

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RE: : No. CV-23-00544
PETITION OF LYCOMING BOARD :
OF ELECTIONS TO ALTER THE :
BOUNDARIES OF ADJOINING :
ELECTION DISTRICTS IN LYCOMING:
COUNTY, PENNSYLVANIA :

OPINION AND ORDER

This matter came before the court on the Petition to Alter Boundaries of Adjoining Election Districts filed by the Lycoming County Board of Elections (“Board”). The petition seeks to consolidate the two voting precincts in the Borough of Muncy into a single precinct. The petition asserts that the combined precinct would contain 2,440 residents and 1,622 registered electors. On the date of the hearing, William “Bill” Scott, who was the Muncy Borough Council President and a professional engineer, filed objections to the proposed consolidation.

The court held a hearing on the Board’s petition. At the hearing, the Board presented the testimony of Forrest Lehman, who is the Lycoming County Director of Elections and Voter Registration, as well as numerous exhibits. Several voters from Muncy Borough, including the Muncy Borough Council President, appeared at the hearing to oppose the consolidation.

Forrest Lehman testified that he discussed the consolidation with the Board, which approved proposal at the Board’s meeting in May 2023. He placed an advertisement in the Williamsport Sun Gazette and published the same text on the Voters’ Services website, which is part of the Lycoming County website. Around July 17, 2023, he also posted notice at ten locations in Muncy Borough – five in each precinct at major intersections. The

postings were on utility poles.

Mr. Lehman testified that Precinct #1 had 1201 residents and 866 registered voters and Precinct #2 had 1239 residents and 756 registered voters. The proposed combined district would have 2446 residents and 1622 registered voters. He obtained this data from the last general election held in November of 2022. See Exhibit B, attached to the Petition. Mr. Lehman indicated that if the Petition were granted, Muncy Borough would become the seventh largest voting precinct in Lycoming County. He also was of the opinion that Precinct #1 would be able to handle 1600 voters.

Mr. Lehman testified that the Petition was prompted, in part, by a settlement agreement with the Department of Justice (DOJ) regarding accessibility deficiencies that needed to be corrected for Lycoming County's voting precincts to comply with the Americans with Disabilities Act (ADA). The County contracted with a design professional (an architect), who produced reviews of about 20 of Lycoming County voting precincts, including Precinct #1 and Precinct #2 in Muncy Borough. The reports summarized the compliant and non-compliant features of the First United Methodist Church ("Church), which is the building where voting occurs in Precinct #1 and the Muncy Historical Society (MHS), which is the building where voting occurs in Precinct #2. These reports were submitted as Board Exhibits I and K. Mr. Lehman testified that the Church was located at 602 Market Street on the edge of the Borough and the building was in very good shape as far as accessibility. The MHS, however, is a re-purposed house located on either Main Street or Market Street. It is centrally located in Precinct #2. Mr. Lehman testified that he has had concerns about the MHS for five or six years. There is a long public sidewalk from the parking area to the side of the building where the voting entrance is and there is a long ramp

into the building. Mr. Lehman stated that the voting space is small and can have issues with turning radiuses for wheelchairs.

Mr. Lehman testified that Muncy Borough is fairly compact and he estimated that it was “maybe about twenty blocks” in either direction. He also stated that looking toward the future, staffing can be an issue as well. He indicated that we are living in a time where there is declining civil engagement. Fewer people want to be poll workers so having one precinct instead of two is one more benefit, although it was in not in any way the prime motivation for consolidation.

The court asked Mr. Lehman what efforts were made to find suitable facility within Precinct #2. Mr. Lehman testified that he drove around the Borough and looked at other buildings such as churches and the Borough building but, in his opinion, these facilities also had accessibility issues and were not any better than the MHS. Later in the hearing, in response to questions from a member of the public regarding the posting of the notices, the court asked Mr. Lehman whether the MHS and the Church were posted with the notice. Mr. Lehman testified that the dot at Brady Street and Main Street is very close to the MHS; the notice was not posted on the building itself but was on a utility pole right along the parking area.

The Board submitted numerous exhibits. Several exhibits were attached to the Petition. Exhibit A consisted of maps and verbal descriptions of the existing precincts and the proposed precinct. Exhibit B contained the number of registered voters in each precinct in Lycoming County as of the November 2022 general election. Exhibit C contained form copies of notices about the proposed change. These notices did not contain the specific date and time for the hearing. Exhibit D was a copy of the settlement agreement with the DOJ.

Additional exhibits were submitted at the hearing. Exhibit E listed the twenty-five largest precincts in Lycoming County by registered voter count (E-1) and by voter turnout (E-2). Exhibit F-3 was an aerial photograph with five red dots representing the five locations in Precinct #2 where notices were posted. Exhibit G was proof of publication of notice in the Williamsport Sun-Gazette. Exhibit H was a copy of the objections filed by Bill Scott, Muncy Borough Council President. Exhibit I was the polling place accessibility checklist/report for the Church completed by the architect. The cost estimate to correct deficiencies was \$9,100. Exhibit J was an aerial photograph of the MHS. Exhibit K was the polling place accessibility checklist/report for the MHS completed by the architect. There was no cost estimate to correct deficiencies at the MHS. In his testimony, Mr. Lehman explained that an estimate was not included because by this point based on his review we had already made the decision that we were probably going to look at moving away from that building.

William Scott, the Muncy Borough Council President, testified in opposition to the Petition. Mr. Scott stated “none of us saw the notices anywhere in town.” He first became aware of the whole process about two weeks prior when he saw the little ad legal notice in the paper. Nobody in Muncy was aware of it; it was a shock to them. They also were not happy about it. In the last week, Mr. Scott’s phone “lit up” about this. Mr. Scott explained that a lot of people who vote in Precinct #2 walk to the MHS. The Church isn’t even in the Borough; it is three blocks outside the Borough and there are no sidewalks to be able to walk there. You would have to drive there. Mr. Scott stated that nobody was going to walk uphill ten more minutes when there was no sidewalk to an even further location. Mr. Scott’s big concern that requiring everyone to vote at the Church was going to deter voting.

Mr. Scott noted that he is a professional engineer, and he is familiar with the ADA.

He has never seen the architect's report. He would like to be given the opportunity to either update the MHS or find another suitable place in Precinct #2. He would like to know the cost to make the MHS compliant. He also noted that the voting place in Precinct #2 used to be the gymnasium of the Muncy High School ("School"). The School would be a good location; it has a flat entrance and it's walkable. All the kids walk to the School. A lot of people rely on walking. He also mentioned other potential locations, such as a firehall that's being sold downtown.

John Maxwell testified that this was "being rammed down our throats." He indicated that yard sale signs received more attention than the notices and he wanted to know what factored into where the notices were posted. He asked if Mr. Lehman was aware that the Church did not allow political signage on their property. Mr. Lehman indicated that he was aware that some polling places asked that signs not be posted. Mr. Maxwell then stated that he thought if a place is a polling place, it should allow people to put up their signs and get their names "out there." Mr. Maxwell also asked if handicapped individuals could get a waiver to vote in Precinct #1 instead of Precinct #2. Mr. Lehman explained that could not happen because a person must vote where they are registered to vote.

Jerry Watson, the majority inspector at Precinct #2, testified that on Election Day approximately one and one-half years earlier he had conducted an informal poll of over 90% of the voters that came to vote and the vast majority objected to moving the polling place because they walked to the MHS. There were people that did not have a car and would have to arrange for a driver to take them to the polling place. It would present a hardship to a number of Precinct #2 voters to go to the Church. A few said that they used to vote at the School and asked if that would be acceptable. Upon questioning from the attorney for the

Board, Mr. Watson explained that he had taken the poll because they had heard rumors that they were considering moving the voting place.

James Bishop testified that the Church is not in Muncy Borough. The residents of Muncy Borough would have to go to Muncy Creek to cast their votes. He also noted that there are no sidewalks to the Church; you have to drive up.

Mr. Lehman acknowledged that the Church property was not located in the Borough and noted that there were other polling places in Williamsport where the polling place was not located within the precinct as well.

DISCUSSION

This petition is governed by various sections of Title 25 of the Pennsylvania Statutes. The standard for the court is whether the proposed action, in this case consolidation, suits the convenience of the electors and promotes the public interest. 25 P.S. § 2702 (“the court of common pleas... may...consolidate adjoining election districts or form an election district out of two or more adjacent wards, so as to suit the convenience of the electors and to promote the public interests.”); *In Re Petition for Redistricting Voting Districts of Ross Tp.*, 577 A.2d 59, 60 (Pa. Commw. Ct. 1989). Section 504 of the Election Code states:

The county board of elections may also petition the court for the division or redivision of any township, borough, ward or election district into two or more election districts, or for the alteration of the bounds of any election district, or for the formation of one or more election districts out of two or more existing election districts, or parts thereof, or for the consolidation of adjoining election districts, accompanying its petition with a map and a verbal description of the boundaries of the proposed new election districts which must have clearly visible physical features conforming with census block lines from the most recently completed Federal decennial census. The petition must also include a certification of the number of electors registered in each of the resulting election districts for the immediately preceding general or municipal election. Upon the presentation of any such petition by

the county board, or upon the filing by the board of its report and recommendations as to any petition presented by qualified electors under the provisions of section 503¹ of this act, the court may make such order for the division, redivision, alteration, formation or consolidation of election districts, as will, in its opinion, promote the convenience of electors and the public interests: Provided, however, That ***the court shall not make any final order for the division, redivision, alteration, formation or consolidation of election districts until at least ten days after notice shall have been posted in at least five public and conspicuous places in the district or districts to be affected thereby, one of which notices shall be posted on or in the immediate vicinity of the polling place in each such district. Such notice shall state in brief form the division, redivision, alteration, formation or consolidation of election districts recommended by the county board, the number of electors registered in each district at the immediately preceding general or municipal election, and the date upon which the same will be considered by the court, and shall contain a warning that any person objecting thereto must file his objections with the clerk of the court prior to such date.*** Upon the making of any such final order by the court, a copy thereof shall be certified by the clerk to the county board of elections.

25 P.S. § 2704 (emphasis added).

The court finds that the notice provided did not comply with the statute. Nowhere in the notice did it state the number of registered electors in each district at the preceding general or municipal election. The statute requires this information to be included in both the petition and the notice. The number of registered electors is important in this case, because the public would not know this information otherwise and the proposal seeks to create a single district which exceeds the number provided by statute.

Section 502 of the Election Code states: “Except for good cause shown, election districts so formed shall not contain more than one thousand two hundred (1,200) registered electors.” The evidence established that there would be one thousand six hundred twenty-two (1,622) registered electors in the proposed consolidated district. The public cannot file timely objections challenging the excessive number of registered electors when the notice

¹ 25 P.S. § 2703.

does not contain that information.

The court also questions whether the notices were properly posted. The statute requires that the notice be posted in at least five **public and conspicuous places** in the district or districts affected thereby, **one of which notices shall be posted on or in the immediate vicinity of the polling place in each such district**. It is clear from Mr.

Lehman's testimony that none of the notices were posted on either polling place. While Mr. Lehman testified that a notice was posted on a utility pole in the vicinity of the MHS, no testimony or evidence was provided regarding any posting on or in the immediate vicinity of the Church.

The court also questions whether the postings were at conspicuous places when all of the notices were posted on utility poles, rather than one or more of the notices being posted at or in the immediate vicinity of establishments where the public frequents such as a grocery store, the post office, a bank or a convenience store/gas station. Mr. Lehman testified that the notices were posted on utility poles at "major intersections" in the Borough. He did not describe what made the intersections "major" or how the postings were conspicuous. Given the objectors complaints that no one saw the postings, the court was somewhat surprised that the solicitor did not elicit or Mr. Lehman did not provide more detailed information regarding the location of the postings.

The Board argued that consolidation was necessary because the MHS is not ADA compliant. The court understands that the Board must have ADA compliant polling places. However, neither the MHS nor the Church are compliant with the ADA standards.

It will cost approximately \$9,100 to bring the Church into compliance. The court does not have any idea whether the MHS can be brought into compliance or the cost to do so,

because a cost estimate was not obtained. The first page of the architect's reports had a place for him to evaluate the status of the polling place by checking one of the following options: All Elements Compliant; Non-Compliant Elements Remediable with Temporary Measures; or Non-Compliant Elements Not Remediable with Temporary Measures (Relocate Polling Place). The architect did not check any of these statements on either report. Mr. Lehman essentially testified that they did not even look into trying to bring the MHS into compliance, because they had already decided to consolidate MHS with the Church.

The court also notes that, contrary to Mr. Lehman's testimony, the architect's checklist/report indicates that there is enough room to provide a turning space in front of at least one voting station and in front of at least one accessible voting machine such as a circle that is at least 60" in diameter. See Board Exhibit K, items F6 and F7.

With respect to the location of polling places, the court finds that the objectors concerns are valid. The objectors noted that the Church is not within Muncy Borough. They also noted that many of the voters in Precinct #2 walk to the polling place and would not be able to walk to the Church. There was a legitimate concern that consolidating both precincts at the Church would discourage voting by the electors in Precinct #2. Further, when Mr. Maxwell conducted his unofficial poll, the vast majority of electors were opposed to moving the polling place and some asked if the polling place were to be moved, could it be moved back to the School.

Section 527 of the Election Code discusses the location of polling places. Section 527 states:

(a) In selecting polling places, the county board of elections shall, wherever possible and practicable, select schoolhouses, municipal buildings or rooms, or other public buildings for that purpose. Any board of public education or

school directors, or county or the municipal authorities shall, upon request of the county board, make arrangements for the use of school property, or of county or municipal property for polling places. In selecting polling places, the county board of elections shall make every effort to select polling places that provide all electors with an environment that is free from intimidation and violence.

In the event no available public building as contemplated under this section is situated within the boundaries of any election district, the county board of elections may, not less than twenty days prior to any election, designate as the polling place for such election district any such public building situated in another election district within the same or immediately adjacent ward, or, if there are no wards, then within the same borough or township as the case may be, provided such other building is located in an election district which is immediately adjacent to the boundary of the election district for which it is to be the polling place and is directly accessible therefrom by public street or thoroughfare. Two or more polling places may be located in the same public building under this section. A polling place may be selected and designated hereunder less than twenty days prior to any election, with the approval of a court of competent jurisdiction.

(b) In the event no available public building as contemplated under subsection (a) is situated within the boundaries of a borough which constitutes a single election district, the county board of elections may, not less than ten days prior to any election, designate as the polling place for such election district a municipal building owned by that borough and located in an adjoining second class township: Provided, That the municipal building which is to serve as the polling place is located in an election district immediately adjacent to the boundary of such borough and is directly accessible from the borough by public street or thoroughfare. Such municipal building may be designated as the polling place for an election less than ten days prior to that election, with the approval of a court of competent jurisdiction.

(c) The board, in its discretion, may procure and provide portable or movable polling places of adequate size and facilities for any or all election districts.

25 P.S. §2727. The statute states a preference for schoolhouses and municipal buildings.

Despite the objectors' statements that the School was used previously as a voting place and that the School had a new gymnasium,² the Board did not offer any evidence specific to why

² One would expect any new construction in a public facility such as a school would be required to be ADA

the School could not be used or what it would take to make a polling place at the School compliant. Mr. Lehman just made a generalized statement that he is familiar with the ADA requirements and that he drove around the Borough and looked at other buildings such as churches and the Borough building but, in his opinion, these facilities also had accessibility issues and were not any better than the MHS.

CONCLUSION

The court acknowledges that the Board must bring the polling places in Lycoming County into compliance with the ADA. The Board, however, must also comply with the Election Code. The court's role is to ensure that the Board complies with the Election Code and that the proposed change promotes the convenience of the electors and the public interest. By failing to include a statement in the notice regarding the number of registered electors, the Board did not comply with the Election Code. The court is also concerned that the posted notices were not conspicuous, although that could be a misconception due to a lack of specificity regarding what establishments were in the immediate vicinity of the posted

utility poles.

In addition, the court is concerned that the proposed consolidation would create a precinct in excess of 1200 registered electors and would require the residents of Precinct #2, of whom at least a portion walk to vote, to go to a polling place that is not readily accessed by walking or even within Muncy Borough. This is not to say that a precinct may never exceed 1200 electors or never be in an adjoining municipality. The court, however, is not convinced that sufficient consideration was given to making the MHS compliant or to finding another location within Precinct #2, such as the School. Rather, it seems that the convenience of only having to staff one precinct was the motivation behind consolidation as opposed to considering alternate locations within Precinct #2, which could serve the convenience of the electors of Precinct #2, particularly the individuals who walk to the polling place, as well as keep the number of registered electors below 1200.

Nothing in this Opinion is intended to be critical of the Board, its solicitor, Mr. Lehman, or any of the objectors. All are conscientious individuals or composed of conscientious individuals who are concerned with voting in this community. The court would encourage them to work together to try to find an agreeable solution. (Perhaps in doing so, Voters Services may obtain more election volunteers from the Muncy area.) If an agreeable solution cannot be achieved, however, nothing in this decision precludes the Board from correcting the notice and filing a similar petition in the future.

ORDER

AND NOW, this 16th day of January 2024, the Court DENIES the Petition to Alter the Boundaries of Adjoining Judicial Districts.

By The Court,

Nancy L. Butts, President Judge

cc: Joseph Musto, Esquire
Forrest Lehman, Director of Elections
William Scott, Muncy Borough Council President
Gary Weber, Esquire (Lycoming Reporter)
Jerri Rook

NLB/laf