



Washington State Conservation Commission

May 17, 2018

TO: Conservation Commission Members
Mark Clark, Executive Director

FROM: Bill Eller, Election Officer

SUBJECT: Thurston Conservation District election investigation

Summary: Several complaints regarding the Thurston Conservation District (TCD) election were presented to the Conservation Commission. Commission staff have completed their investigation of the complaints. Staff have determined the issues presented before, during, and after the TCD election do not rise to the level of significant noncompliance with election procedures necessary to invalidate the election.

Requested Action: The Commission must decide whether or not to certify and announce the official winner of the TCD election.

Staff Recommendation: The Commission should certify and announce the official winner of the TCD election as none of the issues presented establish a finding of significant noncompliance with WAC Chapter 135-110 and the election procedures published for this election cycle.

Background: The Commission received numerous complaints and concerns from various sources even before TCD held its election on March 3, 2018. Some of the following were issues or questions that were identified and satisfactorily addressed prior to Election Day (summary of answers provided):

- Do the notices about our election need to be sent to the Commission? [No]
- Can the Commission staff review notices about our conservation district elections before we publish them? [Sometimes we are able to.]
- Must a district verify that a candidate is a landowner or farm operator? [Yes]

- Must candidates reside in the district boundaries to be eligible to be elected? [Yes]
- Must candidates be registered voters to be eligible to be elected? [Yes]
- Is an absentee landowner who owns land within the district boundary eligible to be elected if they reside outside the district boundary? [No]
- Must the information provided by a candidate on the candidate information (application) be accurate? [Yes]
- Is the definition of what a landowner or farm operator is for purposes of being a candidate in an election in the WAC? [Yes]
- Is the reason why two of the three elected supervisors need to be farm operators or landowners in statute? [Yes]
- In an election with multiple candidates, is a primary election held first to determine the top two candidates? [No]
- Can a candidate withdraw from an election? [Yes]
- Does the ballot need to be re-written to remove a candidate who has withdrawn? [No]
- Must the conservation district do anything when a candidate withdraws to notify the voters of the candidate's withdraw? [No, but the conservation district can provide notice to the public of the candidates' withdraw.]
- Can a candidate withdraw by an email? [Yes]
- Can a candidate offer voters pre-paid envelopes to return their ballots in? [Yes, but that should be available to all voters and voters run the risk of the returned envelope lacking a post-mark.]
- Can a conservation district use an electronic method to handle absentee ballots? [Yes, provided the election procedures are complied with.]
- Must a request made by a voter for an absentee ballot be matched to that voter's address? [Yes]
- Can absentee ballots be requested by someone other than the voter on behalf of the voter? [Yes. A request for an absentee ballot can be made in person, in writing, by telephone or electronically, by the voter, a family member, or a registered domestic partner.]
- Should the conservation district provide instructions for requesting absentee ballots in an election? [Yes]
- Should voters declare their eligibility to vote to the district before a request for an absentee ballot can be fulfilled by the district? [Yes]
- If a voter refuses or declines to declare their eligibility to vote to the district before a request for an absentee ballot is fulfilled by the district, must the district still provide the ballot? [Yes]
- If a voter does not use the two envelope system when returning an absentee ballot, will that disqualify the vote? [Not automatically.]
- Can the county auditor's office assist conservation districts in running elections? [Yes]
- Can candidate statements be provided to voters at the poll-site on the day of election? [No]
- Are conservation district elections different from general elections? [Yes]

These issues or concerns were resolved and the election was held. Mr. Joe Hanna received 287 eligible votes, with 6 other votes for him being disqualified for various reasons. Mr. Paul Pickett received 2,190 eligible votes, with 44 other votes for him being disqualified for various reasons. There were 20 other votes that were not attributable to either Mr. Hanna or Mr. Pickett that were disqualified for various reasons, creating a total of 2,541 votes cast. The margin of eligible votes between Mr. Hanna and Mr. Pickett was 1,903, or 77% of the eligible votes cast.

After the election was held and the votes tallied, TCD submitted the required election form (EF2) to the Commission. In reviewing that form and additional information supplied by TCD, it was determined that TCD recorded and disqualified approximately 50 ballots as “No absentee ballot request on file”. 8 of these were votes for Mr. Hanna, and 42 were votes for Mr. Pickett. These numbers were factored into the totals described in the previous paragraph.

While some of these issues were being resolved, and after the election was held, more issues and complaints involving election improprieties were received by Commission staff. What follows are the staff’s effort to investigate all the issues that might warrant a finding of significant noncompliance with election procedure that may affect the outcome of the election, as defined in the Washington Administrative Code (WAC) 135-110-120, and therefore require the Commission to decline to certify the TCD election.

Allegations

Allegation 1: “The election process is too restrictive. By limiting voter turnout it allows only a handful of district residents to control the organization. Better access to ballots and better communication to the district members informing them of an election is required.”

Date Made: February 28, 2018

Status: Immaterial.

Effect: No substantiated effect on election outcome. .

Source: Formal complaint from William Scheidt using the Commission’s [Election](#)

Feedback Form.

Summary: More notice to voters would boost voter turnout.

Discussion: Published notice to potential voters is a required procedure, and our review of the way TCD complied indicates they exceeded the Conservation Commission’s requirements. District elections are not governed by general election law but by RCW Chapter 89.08 and WAC Section 135-110. Further, district election law requires publication to the public of the date, time, place, and manner of district elections. See WAC 135-110-210 and WAC 135-110-220.

One way more potential voters would be notified is if TCD mailed notices or ballots to every qualified elector in the conservation district, but conservation districts have insufficient funding to incur this expense and meet their statutory responsibilities.

Voter participation is always a concern to the Commission and districts. The Commission requires due notice of the election to be published in various media. See WAC 135-110-220. The Commission also encourages additional publication of election notices beyond the minimum required by the WAC. "Conservation districts are strongly encouraged to exceed the minimum due notice requirements to reach the maximum number of potential candidates and voters." Manual, pg 2. However, there is no evidence that low voter turnout affected the outcome of the election.

Voter turnout in conservation district elections varies greatly throughout the state and for a number of other reasons (timing of the election, candidates in the election, issues in the district, and a host of other reasons). Districts are required to publish election notices promoting the election to the public in a variety of media. TCD has done so for this election, and properly complied with Commission rules on election notice publication.

Allegation 2: "I accidentally heard about yesterday's election, and was dumbfounded at the weird procedures I was required to endure in order to vote. The TCD provided inadequate notice of the election, held it at a remote location that most voters have never been to, with no signage to help guide voters, and provided inadequate parking, making participation cumbersome and inconvenient. Cars lined the streets for blocks around the site, which provided no sidewalks, but plenty of large trucks to lumber by at close range. The very limited hours provided for voting caused long lines. The process was designed to limit voter participation contravening public policies promoting an informed and involved electorate. This election process is absurd and needs to change before the next election."

Date Made: March 4, 2018

Status: Various – ranging from opinion, immaterial, policy / procedural choices, unsubstantiated, and substantiated.

Effect: Most of the issues identified stem from differences between general election procedure and conservation district procedure and / or policy choices by TCD allowed under district election procedure. None were identified as errors constituting "significant noncompliance" as defined in WAC 135-110-120(2) requiring non-certification of the election.

Source: Formal complaint using the Commission's [Election Feedback Form](#).

Summary: Notice and Election Day logistics were problematic for potential voters.

Discussion: See discussion in Allegation 1, above. Further, TCD is free to set polling locations in their election resolution, (see WAC 135-110-240), and they are to set the time, place and manner of their election. See WAC 135-110-210. The poll-site location that TCD choose for this election was their own office, 2918 Ferguson St SW, Suite A, Tumwater, Washington. The election was held in conjunction with their annual plant sale, a common practice for conservation districts in an effort to generate more visibility for their election and more participation by potential voters. The election was held on a Saturday, with the polls being open from 10:00 am to 3:00 pm.

Election rules require that each “physical poll site must be open for at least four hours at a time convenient for voters....” WAC 135-110-240 (2). In addition, to accommodate voters, the election supervisor may extend the time that the polls are open, and persons waiting in line at a poll site when the polls are scheduled to be closed must be allowed to check in and vote. WAC 135-110-650. Further, for poll site elections, each district is required to have ballot boxes and signage. WAC 135-110-630.

As a routine practice, Commission staff, in this case the Puget Sound Regional Manager, observed the TCD election. She reported that each poll site was open at least four hours, sufficient parking was available to accommodate voters to the “extent possible,” and the poll site was clearly marked.

Beyond the allegation presented above, there is no substantiated evidence that any voter was unable to vote or the outcome of the election otherwise affected due to the date, time, or place set for the poll-site.

Allegation 3: “Hi, I object to the way the Conservation Commission election for board members is run. I understand that State law allows the current "secret" election day/process outside of common election process, that's what I dislike. It seems obvious that elections held in this "back room" environment invite fraudulent behavior. The lack of open and transparent election process casts a shadow on any outcome, including the selection of board members.”

Date Made: March 8, 2018

Status: Opinion / Immaterial.

Effect: No substantiated effect on election outcome.

Source: Formal complaint from John R. Eller (no relation to this memo’s author) using the Commission’s [Election Feedback Form](#).

Summary: Conservation district elections are outside of the general election process and therefore prone to fraud.

Discussion: The Revised Code of Washington (RCW) Title 29A generally governs elections in Washington and includes the duties of county auditors and county elections departments. Specifically, RCW 29A.04.216 sets out the duties of county auditors and also sets out the exception to those duties. One of the exceptions applies to conservation district elections:

This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.321 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections.

RCW 29A.04.216. The duties of the county auditor apply to all elections except “general or special elections for any ... district that is not subject to... RCW 29A.04.330.” RCW 29A.04.216.

A review of RCW 29A.04.330 (1) (b) indicates that the general provisions of RCW 29A.04.330 do not apply to “... conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto... [.]” RCW 29A.04.330 (1) (b).

So, therefore, while RCW Chapter 29A governs general elections in Washington State, it does not govern conservation district elections. Conservation District elections are governed by RCW Chapter 89.08, WAC Chapter 135-110, and elections policy and procedures as determined by the Commission, the state agency charged with establishing procedures for elections.

The Commission is directed in RCW 89.08.190 to establish conservation district election procedures: “The Commission shall establish procedures for elections, canvass the returns and announce the official results thereof.”

The Commission has adopted election rules in WAC Chapter 135-110, effective November 19, 2010. District elections are to be conducted annually, and must comply with election rules and procedures.

The election procedures exist to assist conservation districts and conservation district supervisors in the election, appointment, and replacement of supervisors in the State of Washington, and to assure fair treatment of all parties involved in such proceedings, and to provide guidance for compliance with WAC Chapter 135-110.

The Commission actively investigates allegations of election improprieties and has measures in place to combat electioneering and fraud. See generally WAC Chapter 135-110. Commission staff also routinely observe conservation district elections using a variety of metrics to assess compliance with election procedures, and this election was observed and no fraudulent behavior detected.

The Commission promotes the sovereignty of local government by allowing for procedural variations, whenever possible, among conservation districts related to how they conduct elections. Illustrations of this can be found in all aspects of elections procedures (choosing an election date, picking the type of election, and advertising methods are examples). The Commission strives to balance procedural variations with a straight-forward, user-friendly election process. Regardless of variations chosen, all conservation districts place great value in the integrity of the election process.

Allegation 4: “We have lived here since 1986. Until the Olympian had an article about the board & voting on 2/28/18 we never knew anything about it. Never notified in any way. Never knew any voting dates etc. Maybe that is why only 121 had voted in the past. And apparently this board affected our taxes. Residents have recd infor on septics, etc but NEVER on voting. Does not bode well for this body. Now it sounds like there are 2 disgusting board members who should not be there. Involve the public, send out notices, however you can. Censure if needed.”

Date Made: March 21, 2018

Status: Opinion / Immaterial.

Effect: No substantiated effect on election outcome.

Source: Formal complaint using the Commission’s [Election Feedback Form](#).

Summary: Notice of conservation district elections is inadequate.

Discussion: See discussion in Allegation 1, above. TCD published notice in the Olympian newspaper on December 8, 2017 and December 15, 2017, in addition to using its web site and other media, including flyers at public events, to promote its election and provide notice to the public.

Allegation 5: Posting to Facebook by a TCD board supervisor, in their official capacity as TCD board supervisor that favors one candidate over another in the election.

Date Made: February 27, 2018

Status: Immaterial.

Effect: No substantiated effect on election outcome.

Source: Email to Shana Joy, Commission staff, from Mr. Martin McCallum.

Summary: The complainant alleges that Eric Johnson, in his official capacity as TCD board supervisor, posted text on social media (Facebook) that purports to favor one candidate over another in the election.

Discussion: Both the rules related to conservation district elections and the Election manual prohibit a conservation district supervisor from adopting or stating an official position about any candidate that promotes or is prejudicial to, a candidate.

"No conservation district supervisors, municipal officers or employees may adopt or state an official position about any candidate that promotes, or is prejudicial to, a candidate." WAC 135-110-150. "A conservation district must not take an official position on any candidate that promotes, or is prejudicial to, a candidate, nor may supervisors or employees of the conservation district do so in their official capacity." Election and Appointment Manual, Section (D) (2) (j) (ii), pg 20.

The Commission is unaware of any evidence that any TCD supervisor taking such a position in their official capacity has influenced any vote or voter. A post by a conservation district supervisor on social media, not associated with an official TCD social media account or otherwise identified as a post associated with a supervisor in their official capacity, without more, cannot be construed as done in the official capacity of the supervisor. Nor has any complainant come forward to provide any evidence that any voter was influenced by such a post.

Conservation district supervisors do not give up their First Amendment right to free speech upon assuming the position of conservation district supervisor. However, they must remain impartial when acting in their official capacity during a district election. Commission regional staff assigned to TCD should review election policy and procedure with TCD supervisors and staff to ensure compliance.

Conclusion:

In the present case, for the aforementioned reasons, we find no significant noncompliance with the election rules and procedures. Therefore, we recommend the certification and announcement of the official winner of the TCD election.