

**STATE BOARD OF ELECTIONS
Board Meeting
Monday, March 16, 2009
Springfield, Illinois**

MINUTES

PRESENT: Albert Porter, Chairman
Bryan Schneider, Vice Chairman
Patrick Brady, Member
John Keith, Member
William McGuffage, Member
Wanda Rednour, Member
Jesse Smart, Member
Robert Walters, Member

ALSO PRESENT: Dan White, Executive Director
Steve Sandvoss, General Counsel
Rebecca Glazier, Assistant to Executive Director

The regular monthly meeting of the State Board of Elections was called to order at 10:30 a.m. with eight members present. Members Keith, Rednour, Smart, and Walters were present in the Springfield office. Chairman Porter, Vice Chairman Schneider and Members Brady and McGuffage were present in the Chicago office and connected via videoconference.

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

In order to accommodate parties present on campaign disclosure matters, Chairman Porter noted the order of the agenda would be changed.

The General Counsel presented *Emilio Cundari v. Cicero Equality Committee*, a complaint following a closed hearing. Mike Lavelle was present representing the complainant and Frank Avila was present representing the committee. Mr. Sandvoss discussed the Motion to Reconsider. Mr. Avila reviewed the hearing activities at which he was present and indicated he was under an incorrect assumption that this matter was not going to be heard today. He indicated he had not seen the hearing officer's report and felt there was no need to proceed to a public hearing. Mr. Lavelle indicated that at the hearing it was indicated that the Board will discuss it at today's meeting. Mr. Sandvoss indicated that the hearing officer informed both parties at the hearing that the matter would be on the agenda today. Both parties were sent the hearing officer's report Monday morning via e-mail. Mr. Sandvoss recommended the motion to reconsider be denied. Member Keith moved to deny the motion to reconsider. Member Smart seconded the motion which passed by roll call vote of 7-1

with Member Brady voting in the negative. Mr. Sandvoss reminded both parties there is a pre-hearing management conference scheduled on this matter for Wednesday at 10 a.m. in the Chicago office.

The General Counsel presented *SBE v. Friends of Bob Lutz*, 08MA016, an appeal of a campaign disclosure fine that the hearing officer recommended be denied. Robert Lutz was present on behalf of the committee. Mr. Sandvoss reviewed the committee's delinquent filing and the \$15,960 assessment.

The hearing officer recommended the appeal be denied since the committee did raise and spend money during 2007 and 2008 in support of his successful bid for re-election and did not report the transactions until after the election. Mr. Sandvoss concurred with the recommendation. Mr. Lutz discussed his activities as to raising and spending funds but indicated he mistakenly believed he would have to pay the original fine before creating a new committee. He further indicated as a public servant for 29 years he would never have willfully not filed and requested the fine be reduced to \$675 which was the amount of the original fine. After further discussion on the fine and an offer from Mr. Lutz to pay \$2,275 Member Smart moved to assess a penalty of \$2,275 to settle the claim. Member Walters seconded the motion which lost by roll call vote of 3-5 with Members Brady, Keith, McGuffage, Vice Chairman Schneider and Chairman Porter voting in the negative. Mr. Lutz then offered a settlement amount of \$5,000. Member McGuffage moved that the offer of \$5,000 be accepted. Member Smart seconded the motion which passed by roll call vote of 5-3 with Members Brady, Keith and Chairman Porter voting in the negative.

The General Counsel presented *Roberto Garcia v. Cicero Voters Alliance*, a matter that was held over from the February meeting but did not make it on today's agenda and recommended the Board proceed to hear the matter as to Counts 1 and 2. Rich Means was present on behalf of Cicero Voters Alliance Committee and waived the closed session requirement. Frank Avila was present on behalf of Roberto Garcia and also waived the closed session requirement. Mr. Sandvoss reviewed the complaint. Mr. Means indicated that as recommended by the hearing officer the committee transferred all of the assets from the for-profit committee to a not-for-profit committee to make it clear there was no appearance or possibility of an improper use of campaign funds and indicated the committee is now in compliance with Counts 1 and 2. Mr. Sandvoss indicated he had not had a chance to review

the material at depth. Vice Chairman Schneider moved to set this matter over to the April 20 Board meeting. Member Keith seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Citizens for Bill Brady*, an appeal of a campaign disclosure fine. Ed Brady was present on behalf of Citizens for Bill Brady. Mr. Sandvoss discussed the appeal and indicated the hearing officer recommended the appeal be granted in part and denied in part and concurred with the recommendation. He explained the appeal be granted in regard to contributions in point 1 and 2 and the appeal be denied in regard to the in-kind contribution discussed in point 3. Mr. Brady indicated his agreement with the recommendation. Vice Chairman Schneider moved to accept the recommendation of the hearing officer and General Counsel. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Committee for Retention of Judges in Cook County*, a motion for reconsideration. Robert Gordon was present to answer any questions. Mr. Sandvoss discussed the civil penalty assessed to the committee for delinquent filing in which the penalty was stayed as a first violation. Mr. Sandvoss recommended the motion to reconsider be denied. The committee's explanation was that they attempted to e-mail the report but the program was not compatible with the SBE program. The SBE refused to accept a manual report because this committee is required to file electronically. Discussion ensued on the submission of the report. Member Keith moved that the motion for reconsideration be denied. Member Smart seconded the motion which passed by roll call vote of 6-1-1 with Member McGuffage voting in the negative and Chairman Porter recusing himself from the vote.

The General Counsel presented *SBE v. Friends of John Corrigan*, a motion for reconsideration. John Corrigan was present on behalf of the Committee. Mr. Sandvoss discussed the activities leading to the assessment and the committee's appeal which was received late. Mr. Corrigan discussed his request for reconsideration and asked that the Board allow the Committee to move forward with the appeal as they would like to keep the record clean. They had sent the appeal but it was received one day after the deadline. Discussion ensued on the multiple A-1 violations and the date of the Board order as well as the date of the mailing. Member Brady moved to grant the motion for reconsideration over the recommendation of the General Counsel. Vice Chairman Schneider

seconded the motion noting that this is not on the merits of the issue but rather on the question of should he have a chance. The motion passed by roll call vote of 6-2 with Members Smart and Walters voting in the negative.

The General Counsel presented *SBE v. Acorn PAC*, *SBE v. Citizens for April Troope*, and *SBE v. Illinois New Party Political Committee*, all motions for reconsideration that could be heard at the same time. Dan Johnson Weinberger was present on behalf of the committees and explained the request for reconsideration of the decisions also indicating all three committees have been inactive for two or three years. Mr. Johnson Weinberg had checks to pay the assessed fines noting the remaining funds will be given to charity and he will then close the committees. Mr. Sandvoss indicated each committee was sent a notice of assessment and the appeal forms but none took advantage of it. He recommended denying the motion. Member Keith moved to deny the motion to reconsider in all three cases. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Citizens for Judy Cates*, a motion for reconsideration of the final order. Jason Gyere was present on behalf of the committee. Mr. Sandvoss recommended the motion be denied. Mr. Gyere explained that he is now the current treasurer but the past treasurer misled Ms. Cates and was negligent in filing or passing on information. Mr. Keith indicated that if the committee wants to make a settlement offer perhaps it should be considered at this time before the motion to reconsider is addressed. Mr. Sandvoss explained if the motion to reconsider is denied the matter ends; if it is granted the Board could consider the merits of the case and a settlement offer. With no further discussion, Member Keith moved to deny the motion for reconsideration. Member Smart seconded the motion which passed by roll call vote of 8-0 with Chairman Porter voting Member McGuffage's proxy as he had stepped out of the room.

The General Counsel presented *SBE v. Jersey County Democratic Central Committee*, an appeal of a campaign disclosure fine that the hearing officer recommended be denied. Gene Abbott was present on behalf of the committee. Mr. Abbott discussed the penalty and asked that it be reduced from the \$900. Mr. Sandvoss reviewed the delinquent filing and recommended the appeal be denied. After further discussion Mr. Abbott offered a settlement offer of \$500. Member Brady moved to accept the recommendation of the hearing officer and General Counsel and deny the appeal.

Member Smart seconded the motion which passed by roll call vote of 7-0-1. Member McGuffage was out of the room and Chairman Porter passed on his proxy vote.

Director White presented for discussion the issue of testing voting systems for the 2010 elections. Bob Saar, DuPage County Election Commission; Peter McLenna, Cook County Clerk's office; Lance Gough, Chicago Board of Election Commission; and Sandy Green, Sequoia Voting Systems were present for this discussion. Director White indicated that at the February meeting the Board voted to direct staff to obtain further information toward accomplishing testing, including costs, time to complete testing and staffing. A detailed report was included in the Board packet. Member Keith indicated this would be an unfunded program and the money collected would go to the General Revenue Fund and not the SBE. Director White indicated that under our current rules we could require the vendors to provide all resources. Currently, the SBE does not test until the vendor has received its federal identification number from the EAC. Mr. Gough asked the SBE staff to test the voting equipment prior to them receiving their number. Mr. Saar indicated that many other states have chosen to disconnect from the federal guidelines. Dianne Felts explained that the SBE has adopted the voluntary standards and Section 24C-16 of the Election Code requires that testing follow the standards for DRE'S. Discussion ensued on the Board considering rescinding their approval of the voluntary standards or allowing staff to test prior to receiving the EAC identification number. The Election Assistance Commission (EAC) has established a 120 day timeline for their testing program and one of the systems currently in the ITA is DuPage's system. Ms. Felts indicated that the EAC testing program seems to be a moving target for the vendors right now. She agreed with the possibility of rescinding the standards for a short period of time and allowing the SBE to test before the vendors are finished with ITA testing. If something would change after it goes to the EAC, the system would have to be re-tested and it is not uncommon that the EAC requires revisions. Ms. Felts explained that the ITA tests for different things that she does. Her tests involve accuracy and whether the system works under Illinois law, where the ITA tests for physical requirements such as temperature and humidity response as well as reviewing the source code. After further discussion it was agreed the General Counsel will review whether the Board can legally begin its own testing before the EAC approves the ITA reports and any other rules or regulations that would impede the SBE from

moving ahead with the request from Chicago to test the Sequoia equipment and to also work with DuPage.

The Executive Director presented the minutes of the February 5 special meeting and February 17 regular meeting. Director White discussed revisions to the February 17 minutes. Member Keith moved to approve the minutes as revised. Member Smart seconded the motion which passed by roll call vote of 8-0 with Vice Chairman Schneider voting Member Brady's proxy as he had stepped out of the room.

Director White reported on the February 24 Consolidated Primary indicating only a handful of phone calls were received. There was light turnout and no major problems at the March 3 Special Congressional Primary Election. The Special Congressional General Election will be held on April 7, 2009 the same day as the Consolidated Election. Staff assignments are located in the Board packet, along with the voting system pre-test schedule, and schedule of election judges schools.

Director White presented the ES&S M-100 v. 5.2.10 for final approval. Dianne Felts discussed the optical scan system indicating it has worked very well for the last two years and recommended final approval. Member Smart moved to approve the system as recommended by Mrs. Felts. Member Rednour seconded the motion which passed unanimously.

The Executive Director presented a legislative update indicating the Governor will give his budget address on Wednesday, March 25. Our House Appropriations hearing is scheduled for March 25, and our Senate Appropriations hearing is scheduled for April 1. Cris Cray indicated that SB 761, now Public Act 95-1038, codified the Pay to Play Rules resolving the legality of the temporary paper filing. She informed the Board that Speaker Madigan has indicated the primary will remain in February.

The Executive Director presented the FY 09 fiscal status report for the period ending February 28, the FY 09 fiscal report for the Help Illinois Vote Fund, the FY 09 fiscal report for the EAC Data Collection grant, and the two year plan of activity for the months of March and April for informational purposes.

Meeting recessed for a short break at 1:05 p.m. and reconvened at 1:20 p.m.

The General Counsel presented agenda items 3.a.7-11, appeals of campaign disclosure fines

that the hearing officer recommended be granted as follows: *SBE v. Steve Weber for Auditor*, 08AG002; *SBE v. 23rd Ward Democratic Organization*, 08AG003; *SBE v. Citizens to Elect Eddie Washington*, 08AP052; *SBE v. Friends for Howland*, 08GE046; and *SBE v. Friends for Eddie Winters*, 08AP088. Mr. Sandvoss concurred with the recommendations of the hearing officer. No one was present in these matters. Member Smart moved that the appeals be granted as recommended by the General Counsel and hearing officer. Member Rednour seconded the motion which passed unanimously.

The General Counsel presented agenda items 3.a.12-16 and 19-22, appeals of campaign disclosure fines that the hearing officer recommended be denied as follows: *SBE v. Stark County Democratic Central Committee*, 08GE001; *SBE v. Rock Island County Democratic Women's Club*, 08GE002; *SBE v. Committee to Elect Tommy Brewer*, 08JS248; *SBE v. Citizens for Mary Margaret Maule*, 08JS251; *SBE v. Friends of the Park District*, 08JS257; *SBE v. The Republican Organization of Elk Grove Township*, 08GE054; *SBE v. Taxpayers United for Fairness*, 08JS265; *SBE v. Citizens for Diane Shapiro*, 08GE056; and *SBE v. Citizens Looking at Supporting Schools*, 08GE057. Mr. Sandvoss concurred with the recommendation of the hearing officer. No one was present in these matters. Member Smart moved to deny the appeals as recommended by the hearing officer and General Counsel. Member McGuffage seconded the motion which passed unanimously.

The General Counsel presented for informational purposes a listing of committees who have paid civil penalties.

Vice Chairman Schneider moved to recess to executive session for the purpose of discussing campaign disclosure matters, potential and pending litigation, and personnel issues. Member Brady seconded the motion which passed unanimously. Meeting recessed at 1:20 p.m. and reconvened at 1:40 p.m.

Member Keith moved in the matter of *Swiss, Skoien & Sutarik v. Roupas*, 08CD086 to adopt the recommendation of the hearing officer and General Counsel and find the case was not filed on justifiable grounds and the matter be dismissed without further action. Vice Chairman Schneider seconded the motion which passed unanimously.

Member Keith moved in the matter of *Wiggins v. Foster*, 09CD007 to adopt the

recommendation of the hearing officer and General Counsel and the case be dismissed for lack of prosecution based upon the non-appearance of the complainant. Vice Chairman Schneider seconded the motion which passed unanimously.

Member Keith moved to request the Attorney General of the State of Illinois represent the State Board of Elections in the matter of *Roppo v. State Board of Elections* filed in the U.S. District Court in the Northern District of Illinois. Member Rednour seconded the motion which passed unanimously.

Chairman Porter discussed the meeting with the Illinois Reform Commission that he, Vice Chairman Schneider, Director White, Assistant Executive Director Borgsmiller and Steve Sandvoss attended. The same materials distributed to the Commission were distributed to the Board. Chairman Porter discussed his presentation to the Commission.

The next regular meeting of the State Board of Elections will be held on Monday, April 20, 2009 at 10:30 a.m. in Chicago.

With there being no further discussion, Vice Chairman Schneider moved to adjourn until April 20 or the call of the chair. Member Rednour seconded the motion which passed unanimously. The meeting adjourned at 2:00 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director