

February 14, 2022

MINUTES: CALHOUN COUNTY ELECTION COMMISSION – RECALL EFFORT FILED AGAINST RICHARD LINDSEY

LOCATION: Calhoun County Building, Boardroom 3-C08, 315 W Green St, Marshall MI 49068

CALL TO ORDER: 10:00am. Judge Jaconette called the hearing to order, welcomed all in attendance, explained the reason for today's hearing, and notified audience that the meeting was being recorded, and minutes taken.

ROLL CALL: PRESENT: Calhoun County Clerk Kimberly Hinkley, Treasurer Brian Wensauer, and Chief Probate Judge Michael Jaconette. The meeting was conducted by Chief Probate Judge Michael Jaconette

APPROVAL OF AGENDA: Motion was made by Treasurer Wensauer, , Seconded by Clerk Hinkley. Motion Approved.

ROLE OF THE COUNTY ELECTION COMMISSION: Chief Probate Judge Jaconette read MCL 168.952 Michigan law regarding the purpose of the hearing and how the commission determines whether the language is of sufficient clarity and factual nature.

READING OF THE RECALL PETITION LANGUAGE: Chief Probate Judge Jaconette read the petition of the recall language into the record.

Richard Lindsey is being recalled because numerous voters believe he violated MPS policy #1130 CONFLICT-OF-INTEREST, based on the following facts. He simultaneously served as BOE President & as attorney representing Albion College. His activities as an attorney raised questions of conflict with his school system duties & responsibilities. He presided over BOE meetings associated with a school bond proposal while concurrently participating in activities associated with his client's unsolicited proposal, to MPS for establishing a new elementary school adjacent to their campus. Questions were raised by the public, bloggers, and in local newspapers about the appearance of impropriety & apparent conflict between his representation of Albion College & activities as president of the school board. The legal firm of Hewson & Van Hellmont sent a legal opinion to the school board concluding a conflict-of-interest under MCL 380.1203(1) exists and that Mr. Lindsey's representation of Albion College on a matter involving MPS is in violation of the Michigan Rules of Professional Conduct. Fifty community members in the Marshall School District signed a petition requesting he recuse himself from voting on board decisions which affect the location of a new school in Albion. Mr. Lyndsey continued to represent Albion College.

COMMENTS OF SPONSOR AND OFFICE HOLDER:

Judge Jaconette: addressed the Recall Sponsor: Mr. Atchison, are the allegations stated in the recall petition based upon the officer's conduct during his current term in office? David Atchison: "Yes, your Honor"

Judge Jaconette: Mr. Atchison, do you or a representative wish to comment on the recall petition language? David Atchison: "Yes, your Honor"

SPONSOR COMMENTS: 5 minutes (begin 10:08 – end 8:14) *Mr. Atchison:* Each one of the statements are statement of fact... His conduct stated in the language of the petition are statements of fact. He did simultaneously serve as Board of Education President and as attorney representing Albion College. He admits this is a clear statement of fact. It is not disputed. His activities as an attorney raise questions of conflict with his school system duties and responsibilities. That is a statement of fact. It's reflected in multiple areas. The fact that Mr. Lindsey went to the Superintendent of the school and got his concurrence, the school board got a legal opinion stating there is no conflict, the fact that there is an opposing legal opinion stating there is a conflict, those were all driven based on questions raised by the public. And, as we found out later, by members of the board who subsequently resigned. The question is whether his conduct serving as President of the School Board and representing his client, Albion College, raised questions of conflict of interest. And, it's clear in articles in the paper, the fact that people showed up in school board meetings, and raised those issues. Online blogs, all talked about those questions... The school districts policy on ethics doesn't list specific questions, it just says it raises questions of ethics, or... questions of conflict. People believe he violated that policy, that's not disputable, there's a lot of people who believe that. In fact, when we get to ask people to sign the petitions, we'll get a head count, if we get the correct number of signatures. There's no question that the legal firm, Hewson & Van Hellmont, did in fact send a legal opinion. Mr. Lindsey admits that the statement is factual. He says there's not enough detail, there's a competing opinion, it's a matter of public record. 50 community members in October within the school district signed a petition requesting he recuse himself from voting on board decisions which affect the location of the new school I previously submitted a copy of that. That petition language with those 50 signatures is a matter of public record. It talks about the clear and compelling nexus drawn between him serving as the attorney representing his client, Albion College, and the fact that his firm and he personally are making money from that while he simultaneously sits on the Board of Education., and makes decisions on the school bond coming forth... Mr. Lindsey states where the school is going to be is not part of the bond. We can go back and read the school board minutes where that was specifically discussed. So, the question of where the school was going to be located was hot topic during the bond being put forward and so it was part of the process. The voters voted it down, so it's a little disingenuous, I think, to claim that "well, that's really off the table because it wasn't in the bond proposal". And, I think the last thing the statement "Mr. Lindsey" continued to represent Albion College, he doesn't dispute that. What he says... (5-minute timer rang)

Judge Jaconette: Does Richard Lindsey, or a representative, wish to comment on the recall petition language filed? Richard Lindsey: "Yes your Honor"

SPONSOR COMMENTS: 5 minutes (begin 10:14 – end 10:17) *Mr. Lindsey:* Initially, I want to state I understand how low the burden is for this, to approve this, but again there was never a proposal, never any decision, never anything done by Marshall Public School Board, and to the extent after the election took place and failed, I did disclose in accordance with what the opinion of the attorney was so all this stuff that's been generated is Mr. Atchison generating this along with a couple other people in Albion. So, that's neither here, nor there. In my mind there's not a conflict and I'll be glad to, if Mr. Atchison can get his language correct, I'll be glad to address that with the electors, I just want to focus on 2 points, again, if any of these issues are not of sufficient fact, and are not of sufficient clarity, then the whole thing has to be rejected. One is the recall petitions states questions are raised by public bloggers and local news papers about the appearance of impropriety and apparent conflict. Again, there was a lot of stuff in a lot of places and a lot of things. So, the standard is can the electors make a decision about the course of conduct that led to my allegedly, to the submission of this language and that it might be recalled, I would submit this is simply not possible with that language. I don't know who he's

talking about... I would submit that is not sufficient to rise to the standard. And, the other 1 is the 50 community members in Marshall School District signed a petition requesting he recuse himself. Now, there were 50 people who signed a petition, and I've attached as an exhibit to the... to my response. The actual petition and it goes thru "we the undersigned members of the Albion, Marshall communities have a vested interest in the bond request, that I abstain from voting on things relative to violations of the Michigan Code of Educational Ethics promulgated by the Michigan Department of Ed. Again, Mr. Atchison raised that in the last petition or the last language and has withdrawn that and now it doesn't apply to me so he's begun mixing something into this that does not apply to me as a school board member. I think he said he'd like it to apply to me or that it should, but it doesn't. He then goes on to say that there is an appearance of impropriety associated with me simultaneously serving as legal council for Albion College. Again, that's the focus of a large part of what he's talking about, he goes on to 3 different paragraphs, goes thru what he believes are the basis for that and again the test is that you hand this to the elector and the elector is making the decision whether or not to sign this, can the elector identify the course of conduct for which I'm being recalled, and again, I would submit that same 50 people who signed the petition, that you can't see, and is not part of the petition, he cannot meet that standard. I'd be glad to answer any questions... that's my presentation.

No questions from the commission

Judge Jaconette asked for a motion

Motion: by Treasurer Wensauer, I move the Commission vote on the petition language submitted for the recall of the School Board Member Richard Lindsey to determine if each reason is factual and of sufficient clarity to enable office holder Richard Lindsey and the electors of Marshall Public School District to identify the course of conduct that is the basis for the recall, seconded by Clerk Hinkley.

DISCUSSION BY COMMISSION MEMBERS:

Treasurer Wensauer: ...I want to thank you both, Mr. Lindsey and Mr. Atchison for educating me... One I am not an attorney, two I am a businessperson, and it's been very enlightening to learn some of this, and it's helped me a lot because a lot of things have changed in today's society, especially on recalls. Sitting in this position is not easy... I want to read this one thing under conflict of interest 1130A Section 1 "No employee, officer, or agent shall engage in or have a financial or other interest directly or indirectly in any activity that conflicts or raises an unreasonable question of conflict". That's the word that really caught my attention, and I'm glad I had the opportunity to read "that raises a reasonable question of conflict with his or her duties and responsibilities to the school system"... I know both of you, it's hard to be an elected official... sometimes you have to make decisions that are not easy. Thank you for allowing me to state that we sometimes we make decisions that are not easy.

Clerk Hinkley: I have to concur with Treasurer Wensauer, these hearings aren't easy. And, as I was reviewing the petition language going back and forth to what's possibly true and what's possibly fact and clear, it's a hard line to walk... this isn't an easy position, this isn't an easy job, and you want to make the correct decision.. Whether you know the people being recalled, or the people filing the petition language, and whether its' clear and factual, or not whether its' true. None of the decisions made here are taken lightly in my mind and my heart. I thank you for presenting your side of the case, and trying to do your due diligence for the communities which you serve.

Judge Jaconette: I was unable to be here at earlier hearing due to illness... I don't know what was said, I read everything in preparation of being here for that earlier hearing, I had read everything in preparation of being here for that earlier hearing, and I had my own opinions about the language... I have my own thoughts about the language here in this petition... And just to be clear I've not discussed this with anyone, specifically the Treasurer or the Clerk. That wouldn't be proper... There's a lot of discussion here whether there was a conflict of interest, whether there wasn't a conflict of interest. I know that ultimately would be the subject of concern for the voters. If the recall petition is approved and the signatures are gathered and there's an election, that's going to be of interest to the voters certainly. That was less important to me because for me the issue is not whether there was a conflict or wasn't a conflict, the issue is whether the allegations in the petition deal with factual allegations as opposed to what I view as, those are allowed, what I view as not allowed are opinions. For me that's the distinction. I looked at the case and I think it was Mr. Atchison actually who attached a case... which I think is the most recent statement from the Court of Appeals, and it's a published opinion from May of last year which is Whitmer VS Board of State Canvassers. For me that's the guide. That how I should be framing my analysis. I did read Mr. Lindsey's submission on this most recent petition, what he did was interesting to me, as an attorney, it made sense he did it this way because attorneys are taught to answer each and every sentence as it's own factual statement... He analyzed each sentence separately. I don't believe that that specific "bit by bit" viewing is how it should be looked at. I think the petition as a whole should be looked at, and I think a petition can have multiple allegations within it that may be one (1) sentence allegations, and they may be more than one (1) sentence allegations, but strung along, just because one (1) as it stands alone might be something that, might be something where you might raise your eyebrow and say that's not entirely clear, if you step back and look at it in the entire petition language, it may well be clear... (*reads petition language*) I think you need to read the subsequent sentence or two (2)... (*read petition language*) to me that's what links it all together. I agree with Mr. Lindsey there is a misspelling of his name, but as is clear in the Whitmer opinion,... presumably, the sponsor of the petition would ask to have the officer holders name amended. I struggled with this because I have a really strong opinion... I know I am taking a really long time talking, forgive me for doing that, but I didn't see there was a time limit for me... So, I know Mr. Lindsey casually, I've met Mr. Atchison once in 12 years or so... I really do focus in on are we talking about opinion, or are we talking about fact. Truthful or not, is it a factual allegation, so the office holder can say that's not correct, and the electors can look at it and say I agree with this, or, wait a minute, that's not correct... Although there is opinion type language within this, I think the opinion type language is simply there to show what happened next, opposed to "Richard Lindsey is unworthy to sit on the school board". If I were to see language like that, that would be opinion that I think would call for the petition language to be stricken just on that type of language alone. But, it's different here, so, assuming that the sponsor Mr. Atchison is going to ask that the misspelling of Mr. Lindsey's name be corrected, I would indicate that based on my reading of the Whitmer case to me it is appropriate to vote that this language should be approved for the next step in the process, which is a review in the circuit court, where testimony can be taken and exhibits can be offered. All the things we can't do in this election commission here because we're a commission, not a court... We are supposed to be erring on the side of the sponsor of the petition as opposed to the office holder. Because, ultimately, this is a political issue and the Constitution of the State of Michigan says that, the case law says that, and this is a close call, and it's a close call because of the opinion type language that is within this petition. But, that close call, I think, for the reasons that I've stated for me, it's enough to compel me to vote in favor that amendment is made.

Clerk Hinkley: I would like to say I agree with you, your Honor. This was the hardest petition language that we've had, and we've had six(6) I believe now. This one (1) was the hardest, I even did my own

little break down of each sentence and then again, like you said, then put it together because we have to either reject it as a whole, or approve it as a whole. And this one was the most difficult one, and I agree with your outcome as well, that is my outcome as well.

Judge Jaconette: As a point of order, I do think, since I brought up the issue... as a point of order, and I did bring up the issue in my comments, and Mr. Lindsey brought it up as well, there is a misspelling of Mr. Lindsey's name in that last sentence. It is a ministerial correction in my view. And, Mr. Atchison, I'm assuming you're asking that the board make correction of the second letter should be an "I", not an "Y" in Mr. Lindsey's name. Is that correct?

Mr. Atchison: "Yes Sir" ... inaudible...

JUDGE JACONETTE: My Roberts Rules are weak, I suppose we should have a motion for the amendment of that spelling of Mr. Lindsey's last name in the last sentence so that it's proper.

CLERK HINKLEY: I make a motion that we do correct Mr. Lindsey's spelling of his name in this last sentence of the petition. Seconded by Treasurer Wensauer.

ROLL CALL VOTE: Clerk Hinkley: *Approve*, Treasurer Wensauer: *Approve*, Judge Jaconette: *Approve*. By a vote of 3 – 0, the Recall Language was approved.

NOTICE OF DETERMINATION: THE COMMISSION MEMBERS TO SIGN A *Notice of Determination*. Notice of Determination was made available following the meeting. Emailed copies of the determination were sent via email to the recall petition sponsor and the officeholder subject to the recall.

REVIEW OF 10 DAY APPEAL PROCESS was read by Judge Jaconette to Mr. Atchison and Mr. Lindsey.

PUBLIC / CITIZEN COMMENT: Mr. Atchison commented: One, I want to thank the commission for taking the time, I know it's not easy to generate them, and I know it's not easy on the people who have to respond them, it certainly is not easy on the folks who have to make a decision. I appreciate very much your explanation Judge, and again I thank you all for the time you put into this, I appreciate it very much, as do the registered electors within the school district

ELECTION COMMISSIONERS' COMMENTS: Judge Jaconette: I do want to echo the commissioners stated of appreciating both sides presenting their case, if you will, and, I try... if I am voting for something, I try to be real clear as to why I'm voting in favor of it, if I'm voting against it, I try to be equally as clear. And, I've done this each way in my time doing this, I know that this is just one step in the process. I wish all of you, I wouldn't say... wishing you well isn't right. I hope that this process is something that will help to educate people who are involved in dealing with the Marshall School Board issues, and if this goes thru into the part where this goes to the voters, each side is going to have the opportunity to do their best to educate those electors, so, that's all I want to state in that regard.

ANNOUNCEMENTS: None

AJOURNMENT: Motion to adjourn by Clerk Hinkley, seconded by Treasurer Wensauer at 10:44am

Respectfully submitted by: Jill Stout - Election Specialist