

TESTIMONY OF JEROME A. KOENIG
CITY COUNCIL GOVERNMENT OPERATIONS COMMITTEE
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Good afternoon. My name is Jerome Koenig. For over twenty years, until my retirement in 1996, I was Chief of Staff for the Election Law Committee of the State Assembly. In that job, I was the principal draftsman of almost all of the election laws enacted during that period.

I want to thank the Committee for holding this hearing to review the conduct of the primaries and the special elections so soon after they occurred and offer my views on what was done and what was not done.

The criticism has centered on the delays in reporting unofficial results on election night. These delays result from the Board of Elections decision to tally the results by Election District that night. Since the scanners are programmed to count ballots from all the EDs in a polling place, the Board has developed a cumbersome procedure in which the inspectors must cut up the result tapes printed by the scanner and separate the sections by ED. Then the inspectors must add up the votes for each candidate from all the little sections of tape for each ED. The Board does not supply calculators, so the inspectors must either bring their own or do the addition with pencil and paper. The inspectors must record the totals on the return of canvass for that ED. Those canvass sheets are then taken by the police to the precinct for data entry transmittal to the AP. Needless to say this takes a great deal of time so the inspectors must stay much later than in the past. And, of course, the procedure is rife with opportunities for errors in addition, data entry, etc.

The changes which the Board is developing to expedite the procedure, may speed up the reporting of the results a little, but it will still very cumbersome. So I think that the results will still be reported more slowly that with the old machines. And the inspectors will still have to stay very late to cut up the tapes and add up the vote by hand. This will only exacerbate the difficulties the Board has in recruiting sufficient people to staff the elections.

The counsel to the Board interprets the law to require a tally by ED on election night at the polls. I think that is an overly rigid analysis of the statute. Section 9-102(2) specifically permits the election night tally to consist of a copy of the printed tape from each scanner attached to a return of canvass. Counsel to the Board cites the language of Section 9-122 as requiring a tally by ED. That section is archaic. It is premised on the assumption that there was a separate polling place for each ED, which has certainly not been the case in my lifetime. I do not agree with Counsel's interpretation of Section 9-122, but if he is correct, then there is a conflict with the language in section 9102 which permits election night tally by scanner. As a rule of statutory construction, if there is a conflict between two sections of the same statute, the later enactment governs. Section 9-102 was amended in 2010 to add the language about scanners. Section 9-122 was last amended in 1982 with reference to

the phrase "ballot proposal" which was the only amendment since at least 1949. So I think the statute definitely permits the election night tally to be done by scanner rather than ED. Which will certainly expedite the closing of the polls. But since the Police Department computer system for election night reporting is programmed by ED, in order to report the results expeditiously, the Board will still have to develop a new procedure for reporting the vote. Unless the Police Department is willing to reprogram it's system, which it so far has refused to do because of the cost.

There is another point I would like to make on the primary and special elections. I think the Board expended significantly more money than was necessary to run efficient elections. The Board deployed a full complement of staff and equipment for what was obviously going to be a very low turnout election. There was no need to have more than a minimum number of scanners at each polling place and no more than the minimum amount of staff mandated by statute. While we don't yet have a tally on the number of poll workers who actually worked, the Board tried to deploy 19,159. Given the fact that the polls were not open at all in the Bronx and Staten Island and open in only parts of Queens and Manhattan and it was obvious that the turnout was going to be low everywhere, except possibly in the 9th CD this was clearly overkill. In Brooklyn, where the Board deployed the usual number of people and amount of equipment, there were only about 35,500 votes cast in the entire Borough or an average of about seventeen per election district. And if you were to exclude the EDs in the 9th CD, the average would be even lower. And in those special elections in Queens in districts where there was only a special election, the Board had the authority (Section 4-104(5c)) to combine two or three EDs with one set of inspectors, which would also have resulted in significant savings. But it didn't do that. Which is their standard policy. Every time there is a special election, I remind the Board of the discretion it has to combine EDs but they are very reluctant to do so. If they do any combinations at all, it is on a very limited basis.

The Board apparently does not intend to take advantage of another part of the same statute for this year's general election. That law provides that in the off year of the four year cycle, in which there is no election for President, Governor or Mayor in NYC, the Board may combine EDs with up to 2,000 voters. Their unwillingness to do that is particularly egregious in the Bronx, where there will be only one office on the ballot with only one unopposed candidate. The Board could easily combine between two and three hundred EDs at a saving of many hundreds of thousands of dollars. And that is just in the Bronx.. They could do the same thing in the other Boroughs where whatever elections there are, with the possible exception of Richmond County DA, are essentially uncontested. I find that particularly frustrating since I wrote these provisions of law with the expectation of saving the city a great deal of money.

There is another provision of law, which I take great pride in having written, which could also save the city a great deal of money. The Board's failure to take advantage of the provision is also very frustrating for me. New York City is the only Board in the state, which still maintains an alphabetical file, by Borough, of the voter

registration applications of all active voters. In order to maintain the file, the Board must continually file the application forms of new registrants and remove the forms of those voters whose registrations are cancelled. This of course requires a huge amount of staff time. But the statute (section 5-506(3d)) provides that Boards such as New York City, which scan the entire face of the registration form, need only save the originals for two years. And even for that period the forms do not have to be alphabetized. The computer assigns a "batch number" to each new registrant entered in the system. Most Boards around the State simply file the forms by batch number and year. Those Boards which do not scan the entire form, must keep the original forms indefinitely but they do so by year of registration and batch, rather than alphabetically. Even if the New York Board felt it that it was desirable to keep the forms for more than two years, it could also file them by year of registration and batch, which is a lot less labor intensive than putting them in an alphabetical file.

I hope my comments have been helpful to the committee. Of course I will be happy to answer any questions you may have.