



NORTH CAROLINA

State Board of Elections

Mailing Address:
P.O. Box 27255
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KIM WESTBROOK STRACH
Executive Director

April 20, 2015

VIA ELECTRONIC MAIL

Luke Eggers
Chairman, Watauga County Board of Elections
Luke.Eggers@watgov.org

RE: Appointment of a director of elections to the Watauga County Board of Elections ("County Board") pursuant to G.S. § 165-35.

Dear Chairman Eggers:

I am in receipt of your letters describing the County Board's effort to secure a replacement for outgoing Director Jane Ann Hodges, who has served your county for nearly three decades. I extend to Director Hodges my sincere appreciation for her years of service to Watauga County and my best wishes to her in retirement.

You have requested that my office review the nomination of Matthew Snyder consistent with my statutory duty under G.S. §§ 165-35(a) and (b), which require that my office approve any nominee submitted by a county board of elections, provided that my doing so is consistent with other state and federal requirements, and that the nominee is not otherwise ineligible pursuant to a G.S. §§ 165-35(a)(1)–(7). As you know, the exercise of this statutory responsibility is not an opportunity for my office to pass judgment on the propriety or relative qualification of a given nominee. Instead, my office is directed to ensure basic statutory qualifications are met and then to facilitate required training and support for the incoming director.

Having reviewed your initial letter and enclosure (received April 9), your supplemental letter and enclosure (received April 18), and video footage of the County Board's April 1 meeting, I am satisfied that the majority has sufficiently evidenced its intent to nominate Mr. Snyder, though I would stress the importance that minutes be "full and accurate". See G.S. §§ 143-318.10(e), 163-31. The nomination is, therefore, appropriately submitted to my office. I am informed your nomination process did not include a public solicitation of applications and certain members of the public have objections to Mr. Snyder's nomination on that basis. Applicable statutes do not require an open application process and practices in this regard vary from county-to-county. Absent any finding that Mr. Snyder is ineligible, I hereby appoint Mr. Snyder to the position of Director of Elections, effective July 1, 2015.

It will be imperative that your Board stress the necessity that Mr. Snyder abstain from political activities, as required by G.S. § 165-39 and the enclosed *Notice Regarding Social Media*. Impartiality and sound judgment are necessary to the proper administration of elections and are qualities critical

for every director of elections. Mr. Snyder will be required to meet training and certification requirements, as set out in G.S. § 163-35(g), and we will look forward to scheduling training for Mr. Snyder in the coming weeks. When your Board has adopted duties and responsibilities for Mr. Snyder, please provide my office with a copy.

My office is committed to working with your County Board and with Mr. Snyder to explore ways in which the State Board of Elections can support the ongoing success of elections administration in Watauga County.

Sincerely,

A handwritten signature in cursive script that reads "Kim Westbrook Strach".

Kim Strach
Executive Director, State Board of Elections

Encl.: *Notice Regarding Social Media* (August 5, 2014)

Cc: Bill Aceto, Secretary, Watauga CBE (via Bill.Aceto@watgov.org)
Kathleen Campbell, Watauga CBE (via Kathleen.Campbell@watgov.org)
Jane Ann Hodges, Director of Elections, Watauga CBE (via JaneAnn.Hodges@watgov.org)



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Executive Director

MEMO

TO: County Boards of Elections
FROM: Josh Howard, Chairman
RE: Notice Regarding Social Media
DATE: August 5, 2014

Notice Regarding Social Media

Since taking office on May 1, 2013, the current Members of the State Board have repeatedly stressed to county board members and staff that it will strictly enforce N.C. GEN. STAT. § 163-39 and the limitations that statute imposes on the political activities of those subject to its restrictions. This provision, among other things, bars board members and staffers from making written or oral statements intended for the public at large supporting either candidates or referenda.

On September 23, 2013, the U.S. Court of Appeals for the Fourth Circuit handed down a legal opinion in *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013), dealing with Facebook "likes" and their treatment as political speech. In a rich opinion, the *Bland* Court stated that "liking a political candidate's campaign page communicates the user's approval of the candidate and supports the campaign by associating the user with it. In this way, it is the Internet equivalent of displaying a political sign in one's front yard, which the Supreme Court has held is substantive speech." *Id.* at 386. The Court also said, "[o]n the most basic level, clicking on the 'like' button literally causes to be published the statement that the User 'likes' something, which is itself a substantive statement. In the context of a political campaign's Facebook page, the meaning that the user approves of the candidacy whose page is being liked is unmistakable." *Id.*

Members and staff of county boards of elections and the State Board of Elections may try to limit the *Bland* opinion to the particular facts of that case, but they should know that they engage in political speech via social media at their peril when it comes to this Board's enforcement of N.C. GEN. STAT. § 163-39.

Members and staff are encouraged to review and give great weight to the *Bland* opinion and its take on social media. Compliance with N.C. GEN. STAT. § 163-39 may require board members and staff to review their previous social media posts and take action to cure any perception of bias the posts might cast over their official actions. Please do not hesitate to contact staff at the State Board with any questions regarding this Memo.