am indeed responsible for training the precinct workers, I felt my background in training other boards, focus groups, and nonprofit staffs might be of help in improving LCBOE's poll worker training. I did think the meeting with Jamie Robinson and Supervisor of Elections Hammonds had gone well, that the training would be substantively more interactive, that hands-on training with the voting machines would be mandatory, and that all trainees would depart with handouts which they had requested repeatedly. That was to be the only meeting for planning the training. Imagine my surprise when I received the training agenda on October 1 and learned that my "participation" would be limited to "comments" on each section of the training. In fact, two elements of the training agenda – the mock election, which was to include the precinct officials, and the laptop review did not happen; a full 16 minutes was spent on packing the supply boxes. Mrs. King didn't "have to step in," she was fully present and clearly didn't welcome any change in her routine.

Had the board members ever seen the piece of paper Mrs. King has attached to her reply as Exhibit #44, we would all have known the staff's correct titles. This was apparently an item that wasn't deemed important enough for training/orientation, but has loomed large in her Reply.

8. We have previously responded to his same issue in item 2 herein.
9. To our knowledge, the dates of the August 2012 SBOE training were not announced at the September 2011 SBOE training, so Mrs. King's opinion we "should have known the mandatory training was coming" is curious, at best. Unless the other board members in attendance had heard it and informed the board chair, Mrs. Kanter wouldn't have known about it, having missed the September training due to her mother's death. Board member Allison had just begun a new job in July, 2012, and had great difficulty arranging days off with "well over one month" to do so. Mrs. Allison also sent emails to Mrs. King and the board on June 8, the day before Mrs. King received her email regarding the training, advising them that she had accepted a position and would be out of the county for new on-the-job training.
10. Mr. Herring has also retained the email correspondence with Mrs. King regarding the Marriott Hotel. Mr. Herring acknowledges that he did not respond to Mrs. King's email because he had requested that Mrs. King book the attendees at the Courtyard Marriott. Mr. Herring has an ongoing family commitment and is not available the majority of the time, and did not think it was his responsibility to notify the other board members of the date of the training. Mrs. King apparently considers it the responsibility of board members to make each other aware of official event dates, rather than her responsibility to communicate with her board.

11. When Mrs. Allison and Mrs. Kanter checked into the Marriott, we were told that Mrs. King's credit card had been denied, so we would have to put our rooms on our personal credit cards. We did that, separately; Mrs. Allison had arrived a bit earlier than Mrs. Kanter did. Both our credit cards were charged at standard rates. After they had checked in and before going to their rooms, Mrs. Kanter and Mrs. Allison compared charges; then Mrs. Allison went to ask the clerk if we were not eligible for a discounted rate. That led to the conversation recounted in the petition. Mrs. Allison spoke to Mrs. King, on her arrival, about the discount eligibility; Mrs. Allison can speak to Mrs. King's expressed surprise, which she recounted to Mrs. Kanter later that evening. We had discussed the charges on our personal cards with Mrs. King, and they were reversed before we left the hotel. This entire issue goes directly to lack of communication; it would have been helpful if the board members had known Mrs. King was doing anything to recoup for the LCBOE part of the room charges, but we were not informed of her efforts. The exhibits that Mrs. King provided show that her communications by email began on August 17<sup>th</sup> – after she returned to the office from the conference.

12. We differ with Mrs. King. All three board members recollect her saying that DOJ required 90 days to approve precinct relocation. The correspondence with Mr. Baddour and NCSBOE was never shared with the board, despite Mrs. King knowing from our discussion that we were all anxious about the time line. The precinct location certainly was an issue, because the precinct workers had told all three board members separately that they could not work again in an unheated, un-air conditioned space open to the outdoors, where they couldn't begin to set up until 6:00 AM on any election day. The term "intolerable" came from the precinct officials who were pleading for an alternative poll site, not from the board. The composition book in which Secretary Herring takes the notes of the board meetings document: Approval use of church, Hugo FWB Church. Precinct workers want to get out of FD. Required 90 days and do not have time to move, SBOE & DOJ.

12.1. We believe the common thread through this response thus far is Mrs. King's lack of communication with board members. Board members each have had several instances in the past 19 months of going into the BOE to ask or tell Mrs. King something, only to learn that she was not in the office that day. The calendars we have received, on paper or by email, do not include any of the hand-written notes in Exhibit #58 of her Reply. The notes apparently were added at some point after the calendars were delivered to the board. Communication with the board did improve, briefly, following the September performance review; that trend did not sustain itself into the new year.

The chairman was the board member who, during the discussion that followed Mrs. King's March performance review, offered to help with developing a plan of work, after Mrs. King stated she was not familiar with that management tool. Mrs. Kanter suggested Mrs. King look at her calendar and let her know when she would like to meet for that purpose. The chair never received a response in that regard.

12.2. Board members' receiving a calendar six weeks into the year has already been addressed in this response. Contrary to Mrs. King's assertion, board members have rarely – let alone "continually" – "misplaced or lost" any copies. This claim seems to indicate that Mrs. King considers going into what was predicted for at least two years to be the largest election in this country's history without a calendar to be acceptable management practice. We disagree.

It is interesting that Mrs. King believes her probation period should be "over." That determination rests with the board, and it was deliberately left open-ended because of her lack of response to her March performance review. We had hoped, based on the conversation following Mrs. King's September performance review, that the assorted unaddressed issues might be resolved by the time the general election was over. With the outcome of the November, 2012 general election driving an inevitable change in the board's composition in July, 2013, the board decided by consensus to simply let the new board, after it was sworn in, determine Mrs. King's status. This board's decision changed when we received copies of County Manager Mike Jarman's December 5, 2012 memo to Mrs. King, numerous copies of which are attached as exhibits to both the Petition to Terminate and to Mrs. King's Reply. That memo was the first indication to this board that there were the kinds of mismanagement issues at the BOE documented in that memo. The board met informally with Mr. Jarman at his office on January 3, 2013 to clarify the issues raised in his memo, then met in session at the BOE on January 8, 2013. During that meeting, after discussing Mrs. King's lack of response to two performance reviews and the issues brought to the board's attention by Mr. Jarman's memo, the board entered into closed session and voted unanimously, in closed session, to petition the NCSBOE for Mrs. King's termination as Elections Director.

Had Mrs. King been performing the tasks identified from her first performance review, that improvement would have been reflected in the board score on the review instrument. That was not the case. Mrs. King claims indignantly in her points 10, 11, 12, 13, and 14 in the Management section of the review that "I am not a 'Registrar at Large.'" In fact, her job description, which was the basis for developing the performance review instrument, states on page 2 that the Elections Director serves as a Registrar at Large.

13. Board members are not responsible for day-to-day operation of the LCBOE. That is the Elections Director's responsibility. It is also the responsibility of the Elections Director to ensure that board members are familiar with those day-to-day operations, to ensure the board's effective oversight of the agency. Long tenure of staff personnel is not necessarily an indicator of competent supervision. The Petition documents multiple examples of Mrs. King's failures to oversee and correct errors made by her staff.

It should be noted that all three board members always speak to and carry on conversations with each employee upon arriving and leaving the BOE office. The board members have also on many occasions purchased breakfast biscuits for all the staff as well as shared home-made goodies with them, and given each employee gifts and flowers in this "hostile work environment."

Mrs. King claims in her Reply that she did not solicit any letters of support for her Reply. To the contrary, two of three board members received at least three phone calls in mid-January, 2013 from separate current poll workers who asked what was going on at the BOE and stated they were being asked to write letters of support to NCSBOE for Mrs. King. Two of the individuals who wrote support letters on behalf of Mrs. King are not very credible. Law enforcement had to be called to the polling place where Chief Judge ██████████ was working because she chased a would-be voter out of the polling location while cussing at him. Judge ██████████ and Assistant ██████████ were reprimanded during October, 2012 One-Stop Voting for issues they had with voters. The board chair, after consulting the County Manager for guidance, emailed Mrs. King, pursuant to the third such phone call, to remind her that she could not conduct such solicitation on County time, or use County-funded supplies or equipment in that activity.

██████████ and Secretary Herring did have words in the BOE hallway on November 6<sup>th</sup>. Space is at a premium in all areas of the BOE on election nights. In the past, ██████████ has entered the front door of the office, with her son, and he would take a seat which made the area even more congested because this is the area where the three staff members check in the items being returned to Election Headquarters. At the July 24, 2012 Canvass meeting, *“Herring informed the Chief Judges that on election night (11/6/2012) that the front door will be locked and the Chief Judges are requested to enter through the conference room door or the door to the room where the precinct supplies are stored. Herring stated that the check-in process will be very time consuming and the small room will not accommodate the Chief Judges if they enter through the front door”*. ██████████ did not comply with the request; she came through the front door and stood in the office where the staff was attempting to check in the Chief Judges prior to going to the back hallway. Mr. Herring gave her a number which was not in order but he remembered the order in which the Chief Judges had entered the hallway. The Moseley Hall Chief Judge had gone to her car to retrieve some missing documents. The hallway was full of Judges waiting to be processed. ██████████ stated that her number revealed that she was next and Herring told her that she was not next, the Moseley Hall Chief Judge was next. Mr. Herring was professional but stern and did not waiver in his decision. Her comments have been expanded for this Reply.

13.1. Mrs. King is deliberately obfuscating. The training announcements recruiting additional One-Stop workers were made and the resulting list of One-Stop signups created at the May, 2013 primary trainings.

Anticipating a heavy increase in One-Stop voters in November, the board adopted a motion at its meeting on August 23, 2012 (LCBOE Official Minutes Book page 1508) to restrict poll worker overtime as much as possible. Mrs. King was instructed to implement this effort by recruiting additional One-Stop poll workers, developing a list of One-Stop poll workers, and preparing a schedule for each One-Stop site to provide for orderly rotation of poll workers to curtail overtime. No schedule was ever presented to the board, despite repeated requests. As a result of this inaction, the same “core group of One-Stop workers” accrued

extreme amounts of overtime in the October-November, 2012 One-Stop voting period. The documents Mrs. King presented as exhibits 65, 66, and 67 in her Reply applied to the May, 2012 primary One-Stop sites. Exhibit 66 was created for inclusion with this Reply; *the board has never seen these lists before now.*

13.2. Mrs. King states that “every poll worker was contacted by phone . . . to inform them of the error.” Unfortunately, not every poll worker received that phone call. Several poll workers simply missed the training. Had Mrs. King reviewed the letter that went out to the poll workers with the incorrect date, the situation would not have happened.

13.3. Mrs. King claims “the board members insisted on training all 188 workers twice . . .” The reality is that, in response to widely-expressed requests from poll workers themselves during the July 17, 2012 second primary, one of those two trainings was a technical training only, focused on the ATV computers and printers. The technical training was a direct outcome of the repeated problems poll workers had experienced in previous elections with the computers and printers. As with the expanded voting hours in the One-Stop Plan, Mrs. King assured the board that there were adequate funds in the budget to cover the costs of the technical training.

13.4. The LCBOE minutes to which Mrs. King refers (LCBOE Official Minutes Book page 1511) is an attendance list from the trainings on October 9 - 11; it is not a complete list of poll workers, organized by precincts and positions – the kind of list that has been provided board members before past elections. As with Exhibit 66, the list of November One-Stop workers in Exhibit 74 was created for Mrs. King’s Reply. The organized list of all precinct officials is the list board members were given for the first time after the November 6 election. Mr. Herring requested the schedule of workers at the One-Stop site so he could indicate the names of poll workers who missed the training with a bullet to provide rationale. That schedule/listing was never provided.

13.5. It is true that Mrs. Kanter was out of town, fulfilling a longstanding family commitment of which the board and Mrs. King were aware, on the first day of One-Stop voting. It is not true that she was not performing her duties. Her family members and mobile phone records from all three board members can attest that Mrs. Kanter was in constant touch, from 8:10 AM throughout the day, with both other board members, helping in their attempts to deal with missing supplies, overcrowded polls, unruly electioneers, and the myriad issues they encountered and efficiently dealt with that day, including the emergency board meeting.

13.6. (*Response from Secretary Oscar Herring*) The statement that Mr. Gary Bartlett did not phone the LCBOE about voters being in the incorrect district is false. Deputy Supervisor of Elections Perry received the call and came to the board room to inform Secretary Herring

and Mrs. Allison that Mr. Bartlett was on the phone and wanted to talk to Mrs. King. Secretary Herring and Mrs. Allison took the call, informing Mr. Bartlett that he was on the speaker phone. Mr. Bartlett stated that one of his staff members, Marc Burris, was in his office and he believed some voters are in the incorrect district. Mr. Bartlett stated he was going to let us talk with Mr. Burris. We asked Mr. Burris to hold while we transferred the call to the correct staff person. Mrs. Perry 's statement is incorrect. As previously noted Herring prepares a Memo for Record to document the conversation and since this did not occur in a board meeting it is not in the minutes.

Once again, competent oversight of her staff by Mrs. King would have prevented the problem ever arising.

Mr. Herring has stated he has always prepared Memoranda for Record to jog his memory. The minutes are dated 19 October 2013 but the first paragraph states "*to discuss the problems the first day*".

Mrs. King's accusation of the board having created *any* document "in the past few days" is untrue and offensive.

13.7. This board does not believe that good management is based on assumptions. Poll workers should not be expected to automatically infer from attending training that they are actually scheduled to work. It is unclear in this charge whether Mrs. King means "hearsay" or "heresy" in regard to Exhibit 79. If it is the former, it is surprising that she would consider a conversation to which Mr. Gary Bartlett, Mr. Marc Burris, a board member, and the Deputy Supervisor of Elections were party, a conversation witnessed by a second board member, to be hearsay. Once again, Secretary Herring prepared a Memo for Record to attest to his conversation with poll worker [REDACTED], correction of the petition as the information was related to Mr. Herring.

13.8. Mrs. King misremembers. Board members Herring and Allison can attest to supplies – primarily the 50-foot electioneering boundary rope and informational signage for voters and electioneers – being missing from three of the four One-Stop sites' supply boxes. Had Mrs. King been adequately supervising the staff member responsible for packing the supply boxes, those supplies would have been in place before the polls opened on October 18, 2012. Exhibit 8(5) of Mrs. King's Reply is an inventory list of supplies designated for the precinct supply boxes. It is difficult to understand how basic items so clearly listed on a well-organized list like this could have been overlooked, when they were only needed by four voting sites.

At the October 23, 2012 meeting of the LCBOE, both the Republican and Democratic parties' local executives were present, and both had multiple complaints related to the missing electioneering and curbside voting designation signage. The Democratic Chair plainly stated

that some of the violations occurred because the Board of Elections was not fully prepared for the opening of the One-Stop sites, and that signs were not delivered to at least one of the busiest sites until mid-morning (LCBOE Official Minutes Book page 1521).

Again, Secretary Herring prepared a Memo for Record. In his MFR [Exhibit 13.6 Corrected] he states the precinct supplies were not delivered until mid-day, and it lists the items that were missing that were reported by the precinct workers.

13.9. A case of computer paper was, indeed, ordered from Corporate Resources on an emergency basis late in the day on November 5. Exhibit 88 provides purchase orders through 10/31/12. However, Exhibit 113 states there is an additional expense from Corporate Resource. A board member heard the Elections Supervisor make the call to Corporate Resource on Election Day and demand that they deliver paper immediately. Board member Kanter was standing in the BOE administrative area when the paper was delivered. Nothing in the Petition has been “fabricated.” The invoices included in Mrs. King’s Exhibit 88 are irrelevant, except for two paper purchases made well before the election in November.

13.10. The time on the voting machines on November 6, 2012 at the polls’ opening was incorrect on the machines in every one of the county’s 22 precincts, not just “some” of them. Mrs. King had calibrated the voting machines for Daylight Savings time instead of Eastern Standard Time. Mrs. King is correct in stating that board members did not go to the precincts to help poll workers deal with the problem; all three board members were already at precincts where they had gone to deliver absentee lists, and were acutely aware of the problem.

14. Mrs. King was asked directly, before the board approved the two extra half days’ October early voting on July 8, 2012 if LCBOE’s budget was adequate to cover the added expense. She assured the board that there were adequate funds (LCBOE Official Minutes Book page 1505). She restated that false assurance at the August 23, 2012 board meeting at which the erroneous One-Stop Plan was presented to the board for the first time and tabled pending corrections (LCBOE Official Minutes Book page 1507, August 23, 2012). A manager with 16 years’ experience running elections should have enough historical election expense records and experience to be able to project reasonably the expenses of an upcoming election. The issues raised again by Mrs. King regarding extended One-Stop hours and “double training” the poll workers have already been addressed in 13.3 of this document. Exhibit #95 to Mrs. King’s Reply is a repetition of the early voting recruitment list from May, 2012; Exhibit #96 is a repetition of the elusive One Stop Workers list that board members have never seen before reading Mrs. King’s Reply; Exhibit #98 demonstrates that a grand total of \$700 was added to the Training line in LCBOE’s 2012-2013 budget to cover the added technical training of poll workers. Given the magnitude of the eventual budget overrun, the \$700 training item appears to the board members to be modest.

There is no plan or any schedule for One-Stop workers included in these exhibits. Mrs. King appears not to understand that a list is not a plan, nor is a calendar a schedule.

The \$10,000 budget disparity between 2012-2013 and 2008-2009 was stated verbally to the board by County Manager Mike Jarman during his informal meeting with the board at his office on January 3, 2013. The board has obtained a copy of the LCBOE budget for 2008-2009; budget line items are different from the current budget format, and without Mrs. King's input regarding which elections-related salaries are in which lines on the 2008-2009 budget, it is impossible for the board to document Mr. Jarman's statement.

The LCBOE having \$70,100.53 remaining in its budget for FY 2012-2013 is good news to this board. It is, however, difficult for the board to understand how that amount of money can sustain this agency for the 4-1/2 months remaining in this fiscal year. According to the most recent (through November, 2012) month-to-date budget supplied to the board, as of November, 2012, with 42% of the fiscal year past, 59% of the salary line alone had been expended. The majority of the money remaining in the budget is allocated for salaries.

15. Mrs. King claims there was no way to know there would be a larger than normal voter turnout in November, 2012. If her own board was concerned enough in August to attempt compelling her to plan for the heavy turnout (LCBOE Official Minutes Book page 1508), surely she was aware that there was at least potential for an unusual election. For at least two years prior to that election, every media outlet in the country had been predicting -- and backing up their predictions with polls, surveys, statistics, and campaign coverage -- that the November, 2012 general election would be the largest election in American history. This board believes that Mrs. King did not have time to give the board calendars and budget reports for the last third of the year, including the entire election period, because she lacks the ability to prioritize, plan and manage her time effectively.
16. The much-cited NCGS #153-33(11) does, indeed, mandate submitting a budget that *estimates the cost of elections for the coming year*. Contrary to Mrs. King's interpretation of that statute, it does not state that the entire budget is an estimate.
17. Mrs. King's interpretation of NCGS #153-33(11) has been addressed in 16. above. This Reply is the first time any member of this board, including the 6-year veteran Secretary, has ever heard the term Memorandum of Understanding. It would have been helpful for the board members to have been familiar, perhaps through orientation or local training at the beginning of their terms, with this term, its implementation, and its implications for governance of LCBOE. It has by default been our understanding that, as a County employee, and a County department head of an agency funded by the County, Mrs. King is accountable at least to some extent to the Manager of that County.

Mr. Bauer is long gone from Lenoir County and could not have fabricated his 2001 and 2004 memos for the Petition. His memoranda to Mrs. King were retrieved from Lenoir County's files.

18. The Fair Labor Standards Act issues were explained in Mr. Jarman's memorandum of December 5 to Mrs. King. Likewise, the potential – "looming" is Mrs. King's addition – for state and NCGS #153-33(11) and the lack of a Memorandum of Understanding have been addressed in 16. And 17., above, in this document. On Tuesday, January 15 at 3:02 PM, the chair emailed Mrs. King that the board would like to meet with her on Friday, January 18 to discuss four items, one of which was "The resolution which you have been directed to submit to County Commission next Tuesday regarding the budget overrun." Mrs. King responded at 3:05 PM, "Sharon, Friday at 10:00 AM is fine." The intent was to review, before it was submitted, a resolution that would be delivered in our names. It was delivered, in the name of the LCBOE, without the board's either having seen or approved it.
19. The Memorandum of Understanding issue has been addressed in 17. above, but Mrs. King once again misunderstands the board's concern. The Lenoir County expenditure statement, Exhibit #117 in Mrs. King's Reply, contains no Temporary Help line. The July 2012-2013 budget expenditures chart generated by Mrs. King and distributed to the board contained such a line, Line 1260, in the amount of \$600, but that line has disappeared from subsequent reports. Mrs. King employed an LCBOE Chief Judge and close friend, [REDACTED], in the LCBOE office for six weeks prior to the election. We are not concerned with Mrs. King having hired temporary help, but with the budget impact of this hire. Surely, the temporary hire's wages for six weeks exceeded \$600, which was the amount approved by the board when the budget – for which the board is ultimately responsible -- was submitted. The Temporary Help line in the budget was never charged until after the budget overrun was identified, when it was zeroed out in line transfers. We do not know the budget line from which the temporary help was paid, and how that impacted whatever budget line was charged. Yet we are charged with oversight of the LCBOE budget.
20. The Petition to Terminate included copies received from Lenoir County's Department of Human Resources of all I-9 forms as attachments to County Manager Mike Jarman's memo of December 5 to Mrs. King that the County considered relevant. Mrs. King has never communicated to the board regarding the number of employees she has hired, and lacking that information, we have no basis to dispute LCDHR's information. Had Mrs. King been adequately supervising the Supervisor of Elections, she would have identified the errors in form completion that caused the back-and-forth between the LCDHR and the Supervisor of Elections, and forestalled any questions as to their validity. County Manager Jarman, on page 2 of the same memo to Mrs. King, states "Also you failed to file Workers' Compensation Claims in a timely manner in two incidences in the last year." Mrs. King apparently failed to read that part of the memo.
21. Point 21 is missing from Mrs. King's Reply.

22. The board's issue in this instance goes again to Mrs. King's inadequate management skills. She is disbursing taxpayers' money, and should be paying careful attention to the way in which each of her employees is paid.
23. Again, Mrs. King incorrectly cites NCGS #163-33(11). Mrs. King may believe she has provided the board with monthly budget statements, but that is not the case. By her own admission, she neglected to supply such statements during the busiest time – September through December, 2012 – this board has experienced.

The board members are familiar with the practice of line item transfers in adjusting a budget. That practice is not the issue. The issue is the lack of communication with the board regarding the budget, for which the board is responsible. This Reply is the first time this Board has seen Exhibit 128. We were not aware that Mrs. King had filed a budget request with the County to move these funds. The requested decrease in the legal fees line is a particular surprise.

24. Mrs. King was reminded in an email from the chair dated and sent January 9, 2013 at 9:46 AM, that "The Board requested some time ago that you develop a schedule for the staff to begin immediately taking their accrued comp time. That schedule, if it has been developed, has not been shared with the Board; . . ." Mrs. King responded at 1:00 PM from Las Vegas, "Ok. Dana" The list of overtime accrued by each employee which Mrs. King presented to the board at the January 18, 2013 meeting is informative, but it is not a schedule for taking that time.
25. Mrs. King was standing at the M-100 machine less than four feet from the table where the board members were seated and in front of which the question was asked. The questioner, in fact, verbally directed Mrs. King to the correct statute. Mrs. King claims she simply had "a moment of confusion over a particular ballot." Confusion concerning ballots, especially on the part of an Elections Director, is simply unacceptable.
26. Mrs. King was indeed out of the state, but she responded to the chair's email on January 9 as referenced in 24. Above. The board was clearly aware that she was out of town.

The Lenoir County Commission is the actual name of the body on which the Lenoir County Commissioners serve. After 16 years as a County employee, Mrs. King should know the correct terminology.

The exchange of emails between Mrs. Kanter and Mrs. King on January 9, which informed Mrs. King of the meeting on January 18 and to which she agreed, clearly indicates that this charge is not true. The email contains the directive about which she so vigorously denies any knowledge.

27. Mrs. King appears from this claim to believe that a closed session, *per se*, negates any kind of deadline. Mrs. King shared none of the information with her board regarding the presentation

to County Commission; that information came to the board members from County Manager Mike Jarman in a phone call to the chair.

The memorandum from the board that Mrs. King characterizes as “very hurtful” was actually sent on December 22; Mrs. King would have to explain why she didn’t receive it on her County-supplied mobile phone until December 24. That memorandum was sent because the board members understood they were facing a January 3 deadline for presenting the resolution to County Commission. The memorandum clearly states that the board, because Mrs. King never created a schedule for the One-Stop sites, would not support her request for an extra appropriation to cover the overtime caused by her lack of planning. In no way did that memorandum indicate the board did not support either her or the employees who had accrued that overtime.

As stated earlier, Mrs. Kanter had seen an improvement in communication between the director and the board; that improvement was not sustained beyond the general election.

Mrs. King’s scurrilous accusation about “many secret meetings” is completely baseless. This board has been scrupulous in its commitment, going so far as to not even have a cup of coffee together, and has never held a “secret meeting.” The decision to initiate a Petition for Termination was taken by the board in closed session, meeting at the LCBOE, on January 8, 2013. At the meeting with Attorney Bob Griffin on January 15, 2013, the Chair stated that she would prepare a Petition for Termination, and requested that Mrs. Allison and Secretary Herring send me concerns and issues they thought should be included in the Petition. THERE HAVE BEEN NO SECRET MEETINGS of this board.

*(Response from Sharon Kanter, Chair)* I did, indeed, wonder if Mr. Bartlett received the emails I had sent him, since I had not had responses to them.

The members of this board consider Mrs. King’s assumption that Mr. Jarman is available on a 24/7 basis to be unrealistic. That opinion is borne out by the fact that she herself claims not to have received the memorandum from the board emailed to her on December 22, 2012 until the early morning of December 24.

Mrs. King states that the board’s opinion of her work performance “is only an opinion.” It is, however, the opinion of her board. If it were not the board’s opinion, this Petition would never have been initiated. That opinion is supported by the facts presented in the Petition.

It is laudable that the LCBOE has, since 1997, returned more than \$748,746 to Lenoir County. That fact makes the current elections budget overrun (Mrs. King’s term) even more inexplicable to the board.

Mrs. King demonstrates her lack of familiarity with the NCGS in stating the board “chose to handle this personnel matter in an open session . . .” NCGS 143-318.11(6) clearly states, “. . . Final action making an appointment or discharge or removal by a public body having final authority for the appointment or

discharge or removal shall be taken in an open meeting.” The Petition, once it was adopted by motion and unanimous approval by the board, became public record as an action taken by the board in that open meeting, and thus became part of the minutes of that meeting. No option of choice is provided in the statute. The board’s initial refusal to include Mrs. King’s very personal remarks in the minutes was pursuant to the advice of Ms. Johnnie McLean, NCSBOE, who had advised Secretary Herring in a phone call that the minutes should contain any motions and decisions made by the board, and very little discussion. That advice was waived to accommodate Mrs. King’s insistence, and the remarks she approved in emails to the chair were included in amended minutes (LCBOE Official Minutes Book page 1536. Mr. Herring’s memo on behalf of the board is addressed in 27. of this document, above.

Mrs. King cites Mrs. Kanter’s failure to appear at the opening of the polls on September 13, 2011. Mrs. Kanter had, in response to Mrs. King’s phone call, arrived at the BOE before 3:45, because she was present for the Absentee count, which began at 3:45 PM (LCBOE Official Minutes Book page 1429). Between the end of that count and the close of polls, Mrs. Kanter managed to visit all 9 city precincts. Mrs. Kanter’s early misunderstanding of her duties and the expectations of a board chair have been addressed in 1.1 of this document. Her fellow directors, not Mrs. King, were responsible for clarifying those duties and expectations, an act of great kindness that enabled Mrs. Kanter to assume the duties of her role.

Mr. Herring was well aware of the answer to an elected official’s query about working at the polls. Mr. Herring’s motive in forwarding the request to Mrs. King was to allow her to respond, as the Elections Director, to a question from an elected official. This charge is an excellent example of intended good deeds backfiring.

Mrs. King’s unhappiness with the board’s adhering to the North Carolina General Statutes has been addressed earlier in this document. Had the board held that meeting in a closed session, that session would have been illegal.

This board stands behind its Petition to Terminate Elections Director Dana King.

Sincerely,  
Lenoir County Board of Elections

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Sharon L. Kanter, Chair

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Oscar E. Herring, Secretary

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Kimberly B. Allison, Member

February 21, 2013

## ADDENDUM

### LCBOE Response to Addendum to Reply, Lenoir County Board Of Elections Petition to Terminate Elections Director Dana W. King

This board regards the Addendum to Mrs. King's Reply to LCBOE's Petition to Terminate Elections Director Dana W. King's employment as specious.

Mrs. King cites NCGS 163-35(b) as the basis for this charge. The most recent posting in LCBOE Official Minutes of the Election Director's "specified duties, responsibilities and designated authority" occurred on October 7, 1997 when the board at that time adopted a document titled "Duties of the Director of Elections." That document served as the basis for the performance review instrument used in both reviews conducted by this board of Mrs. King's job performance. Mrs. King distributed copies of that document to the board at its meeting on February 15, 2012 (LCBOE Official Minutes Book page 1476). If, indeed, this board has violated NCGS 163-35(b), all previous LCBOE boards for the past 16 years, since Mrs. King's last performance review in 1997, must be charged with the same violation. Previous LCBOE boards have followed the same procedures as has this board in appointing precinct officials and poll workers on Mrs. King's recommendations. This board can only be cited for a direct violation of the statute if there is precedent in this board or in other counties for boards of elections directly appointing all precinct officials and poll workers.

Mrs. King further charges that this board has violated NCGS 163-33(11) by not preparing the agency's budget. Item #25 of Mrs. King's existing 1997 job description states that duty as: "*To prepare preliminary budget and final budget on approval of the board.*" At its meeting on February 15, 2012, the board agreed by consensus to hold a meeting specifically to review the 2012-2013 budget (LCBOE Official Minutes Book page 1475). That meeting occurred on March 2, 2012, when Mrs. King submitted to the board a proposed 2012-2013 budget she had prepared; the board and Mrs. King discussed the budget at some length; board members identified changes; and the board moved acceptance and adopted the revised budget for submission to Lenoir County (LCBOE Official Minutes Book page 1479). This board has followed the job description stipulation to the letter. If it has done so in violation of NCGS 163-33(11), then previous boards at least since 1997 must also be held in that same violation, and this job description itself must be held to be in violation of NCGS 163-33(11).

Mrs. King states that the Resolution she was required to submit to the Lenoir County Commissioners (*sic*) for additional funds to cover the costs associated with the November, 2012 election "was unanimously approved." Of course, it was approved. The North Carolina General Statutes require all 100 counties in the state to fund their boards of elections as required. The Commissioners had no option, as two of them pointed out in the process of making that vote. (NCGS 163-37; S.L. 1999-424, § 3[a])

Mrs. King attributes \$6,000 of the overrun (her term) to unexpected expenses related to an increase in her salary and that of the Deputy Supervisor's salary, who has applied for retirement. The Deputy

Supervisor's retirement is no surprise to anyone associated with the Board of Elections; she has been talking with board members since shortly after they were appointed about her anticipation of her retirement, and that it would come "in the spring" of 2013. While Mrs. King's salary increase may have been unanticipated, the Deputy Supervisor's increase should have been planned in the budget. Instead, no mention was made in the budget work session referenced above of any increased salary expenses in the coming year. This addendum contains the first information this board has had regarding any staff salary increases.

We believe these charges to be an attempt on Mrs. King's part to distract from the real issues of her mismanagement.

Lenoir County Board of Elections

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Sharon L. Kanter, Chair

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Oscar E. Herring, Secretary

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Kimberly B. Allison, Member

February 21, 2013