

Commissioners

MARISEL A. HERNANDEZ, *Chair*
WILLIAM J. KRESSE, *Commissioner/Secretary*
JONATHAN T. SWAIN, *Commissioner*
LANCE GOUGH, *Executive Director*



Board of Election Commissioners for the City of Chicago
Minutes of Emergency Board Meeting
March 19, 2020, 6:00 p.m.
69 West Washington Street, Office of the Executive Director, Chicago, Illinois 60602
and via audio-conference

Board Members:

Marisel A. Hernandez, Chairwoman
William J. Kresse, Commissioner/Secretary
Jonathan T. Swain, Commissioner

Staff:

Lance Gough, Executive Director
Charles Holiday, Assistant Executive Director
Adam Lasker, General Counsel
James P. Allen, Communications Director
Trish Sheehy

Guests:

Eric Coomer, Dominion Voting Systems
Nicole Nollette, Dominion Voting Systems

- I. Call to Order: Chair called the meeting to order at 6:01 pm.
- II. Roll Call: All Board members were present via electronic means (telephone); the Executive Director was in attendance, physically present at the Board's office.
- III. Consideration of Agenda – no changes at this point in the meeting.
- IV. Emergency Business

General Counsel Adam Lasker explained the salient facts of Illinois Governor's Executive Order 2020-07 ("Executive Order in Response to COVID-19 (COVID-19 Executive Order No. 5)") (the "Order"), including the suspension of some aspects of the Open Meetings Act ("OMA"). The Order allows members of a public board to attend remotely, via "other means." The OMA is specific as to what grounds a member could attend remotely, i.e., being out of town on business, out of the office on Board business or health/medical reasons. The order suspends these restrictions.

There was discussion as to public participation and whether there was a need to video or audio record the meeting. Counsel Lasker stated that after having reviewed the Governor's Executive Order, the Order does encourage that the public attend, but does not require that the meeting be recorded. The public may attend in-person if a member of the Board or the Executive Director is present.

The General Counsel pointed out that pursuant to the Order, this meeting was open to the public, as the meeting was conducted in the Executive Director's office and he was present. Further, if no one is present at the Board's offices, the public should be allowed to dial-in to the meeting call to attend the meeting; and if a person wishes to make public comment to participate in the meeting, they should email a request for public comment in advance. Information regarding this should be posted on the Board's website.

Discussion ensued.

The Board requested that an audio and/or video recording be made of this meeting and that the recording be uploaded to the Board's website.

Methods for conducting future audio/video meetings are being researched.

- A) Adoption of new employee policies in light of the COVID-19 coronavirus public health emergency, including but not limited to a Telework Policy allowing necessary personnel to work remotely.
 - Mr. Lasker explained that on March 18th, the Board's HR Director circulated a City policy related to remote work during the COVID-19 emergency. This policy would allow employees to access their emails via remote computers. This is against the Board's current policies, but the policy will revert after this emergency. This policy is only for work that can be done at home and allows for high risk employees to be excused of their duties (i.e., over 60 years of age, have other health risks, or have children 12 months of age and under).
 - Staff will continue to work at the office in order to complete the canvass, but those at higher risk are to stay at home and, if possible, work remotely.
 - Commissioner Kresse wanted it put on the record that the Mayor recently ordered that anyone over the age of 60 and those at high risk should stay home.
 - Commissioner Kresse made a motion to adopt the new employee policies in light of the COVID-19 coronavirus public health emergency, including but not limited to a Telework Policy allowing necessary personnel to work remotely. Commissioner Swain seconded the motion. The motion passed by unanimous vote of the Board.

- B) Passage of a resolution, to be memorialized in writing at a later date, in support of the General Counsel's interpretation that the statutory 21-day deadline for the canvass and proclamation of election results is directory and not mandatory.
 - General Counsel Lasker explained that due to social distancing slowing down the process, the Chicago Board of Elections may not be able to complete the canvass within the 21-day following the date of the election deadline. However, if this were to occur, this would be acceptable, as 21-day statutory deadline is directory and not mandatory. Discussion ensued.
- C) Board action to close its offices, suspend election operations and allow Board employees to work remotely to the extent such is possible, in light of the COVID-19 coronavirus, and directing the Executive Director to send notice of same to the Illinois State Board of Elections and the Chief Judge of the Circuit Court of Cook County.
 - Commissioner Swain asked that the Board move forward to agenda items IV (D) and IV (E) and return to the related items IV (B) and IV (C).
- D) Board action authorizing that, until the COVID-19 public health emergency has subsided, all meetings of the Board may be conducted with remote participation, without the need for in-person attendance, pursuant to the Governor's Order.
 - General Counsel Lasker explained that under the OMA members can attend a meeting remotely only if they are out of town on business; this proposed action by the Board would allow Board members to attend remotely even if they are not out of town on business. The General Counsel also explained that the Governor's order encourages public boards to have public present. Discussion ensued. The General Counsel stated that this could be met by having the public notices of meeting include dial-in instructions. Commissioner Kresse suggested that the Board record meetings and post these recordings on the Board website.
 - Commissioner Swain moved that until the COVID-19 public health emergency has subsided, all meetings of the Board may be conducted with remote participation, without the need for in-person attendance, pursuant to the Governor's Order. Commissioner Kresse seconded this motion. The motion passed by unanimous vote of the Board.
- E) Board action to allow that all non-essential staff of the Board be immediately sent home with pay, and that any other staff who can conduct their work from home be encouraged to do so with pay, until the COVID-19 public health emergency has subsided.
 - General Counsel Lasker stated that at this time the only necessary staff are those needed to complete the canvass and the proclamation; all other duties can be temporarily suspended (e.g., registration applications, changes of address, applications for November general election ballots). Following discussions with Mr. Gough, Legal Counsel Joan Agnew and Human Resources Director LaCretia Dandridge, it was determined that some staff can work from home. Discussion ensued.

- Commissioner Kresse moved that non-essential staff, as determined by the Executive Director, be sent home with pay until the COVID-19 emergency has subsided. Commissioner Swain seconded this motion. The motion passed by unanimous vote of the Board.
- F) Board action to confirm that the Board shall meet, if necessary, with remote participation, at least once a week during the COVID-19 health emergency in order to reassess the situation and take any additional action related thereto.
 - Mr. Lasker stated that this item simply puts everyone on the notice that the Board may be meeting weekly during this current situation. Mr. Lasker also noted that the Board can call special meeting with 48-hour notice, and emergency meetings with little to no notice. The General Counsel requested that Board members make themselves available at least once per week at the call of the Chair.
 - Commissioner Swain made a motion to confirm that the Board shall meet, if necessary, with public participation during this emergency, to reassess the situation and take any action it deems necessary. Commissioner Kresse seconded the motion. The motion passed by 3:0 vote of the Board.

Return to Items IV (B) and IV (C):

- Item IV (B) Passage of a resolution, to be memorialized in writing at a later date, in support of the General Counsel's interpretation that the statutory 21-day deadline for the canvass and proclamation of election results is directory and not mandatory

General Counsel Lasker stated that this matter does not have to be passed at this time. Discussion ensued. Mr. Lasker noted that we are going to move along with the 21-day goal, but if it looks like we will not be able to meet that deadline, he would ask the Circuit Court for an emergency declaratory judgment and/or emergency TRO.

Without objection, the Board decided that no such resolution or motion is needed at this time.

- Item IV (C) Board action to close its offices, suspend election operations and allow Board employees to work remotely to the extent such is possible, in light of the COVID-19 coronavirus, and directing the Executive Director to send notice of same to the Illinois State Board of Elections and the Chief Judge of the Circuit Court of Cook County.
 - Mr. Lasker summarized;
 - Voter registrations and November applications for ballots will still be processed, but we should give staff time to self-quarantine.
 - Commissioner Swain clarified: suspending non-essential operations, but not suspending all operations.
 - Mr. Lasker continued, the Board should send a letter to the ISBE and Chief Judge to notify each that we are proceeding with the canvass as scheduled

- Commissioner Kresse moved to close / suspend non-essential operations and send non-essential employees home at the discretion of the Executive Director and directed the Executive Director to send a letter to the Chief Judge and Illinois State Board of Elections. Commissioner Swain seconded the motion. The motion passed by 3:0 vote of the Board.

V. Public Comment: none

VI. Adjournment: Commissioner Kresse moved to adjourn until the next regular meeting, or at the call of the Chair. Commissioner Swain seconded the motion. The motion passed by unanimous vote of the Board. The meeting adjourned at 6:40 p.m.

Submitted,

A handwritten signature in black ink, appearing to read "William J. Kresse". The signature is fluid and cursive, with a large, stylized initial "W".

Commissioner William J. Kresse
Secretary