

Jacqueline Kelly

From: Jacqueline Kelly <JKelly@belaireks.gov>
Sent: Wednesday, September 8, 2021 1:58 PM
To: Ty Lasher <TLasher@belaireks.gov>

Council,

This morning I received a call from the new County Election Officer (CEO), Ms. Angela Caudillo. She advised that after further review they will not be approving our ballot questions for this election, though their prior guidance was opposite. The issue they found is that the nature of our question is advisory. That means it is a non-binding question of public concern submitted to gather the preferences of the people. These questions are distinct from statutory questions which are required to be presented to the public (changing forms of government, purchase of utility plants, authorizing of certain public improvements, street improvements, establishment of a library, trash collection expenses, or grant of certain franchises). Although we are operating under home rule and the statute does not clearly prohibit it, the prevailing interpretation of the law in this area is that during a county operated general election, advisory questions should not be included. These elections are for binding questions submitted which by statute are proscribed for voter input and voters are participating in a, "legislative activity by which an ordinance will stand or fall". In our case, even if our Council promised to follow the majority of voters, you wouldn't be statutorily bound to pass the language. According to the Secretary of State election guidelines, the CEO is not required to have it included in the election. Additionally the CEO argues it is actually more difficult to address an advisory questions during a general election because they'd have to make a separate ballot and use separate voting rolls to track our 3 questions — on the same day of the general election—that is too much.

Mrs. Caudillo apologized for the incorrect guidance we received over the past 2 county administrations up until today, when we explained our goal we were told the ballot question was an appropriate solution to our desire for public input, so it is very disappointing to find this out only *after* the county had already reviewed and approved our question. Caudillo did say she only found out it was wrong when she was doing the publication analysis, (we didn't fit under any of her statutory publication requirements) and contacted her legal and alerted us right away.

I've spent the morning reviewing their guidelines, case law and opinions, and do not believe it would be worth us fighting this one-- the advisory election interpretation is consistent.

Here are our options at this point:

1. Send out our own mail in ballot in October or include it in the water bill.
2. Pass a charter ordinance which would trigger the protest period and if enough voters petitioned in 60 days, force it to be added to a County election/special election as a binding question. (this was the original alternative we talked about)
3. Bel Aire can conduct an election with just this item on the ballot on a different day, CEO may be willing to help provide machines and administration, but our City would have to pay costs of the election.

Please let me know your preferences by September 15th so I can prepare agenda items as necessary.

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