

# **INTERIM JOINT COMMITTEE ON STATE GOVERNMENT**

## **Minutes of the Third Meeting of the 2024 Interim**

**August 22, 2024**

### **Call to Order and Roll Call**

The third meeting of the Interim Joint Committee on State Government was held on August 22, 2024, at 1:00 PM in Kentucky State Fair & Expo Center. Representative Kevin D. Bratcher, Chair, called the meeting to order, and the secretary called the roll.

### **Present were:**

Members: Senator Robby Mills Co-Chair; Representatives David Hale Co-Chair; Kevin D. Bratcher Co-Chair; Senators Cassie Chambers Armstrong, Greg Elkins, Amanda Mays Bledsoe, Michael J. Nemes, Brandon J. Storm, and Gex Williams; Representatives Adam Bowling, Josh Calloway, Adrielle Camuel, Jennifer Decker, Jim Gooch Jr., Richard Heath, John Hodgson, Thomas Huff, DJ Johnson, Matthew Koch, Scott Lewis, Savannah Maddox, Steve Rawlings, Josie Raymond, Nancy Tate, James Tipton, Wade Williams, and Susan Witten.

Guests: Wil Schroder, Senior Counsel, Office of the Attorney General; Christopher Thacker, General Counsel, Office of the Attorney General; Tabatha Clemons, Grant County Clerk/KCCA President; Chris Cockrell, Montgomery County Clerk; Jason Denny, Anderson County Clerk; Karen Sellers, Executive Director, State Board of Elections; Richard House, Assistant Executive Director, State Board of Elections; Taylor Brown, General Counsel, State Board of Elections; Bobbie Holsclaw, Jefferson County Clerk; Frank Friday, Director of Government Affairs, Office of Jefferson County Clerk; and David Summerfield, Executive Director, Office of Jefferson County Clerk.

LRC Staff: Daniel Carter, Shannon Tubbs, Alaina Spence, and Peggy Sciantarelli.

### **Approval of Minutes - July 29 meeting**

A motion to approve the minutes of the July 29 meeting was seconded and passed without objection by voice vote.

### **Discussion of School Districts and the Use of Tax Dollars on Ballot Initiative Advocacy - Kentucky Office of the Attorney General**

Wil Schroder, Senior Counsel, and Christopher Thacker, General Counsel, Office of the Attorney General, testified regarding a recent advisory issued by Attorney General Russell Coleman relating to a proposed constitutional amendment (Amendment 2) that will appear on the statewide general election ballot in November 2024. The advisory states that Amendment 2 would enable the General Assembly “to provide financial support for the education costs of students in kindergarten through 12<sup>th</sup> grade who are outside the system of common (public) school” and that public resources may not be used to advocate for or against Amendment 2.

Mr. Schroder stated that the advisory clarifies that public resources are not to be used for political campaigns. Mr. Thacker discussed the advisory at length, focusing on statutory and constitutional authority and previous Attorney General opinions.

Both KRS 65.013 and KRS 48.025 (effective June 29, 2021) provide that “local, state, and federal tax dollars shall not be used to advocate, in partial terms, for or against any public question that appears on the ballot.” The prohibition on the use of tax dollars to campaign on either side of a ballot question extends to the use of any public resources paid for by tax dollars to campaign either in support of or in opposition to the question. Prior to these enactments, those principles were already part of the Kentucky Constitution in Section 180 (Act or ordinance levying any tax must specify purpose, for which alone money may be used; ratified November 1996) and Section 184 (Common school fund – what constitutes – Use – Vote on tax for education other than in common schools; ratified September 1891).

KRS 160.290(1) provides that boards of education are required to “have control and management of all school funds.” The advisory states that it has been generally understood that “school funds are held to be trust funds for educational purposes which the courts will not permit to be diverted to other, even though closely kindred, uses....” In OAG 74-118, the Office of the Attorney General opined that expenditure of resources and time to promote a constitutional amendment improperly used taxpayer dollars and wrongfully interjected political activity into the operation of public schools. This violated legislative intent to divorce politics from the public schools.

Mr. Thacker emphasized that the First Amendment protects the rights of public school officials, administrators, and educators to express their views on any public matter; however, it would violate Kentucky law for them to use school resources or school time to advance their personal views. It would also violate policies that have been adopted by school boards across the Commonwealth, as noted in recent guidance issued by the Kentucky School Boards Association. The Office of the Attorney General realizes that educators are doing their best to not use political position inappropriately; however, the

Office is prepared to take any necessary action within its authority to ensure that constitutional and statutory limitations are upheld.

Senator Chambers Armstrong expressed concern whether school professionals would be free to provide evidence and fact-based answers to questions about the impact of Amendment 2 on school systems. Mr. Thacker said they would be free to present evidence and arguments when questioned by members of the public—during public comment at school board meetings, for example.

### **Election Security, Elections Funding, Open Records, and General Election Update**

The guest speakers were Tabatha Clemons, Grant County Clerk and President of the Kentucky County Clerk's Association (KCCA); Chris Cockrell, Montgomery County Clerk and past president of KCCA; and Jason Denny, Anderson County Clerk and KCCA Treasurer.

Mr. Cockrell discussed recent advances and measures implemented by county clerks to strengthen election security and improve the voting process. These include use of security cameras to monitor election equipment and ballot drop boxes; coordination with local law enforcement and school resource officers to bolster security for staff and voters; working and training with federal agencies, including the FBI; and examining other states. Every voter has a paper ballot for verification. In the next election every county will conduct an audit of one voting machine in order to ensure accuracy and enhance voter confidence. KCCA has developed a handout containing useful information about the election process for dispersal to the public and posting to its website.

Ms. Clemons spoke about elections funding, open records issues, and the upcoming November general election. She emphasized that election funding for counties has not been increased for nearly 50 years, while costs have increased. County clerks are reimbursed 25 cents for every new registered voter and 50 cents per voter for voter maintenance. County fiscal courts receive \$255 per precinct. She suggested consolidating the reimbursement rates as a single higher rate reimbursement. The current 50 cent model cost the state approximately \$7 million in 2024 and \$1.5 million in 2023. The State Board of Elections reports that county clerks' election personnel costs exceeded over \$5 million annually, leaving a shortfall of over \$3 million to be covered by county clerks' budgets. There are costs to pay election officers and vendor costs for certification, inspection, and repair of equipment. Counties bear more than 90 percent of election expenses. Clerks are having difficulty finding, recruiting, and retaining people to serve as election officers, as there has been a general decline in volunteerism.

With respect to open records, KCCA suggests that all requests for voter rosters be made to the State Board of Elections (SBE). The data can be made regularly available to SBE, and it would improve the open records process for voter transparency and decrease inconsistencies in data requests.

Clerks are preparing for a record turnout in the November general election. To assist with planning, KCCA recently conducted a panel discussion and training with county clerks. One procedure suggested for implementation by clerks was the distribution of sample ballots that illustrate the language of constitutional questions that will appear on the ballot.

When asked by Representative Rawlings, Ms. Clemons and Mr. Cockrell said they were not aware of any reported attempts by illegal immigrants to register to vote.

In response to Representative Tate, Mr. Cockrell explained that the current voter registration process would not permit voting by noncitizens.

Representative Witten inquired about costs associated with mail-in ballots. Ms. Clemons stated that costs have increased. Postage continues to increase, and it costs counties approximately \$1.60 to mail a ballot. There is paper expense and expense for personnel involved in ballot preparation.

In response to Representative Hodgson, Ms. Clemons discussed the timetable and process for counting ballots and reporting election results on election night.

In response to concerns expressed by Senator Williams, Ms. Clemons discussed the citizen documentation requirements of the driver licensing system.

There were no additional questions, and discussion concluded.

### **Administrative Regulation 031 KAR 005:026 (Ballot standards and election security)**

Administrative regulation 031 KAR 005:026 was referred to the Committee for review on August 7, after amendment and approval by the Administrative Regulation Review Subcommittee on July 9. Taylor Brown, General Counsel, State Board of Elections, explained a new SBE amendment proposed for consideration by the State Government Committee. Senator Mills moved for approval of the proposed amendment. The motion was seconded by Representative Hale and passed without objection.

## **Update on Voter Roll Maintenance**

The State Board of Elections (SBE) was represented by Karen Sellers, Executive Director; Richard House, Assistant Executive Director; and Taylor Brown, General Counsel. Mr. Brown reviewed their slide presentation, "Voter List Maintenance in the Commonwealth."

The National Voter Registration Act (NVRA) Sec. 20507 governs requirements for each state to administer voter registration for federal elections. KRS 116.112 directs SBE to establish a voter registration purge program using change-of-address information supplied by the US Postal Service or other sources. KRS 117.015 establishes SBE as an independent agency of state government, to administer Kentucky election law and supervise the registration and purgation of voter rolls. Kentucky is one of 24 states that are members of the Electronic Registration Information Center (ERIC), a nonprofit, nonpartisan organization created in 2012 by state election officials. ERIC is fully funded and governed by the states that elect to participate. The reports include USPS national change of address reports and deceased reports matched to the Social Security death master list. The General Assembly has authorized SBE to enter into agreements with states that are not members of ERIC in order to further exchange of voter data. To date, Kentucky has entered into agreements or had meaningful discussions with neighboring states Virginia, Tennessee, Ohio, as well as Alabama, Mississippi, Florida, and others.

In 2017, the nonprofit organization Judicial Watch sued then Secretary of State Alison Lundergan Grimes alleging that under her watch the voter list maintenance required under the NVRA was not happening in Kentucky. In 2018 the US Department of Justice joined the case as an intervening claimant. Eventually the parties entered into a consent judgment which stated that Kentucky must follow the provisions of the NVRA and use ERIC as one of the sources for change of address information.

Under KRS 116.113, the State Board of Elections may remove a registration upon receipt of the following: notification of death from the Cabinet for Health and Family Services or other reliable sources; notification by circuit clerks that a person has been declared mentally incompetent; notification from a local or state jurisdiction that a voter is registered to vote outside the state; and notification from the Administrative Office of the Courts that a person has been convicted of a felony offense or excused from jury duty for not being a citizen of the United States. The excusal from jury duty exclusion is a new addition to KRS 116.113, and no removals have taken place yet under that provision.

Between July 1, 2023 and July 1, 2024, 58,469 registrations were removed after notification of death, including 11,122 that were removed after the Cabinet for Health and Family Services provided historical data that had not been previously reported to SBE. Registrations of 608 people were removed for a court declaration of incompetency; 7,004 voters were removed following a felony conviction; and 5,354 registrations were removed due to the voter's registration in another state. Registrations for 1,054 were removed at voter request, and 1,114 duplicate registrations were removed. Removal from all sources totaled 73,603 from July 1, 2023, to July 1, 2024. There was a net increase of 32,156 registrations from July 1, 2023 to July 1, 2024.

Mr. Brown explained SBE's postcard notification process for updating registration records. No voter's registration is removed under the process solely for failure to vote. For a registration to be purged, a voter must be proven to have been inactive over the course of two federal elections. SBE is engaged daily in the process of voter list maintenance and is required to issue a comprehensive status report regarding voter registration cleanup and maintenance on or before July 1 of each year. Citizens can access the report from county clerks or on the Secretary of State's and SBE websites. In February 2023, the first time SBE conducted a purge pursuant to the NVRA and state law, more than 127,000 registrations that were proven inactive were removed from the voter rolls. Since 2020, the SBE has sent out over 1.5 million postcards.

Representative Hodgson commended SBE for its work in voter list maintenance and for its efforts to obtain and include death record data from the Cabinet for Health and Family Services.

### **KAVIS and Kentucky County Clerk Modernization Priorities**

The guest speakers from the office of the Jefferson County Clerk were Bobbie Holsclaw, Jefferson County Clerk; Frank Friday, Director of Government Affairs; and David Summerfield, Executive Director.

Ms. Holsclaw talked about the January 2024 ransomware attack on the Jefferson County Clerk's Office. The attack was conducted by Ransom Hub, a Russian syndicate. She stated that no ransom was paid, little sensitive data was lost, and most services have been restored after the attack. The office's IT department had a thorough plan in place for system protection, mitigation, and recovery. The Transportation Cabinet and neighboring county clerks helped Jefferson County complete its work and serve customers. No voter data was affected, since there are no Internet connections to voting machines. She cautioned that government agencies can anticipate an increase in cyber attacks. Cyber insurance is not a practical choice for small government agencies, and it is

difficult to qualify for federal cyber security grants. In proposed 2025 legislation, clerks will be requesting cyber security funding.

The Kentucky Automated Vehicle Information System (KAVIS) is now “in a safe place” and works better than when it began; however, it is slower than the old AVIS system that it replaced in January 2024. There are minor problems—transfer of titles, for example—that need to be addressed by Commissioner Cole and staff in the Transportation Cabinet’s Department of Vehicle Regulation.

Concluding her remarks, Ms. Holsclaw stated that Kentucky has not changed its motor vehicle fees since 2006, and she hopes that this can be addressed in the next legislative session.

In response to Representative Calloway, Ms. Holsclaw said that her office worked with the FBI and other local and federal agencies following the ransomware attack. Regarding security for the November election, she noted that it is not possible to hack into election equipment.

Senator Williams thanked Ms. Holsclaw and her staff for their previous testimony before the Investments in Information Technology Improvement and Modernization Projects Oversight Board. He said that cybersecurity is a statewide issue that needs to be addressed legislatively and by taking advantage of available federal funds.

Senator Nemes discussed his past legislation that proposed establishing a Kentucky Cybersecurity Center at the University of Louisville. He emphasized the importance of continuing to pursue passage of cybersecurity legislation.

### **Adjournment**

Discussion concluded, and the meeting was adjourned at 2:21 p.m.