

**MINUTES, LENOIR COUNTY BOARD OF ELECTIONS, 3:33 P.M. ON 15 MARCH 2013 AT 110-C SOUTH HERRITAGE STREET, KINSTON, NC 28502** [File: BOE15Mar2013]

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

Chairman Kanter called the meeting to order at 3:33 p.m.

Prior to the meeting the Elections Director, Dana W. King, provided the Board with her written proposed budget request. The Board members reviewed the proposal and responded with written questions regarding the proposed budget. As a guide the Board members used the proposed budget, which initially contained a 21% increase over the 2012-2013 budget, and the questions from the Board members to begin the budget work session. The Board members reviewed each line item and held extensive dialogue regarding the budget. Clarification was requested if the pending retirement of two LCBOE employees had been calculated in the employee benefits of the proposal. Mrs. King informed the Board that she had sought assistance from Martha Martin, Lenoir County Finance, about the grade/step and longevity of potential replacements of the retiring personnel. Mrs. Martin provided a spreadsheet on the LCBOE employees and the poll workers for inclusion in the 2013-2014 LCBOE budget. Mrs. King informed the Board that her full-time position would be reclassified to a part-time position. After much discussion of *line item 1260, Salaries/Wages – Part Time* Mrs. King suggested that the line item be increased from \$600 to \$1,000. Board member Allison asked Mrs. King if she thought that was enough money on that line item and she stated “yes”. In addition Board member Allison suggested to Mrs. King to use that part-time line item for the salary of her new employee so in the future if she needed a full time employee she would have a designated line item with financial data to justify that employment. Mrs. King acknowledged the suggestion. There was unanimous consensus by all Board members to send the proposed 2013-2014 Lenoir County Board of Elections budget to the County Manager. The total of the proposed budget is **\$373,754.00**.

On a motion by Oscar E. Herring, a second by Kimberly B. Allison and unanimous approval to include the Judicial Decision on the Petition to terminate the Elections Director in the official minutes. The Judicial Decision was made by the NCSBOE Executive Director, Gary Bartlett.

Board member Oscar Herring asked Mr. King if *the Petition, the Reply and the Response had been copied on acid-free paper and included in the official book of minutes*. Mrs. King responded *that she had to order a box of acid-free paper from Wilson-Jones, the supplier*. Mrs. King was requested to include the *Judicial Decision of the Petition* in the official book of minutes and the document be copied on acid-free paper.

Mrs. King informed the Board that she would be on vacation next week and was traveling to Tennessee to direct a wedding.

The meeting adjourned at 4:50 p.m. on a motion by Kimberly B. Allison and a second by Oscar E. Herring.

These minutes were electronically approved by the Board members on March 16, 2013.

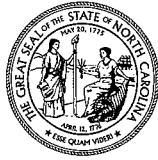
**APPROVED:**

Sharon L. Kanter  
Chairman

Kimberly B. Allison  
Board Member

Oscar E. Herring  
Secretary

Attachment  
Judicial Decision to the Petition



## STATE BOARD OF ELECTIONS

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**GARY O. BARTLETT**  
Executive Director

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Lenoir County Board of Elections  
Ms. Sharon L. Kanter, Chair  
Mr. Oscar E. Herring, Secretary  
Ms. Kimberly B. Allison, Member  
P.O. Box 3503  
Kinston, NC 28502-3503

March 4, 2013

Dear Board Members,

The office of the State Board of Elections (SBE) has received your Petition for Termination of Lenoir County Board of Elections (CBE) Director Dana King, as well as Ms. King's response and addendums received from both sides. On Thursday, February 21, 2013, I also traveled to your office in Kinston to meet with your Board and Ms. King.

To begin my response, I would like to thank all of the Board members — and Ms. King — for your public service. I am sure all can agree that the current situation is highly unfortunate for all involved, and for Lenoir County.

During my 20-year tenure as Executive Director, I have administered several resignations, terminations and compelled retirements of CBE Directors. Such processes naturally have harmful impacts upon cohesion within an elections office, and the public perception of that office. Both the Petition and Ms. King's response mount serious allegations. Unfortunately, the documents I have received also reflect poorly upon all involved, and uncover some highly-discouraging ineptitude in how business has been handled within Lenoir County Board of Elections. I see unchecked personality conflicts, vindictive distortions, and a lack of trust and harmonization by all. It was difficult to sift out the facts from the innuendo and invective contained in the materials.

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Below, I address each point of the Petition in turn before detailing my decision.

1. This will be a common refrain through my response, but the Petition's complaints show a disheartening lack of proper communication between Ms. King and the Board. The blame for poor communication cannot be laid solely at Ms. King's feet.

The Board acted properly to conduct performance reviews of Ms. King in March and September 2012. The office of the State Board of Elections encourages County Election Boards to conduct regular performance reviews of Directors in order to gauge performance and have a record of that assessment. It is within the County Board's discretion to choose the evaluation tool for that performance review, so there is no issue with the Board using a document from the administration of Lenoir County.

However: Evaluating Ms. King would have been much easier, and expectations could have been more effectively addressed, had the Board properly adopted a current document defining her Duties and Responsibilities as Director; see North Carolina General Statute § 163-35(b). Without such an instrument that has clearly defined *for this Board's term* which CBE functions have been delegated to the Director, the Board's Petition cannot point to specifically-delegated Director job duties (such as a duty for the Director to create what the Petition refers to as a "work plan"). In general, the Director and staff of a CBE office are primarily responsible for *administrative* functions, such as ensuring proper and current information is published on the CBE website (the Board is certainly free to comment on the substance and format of that website). Meanwhile, nearly all responsibilities set out in the North Carolina General Statutes regarding election business fall to the *County Board of Elections*, not specifically to the Director of that office.

At the county level, the Board is the final decision-maker. The Board has authority over the Director, and should assert that authority, in election business decisions (such as when to conduct pollworker training). The Director is expected to follow the Board's directives.

The Petition indicates that Ms. King failed to follow directives in some instances. In such a situation, there should be clear communication between the Board and Director — the matter should be resolved without issue. Or, the SBE office should be brought into the conversation if necessary and at a juncture when the matter still can be resolved.

Without adequate communication between the Board and Director, the Board did not receive the information and structure that Board Members now claim were necessary for them to be able to carry out Board duties. This was a breakdown of communicating expectations between all involved. Board Members did not articulate what they needed, or did not effectively follow up when requests were made. For Ms. King's part, she failed to proactively assist Board Members, and in many instances failed to adequately respond

to requests and instructions. While Ms. King brings evidence in her response that she did provide the bare essentials such as some monthly calendars of Board activity, it is clear that her job performance in this area was not stellar.

2. This matter should have been resolved, at the time, without issue. While the Board is free to make edits to a CBE document such as a One-Stop Implementation Plan, in this instance none of the edits materially changed the Plan.
3. This issue is now moot. Ms. King made an apology at the time. No further action is warranted.
4. Voting sites not opening on time is a serious issue. Responsibility lies with the Judges of the polling places in question, the CBE staff including Ms. King, and finally the Board.
5. Alert bells for curbside voting are not required. It is the responsibility of the County Board of Elections to ensure that curbside voters receive prompt service from their automobile. That responsibility includes scheduling enough election officials for one official to be able to monitor the designated curbside voting area, if necessary, given the layout of the voting site.
6. Developing and maintaining processes to ensure timely reporting of election results is an internal issue to be resolved by the County Board of Elections.
7. This issue, relating to the scheduling of CBE business, is an internal grievance. The Board should assert its authority to avoid such misunderstandings between the Board and Director.
8. See Item 2.
9. Ms. King delayed sending out training conference information for one month's time. While no major consequence arose out of it, I agree that such an elapse is an aggravation.
10. Ms. King resolved the training conference hotel billing issue.
11. The Board presents a host of minor vexations regarding how this polling place change was handled. However, the relocation received all requisite approvals — there was no ultimate harm.
12. The Board is free to set the parameters of a Director's probation. See also Item 1.
13. The Board offers no evidence of complaints of Ms. King by her staff. All of Ms. King's staff members have a long record of service under her leadership.

The Board has a legitimate complaint that Ms. King did not recruit an adequate number of One-Stop workers to cover 2012's election demands without substantial overtime

costs. That being said, as a matter of practicality, a balance must be struck between recruiting additional new workers (who are unproven in elections and must be trained) and relying upon the county's experienced election officials. This balance includes an assessment of training and labor costs required to bring those new workers up to speed. A degree of flexibility is required to respond to voter traffic, and it is often more efficient to adapt schedules of existing workers rather than to place additional workers into the equation. Hiring additional workers may have mitigated — but not eliminated — the overtime costs.

The larger issue is that the Board was not aware of overtime costs until after the fact. Again, the materials received demonstrate a breakdown of communication and other complaints with Ms. King's job performance. Again, it is important for the Board to assert its authority in instances when the Director is not meeting the Board's expectations or providing sufficient information for the Board to carry out its duties.

In response to some complaints raised by the Petition, Ms. King details how the issue was resolved or corrected. In other complaints, there is at least a factual dispute about the issue itself or whether Ms. King complied with the Board's directive. Many of the complaints demonstrate a lack of proper planning, double-checking and, of course, communication on the part of Ms. King. Several lapses that occurred in the Lenoir CBE office are not in dispute, including the failure to ensure all polling places were provided all needed supplies in advance, and the failure to properly set the time on voting machines.

14. The responsibility to maintain a budget ultimately rests with the Board, although the Director is responsible for those budgeting duties that have been delegated.

Ms. King provides evidence that the Lenoir CBE office had the following surpluses in previous years, which were returned to Lenoir County:

- FY 2007-08: \$66,477 surplus
- FY 2008-09: \$26,181 surplus
- FY 2009-10: \$96,288 surplus
- FY 2010-11: \$44,306 surplus
- FY 2011-12: \$61,754 surplus
- Total surplus FY 2007-08 to FY 2011-12: \$295,006

In this larger context, Ms. King shows that Lenoir County Board of Elections has carried a surplus of hundreds of thousands of dollars in the past few years.

It is not disputed that following the 2012 General Election, Ms. King had to request from the Lenoir County Commission a special appropriation of \$20,847 to cover overtime expenses, which was eventually granted. However, this amount is dwarfed by the

previous CBE office surpluses above. In fact, Ms. King asserts that this instance was the first time during her tenure that she ever had to request additional funds from the county. A further consideration is the fact that the 2012 election year included two Primaries, a high-turnout Presidential General Election and recounts (although it is the responsibility for the CBE office to be prepared for contingencies such as Second Primaries and recounts).

As already mentioned in Item 13, even if additional One-Stop workers had been recruited, that action would have resulted in additional training and labor costs, and would not have completely avoided the budget overrun for overtime.

15. Although the Board is ultimately responsible for maintaining a budget, it does rely upon information received from its Director. It is not disputed that Ms. King provided assurances that the CBE office could afford to cover expansions of the county's One-Stop voting in 2012, when in actuality the expansion contributed to budget overruns.
16. See Item 15.
17. Without a formal Memorandum of Understanding, Board action, or at least some other form of precedent or documented understanding between the county administration and the CBE office, a County Manager does not have the authority to approve in advance all overtime costs incurred by the CBE office. The e-mail that the Board provides, showing that overtime of a CBE employee was denied in one instance several years ago, does not suffice to demonstrate such an understanding.
18. See Item 14. Ms. King could certainly have been more adept in handling this issue.
19. In this instance, Ms. King *did* hire additional workers to meet the election needs in 2012 — it has been the Board's complaint in other parts of its Petition that she did not hire enough workers to avoid staff overtime. However, Ms. King should have communicated with the Board about her action to meet the business needs of the CBE office.
- 20/21. There is some uncertainty surrounding the obligations to collect I-9 employment forms from new election workers. SBE staff can provide guidance on this topic for county election offices.

In any event, both the I-9 issue and the worker's compensation claims are primarily human resources issues and not central to the business of conducting elections.

22. Ms. King resolved the issue of some expenses being allocated to the incorrect budget lines. As has already been discussed, her communication with the Board regarding budgetary matters shows a need for improvement.
23. Again, Ms. King does need to stay in communication with her Board about the budget.

Ms. King admits that there will be a budget overrun of at least several thousand dollars at the conclusion of FY 2012-13 (in addition to the \$20,847 special appropriation to cover overtime expenses in 2012). However, this FY 2012-13 overrun will still only constitute a small fraction of the cumulative surplus of more than \$295,000 returned to Lenoir County in preceding years; see Item 14.

24. See Item 23.

25. The Petition does not mention any lasting implications of this exchange with a campaign attorney during the Congressional District 7 recount. In any event, the issue was promptly resolved and is now moot.

26. See Item 18.

27. See Item 18.

Particularly when taken in aggregate, the complaints advanced against Ms. King indicate poor communication, lack of diligence regarding some aspects of her job, and a budget overrun occurring on her watch that put her and the Board in an uncomfortable situation. The Board properly acted within its authority to place Ms. King on probation.

The Petition's complaints do not rise to the level to compel Ms. King's immediate termination. One important consideration is that no shortcoming had a serious harmful impact on Lenoir County's elections conducted during the term of the Board. As election administrators, the business of conducting elections is our primary responsibility, and the Lenoir CBE office conducted its elections without major incident. Rather, the complaints largely center around internal issues in the CBE office such as communication between the Board and Director, personality conflicts, aspersions, and budgetary complications.

As I have already indicated, many of the areas of complaint are ultimately the Board's responsibility. I find communication to be lacking *in both directions* between Ms. King and the County Board.

The Board's Petition is denied. Further review of the noted failures and shortcomings in Ms. King's job performance is held in abeyance during a probationary period ending December 1, 2013. Also, see the following plan of action for the Lenoir County Board of Elections and Director. Compliance should begin immediately. Failure to meet expectations could be grounds for Ms. King's termination, upon petition by the new County Board. Ms. King should know that certain aspects of her job performance have placed her employment in serious jeopardy.



**Lenoir CBE Action Plan**

- A. The Board shall develop a current list of Duties and Responsibilities for the Director. This document should be submitted to the SBE office and passed along to the incoming County Board. The new County Board can take its own action to adopt it or modify it.
- B. Ms. King must provide a monthly calendar and budget update to the County Board on at least a monthly basis, without exception.
- C. Ms. King must promptly provide to the County Board all information from the SBE office, including scheduled events and deadlines of SBE-mandated tasks.
- D. The Board and Ms. King should meet with the administration of Lenoir County to formulate a documented understanding regarding all budgetary items, policies and expectations, including overtime. The Board and the Lenoir County administration should revisit the issue of whether the County Elections Director position is eligible for overtime pay.
- E. Ms. King must promptly schedule all remaining comp time, if any, of herself and other CBE staff members. Ms. King must furnish a complete calendar of that scheduling of time off to the County Board (along with any other scheduled staff absences such as vacation).

I sincerely hope that the Board Members and Ms. King can improve communications and business operations. In CBE offices, it is paramount that the Director and Board work in cooperation to carry out the public's business and administer successful elections.

I wish Lenoir County Board of Elections the best going forward.



Gary O. Bartlett  
Executive Director

Cc: North Carolina State Board of Elections Members  
Ms. Dana King, Director, Lenoir County Board of Elections