

**Automatic Recount Meeting of the November 3, 2009 General Election
Moscow Village Council, Washington Township Trustee and
New Richmond Exempted Village School Board
December 3, 2009, 10:00 a.m.**

Chairman Rick Combs called the meeting to order at 10:03 a.m. Ric Ferenc led the Pledge of Allegiance. Board Members present were Rick Combs, Paul Campbell, Ric Ferenc and Dave Lane. Also present were Judy Miller – Director, Mike Keeley – Deputy Director and Becky Rudd – Clerk taking Record.

OTHER ATTENDEES: James A. Rader-observer with Beth Nevel and representing Linda Carter; Beth Nevel-Washington Township Trustee Candidate; Linda Carter-Moscow Village Council Candidate, Kevin Walriven-New Richmond School Board Candidate, Dennis Skeene-Moscow Village Council Candidate, Fred Heflin-New Richmond School Board Candidate and Eleanor Heflin entered the meeting at 11:00 a.m. and Mary Lynne Birck-Prosecutor's Office entered the meeting at 11:10 a.m.

Director Miller explained to the Attendees that they can observe the entire Recount procedure but not touch any ballots or election materials.

TEST DECK:

Nick Sommer (ISD) provided the Board with a new Test Deck for the Recount. Only the three (3) races to be recounted will be hand tallied on the Test Deck. Ric Ferenc read the Test Deck ballot counts as the Board hand tallied the results. Ric Ferenc and Paul Campbell observed Nick run the Test Deck thru the 650 scanners. Ric Ferenc read the scanner results and the Board found the results to match the hand count.

2009-131 – Dave Lane made the motion to accept the Results of the Recount Test Deck. Ric Ferenc seconded the motion. Upon roll call, all Members voted “yes”.

James Rader had an inquiry about voter Paul M. Cipollone II. According to our walking list he is registered at 507 Fifth St., which Mr. Rader states he does not live at. His residence is 318 Third St., Moscow, Ohio. Mr. Rader would like to know if he voted at the polls. (Information was provided, that Paul M. Cipollone II did vote at the polls on Election Day.)

Director Miller explained the Recount procedures. Five per cent (5%) of the votes cast is required to be hand counted. The order of the Recount will be Moscow Village, Washington Township and then New Richmond School Board. Since Moscow Village is only one (1) precinct, the Board will hand count the entire precinct. We will then run all of the ballots (election day, provisional and absentee) thru the 650 scanners. If the hand count matches the computer count those results will be Certified.

Director Miller explained the procedure for returned voted absentee ballots. The security envelope containing the ballot is sent thru the “vote remote” machine. This machine checks the signature and determines whether or not there is a suspended ballot of the returned absentee ballots. After Certification we discovered that the vote remote did not pick up a suspended duplicated voter (within Moscow Village)

as it should have. This voter stated he had lost his ballot and requested another. The original ballot was suspended and another ballot issued. Both ballots were returned via mail, not flagged as being a duplicate/replacement ballot. It was when Linda Carter asked for a list of the people that voted, did we discover that the ballot count was not matching the number of ballots cast. We checked to find out why the number did not match and discovered we had 35 ballots and 35 envelopes but only 34 individual names. Of all of the voters that were issued a replacement ballot this was the only one that was duplicated. The ballot cans have been locked since Certification.

The Board opened the absentee ballot can to see if there was a blank ballot for Moscow Village.

The Board went off the Record at 10:53 a.m.

The Board went back on the Record at 11:00 a.m.

The Board checked the 35 absentee ballots and did not find a blank ballot which meant both ballots returned, were voted.

The staff preceded to hand count the Moscow Village absentee ballots.

Director Miller continued to explain that when the absentee envelopes (names facing down) are opened, the ballots removed and then the stubs removed from the ballots. The ballots can not be traced back to the voter. The Board reviewed the absentee security envelopes for Moscow Village.

Mary Lynne Birck entered the meeting at 11:10 a.m.

Mr. Skeene asked how this affects the count. Rick Combs stated that the answer would be determined as they work thru the process on how to handle it.

Ric Ferenc explained the situation to Mary Lynne Birck.

The Board went off the Record at 11:16 a.m.

The Board went back on the Record at 11:23 a.m.

REFERRAL TO PROSECUTOR'S OFFICE:

2009-132 – Paul Campbell made the motion that the ballots/envelopes (Terry D. Gorth) in question be turned over to the Prosecutor's Office. Dave Lane seconded the motion. Upon roll call, all Members voted "yes".

The Board went off the Record at 11:24 a.m. to finish the hand count and then run the ballots thru the 650 scanners for Moscow Village.

The Board went back on the Record at 12:10 p.m.

Director Miller commenced with the Recount of Washington Township. The required 5% hand count is 37 votes. Rick Combs randomly selected Washington Township-C (170 votes) for the hand count. The staff preceded to hand count WN-C.

The Board went off the Record at 12:14 p.m. while the Director was out of the room.

The Board went back on the Record at 12:27 p.m.

The Director announced the hand and computer results of the Moscow Village Council race.

	Hand Count	Computer Count
Linda Carter	56	56
Carol Forste	58	58
Kent Jones	58	58
Dennis Skeene	57	57
Andrew Thaler	21*	20
Over votes	4	4
Under votes	150	150

*there was a stray mark in the oval for Andrew Thaler

These totals are the same as the Certified Totals.

Dennis Skeene left the meeting at 12:30 p.m.

Rick Combs suggested contacting our Legal Counsel before we Certify the Moscow Village Council race.

The Board went into Recess at 12:31 p.m. to allow the Director to contact Legal Counsel for direction on past practices from the Secretary of State. The staff continued with the count for Washington Township. The Heflins left at 12:35 p.m.

The Board went back on the Record at 12:55 p.m.

Director Miller announced the Results on the hand count for WN-C.

	Hand Count	Computer Count
Tom Dix	65	65
Beth Nevel	79	79
Lisa Williams	26	26

The remaining precincts/ballots were run thru the 650 scanners.

The Board went off the Record at 12:56 p.m.

The Board went back on the Record at 1:00 p.m.

Director Miller commenced with the Recount for the New Richmond School Board. The required 5% for the hand count is 413 votes. The Board continued with the random draw of hand count precincts, WN-A = 96 votes, TE-D = 4 votes,

The Board went off the Record at 1:05 p.m.

The Board went back on the Record at 1:24 p.m. The Heflins returned at 1:24 p.m.

The Board continued to draw precincts, WN-C = 4 votes and NR-B = 344 votes to total 448 hand count votes.

Ric Ferenc read the final Results for the Washington Township Trustee race.

Tom Dix	308
Beth Nevel	313
Lisa Williams	174
Over votes	2
Under votes	300

These numbers were the same as at Certification. Rick Combs inquired if the Moscow Village votes could impact this race and they would not.

2009-133 – Ric Ferenc made the motion to accept and Certify the Results of the Recount for the Washington Township Trustee Race and declare the second seat winner to be Beth Nevel. Dave Lane seconded the motion. Upon roll call, all Members voted “yes”.

The Board went off the Record at 1:28 p.m. to continue the New Richmond School Board hand count and waiting advice from Legal Counsel.

The Board went back on the Record at 3:06 p.m.

Director Miller announced the hand counts for New Richmond School Board.

NR-B	Hand Count	Computer Count
Michael Bennett	32	32
David Hawkins	44	44
Kim Hayden	53	53
Frederick Heflin	38	38
Robert Painter	29	29
Kevin Walriven	77	77
Over votes	0	0
Under votes	88	88

TE-D	Hand Count	Computer Count
Michael Bennett	0	0
David Hawkins	2	2
Kim Hayden	0	0
Frederick Heflin	1	1
Robert Painter	0	0
Kevin Walriven	1	1
Over votes	0	0
Undervotes	2	2

WN-C	Hand Count	Computer Count
Michael Bennett	0	0
David Hawkins	0	0
Kim Hayden	1	1
Frederick Heflin	0	0
Robert Painter	2	2

Kevin Walriven	0	0
Over votes	0	0
Under votes	2	2

WN-A	Hand Count	Computer Count
Michael Bennett	12	12
David Hawkins	14	14
Kim Hayden	23	23
Frederick Heflin	13	13
Robert Painter	11	11
Kevin Walriven	10	10
Over votes	0	0
Under votes	33	33

All of the totals matched.

The staff proceeded to run the ballots thru the 650 scanners.

The Board went off the Record at 3:10 p.m.
The Board went back on the Record at 4:08 p.m.

Director Miller advised the Board that the Recount Results for the New Richmond School Board matched the Certified Results, there were no changes.

Michael Bennett	993
David Hawkins	1,563
Kim Hayden	1,220
Frederick Heflin	1,222
Robert Painter	913
Kevin Walriven	1,230

Rick Combs inquired if the Moscow Village race could have impacted the New Richmond race. Judy stated that it could because there is a two (2) vote difference between third (1,222) and fourth (1,220) place.

Mary Lynne Birck gave the Board Members a written letter regarding the issues surrounding the Moscow Village Council race. See Attachment.

Mary Lynne reviewed the letter with the Board and attendees at the meeting. The question posed to Mary Lynne Birck from the Board of Elections was "what is the remedy?" She reached Case Law, Statutory Law, Ohio Revised Code, Election Law and had a conversation with the Secretary of State's Attorney.

Her research was confirmed. The Clermont County Board of Elections does not have any authority to order a new election even in a case when there are irregularities. There is no recourse for the Village because we can not take out or determine whose ballot it was. She is aware that this is unsatisfactory to the Board Members, the Moscow Village residents and the candidates. Unfortunately this is what we are dealt with. That is the opinion she is rendering to the Board as unsatisfactory as it is.

James Rader entered an objection on the part of Linda Carter as to the Certification of Dennis Skeene based on the fact that it is impossible to tell which ballots are attributed to Terry Gorth and therefore it is impossible to determine specifically the amount of votes each candidate received. The Board noted his request.

2009-134 – Ric Ferenc made the motion to accept the Recount Results of the Moscow Village Council Race and Certify the top four vote counts. Paul Campbell seconded the motion. Upon roll call, all Members voted “yes”.

2009-135 – Paul Campbell made the motion to accept and Certify the Recount Results for the New Richmond Exempted School Board Members. Rick Ferenc seconded the motion. Upon discussion Director Miller added the declared winner was Ben Bird and the next top votes were Kevin Walriven (1,230 votes) and Frederick Heflin (1,222 votes) Upon roll call, all Members voted “yes”.

Director Miller added into the Minutes the Elected Parties for the Moscow Village Council Race. The declared winner was Lori Martineck and the results of the recount are: Carol Forste -58 votes, Kent Jones -58 votes and Dennis Skeene -57 votes.

Rick Combs reminded the Board that the information regarding Mr. Gorth was to be forwarded to the Prosecuting Attorney.

Paul Campbell asked the Director and Deputy Director if there is anything that needs to be done in order to ensure there are no more “glitches” in the vote remote system, Director Miller said the system will be tested again. When this “batch” (of absentee envelopes) were run and downloaded again it was fine. Judy checked with other Counties to see if they had any problems with their system and they did not. We had an “upgrade plus” and DIMS/ES&S wrote programs to bring it into compliance, but found the “glitch” afterwards.

Rick Combs asked Judy to have ES&S provide us with a document to explain to us what did occur and what they did to fix the problem, so we can test it (the system) after it has been concluded.

The Board went off the Record at 4:23 p.m.

The Board went back on the Record at 4:31 p.m.

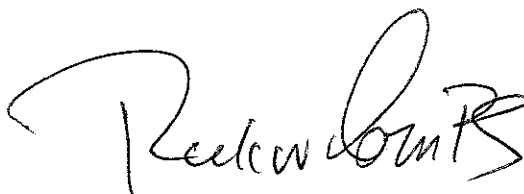
Nick Sommer ran the Test Deck at the conclusion of the Recount and provided the Board Members with the Results. Ric Ferenc read the results and the Board Members found the results to match.

2009-136 – Paul Campbell made the motion to accept and Verify the Results of the Recount Test Deck. Rick Ferenc seconded the motion. Upon roll call, all Members voted “yes”.

2009-137 – Ric Ferenc made the motion to forward the Results of the Recount to the Ohio Secretary of State. Dave Lane seconded the motion. Upon roll call, all Members voted “yes”.

ADJOURNMENT:

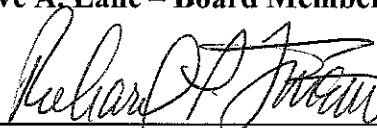
2009-138 – At 4:36 p.m. Dave Lane made the motion to adjourn. Ric Ferenc seconded the motion. Upon roll call, all Members voted “yes”.



Rick W. Combs – Board Chairman



Dave A. Lane – Board Member



Richard P. Ferenc – Board Member



Paul L. Campbell – Board Member

Attest – Judith A. Miller - Director

DONALD W. WHITE
CLERMONT COUNTY PROSECUTING ATTORNEY



Mary Lynne Birck
Assistant Prosecuting Attorney

101 East Main Street
Batavia, Ohio 45103
(513) 732-8178
(Fax) 732-8171

December 3, 2009

Clermont County Board of Elections
76 S. Riverside Drive
Batavia, Ohio 45103

Re: Recount of Moscow Village Council Race

Dear Honorable Board:

This morning you asked this Office for an opinion regarding issues surrounding the recount for the Moscow Village Council race. The following are the facts as I understand them:

1. A resident of the village of Moscow requested an absentee ballot. He subsequently called the Clermont County Board of Elections and indicated that he lost the absentee ballot. An employee of the BOE sent him a replacement ballot and entered information into the DIMS voter management system to indicate that he had been sent a replacement ballot.
2. All sealed envelopes containing absentee ballots were scanned into the vote remote system. When working properly, the software alerts the BOE of a "challenge" when it encounters two envelopes with information from the same voter. The software did not alert the BOE of the presence of two envelopes containing ballots from the same voter. The software indicated that the number of ballots for the race (35) was identical to the number of envelopes (35).
3. As the software did not alert the BOE to a problem, the ballots were manually removed from the envelopes in a manner that concealed the identity of the voter (proper procedure); that is, the ballot could not be traced back to the envelope which contains identifying information of the voter.
4. The ballots were then scanned through the counting machine on election night. The results for the Moscow Village Council race (4 to be elected) were as follows:

Linda Carter	56
Carol Forste	58
Kent Jones	58
Lori Martinek	73
Dennis Skeene	57

Andrew Thayler	20
Overvotes	4
Undervotes	150

5. Lori Martinek was the only declared winner in the race. As statutorily required, the BOE conducted a recount to determine the winners of the other three seats.

6. In preparing for the recount, a report was run by the BOE which indicated that 34 voters cast 35 ballots in the race – the first indication of an inconsistency. The software still did not identify a challenge with regard to any particular voter or ballot.

7. Upon manual examination of the envelopes, the BOE discovered two envelopes from the same voter. Director Judy Miller telephoned the voter and asked him if he indeed voted twice. Director Miller ascertained that the voter did not remember sending in the original ballot. As a result of her investigation, Director Miller found no evidence that the voter intended to engage in elections fraud.

8. Director Miller indicated that upgrades to the software were made to the system within weeks before the election. The software vendor has been notified of the “glitches” with the system and has taken corrective action.

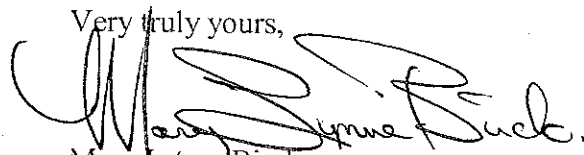
The facts as related to this Office indicate the Clermont County BOE had a system in place to prevent this voting irregularity – one voting two ballots in the same race – but that its system failed with respect to this race.

There is no dispute of fact – a single voter cast two ballots with regard to the Moscow Village Council race. Nor can the problem be corrected by segregating the problem ballot(s) from the others as no one can identify which voter voted which ballot.

The question for the Clermont County BOE is: what are the remedies available to it? This Office, in consultation with legal counsel from the Secretary of State’s office, has determined that there is no statutory or judicial authority to enable the BOE to hold a new election even where an irregularity has been discovered. As the BOE cannot hold a new election to “correct” the irregularity, it is the opinion of this Office that the BOE has no option but to accept the results, irregularity notwithstanding. This Office recognizes that the lack of remedies available to the BOE will no doubt be viewed as unsatisfactory to the Board members, the candidates, and the voters of the Village of Moscow.

If I can be of further assistance in clarifying this matter, please feel free to contact me.

Very truly yours,



Mary Lynne Birck
Assistant Prosecuting Attorney

	TOTAL VOTES	%	ELECTION DAY	ABSENTEE	PROVISIONAL
Board of Education New Richmond EVSD					
(Vote For Not More Than) 3					
(WITH 22 OF 22 PRECINCTS COUNTED)					
Michael Bennett	993	12.01	869	112	12
Ben Bird.	1,563	18.90	1,367	175	21
David S. Hawkins	1,127	13.63	953	161	13
Kim Hayden	1,220	14.76	1,033	175	12
Frederick R. Heflin	1,222	14.78	1,022	187	13
Robert Painter.	913	11.04	780	125	8
Kevin Walriven.	1,230	14.88	1,058	157	15
Over Votes	9		9	0	0
Under Votes	3,390		2,860	483	47

	TOTAL VOTES	%	ELECTION DAY	ABSENTEE	PROVISIONAL
Trustee Washington Township					
(Vote For Not More Than) 2					
(WITH 4 OF 4 PRECINCTS COUNTED)					
Tom Dix	308	26.51	243	62	3
Beth Nevel	313	26.94	263	46	4
David Peters	367	31.58	313	51	3
Lisa A. Williams	174	14.97	147	25	2
Over Votes	2		0	2	0
Under Votes	300		260	34	6

	TOTAL VOTES	%	ELECTION DAY	ABSENTEE	PROVISIONAL
Council Moscow Village					
(Vote For Not More Than) 4					
(WITH 1 OF 1 PRECINCTS COUNTED)					
Linda Carter	56	17.39	43	11	2
Carol Forste	58	18.01	42	14	2
Kent Jones	58	18.01	42	13	3
Lori Martineck.	73	22.67	51	19	3
Dennis Skeene	57	17.70	30	24	3
Andrew R. Thaler	20	6.21	14	6	0
Over Votes	4		4	0	0
Under Votes	150		90	53	7

Notice of Meeting for the
CLERMONT COUNTY BOARD OF ELECTIONS
76 S. Riverside Drive
Batavia, Ohio 45103
(513) 732-7275

The Clermont County Board of Elections has declared that there will be Automatic Recounts conducted for the following races held at the November 3, 2009 General Election: Moscow Village Council, Washington Township Trustee and New Richmond Exempted Village School Board. The Recounts will be held on Thursday, December 3, 2009 at 10:00 a.m. at the office of the Clermont County Board of Elections at 76 S. Riverside Dr., Batavia, Ohio. The Board will review any other regular business that is necessary on that date.

Rudd, Rebecca

From: Rudd, Rebecca
Sent: Monday, November 30, 2009 10:23 AM
To: 'clermontsun@fuse.net'
Subject: recount bd mtg
Attachments: Dec 3, 2009 recount.doc

Art,

This is to advise you of the Recount Board Meeting of the Clermont County Board of Elections. Please refer to the attachment. Please let me know if you have any questions regarding this matter.

Becky Rudd
Clermont County Board of Elections
513-732-7275

Rudd, Rebecca

From: Rudd, Rebecca
Sent: Monday, November 30, 2009 10:26 AM
To: 'therron@communitypress.com'
Subject: recount board mtg
Attachments: Dec 3, 2009 recount.doc

Theresa,

This is to advise you of a Recount Board Meeting of the Clermont County Board of Elections. Please refer to the attachment. Please let me know if you have any questions regarding this matter.

Becky Rudd
Clermont County Board of Elections
513-732-7275

Rudd, Rebecca

From: Rudd, Rebecca
Sent: Monday, November 30, 2009 10:28 AM
To: 'bbrunsman@enquirer.com'
Subject: recount bd mtg.
Attachments: Dec 3, 2009 recount.doc

Barrett,

This is to advise you of the Recount Board Meeting of the Clermont County Board of Elections. Please refer to the attachment. Please let me know if you have any questions regarding this matter.

Thank you.

Becky Rudd
Clermont County Board of Elections
513-732-7275