

MINUTES FOR NOVEMBER 8, 2010
COLUMBUS, KANSAS, CHEROKEE COUNTY
OFFICE OF THE COUNTY CLERK
CRYSTAL L. GATEWOOD

The Cherokee Commissioners met November 8, 2010. Commissioners Garner, Hilderbrand, and Collins were present. The Pledge of Allegiance was said by all present. Commissioner Garner made a motion to approve the minutes for November 1, 2010 as written by County Clerk Crystal Gatewood, his motion was seconded by Commissioner Collins, and all three commissioners voted in favor and signed off. Commissioner Collins made a motion to approve the minutes for November 5, 2010 as written by Clerk Gatewood, his motion was seconded by Commissioner Garner, and all three commissioners voted in favor and signed off. Commissioner Collins made a motion to amend the agenda and move Darrel Speer from 10:00 AM to 9:35 AM, his motion was seconded by Commissioner Garner, and all three commissioners voted in favor and all three commissioners signed off.

EXECUTIVE SESSIONS

Commissioner Garner made a motion to go into **Executive Session for fifteen minutes for Non-Elected/Personnel** with himself, and Commissioners Collins and Garner, his motion was seconded by Commissioner Hilderbrand, and all three commissioners voted in favor. They went in 10:07 AM and returned at 10:14 AM.

Commissioner Hilderbrand made a motion to go into **Executive Session for five minutes for Attorney/Client Privilege** with himself, Commissioners Collins and Garner, and via telephone with County Counselor Kevin Cure, his motion was seconded by Commissioner Garner, and all three commissioners voted in favor. They went in at 12:07 PM and returned at 12:14 PM.

MOTIONS MADE BY COMMISSION

Commissioner Collins moved, pursuant to K.S.A. 25-3107, to cause a Special Election Board appointed by the County Election Officer to meet under the supervision of the County Election Officer and recount the ballots with respect to the Office of Kansas First District State Representative. The contents of this motion shall be immediately delivered to the county Election Officer. Commissioner Garner made a second to the motion, and Commissioners Garner, Hilderbrand, and Collins voted in favor. (All paperwork is attached to the minutes for this meeting.

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OTHER BUSINESS

Don Doherty of Willis and Associates came before the commission to discuss brokering the county insurance. The commission made no decisions on this matter because the county health committee will be meeting this afternoon and the commission will make a formal decision regarding the insurance.

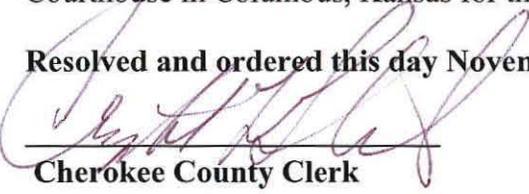
Darrel Speer came before the commission to ask for monetary support for replacing the bridge at the Columbus Ball Field. Mr. Speer was contacting the city of Columbus and he would get back to the commission at a later time. The commission made no decisions.

Candidate Michael Houser came before the commission and brought a list of demands to begin a recount of ballots for the Kansas First District State Representative Race. (His list of demands is attached). The discussion with County Counselor via telephone in the commission meeting with those present is as follows. He could not demand the County Election Officer excuse herself because of Kansas Statute, and he must follow K.S.A. 25-3107 with regards to the re-count. He could only request a hand recount or a machine recount and the commission gave him until 5:00 PM, November 8, 2010 to contact the County Clerk's Office with his decision. The re-count would begin November 9, 2010 at 8:00 AM in the Cherokee County Courthouse.

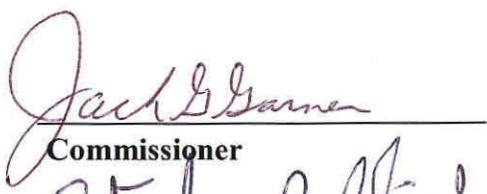
ADJOURNMENT

Commissioner Garner made a motion to adjourn at 1:17 PM, his motion was seconded by Commissioner Collins, and all three commissioners voted in favor. The next Cherokee County Commission meeting will be held November 12, 2010 at 9:00 AM in the Cherokee County Courthouse in Columbus, Kansas for the Recount Certification.

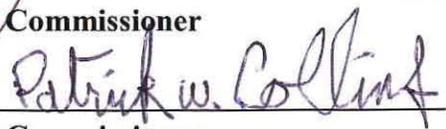
Resolved and ordered this day November 22, 2010



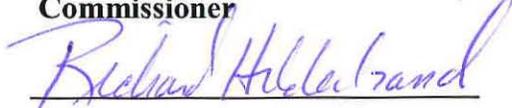
 Cherokee County Clerk



 Commissioner



 Commissioner



 Commissioner

CURE LAW OFFICE
Kevin Cure, Attorney at Law
603 Main Galena, Kansas 66739
Phone: (620) 783-5070
FAX: (620) 783-2185

November 7, 2010

To: Cherokee County Commissioners (via fax 429-1591; 11/9/10)

Dear Commissioners:

If a written recount request is submitted by Monday, November 8, 2010, at noon to the county clerk, there are certain steps the county commissioners must undertake. Upon receipt of any written recount request by the county clerk, she should immediately advise the county commissioners this has occurred. The county commissioners are required by K.S.A. 25-3107, in relevant part, to “cause a special election board appointed by the county election officer (emphasis supplied) to meet under the supervision of the county election officer and recount the ballots with respect to any office...”

The county commissioners should direct this be done by motion, and the proposed motion and excerpt of minutes in light of the anticipated challenge by candidate, Michael Houser, I recommend to be as follows, as stated in bold print only:

1.) Findings

The Board of County Commissioners of Cherokee County, Kansas, upon due consideration of the matter finds that enacting the legislation below is mandated pursuant to K.S.A. 25-3107.

The Board of County Commissioners of Cherokee County, Kansas, meeting in regular session, this 8th day of November, 2010, does hereby make the following findings:

The Board of County Commissioners of Cherokee County, Kansas, (hereinafter designated “BOCC”) is designated by K.S.A. 25-3101 as the board of canvassers for elections occurring in Cherokee County, Kansas.

The BOCC, in performing its function as the board of canvassers, met on November 5, 2010, and canvassed all provisional ballots, and did upon completion of its canvassing function, authenticated and certified, the election of Doug Gatewood to the Office of State of Kansas First District State Representative.

Michael Houser, a candidate for election to the Office of State of Kansas First District State Representative, did on November 8, 2010, by noon of said day, file a written request for a recount of the 2010 ballots and voting results for Office of State of Kansas First District State Representative, thereby meeting the requirements of law.

The county clerk is designated as the county election officer by statute.

K.S.A. 25-3107, and amendments thereto, require the board of canvassers to "cause a special election board appointed by the county election officer (emphasis supplied) to meet under the supervision of the county election officer and recount the ballots with respect to any office..."

This board of county canvassers should pursuant to the Kansas statutes cause a special election board appointed by the county election officer to meet under the supervision of the county election officer and recount the 2010 ballots and voting results with respect to the Office of State of Kansas First District State Representative.

2.) Motion.

Commissioner Collins moved, pursuant to K.S.A. 25-3107, to cause a special election board appointed by the county election officer to meet under the supervision of the county election officer and recount the ballots with respect to the Office of State of Kansas First District State Representative. The contents of this motion shall be immediately delivered to the county election officer.

Commissioner Garner made a second to said motion. Commissioners Hilderbrand, Garner, and Collins voted in favor of the passage of said Motion.

Richard Hilderbrand
Patrick W. Collins
Jack Garner

Once the county clerk is so directed by the county commissioners to appoint a special election board, the county clerk determines the membership of this special election board. The only requirement under K.S.A. 25-3107 is the county election officer may not be a member of the special election board. This special election board is required to commence its work no later than Tuesday and complete its work no later than 5:00 p.m. on Friday, November 12, 2010, by statute.

Veteran's Day is November 11, 2010, and the county clerk should check with the Kansas Secretary of State's Office whether there is a bar to conducting the recount on a legally recognized holiday, in the event the two days preceding this holiday are not enough in which to complete the recount. A call to the Secretary would be useful, particularly, if the statutes have been supplemented by administrative rules passed by that office to cover gaps in, or to add to, topics addressed by statute, such as vote counting on a holiday.

Before the special meeting board meets to consider the ballots upon a properly filed request, the party making such request for a recount, shall file with the county election officer a bond, with security to be approved by the county attorney, conditioned to pay all costs incurred by the county in making such recount.

The request for the recount shall: originate from the candidate seeking the recount; be in writing; specify whether all or only specified voting areas should be recounted; and, specify the method of conducting the recount (such as the optical scan system or hand-counted paper ballots).

Upon the completion of the work by the special election board, the commission will then be required to meet and complete its canvass. I found no law directing when this shall occur in K.S.A. 25-3101 through 25-3110, and the amendment thereto. As a result, I recommend the final canvassing should occur within a reasonable time, and it be at either a special meeting but not later than the regular meeting on November 15, 2010.

If you have any questions or suggestions, please contact me.

Sincerely,



Kevin Cure

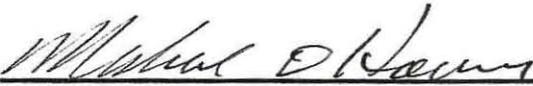
November 08, 2010

DEMAND FOR RECOUNT OF ALL VOTES CAST IN THE DISTRICT #1 2010 KANSAS GENERAL ELECTION INCLUDING THE POSITION OF STATE REPRESENTATIVE DISTRICT #1 AND THE RESULTS FOR EACH RACE ON THE 2010 ELECTION BALLOT.

I, MICHAEL HOUSER, HERBY DEMAND A RECOUNT OF THE VOTES CAST IN THE NOVEMBER 2ND, 2010 KANSAS STATE ELECTION AS ALLOWED UNDER KANSAS STATUE 25-3107.

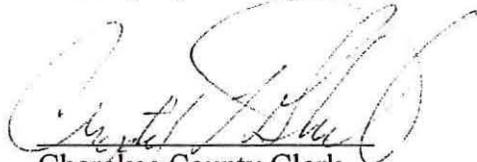
I HEREBY DEMAND THAT CRYSTAL GATEWOOD, THE CHEROKEE COUNTY CLERK, RECUSE HERSELF FROM THE RECOUNT PROCESS IN ACCORDANCE WITH KANSAS LAW. MS. GATEWOOD HAS A CONFLICT OF INTEREST. THE KANSAS SECRETARY OF STATE SHALL PROVIDE OVERSIGHT FOR THE RECOUNTING OF THE VOTES BY BOTH MACHINE AND HAND METHODS. WE ASK THAT THE NON PARTISAN REPRESENTATIVES CHOSEN TO SERVE ON THE OVERSIGHT OF THIS RECOUNT BE REPRESENTATIVE OF BOTH POLITICAL PARTIES. WE DEMAND THAT ALL BALLOTS CAST IN THE ELECTION, BOTH VALID AND SPOILED, INCLUDING THOSE WHICH WERE UNABLE TO BE RUN THROUGH THE ELECTRONIC MACHINES, ALONG WITH PROVISIONAL BALLOTS, BOTH ACCEPTED AND REJECTED, BE AVAILABLE FOR INSPECTION BY BOTH PARTIES. WE DEMAND TO SEE THE MACHINE CALIBRATION CERTIFICATES THAT WERE CREATED BEFORE THE ELECTION AND THE LIST OF VOTERS USING THOSE MACHINES. WE ALSO DEMAND THE REGISTRATION BOOK AT EACH POLLING LOCATION BE PROVIDED FOR INSPECTION BY EACH PARTY AND A LIST OF VOTERS THAT WERE REQUIRED TO VOTE USING PROVISIONAL BALLOTS.

THE PHYSICAL BALLOTS MUST BE REMOVED FROM THE OFFICE OF THE CHEROKEE COUNTY CLERK IMMEDIATELY TO PROTECT THE INTEGRITY OF THE ELECTION IN LIGHT OF MS. GATEWOOD'S CONFLICT OF INTEREST


MICHAEL HOUSER


DATE

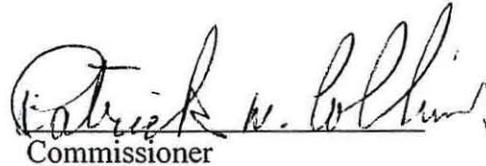
The results of the general election held November 2, 2010, are certified on November 5, 2010, as accurate and true after canvassing the results thereof by the Cherokee County Commissioners done after review and consultation with the Cherokee County Election Officer, Crystal Gatewood.



Cherokee County Clerk
And Cherokee County
Election Officer



Commissioner



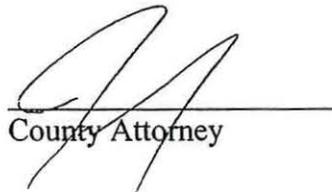
Commissioner



Deputy County Clerk



Commissioner


County Counselor
Kevin Cure
County Attorney