

STATE BOARD OF ELECTIONS
Board Meeting
Monday, March 15, 2004
Springfield, Illinois

MINUTES

PRESENT: John R. Keith, Chairman
Jesse Smart, Vice Chairman
William McGuffage, Member
Philip O'Connor, Member
Albert Porter, Member
Wanda L. Rednour, Member
Elaine Roupas, Member

ABSENT: David E. Murray, Member

ALSO PRESENT: Dan White, Executive Director
Colleen Burke, General Counsel
Rebecca Glazier, Assistant to Executive Director

The regular monthly meeting of the State Board of Elections was called to order at 11:15 a.m. with seven members present. Member Murray was absent and it was noted that Vice Chairman Smart held his proxy.

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

Chairman Keith presented the minutes of the February 17 regular monthly Board meeting and the February 27 special meeting. Vice Chairman Smart moved to approve the minutes as presented. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Member McGuffage moved to recess to sit as the State Officers Electoral Board for the purpose of approving the minutes of the February 17 meeting. Member Rednour seconded the motion which passed by roll call vote of 8-0. Meeting recessed at 11:16 a.m. and reconvened at 11:18 a.m.

The Executive Director noted an addition to the agenda. Four campaign disclosure complaints from two years ago will be added under "other business."

The Executive Director reviewed the background of discussions surrounding the ballot certification and withdrawal issue with the DuPage County Election Commission. Pat Freeman discussed two differing legislative proposals Bob Saar had prepared offering new deadlines for withdrawal of candidates prior to a general primary election. Meetings among the election authorities and staff produced no consensus and the issue has been dropped at this time. The DuPage County

Election Commission will continue to pursue a Petition for Leave to Appeal to the Illinois Supreme Court. Discussion ensued on the possibility of proceeding with a rule to deal with this issue. The General Counsel indicated she would look at the statute to determine if there are any provisions that would allow enactment of some kind of rule.

The Executive Director briefly reviewed the background of the IDEA project and noted that Catalyst Consulting was present today. Rod Zech introduced Arvin Talwar and Scott Hilkert and discussed their presentation. Mr. Hilkert presented a review of the work on the IDEA project and where the project stands to date. Everyone working on the project is optimistic it will be completed by the end of September. Mr. White indicated that although there have been some setbacks there has been communication with the vendors and election authorities.

The Executive Director reported on the status of the SBE/SOS committee and indicated that staff has met over the last couple of months. A meeting is scheduled for March 31 in Springfield to discuss an agreement on a database sharing agreement as well as a firm proposal on the costs the Secretary of State's office expects to incur. Director White indicated he did not believe there would be any significant difference between the original figures and the new request.

The Executive Director discussed the election day assignments indicating the in-house assignments as well as field assignments and office hours. A listing of the election judge schools and general primary voting systems tests was presented for informational purposes. Director White also reported that he has scheduled a meeting to coordinate election day monitoring activities with the U.S. Attorney, Attorney General, Cook County State's Attorney, Cook County Clerk, and the Chicago Board of Election Commissioners.

The Executive Director informed the Board of legislation passed in 2003 which created a conflict with the date to hold county conventions. Legislation has been proposed and has passed out of the Senate to remedy this situation. If it passes in the House, and the Governor signs it, the date would be changed. However, the current statute requires a date of March 29 and it is unlikely this legislation would be completed by March 29. Pat Freeman offered some suggestions that the election authorities might follow. The Board agreed that the parties should convene the convention on

March 29 and if the canvass is not yet complete, recess and reconvene at a later date. It was agreed this advice should follow with the proviso that they follow up with their state's attorney. Vice Chairman Smart moved to adopt the recommendation of Ms. Freeman with the proviso attached. Member Roupas seconded the motion which passed by roll call vote of 8-0.

Ms. Freeman indicated that SB 428 also changed the canvassing dates for the State Board of Elections but not the local election authorities. Thus, they are still required to meet on the seventh day after the election to complete their canvass. This conflicts with the statutory requirement of time for the counting of provisional ballots. Ms. Freeman offered the suggestion that the local canvassing boards convene on the seventh day but if the provisional ballots are not yet counted, the board should recess and reconvene after they are counted. This will affect schools and villages that had referendum on the ballot. Member Roupas moved to adopt Ms. Freeman's recommendation. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0 (with Chairman Keith voting Member Rednour's proxy as she had stepped out of the room).

Cris Cray indicated that a supplemental appropriations bill was signed by the Governor on March 5. The Governor and four legislative leaders have been informed of the need for a five percent state match for HAVA federal requirements money we will receive. Illinois stands to receive approximately \$90 million. Discussion ensued on the bill to allow President Bush to be certified to the November ballot. Ms. Freeman discussed the provision in the election code where the 67 days are specific to candidates nominated at the primary or when filling a vacancy. There is no direct provision for the office of president, but we have always followed the 67 days. Ms. Freeman indicated the legislation is intended to provide clarification.

The Executive Director presented for informational purposes the FY 04 fiscal status report for the period ending February 29 and the HAVA funding report. Mr. White noted that as discussed earlier a supplemental appropriations bill was signed which provides money for legal fees, election judges, a position in Information Technology as well as some retirement money for the IT staff. The retirement deficit should be well within our transferability range. Mr. White also noted that he met with the State

Auditor's office in an exit audit and they are now preparing a final report. He also presented the two year plan of staff activity for the months of March and April.

Chairman Keith congratulated Deputy General Counsel Steve Sandvoss on the birth of a new baby boy Sunday.

The General Counsel presented for consideration a proposed rule amending Title 26, Ill. Adm. Code 204.10-204.181 - Approval of Voting Systems. Ms. Burke reviewed the background of the reason for the proposed rule. SB 428 gave the State Board of Elections power to promulgate rules regarding the requirement that the computer program code used by vote tabulation systems be escrowed with the SBE. This is a precaution to protect the security of the vote count. Discussion ensued on the possibility of securing them in a safety deposit box or possibly the State of Illinois vault. Staff indicated more research would be undertaken in the security of the state vault. After further discussion, Ms. Burke indicated the language will be modified to include an additional sentence stating "all voting system vendors must initially place this into escrow" as the current language doesn't clearly state this. Ms. Burke noted that she will also review the two day notice language so that ample notice will be given to the vendor so they can participate to the extent they want in a discovery recount. This will be placed on the April agenda for further discussion.

The General Counsel presented for informational purposes the emergency amendment to Rule 125.425. Ms. Burke explained that these rules pertain to campaign disclosure provisions in assessing penalties.

The General Counsel presented the appeals of campaign disclosure fines which were distributed to the Board members previously. Ms. Burke indicated she concurred with the revised recommendations of the hearing officer on each of the appeals. Chairman Keith asked that Appeal #L10424, Citizens for Joe Hartzler and Kurt Wilke, be removed from the list so it can be heard separately. Chairman Keith noted he was representing the treasurer of the committee on an unrelated matter and would recuse himself from this case. Member O'Connor then discussed two categories of appeals that might account for a handful of these cases: 1) a violation that was not appealed and could considered based on the record whether to exercise discretion and 2) the violation was

appealed but a full mechanistic application of the fine was applied and the respondent be given the opportunity to appeal if they wish. Member McGuffage asked that S420, Citizens for Marovitz, be removed from the list, and Member O'Connor asked that S6518, Citizens for Beaubien, be removed.

Discussion ensued on the Assessments/Final orders listed on page 67 of the Board packet. Rupert Borgsmiller explained that if there was no appeal of a civil penalty within the time allowed, there is no need for a final order. As a past practice the Board has not issued orders for those committees that did not appeal an assessed penalty. They would have to proceed to court to appeal the final order. Discussion ensued on the items listed on page 67 and Chairman Keith indicated these items would be continued so staff can provide backup materials to determine if the Board wants to take into account any discretion in assessing the fines. This will be placed on the April agenda. Ms. Burke noted that many of these occurred before HB 3412 passed. With the passage of HB 3412 the committees can now be put on notice that if they choose to appeal the appeal goes before the Board who can exercise their discretion in how to handle the appeal .

Discussed returned to the appeal of campaign disclosure penalties. Chairman Keith then moved all cases contained in Volumes 1 through 28 of cases previously transmitted to Board members be set for final disposition at the meeting of the State Board of Elections to be held on April 16, 2004 on an agreed list to adopt the findings and recommendation of the Hearing Officer and General Counsel as amended, if amended, except for L10424, Citizens for Joe Hartzler and Kurt Wilke and S420, Citizens for Marovitz, and S6518, Citizens for Beaubien, with notification of said hearing to sent to each committee by regular mail, including notification therein that any presentation of the committee will be by written comments filed with the State Board of Elections before April 7, 2004, and with any member voting on the agreed list to remove other cases from the agreed list for consideration at that time. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

After discussion on the purpose of removing any committees, Chairman Keith moved that L10424, S420, and S6518 be considered at the April 16, 2004 meeting. After further discussion Member McGuffage offered a substitute motion that S420 be added to the group of cases on the agreed list as

in the previous motion. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

Chairman Keith then moved that L10424, Citizens for Joe Hartzler and Kurt Wilke, and S6518, Citizens for Beaubien, be scheduled for disposition at the April 16, 2004 meeting with the same comment period, but not be voted on with the agreed list but voted on separately after consideration. Vice Chairman Smart seconded the motion. Discussion ensued on the letters to be sent to the committees who have appeals on the agreed list, and the letters will also be sent to the committees not on the agreed list. This will give any Board member an opportunity to recuse themselves from any particular vote. The motion was called and passed 8-0.

Discussion returned to committees listed on page 67 of the packet and the fact that penalties for first offenders are usually stayed. But in these cases, if the fines are not changed, and they file late again in the future, the committee has not had an opportunity to appeal.

The General Counsel presented for informational purposes correspondence received from former Board member John Countryman, where he proposes conducting settlement conferences to attempt to reach agreed dispositions on pending appeals. There is no provision in the statute that would allow for settlement conferences regarding penalty assessments and there is a clearly defined assessment schedule for D-4's. Discussion ensued on the statute and required penalties and that this would open up a whole new administrative procedure if all committees wished to do this. Vice Chairman Smart suggested this matter be tabled until the General Counsel can provide further definitive information.

The General Counsel presented an appeal of a civil penalty in the matter of *SBE v. Paul Manion for State's Attorney*, 00AP38. The committee was assessed a fine of \$1,700 for failure to file a Schedule A-1 Report. The hearing officer found that because the amounts in question were loans it was a general misunderstanding and recommended the appeal be granted. The General Counsel agreed with the hearing officer's recommendation and indicated that in this instance it raises a larger issue. Ms. Burke recommended that the Board grant the appeal and send a reminder to all committee's that loans are considered contributions and need to be reported on A-1's with notice to

the committee that the Board can choose to change its current policy and enforce a civil penalty. Discussion ensued on the definition of a contribution and also that new envelopes contain language indicating the envelope requires additional postage. Member Porter moved to adopt the recommendation of the hearing officer and General Counsel. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented for Board consideration the payment of a civil penalty in the matter of *SBE v. The Integrity Party*, 01JS0509. Ms. Burke reviewed the background in this matter and noted a penalty of \$1,350 was assessed of which the committee has sent payment. By virtue of the payment without the benefit of the Board rendering a final determination a final order should be issued showing the committee has complied. Vice Chairman Smart moved to issue a final order. Member Rednour seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented for informational purposes a list of committees that paid outstanding civil penalties.

The General Counsel presented *Donahue v. Moreno*, 02CD70 and reviewed the lengthy background of this matter. Mr. Eugene Hanses was present on behalf of Mr. Moreno as Matt Delort was otherwise engaged today. Mr. Hanses agreed that additional matters do need review and requested two months to take care of them. The General Counsel concurred with the hearing officer's recommendation that the Board issue an order that the committee meet with SBE staff to answer their concerns and file a second amended report correcting any discrepancies that are determined to be in existence following the meeting with staff and a failure to comply with this order will result in a civil penalty not to exceed \$5,000. Ms. Burke believed it is time that this committee be placed under a Section 9-23 order and indicated she does not find it improper to refer to the State's Attorney for disregard of the election code. They have filed a report but there a huge gaps in it. Ms. Burke concurred with the hearing officer's recommendation and recommended the Committee be put under Section 9-23 order and the matter be set on the April agenda for possible referral to the state's attorney. Vice Chairman Smart moved to accept the recommendation of the hearing officer and General Counsel and refer to the State's Attorney for such action as she deems appropriation.

Discussion ensued and Member McGuffage seconded the motion as well as making the amendment it be referred to the Attorney General rather than the State's Attorney. Vice Chairman Smart accepted the amendment. The motion was called and passed by roll call vote of 7-0-1 with Member Porter recusing himself. This will be placed on the April agenda.

Rupert Borgsmiller indicated a complaint was filed on Friday and a hearing is set for 2 p.m. on Wednesday. Although this will not be adjudicated before election day it falls under the seven day calendar and must be dealt with as such. The Board agreed to meet via conference call on Thursday, March 18 at 9:30 a.m.

Mr. Borgsmiller discussed assessing a number of committees that have filed final reports and he requested permission in lieu of assessing a penalty to send notice that they did not file in a timely fashion. However, since it is no longer an active committee and if the committee stays out of existence for a two year period from the time the violation occurred, the fine will be stayed. If the committee is reactivated hearings would proceed on the violations. Discussion ensued on giving these committees the right to appeal and how the Board could deal with them. After further discussion Chairman Keith asked Mr. Borgsmiller to refine the proposal and report back to the Board.

Chairman Keith discussed the ATA and LEAA campaign disclosure complaints indicating there are motions for discovery still pending from two years ago. It was agreed these would be discussed off the record by the Chairman, Vice Chairman and General Counsel only. The meeting recessed at 2:35 p.m. and reconvened at 2:50 p.m. It was noted the General Counsel had a discussion with the Chairman and Vice Chairman and will give a report at the April Board meeting and will provide direction at that time.

Mr. Borgsmiller referred to the committees listed on page 67 of the packet indicating that there was a typographical error - the Citizens for Lightford fine should be \$29,550.00

Member Rednour moved to recess to executive session to discuss pending litigation and personnel matters. Vice Chairman Smart seconded the motion which passed unanimously. Meeting recessed at 2:52 p.m. and reconvened at 2:54 p.m.

The next regular meeting of the State Board of Elections will be held on Friday, April 16, 2004 at 11 a.m. in Chicago.

With there being no further discussion, Member McGuffage moved to recess. Member Rednour seconded the motion which passed unanimously. The meeting adjourned at 2:55 p.m.

Respectfully submitted,

Rebecca Glazier
Assistant to Executive Director

Daniel W. White
Executive Director