

State Board of Elections Board Meeting
Monday, April 18, 2005
11:00 a.m.

MINUTES

PRESENT:

John R. Keith, Chairman
Jesse Smart, Vice Chairman
William McGuffage, Member
David E. Murray, Member
Wanda L. Rednour, Member
Elaine Roupas, Member
Bryan A. Schneider, Member

ABSENT:

Albert Porter, Member

ALSO PRESENT:

Daniel W. White, Executive Director
Steve Sandvoss, General Counsel
Darlene Gervase, Assistant to the Executive Director

The regular monthly meeting of the State Board of Elections was called to order shortly after 11:00 a.m. with 6 members present. Mr. Schneider was in transit and Mr. McGuffage holds Mr. Porter's proxy.

The meeting opened with Chairman Keith leading everyone in the pledge of allegiance.

The Chairman presented the minutes of the February 22 and March 21 regular Board meetings and the March 23 and April 1 Special Board meetings. Vice Chairman Smart moved to approve the minutes as submitted, Mrs. Roupas seconded the motion which passed by roll call vote of 8-0.

Director White introduced the first 4 items of his report and reported that the Consolidated Election was generally well run with the usual number of routine questions and a few isolated reports of voters receiving incorrect ballots, wrong ballot style, etc. He stated that due to our testing program we were able to catch some of the errors prior to the election and in light of these instances ballots were reprinted. Mr. White indicated that he was present in the Chicago office on Election Day and that we did not receive too many, but many jurisdictions called to talk to Pat Freeman as they rely on her advice. He indicated that Pat Freeman, Director of Election Information, was present and able to answer any questions and that she was also present regarding certification of the Fox Valley Waterway Board. Ms. Freeman stated that certification was not ready as the McHenry Canvassing Board's report was not ready. She noted that the last day for certification is April 26th. Certification was postponed for later in the meeting if we received the canvass report. (Mr. Schneider arrived at 1:15 a.m.)

Mr. White offered a summary of pretests conducted for the Consolidated Election 2005. Rick Fulle, Assistant Director of Voting Systems and Standards, was present to answer questions. Thirteen jurisdictions were tested and errors were found in 10 of the 13. The Opti-Scan testing was extensive and time consuming because staff was physically filling in the circles on the long ballot with the open for the testing. We hope to find a better way to conduct the tests, something like what we have with the punch card readers.

Mr. White proceeded with an oral update of legislation and offered documents that were forwarded by Legislative Liaison Cris Cray, including a Legislative Update, History of Election Bills and a listing of public acts from 1995 to the

present. He noted that on page 2, the bill which extends the time for counting military and overseas absentee ballots passed the House 14-1 and now is going to the Senate. The Executive Director indicated that he will be testifying on our appropriation before the Senate and House on May 4th. Mr. McGuffage added that the 20 Campaign Disclosure revision bills regarding forfeiture and issuing Temporary Restraining Order on non-candidate committees who fail to pay fines will be part of the Legislature's large omnibus bill.

Mr. White confirmed that the board received approximately \$98.5 million in HAVA requirements grant funds and that States receiving requirements payments use the funds to meet the requirements of Title III of HAVA. Further, that Section 201(a)(1)(C)(3) of Title III provides that voting systems must be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation as other voters, through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place. General Counsel Sandvoss is reviewing the draft application procedure for election authorities to utilize to apply for HAVA funds to meet accessibility requirements of Title II and said it will be ready for the May meeting. Mr. White assured the board that there would be enough HAVA funds to comply with this significant requirement. The Board has not approved funding of the machines. Proposal for the bid to purchase such equipment will be presented by staff.

The Executive Director reported that he had contacted 29 jurisdictions regarding their lack of communication with the IDEA/VISTA system and that 21 jurisdictions have responded to the board's request to resolve these communication issues. He further stated that once they respond, establish and maintain efficient communication with IDEA/VISTA there will be no need to appear before the Board to request future HAVA funds. The remaining counties are Dewitt, Henry, Kendall, LaSalle, Madison, Rock Island, Schuyler, and Winnebago. He stated that we will continue to work with all election authorities to complete this network. Mr. McGuffage stated that Mike Hoffman, lobbyist for the County Clerks contacted him regarding SB640 and the fact that the Secretary of State must transmit information directly to the Election Authorities. The Chairman had been contacted regarding that matter also. Mr. McGuffage noted for the record that the State Board of Elections sought an opinion from the Attorney General because the federal law is ambiguous and that we will abide by the Attorney General's opinion. The response we received from the Election Assistance Commission was only 1 line and it was obvious that no research had been done on this question. Mr. White stated that some election authorities did submit questions and he will share those questions and the staff responses with the board in written format. He concluded that we are making good progress.

At the March board meeting, the board considered the concept of posting unpaid assessments owed by candidates and political committees to the state on the State Board of Elections' website. Mr. Rupert Borgsmiller, Director of Public Disclosure raised 6 points for the Board's consideration. Rupert Borgsmiller, Director of Public Disclosure explained that "real time" means that payments, changes, etc., would be reflected within 30 minutes. Mrs. Roupas asked about checks returned for not sufficient funds and Mr. Borgsmiller answered that the committee would be removed upon payment, but if the check was returned it would be again added to the website. Mrs. Roupas noted that the committees would be notified through May of this new policy and suggested that the website listing be started June 1st. Mr. Borgsmiller confirmed that date and stated that the listing would show the violation and penalty. Mr. Murray moved to adopt the policy as presented and to set June as the start up date. Mr. McGuffage seconded the motion which passed unanimously.

Mr. White presented a proposal including timelines created by Mr. Borgsmiller outlining ballot forfeiture procedures for the 2006 gubernatorial election. Mr. Murray moved to adopt the schedule as presented. Vice Chairman Smart seconded the motion which passed 8-0.

Mr. White presented the fiscal status report; the HAVA FY05 Fiscal Status Report/Help Illinois Vote Fund; and the two-year plan of staff activity for the months of April and May for the Board's review and information. He noted that the

State Auditors are present in the Springfield and will conclude their investigation for approximately 30 days. They will return in the fall with their report. Mr. White added that the Governor's office confirmed that \$4.9 million matching funds from Illinois have been appropriated and should be received in the near future from bond sales.

At 1:55 a.m. the Chairman asked for a motion to recess to an executive session to discuss litigation and personnel matters. Mrs. Roupas moved, Mrs. Rednour seconded the motion which carried unanimously.

The Board returned to open session at 1:00 p.m. with 7 members present with Mr. McGuffage holding Mr. Porter's proxy.

Ms. Miriam Shabo was present for the *SBE v. United Southland Republican Women*, 04GE049 complaint. Mr. Sandvoss summarized the complaint and advised the Board that the committee was fined \$200 for filing a pre-election report 2 days late. The Committee filed a Waiver of Appearance and submitted an Appeal Affidavit. Hearing Officer Sharon Steward recommends that the appeal be granted because the committee should have filed a Statement of Non-Participation rather than a pre-election report. The General Counsel concurred with the recommendation. Vice Chairman Smart moved to accept the recommendations of the hearing examiner and general counsel and to Grant the appeal. Mr. Schneider seconded the motion which passed unanimously.

The Chairman called for appearances in *Scott Saewert v. Victor Santana*, 04CD038. Mr. Mathias Delort, of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., represents Complainant Saewert who was present. Mr. Michael Lavelle, Lavelle and Motta, Ltd. represented Respondent Santana, who was also present at the board meeting. Mr. Sandvoss explained that this matter was continued from the February 22, 2005 meeting and set for rehearing and offered a summary of the case. The closed preliminary hearing officer found that the complaint was filed on justifiable grounds, the Board ordered that a public hearing be held on October 15, 2004. The public hearing officer, Phillip Krasny, recommended that the Board amend section 5/9-9.5 to include "and/or any individuals" when referring to attribution of political material. Mr. Krasny was present to summarize the complaint and his findings. In an Amended Order, dated December 13, 2004 the Respondent was found to be a political committee; that the file and D-1 Statement of Organization; that the appear before the Board at the February 22, 2005 meeting to show cause why the case should not be referred to the State's Attorney; and assess a penalty. At the February meeting Mr. Lavelle filed a Motion for Rehearing. The motion was granted and the matter was continued to the April 18 meeting. After lengthy testimony from the parties, a discussion ensued among the board members. Mr. Murray remarked that in the 20 years he has been on the board he has never seen a case like this one; from the most favorable perspective Santana made a series of complicated and hardly believable mistakes and from the least favorable perspective, he committed intentional election fraud by intentionally using someone else's name and creating a forged ballot and if he did that he should be in jail. He moved to accept the recommendation of the hearing officer and General Counsel and that the matter be sent to the Cook County State's Attorney for Review, and the fine assessed. Mr. Schneider seconded the motion which passed by vote 6-2 with Mr. McGuffage and Mr. Porter dissenting.

Mr. Keith called *SBE v. Citizens for Moreno*, 04GP123 and asked if anyone was present for the parties. Mathias Delort was present for the respondent and filed a Motion to Vacate Board Order. Mr. Sandvoss reviewed the committee's activity. Mr. Murray moved to vacate the order and permit the committee to appeal the assessment. Mr. McGuffage seconded the motion which passed 7-1 with Mr. Schneider voting against the motion.

The Chairman noted for the record the appearances of Suzanne Novak and Paul Horan for the Respondents; David Ellis, Andrew Raucci, and Michael Kasper for the Complainants in *Canary/Redfield v. Illinois Coalition for Jobs, Growth & Prosperity and the Sunshine Project*, 05CD002 and 05CD003; and Hearing Officer David Herman. Complainant Cindy Canary was also present. Mr. Sandvoss stated that at the March 23, 2005 meeting, the parties were ordered to submit briefs and reply briefs by April 13, 2005 supporting their position in the Motion to Bar Attorneys not admitted to Practice in Illinois. After testimony from the parties and discussion by the Board, Mr. Murray moved to adopt the

recommendation of Hearing Officer Herman and to continue this matter for 45 days for action by the Circuit Court of Sangamon County regarding the status of Ms. Novak and Mr. Horan, furthermore, if no response is received within the 45 days, to extend the time period until a decision is rendered by the Circuit Court. Vice Chairman Smart seconded the motion which passed unanimously.

Mr. Keith called the consolidated cases *Lavelle v. LEAA*; *Burkett v. ATA and Finoney v. Garman*; 02CD65, 66, 68 and 69 and asked for appearances. Michael Kasper appeared for all Complainants and Mr. Carl Draper appeared for Respondent Garman in 02CD69 only. Mr. Sandvoss reviewed the case and stated that Mr. Zimmer, the Hearing Officer recommended that there was little value in construing a statute that has since been amended and to dismiss these matters. The Chairman noted that out of state attorneys had filed appearances in these cases and asked if they had *pro-hoc vice* status in Illinois. It was noted that the attorneys for both the Complainant and Respondent were attorneys licensed and practicing in Illinois in case 02CD69. Mr. Murray moved to strike the appearances of the out of state attorneys until they have *pro-hoc vice* status in Illinois. Mrs. Rednour seconded the motion which passed unanimously. This matter was continued to the May agenda.

The General Counsel was asked to summarize the complaint in *SBE v. Waukegan Township Republican Organization*, 04J135. He stated that the committee filed its semi-annual report 50 days late and the Respondent contends that the report was faxed as suggested by board staff, but could offer no proof. The hearing officer, Barbara Goodman, recommended that the appeal be denied; to reduce the fine by 50% to \$1,875.00; and reinstate the previous \$50 fine for a total of \$1,925. Although the General Counsel concurred with the recommendation, he noted that we should have received a settlement agreement from the Respondent rather than reducing the fine and stated that the Respondent has 7 days to seek judicial review. Mr. Murray moved to accept the recommendations of the hearing examiner and general counsel. Vice Chairman Smart seconded the motion which passed 7-1. Chairman Keith voted against the motion.

Mr. Keith presented *SBE v. 17th District Democratic Victory Fund*, 04J136. Mr. Sandvoss reported that the committee filed their June 2004 Semi-annual report 77 days late resulting in a penalty of \$5000. Other penalties include a \$50 penalty for delinquent filing of the 1999 December semi-annual report and \$4700 for the delinquent filing of the December 2003 semi-annual report for a total of \$9750. The previous penalties were not appealed. The committee filed additional information with Sharon Steward, the hearing examiner. Ms. Steward reaffirmed her recommendation that the appeal be denied for lack of an adequate defense, however, if the committee files a final report and remains out of existence for a period of two years from the date of the final report, the fine would be abated. The General Counsel agreed with the recommendation. Mr. Murray moved to adopt the recommendations of the hearing officer and general counsel. Vice Chairman Smart seconded the motion which passed by a vote of 7-0-1. Mr. Porter's vote was changed from Pass to Yes later in the meeting.

The Chairman called *SBE v. Citizens to Elect Karen A. Callanan*, 04GE038 and asked Mr. Sandvoss to review the committee's activity. He agreed with the recommendation of Hearing Officer Sharon Steward to grant the appeal, with the suggestion that the committee file their reports earlier in the filing period to be able to resolve any problems that occur. Since the committee made no expenditures and the candidate was not on the ballot, they should have filed a Statement of Nonparticipation in lieu of the Pre-Election Report. Mr. Murray moved to accept the recommendations of the Hearing Examiner and General Counsel. Mrs. Roupas seconded the motion which passed unanimously.

Mr. Keith called the *SBE v. Naperville Township Republican Organization*; 04AP010 case; the *SBE v. Citizens to Elect Gary Del-Re*, 04GP120; and *SBE v. Northeastern IL Federation of Labor AFL-CIO*, 0-4GE078 appeals. The Hearing Examiners recommended the appeals be denied and Mr. Sandvoss agreed. Vice Chairman Smart moved and Mr. Murray seconded a motion to accept the recommendations of the hearing examiner and general counsel. The motion passed by a roll call vote of 8-0.

The assessment and final orders and payment of civil penalties were presented to the board for informational purposes.

Mr. White presented the Fox Waterway Management Agency's official certification. After review of the results and certification, a motion made by Mr. Murray and seconded by Mrs. Rednour was unanimously adopted.

Mrs. Roupas moved in accordance with action taken in executive session to approve the employment agreement of the Executive Director, for FY06 and salary issues will be finalized at a later time. Mr. McGuffage seconded the motion which passed unanimously.

The Chairman asked for a motion to accept the withdrawal of the complaint in *Bellwood First Party v. Bellwood Pride Party*, 05CD09. Mrs. Rednour moved and Vice Chairman Smart seconded the motion which passed 8-0.

The Chairman asked for a motion in *Lietig v. Move Illinois Forward*, 05CD016 matter. Mrs. Roupas moved and Mr. Schneider seconded a motion to adopt the recommendation of the hearing officer and general counsel to dismiss the matter for want of prosecution. The motion carried 8-0.

Changes to the Administrative Complaint Procedures Rule were discussed.

Mr. Keith introduced the proposed amendment of Secretary of State Data Sharing Agreement. Mr. White indicated that a one-time startup fee and a quarterly fee would be paid by HAVA Funds and when the funds run out we would have to budget for these items. Discussion ensued and the Chairman asked Mr. Sandvoss to relate the questions the board posed and invite the Secretary of State's General Counsel, Nathan Maddox, and Policy and Programs Division Manager Beth Langen, to the May meeting.

There being nothing further before the board, the Chairman called for a motion to adjourn until Monday, May 16, 2005 in Springfield, IL. Vice Chairman Smart moved and Mr. Schneider seconded the motion which passed 8-0 by a roll call vote.

DATED: April 22, 2005

Respectfully submitted,

Darlene Gervase, Assistant to the Executive Director

Daniel W. White, Executive Director