

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 3rd Meeting of the 2020 Interim

August 27, 2020

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on State Government was held on Thursday, August 27, 2020, at 8:30 AM, in Louisville, Kentucky, at the Kentucky Fair and Exposition Center in Room 201-203 of South Wing C. Representative Kevin D. Bratcher, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Robby Mills, Michael J. Nemes, Damon Thayer, and Johnny Ray Turner; Representatives John Blanton, McKenzie Cantrell, Jeffery Donohue, Jim DuPlessis, Joseph M. Fischer, Kelly Flood, Derrick Graham, Joe Graviss, Richard Heath, Samara Heavrin, Joni L. Jenkins, Matthew Koch, Derek Lewis, Scott Lewis, Mary Lou Marzian, Reginald Meeks, Patti Minter, Jason Nemes, Jason Petrie, Steve Sheldon, James Tipton, Ken Upchurch, Russell Webber, and Lisa Willner.

Guests: Lynn Hesselbrock, Spencer County Clerk; Gabrielle Summe, Kenton County Clerk; and Jared Dearing, Kentucky State Board of Elections.

LRC Staff: Alisha Miller, Daniel Carter, Roberta Kiser, and Peggy Sciantarelli

Approval of Minutes

A motion by Representative Miller to approve the minutes of the July 28, 2020, meeting was adopted without objection.

Welcome from Commissioner Quarles

Commissioner of Agriculture Ryan Quarles made an unscheduled appearance during the meeting to welcome the committee on behalf of the Kentucky State Fair Board. He thanked the legislature for its work that has led to improvements in the state fair facilities. He said that a video will be produced to provide contact information for 4H and Future Farmers of America members who might like to serve as poll workers in the general election.

Kentucky County Clerks' Association

Guest Speakers were Gabrielle Summe, Kenton County Clerk; and Lynn Hesselbrock, Spencer County Clerk. Ms. Summe said they would discuss the June primary, expectations for the November general election, and legislation that may be revisited in the 2021 legislative session—from the perspective of one of the smaller counties, Spencer, and the third largest county, Kenton. The mail-in process worked well in the primary. She is proud that the county clerks did what was best for their counties. Kenton County had its highest ever turnout for a primary—26 percent, with 22 percent being by mail. For the general election, more opportunities for in-person voting will be available in all counties. County clerks are in the process of studying how the regulation applying to that election will apply to their counties and how to make best use of staff. Communication to the public will be important, once plans are finalized for the general election.

Ms. Hesselbrock thanked the committee, on behalf of the Kentucky County Clerks' Association (KCCA) for allowing her and Ms. Summe to discuss their experience in the June primary and their thoughts regarding the upcoming general election. Spencer County is mid-size to small, with staffing and resources that differ from larger counties like Kenton. Clerks were tasked with a monumental job in the primary, but it was successful because of hard work and cooperation in the communities. The Spencer County Board of Elections appreciates the efforts of the Governor, the Secretary of State, and the State Board of Elections to ensure that voters can cast their votes in a safe and secure manner. She is proud that during the 2016 general election Spencer County had the highest voter turnout in the state—67.88 percent—with the state average being about 59 percent. During the June primary, turnout in Spencer County was about 32 percent, compared to about 28 percent in the state. During the 2016 general election Spencer County had less than 300 mail-in ballots—approximately 3 percent. In the 2020 primary, there were 3,500 mail-in ballots—about 70 percent. Turnout for the November general election is predicted to be 75 percent or better. If that happens, Spencer County will have between 11,000 and 13,000 mail-in ballots. Ballots will not be available until mid-September. Spencer County already has 500 ballot requests and must have everything in place by September 15 for the ballot processing committee to begin its work.

Ms. Hesselbrock said that for the 2016 general election Spencer County had alternate precinct workers available who ultimately did not have to serve. For the 2020 primary, she lost about 25 percent of the regular precinct workers, many of whom were elderly and did not want to risk working at a precinct. For the 2020 general election she will have to recruit and train precinct workers who can commit to work an extended period of time, since the election will take place over a three-week period, plus three Saturdays. It will be a burden to try to recruit people to process ballots in a timely manner. Finding precinct locations was a challenge for the primary. The local high school served as a voting supercenter on election day. Social distancing was observed, and people were comfortable voting there.

Ms. Hesselbrock said that the concepts of web portals, ballot drop boxes, multiple deadlines, and delays in reporting final election results are new in 2020. She does not think anyone could have been prepared to process the number of mail-in ballots or recruit the number of workers that were needed during the primary. It will be worse for the general election, because clerks are expected to have more polling locations. The June primary was a first for many county clerks. Several seasoned clerks, as well as the Executive Director of the State Board of Elections, provided them assistance and good direction. County clerks want nothing more than to serve the public and enable people to confidently cast their votes safely and securely. The primary was a challenge to every county clerk on some level, but it was a success because of their dedication, commitment, resilience, and hard work.

Ms. Summe said that because Kenton County is close to Ohio, people's perceptions are often based on what they hear about Ohio elections. She believes the Commonwealth needs a more ongoing educational component. The KCCA feels that legislators should be offered a more understandable practical approach to how clerks' offices work. The public should also be educated about the duties of county clerks. The KCCA believes that "one size does not fit all." Statutes should allow for flexibility according to size and setup of each county, but also set strict standards for the intricate process of reviewing ballots. Perhaps a task force or working group could begin a conversation regarding standards and flexibility. Ms. Summe suggested that it is time to do an in-depth review of what works, not only theoretically but also practically, regardless of party affiliation. The KCCA also asks to be allowed a seat at the table regarding future apportionment of counties, as part of the legislative redistricting process.

She said that some elements of HB 388—which failed to pass during the 2020 legislative session—will be proposed again in 2021. The use of poll workers who change political affiliation is of particular interest. Some provisions in HB 388 came to fruition in the emergency regulation and have already been vetted. One positive outcome is the implementation of bar codes to provide better election security and a more precise method for tracking voters in the system. Another positive outcome was creation of the web portal, which makes it much easier to identify voters. There are other positives to discuss, too, and the KCCA and county clerks look forward to working with the General Assembly.

Representative Miller asked about early voting percentages. Ms. Summe said that voters originally had to make an appointment to vote early in the two weeks prior to the primary. That did not work well from a practical standpoint. In Kenton County about five percent voted early. Eventually anyone was allowed to come to the office to vote early without an appointment. For the general election, Kenton County will not be requiring appointments, and early voting will be allowed during the three weeks prior—October 13 through November 2.

Ms. Hesselbrock said that in Spencer County about six percent voted early. People did not want to make appointments, and some did not keep their appointments. During the

second week people were encouraged to come into the office and vote. She hopes to have more than one location open for early voting for the general election, as well as a mobile unit. Voters in Spencer County seemed to like the early voting option.

Representative Miller asked whether it is realistic to expect that one-third of voters might vote early in person if it is publicized appropriately. Ms. Hesselbrock said that if it is advertised aggressively, she thinks Spencer County could expect 20 percent to vote early. Ms. Summe said that statewide turnout could potentially be 80 percent for the general election. In Kenton County 30 percent voted in person and 70 percent voted by mail in the primary. She believes more people will want to vote in person for the general election if more options are available to them.

Representative Graham asked whether the counties have decided the number of voting centers. Ms. Summe said Kenton County has 138,000 voters and will definitely have more than one polling location. The 105 precincts are currently condensed into 60 locations, but there will not be enough equipment to accommodate that many in the general election. Kenton County will probably have about 20 locations—with two for early voting, hopefully. The setup in each county may differ, but the regulation calls for a supercenter to be open on election day in every county. In Kenton County that will be her office. She has contacted the local mayors about possibly using community centers as voting locations. The county board of elections plans to mail information about voting locations to registered voters and also to advertise. The cities also will advertise. Ms. Hesselbrock said Spencer County will have at least two locations for early voting, with one possibly being mobile. Any voter in any precinct will be able to vote anywhere in Spencer County, both early and on election day. On election day she plans to have at least three precincts open, and all three will be equipped with ballots and machines that will allow any voter in the county to vote. She said the emergency regulation containing the guidelines was passed last week. Counties, along with local boards of election, are in the process of preparing voting locations and will submit those plans to the Secretary of State, the Governor, and the State Board of Elections for approval. She thinks most small and rural counties plan to have their voting locations serve as supercenters that can accommodate any voter.

Representative Graham asked when absentee ballots will go out. Ms. Hesselbrock said it is her understanding that ballots will be available around September 14 or 15 and that voters can likely expect to receive them in late September.

When asked by Representative Bratcher, Ms. Hesselbrock confirmed that the emergency regulation specifies that each county must have at least one voting supercenter where anyone who resides in the county can cast their vote on election day. In Spencer County the equipment can be programmed for absentees and will be able to handle any ballot face. Ms. Summe said that it would not work to have supercenters throughout Kenton County because she does not have enough equipment to print on demand in all locations. She agreed that the setup will differ in counties.

Representative Tipton complimented the work of the county clerks in his district— Ms. Hesselbrock, Jason Denny in Anderson County, and Kevin Mooney in Bullitt County. He asked whether any significant challenges are foreseen for the general election. Ms. Hesselbrock said that high turnout and the need to find more precinct workers will present a challenge in Spencer County. The emergency regulation allows for precinct workers to work six-hour shifts, and her county is already having difficulty recruiting precinct workers. She is grateful to the State Board of Elections for providing an online tool for persons to volunteer as precinct workers. The workers will have to be trained, and the training will have to be modified. Clerks are being encouraged to have more locations open and will need to purchase more physical ballots. The expense will be greater than for a normal election. Timewise, it will be more time-consuming. CDC pandemic guidelines must be followed, and personal protective equipment must be available in order to ensure the safety of voters and precinct workers. Mail-in ballots will add to the expense. She said the use of bar codes was a tremendous savings for Spencer County in the primary. Ms. Summe said that turnout volume and staffing needs will definitely be a challenge in Kenton County. Thus far, she does not have a shortage of available poll workers.

Representative Tipton asked how spoiled ballots will be handled. Ms. Summe said the statutes are clear about how to review a ballot, but in practicality, different things can happen. For that reason, the emergency regulation provides for various scenarios to address voter error. Voters who have a ballot issue will automatically be sent a note by the State Board of Elections and will be advised to contact their county clerk so that the problem can be fixed. Therefore, a higher percentage of ballots will be accepted and processed.

Representative Bratcher expressed chagrin about the extent to which the emergency regulation is modifying existing statutes but said he is hopeful that the process will work correctly during the general election.

Representative Webber asked about the percentage of spoiled ballots that may occur in November and how much time will be needed to address them. Ms. Hesselbrock said that during the primary in Spencer County approximately 150 of the 3,500 mail in ballots had some error. Of those, 120 were rejected because there was no signature on the outer envelope. That part of the statute did not change for the primary, and those ballots were rejected. For the general election, that has been changed by the emergency regulation, section 17, which includes 12 scenarios for different errors that can occur on a ballot. No signature on the outer envelope is no longer grounds for rejection, for example. The processing committees will have to be educated regarding ballot acceptance. She and her staff are prepared to cure more ballots for the general election than they did for the primary. She thinks the modifications that have been made from the primary to the general election will help ensure that more votes are counted. The envelopes in which the ballots are mailed to voters will be highlighted to indicate where the voter needs to sign. Ms. Summe said Kenton County sent out 32,000 ballots for the primary. Approximately 26,000 were

returned, and eight percent of those were rejected because they were missing a signature on the outside or the inside. The working group felt that county boards should be consistent in how they review absentee ballots. That is why the different scenarios are identified in the emergency regulation. Ballots are stored for 22 months and can be retrieved if a question should arise later.

Senator Thayer expressed thanks to the KCCA for being on the front lines in a difficult situation, and he complimented all county clerks for doing a great job in the primary. He said he represents one-third of the people in Kenton County, mostly in rural areas, and he appreciates Ms. Summe's work to make sure everyone has access to the polls. He said he is a strong advocate of the current statutory requirements for voting in Kentucky. He favors in-person voting on election day—as much as possible—and limited absentee voting, with excuses. That system was developed over a number of years and has worked well. He understands the current difficulties but does not agree with everything that was done during the primary, and he does not agree with everything that is going to be done in the general election. He finds no fault with clerks, of course; their job is just to implement the changes. He said he heard a lot of complaints and concerns that counties had only one voting location for in-person voting on primary day. Thankfully, that will change in the general election.

Senator Thayer asked what is going to be done to educate voters regarding locations for in-person voting. Ms. Summe said that Kenton County does not have a lot of newspapers, and the media market is mainly controlled by Ohio. She is still working on a plan and has enlisted the help of mayors and city councils to help educate citizens about where to vote. It is hoped that the county board of elections will also mail information to every voter. She believes it is going to be a struggle to try to educate voters in all the counties. Ms. Hesselbrock said that in Spencer County advertising and communication was a big problem in the primary. The newspaper is published once a week. She ordered two full-page ads and a half-page ad in the newspaper, but people told her they do not read the newspaper. The use of social media became more a negative than a positive. For the general election, flyers are going to be distributed, and there are plans to include voting information on water bills. Newspaper ads will be used again. It will also be helpful that two of Spencer County's three locations are current or past polling locations.

Senator Thayer said his biggest concern with the voting system for the general election is disenfranchisement of rural voters, who may have to drive farther than usual to reach their polling place. That is why he does not favor supercenters. He said that most of the voting practices that took place in the primary and will take place in the general election were decided by two people. When the General Assembly passed the emergency bill at the last minute during the 2020 legislative session, it abdicated its ability to influence how an election takes place. He strongly believes that during the 2021 session the legislature needs to act to ensure that major changes to elections must be approved by the elected members of the General Assembly. Although the 2020 changes were in reaction to the pandemic, he

thinks they went too far. He hopes that the general election goes well, does not disenfranchise voters, and does not result in voter fraud due to prevalence of absentee ballots.

Senator Thayer asked Ms. Summe whether she was consulted by Secretary Adams regarding the plan for the general election. She said the working group, of which she was a member, included four county clerks and a representative from the Governor's office. The Secretary of State attended, as well as two members from the State Board of Elections.

Representative Koch asked about the role of the National Guard, which was used in 40 counties during the primary. Ms. Hesselbrock said Spencer County did make use of the National Guard on election day to help with crowd control and adherence to CDC guidelines. They did a wonderful job but did not serve as precinct workers. They also helped with traffic control and sanitation of voting equipment. Two guardsmen also assisted at the early voting center, and she hopes the National Guard will be able to help again during the general election. Ms. Summe said Kenton County also used the National Guard during the primary. They did a good job, but they will not be called on for the general election because there will be too many polling locations.

Representative Miller asked about the situation of a voter not receiving an absentee ballot and then deciding to vote in-person on election day. Ms. Summe said that happened a lot in Kenton County because the portal shut down close to the primary, and people did not receive their ballots on time. As long as the ballot has not been accepted, poll workers are able to cancel it in the computer system and allow the person to vote in person. If a voter calls and asks to vote in person on election day rather than by absentee ballot, they will be told to cast the ballot they received in the mail. But if a voter has not received the ballot by October 28 due to postal delay, and it has not been returned to her office, the ballot can be cancelled and the voter allowed to vote in person on election day. That is currently allowed by statute and applies to all counties. On the last day of the portal 6,000 people requested an absentee ballot in Kenton County for the primary, and it was difficult to get them mailed in a timely fashion. It is those voters who likely did not receive their ballots on time and were allowed to vote in person. Ms. Summe also said drop boxes for depositing absentee ballots were helpful and worked well during the primary.

Responding to Senator Mills, Ms. Summe said that voter identification statistics for the general election will be maintained by the State Board of Elections. Because it is convenient, a higher percentage of voters are using driver's licenses to identify themselves. Ms. Hesselbrock said that in Spencer County, poll workers are trained to ask for a driver's license. Although photo ID was not required during the primary, she estimates that probably 99.7 percent of voters presented a driver's license automatically.

Representative Sheldon said he appreciates the efforts to minimize the number of ballots that are not counted. He also emphasized that most rejected ballots are mail-in

ballots rather than in-person ballots, and Ms. Summe agreed. Representative Sheldon asked whether the process for reviewing mail-in ballots will be consistent across the state. Ms. Summe said that prior to the primary, there was not true consistency statewide. After the primary the working group agreed that the process should be the same in all counties, as outlined in Section 17 of the emergency regulation. Ms. Hesselbrock said that prior to implementation of the emergency regulation there were statutory guidelines for rejecting ballots that were followed by most county clerks. The emergency regulation made some changes and now includes very specific guidelines to follow.

Representative Marzian expressed thanks to all county clerks for their flexibility and hard work to ensure that ballots are counted. She said Jefferson County Clerk Bobbie Holsclaw did a great job, although the county had only one in-person polling location. The Governor and the Secretary of State worked together to make really good plans to allow everyone to be able to vote during this COVID environment. She asked whether any instances of fraud were detected during the primary. Ms. Summe said she did not detect any in Kenton County.

There were no further questions, and Representative Bratcher thanked Ms. Summe and Ms. Hesselbrock for their testimony.

Kentucky State Board of Elections

The guest speaker was Jared Dearing, Executive Director of the State Board of Elections. Mr. Dearing said that a little over a month ago he was asked by the U. S. Elections Assistance Commission how the Commonwealth was able to enact and implement a successful primary. His response was that the success was in large part based on a bipartisan effort, through the leadership of Governor Beshear, Secretary of State Adams, members of the bipartisan State Board of Elections, and the contributions of the General Assembly. Ensuring bipartisan oversight of the election system guaranteed that Kentuckians of all political persuasions had ownership in its implementation and ultimate success. He said the employees of the State Board of Elections are exemplary public servants, and he cannot adequately express how much he appreciates their work. He concluded by saying that he is grateful for the work of the General Assembly, the Governor, the Secretary of State, and members of the State Board of Elections—and that all Kentuckians should be grateful for the tireless work of the 120 county clerks, whose dedication and service helped keep voters safe and elections secure during unprecedented challenges.

Representative Graviss thanked today's speakers for their unselfish and dedicated service to Kentucky. He asked Mr. Dearing about the tracking process for monitoring mailed ballots for the general election and the cutoff date for those ballots to be counted if there are mail delays. Mr. Dearing said the emergency regulation specifies that absentee ballots must be postmarked no later than election day, November 3. The portal to request an absentee ballot will close a little earlier than it did for the primary. This will allow the

counties more turnaround time to effectively deliver ballots to the voters. Voters are being asked to return the ballots immediately. Early in-person voting is also being encouraged. The goal is to make sure that ballots are counted effectively and that the clerks have time to process them appropriately. He said the U. S. Postal Service does an amazing job and is a key and crucial partner in the election process, but voters who apply for an absentee ballot are urged to cast that ballot early to ensure that it is delivered on time.

Representative Bratcher expressed reservation about the 3-day extension beyond November 3 for receipt of absentee ballots. Mr. Dearing said that was the methodology for returning ballots for the primary, and to alter or change it would create more confusion.

Senator McDaniel expressed thanks for the work of the counties and the State Board of Elections. He inquired about the process for cleaning the voter rolls. Mr. Dearing said that both federal and state statutes govern the process. Every four years, after completion of two federal election cycles, the State Board of Elections examines the system to determine whether any voters did not vote during the two previous federal election cycles—or touch the system in any way. Someone may not have voted but perhaps updated their information in the voter registration system. That voter would not be removed. It is not only a matter of voting but also whether there has been contact with the system. According to federal statute, a mailer is sent to individuals who are identified as having not touched the system in four years. Once that mailer is sent, a voter would traditionally be labelled inactive, but because of a lawsuit that was filed, they are no longer termed “inactive.” A voter who is determined to be inactive in the system is still an eligible voter. Voters who are flagged to receive the mailer are given four more years—or two more federal election cycles—a total of eight years—to touch the system again. If they vote, poll workers are to ask that voter to update their information in the system. Enfranchisement is an important element of the process. Voters may move, and if they subsequently vote in the wrong location, they would not be voting for the candidates who represent them. If a person has not voted or touched the system during the eight-year period, they are then removed from the voter registration system. On a weekly basis the State Board of Elections removes people after receiving notice of death. If someone dies out of state, it is harder to track that information, and some deceased people are still listed on the rolls.

Mr. Dearing said that the Board of Elections sent a postcard to every registered voter to notify them of changes in the process for the primary. That also provided an opportunity to help clean the voter registration rolls. When the postcards are returned, they are scanned into the system with a return mail date; after that return mail date is set, per federal law, a Section 8(d)(2) mailer is sent and those individuals would be allowed two federal election cycles to touch the system before being removed. The June primary postcards will greatly help clean the rolls effectively and appropriately—not based only on whether someone voted but also whether they still reside at their registered address. The State Board of Elections believes Kentucky has a healthy system, and board members and staff are

actively working to clean the rolls appropriately, and in a way that provides for secure elections without disenfranchising voters.

Representative Willner asked whether a voter whose ballot is disqualified is contacted. Mr. Dearing said that inclusion of bar codes on absentee ballots has helped the process logistically and also enhanced security. If the clerk scanning a ballot identifies an irregularity, they push a button in the voter registration system. Pushing the button notifies the State Board of Elections, which the same day mails a “cure” form to notify the voter of the issue. The cure form is a security mechanism that improves detection of voter fraud. Voters who vote in person also can make mistakes and spoil ballots. The election process tries to preserve the rights of the voters, while maintaining a secure system. The cure form is part of that process. Mr. Dearing said he knows the General Assembly cares deeply about the process, and he offered to make himself available after the meeting to answer questions.

Representative Bratcher said that Mr. Dearing and the county clerks have given excellent testimony, and he thanked them. There were no additional questions, and the meeting was adjourned at approximately 10:20 a.m.