

**STATE BOARD OF ELECTIONS
Board Meeting
Monday, July 17, 2006
Springfield, Illinois**

MINUTES

PRESENT:

Jesse Smart, Chairman
Wanda L. Rednour, Vice Chairman
Patrick Brady, Member
John R. Keith, Member
William McGuffage, Member
Albert Porter, Member
Bryan Schneider, 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 seven members present. Member Schneider was absent and Chairman Smart held his proxy.

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

Chairman Smart presented the revised minutes of the June 12 regular monthly Board meeting reflecting Member Keith's comments. Member Rednour moved to approve the minutes as revised. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The Executive Director reported on the omnibus election bill recently signed by the Governor on July 3. Senate Bill 585 is still waiting for the Governor's signature which has to be signed or vetoed by the end of July or it will automatically take effect. This bill is the Open Meetings Act and will increase the SBE travel budget. It will not create any further openness as all conference calls are already open in the Springfield and Chicago office for any member of the public to attend.

Director White presented an update on HAVA funds and the progress on getting unspent funds returned from a few of the election authorities. There are 2 remaining jurisdictions out of the original 18 that have not returned or properly documented the spending of their HAVA funds. Champaign County has indicated the County Board is meeting Thursday night and will discuss passing a resolution to return the funds. Rock Island County Clerk Dick Liebovitz was present to discuss the

situation in Rock Island County. Mr. Liebovitz indicated that he and his State's Attorney do not agree with the Auditor General's opinion as to holding the funds for a 30 day period and will not return the funds. He indicated they had problems with their voting equipment printer on election day. Rock Island has asked the vendor to extend the warranty on the equipment for all election authorities in the state of Illinois. Discussion ensued on whether or not holding the funds has any leverage over the vendor and the fact that the county is violating its agreement with the SBE. Mr. Liebovitz acknowledged the fact that the county is violating the agreement and indicated they would spend the funds before the November election. Director White indicated that the federal government has provided guidance as to short term funding and we have relied upon that and the Auditor General's opinion that the funds be spent within 30 days or returned. Rock Island County has approximately \$1.2 million they have not spent or documented to date. After further discussion, Member Keith moved to request the General Counsel to start proceedings against Rock Island County to request the funds back with interest from the 30 day grace period that it received the money and that no further funds be distributed to the jurisdiction until the matter is resolved. If the County Board agrees before these proceedings begin and returns the money the interest will be waived. Member Porter seconded the motion. Member Keith amended his motion to include Campaign County and to give both jurisdictions one week to resolve the situation. Director White also indicated that he has requested Diebold to meet with him, SBE staff, and election authorities to resolve the problem and also to provide a demonstration of their printer and that he would continue to work on this. The motion was called and passed by roll call vote of 8-0.

Director White presented for informational purposes the recent Illinois State Voter Registration Newsletter sent to all election authorities. Kyle Thomas discussed the progress of the database project indicating Catalyst would be present at the August Board meeting and provide a demonstration. Member McGuffage suggested the newsletter contain other SBE activities as well.

Director White noted that a conference call is scheduled with the Department of Justice tomorrow to discuss voting systems as well as the statewide database. He provided the Board with an update on the NASED meeting and Ms. Glazier indicated that Mr. Kim from the Department of Justice

complimented the Illinois State Board of Elections for ensuring all jurisdictions had accessible voting equipment prior to the March primary election – especially since the Illinois primary was one of the earliest primaries of all the states. Director White thanked Amy Calvin and Becky Glazier for their hard work on these HAVA projects.

Director White discussed the Voter's Guide that was a new mandate placed on the SBE to provide an Internet website for candidates that wish to include information about themselves and a picture. The IT Department and Cris Cray worked extremely hard to get this up and running. The Board must approve the statements submitted by the candidates before they are actually placed on the website. Lengthy discussion ensued on including the opponents name and where it should be included. Cris Cray explained that each office is listed on one page and all candidates names will be listed on it. The ones that paid the required fee will have their picture and statement included. Several of the Board members felt that the SBE could receive criticism if the opponents names are on the same page. It was indicated that the information must be available by September 25 but staff would like to have it available before then. Mr. Sandvoss indicated that it has to be up no later than 45 days before the election. He also indicated he would like to suggest some changes to the legislation as the statute deadlines don't allow for the third party candidates. Member Keith suggested approving the biographies and have staff set up the site taking into account Board member comments today and allow the Board to look at it before it goes public. In response to a question, staff indicated that there was nothing inappropriate included in any of the statements. Member Keith then moved to approve the statements that have been submitted. Member Brady seconded the motion which passed by roll call vote of 8-0. Member Porter voted Member McGuffage's proxy as he had stepped out of the room.

Director White noted at the June meeting the Board asked for an update on the Illinois Disclosure Information System (IDIS). Mr. White summarized the report that was prepared by Steve Flowers indicating that the IDIS software was written in 1998. Staff began the time-consuming process of updating the software in 2002 but other mandates and issues have placed demands on IT staff which takes them away from the IDIS project. Mr. Flowers offered three options; two of which are not viable options. Both Director White and Steve Flowers felt strongly that the only option is to make IDIS

a top priority in the upcoming year. After discussion on staffing it was agreed that staff would continue to move ahead and make this a priority for FY 07.

The Executive Director presented for informational purposes 1) the FY06 fiscal report for the period ending June 30, 2) the fiscal report for the Help Illinois Vote Fund, and 3) the two year plan of activity for the months of July and August. At this time the Board recessed for a short break. Meeting recessed at 12 noon and reconvened at 12:05 p.m.

The General Counsel informed the Board that a complaint was filed in Federal District Court by Protect Marriage Illinois (PMI), the proponents of the statewide advisory petition seeking declaratory and injunctive relief alleging a constitutional deprivation of various rights as well as due process arguments. He indicated he will further brief the Board in executive session.

He further updated the Board on an amended certification from Cook County on the statewide petition noting that there were some duplicate signatures on the petition that were not accounted for when they completed their random sample verification and as a result after counting the duplicates it changed their results slightly.

The General Counsel presented appeals of campaign disclosure fines listed on the agenda as 3.a.1, 2, 3, 5, and 6 and indicated his concurrence with the hearing officer's recommendation in all. Member Keith moved to accept the recommendation of the hearing officer and General Counsel to grant the appeals in the matters of *SBE v. Friends of Essig for Sheriff*, 06AP007; *SBE v. Citizens for Eric Peck*, 06MA005; *SBE v. Illinois Hospital Assn. PAC*, 06AP012; *SBE v. Citizens for Senator Judy Myers*, 06AP018; *SBE v. Friends of William E. Gomolinski*, S7101, 06AP019;. No one was present in these matters. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0. Member Porter voted Member McGuffage's proxy and Chairman Smart voted Member Walter's proxy as they had left the room. In response to a question, Sue McArthur indicated that notices are sent out twice to committees notifying them of the Board meeting.

Agenda item 3. a. 4, *SBE v. IL 12th Congressional District Republican Comm.*, 06DS127 was removed from group consideration for further discussion. Member Keith discussed this complaint indicating that he was not sure the Board would want to set this precedent but the result would still be

the same. The General Counsel indicated the concern is well taken that committees who are active but don't take in any money can be late on their reports and not suffer any consequences. Discussion ensued and this matter was held for staff to retrieve the D-1 to see what Article the committee was formed under.

The General Counsel presented appeals of campaign disclosure fines where the hearing officer has recommended the appeals be denied. No one was present on these matters. Member Keith moved to accept the recommendations of the hearing officer and General Counsel and deny the appeals in the matters of *SBE v. Brent Schorfheide for Washington County Treasurer*, 06DS005, and *SBE v. Citizens for Gordon D. Bush*, 06AP29. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0. Chairman Smart voted Member Walters proxy as he had left the room.

It was indicated that in the matter of *Friends of Martin Sandoval* the committee had requested the discussion be postponed until noon but no one was present yet. It was agreed to hold the matter until their arrival.

The General Counsel presented for informational purposes a listing of candidates with unpaid fines that face potential ballot forfeiture. An updated list was distributed this morning. Four of the ten on the list have pending appeals of which three were just granted so they would be removed from the list. It was indicated that Rupert Borgsmiller sends out notices to candidates whose appeals may subject them to ballot forfeiture well in advance of the date of certification.

The General Counsel presented for informational purposes a listing of 1) committees that were assessed civil penalties for delinquent filings, and 2) committees that paid civil penalties.

The General Counsel presented for Board consideration a proposed rule for postmark procedures. This would deal with a situation where a committee alleges they mailed the report and it was received late or not at all and there is no postmark or it is an illegible postmark. Member Keith felt this would take a lot of guesswork out of the mailings and put committees on notice of their responsibilities. Member Keith then moved to adopt the rule as presented. Member Porter felt it was unfair. Discussion ensued on options of mailing and documentation of when it is mailed. Vice

Chairman Rednour seconded the motion which passed by roll call vote of 7-1 with Member Porter voting in the negative.

The General Counsel presented *SBE v. Friends of Martin Sandoval*, 06AP021 an appeal which the hearing officer has recommended be denied. The main issue is the lack of information that would substantiate the nature of the contribution and when it was received. Dan Johnson Weinberger and Senator Sandoval were present on behalf of the committee and discussed the activities of the committee. He indicated that they over reported and had no need to report any of the in-kind contributions on the A-1 forms since it fell outside of the 30 day period. He further explained the fundraiser process that offered Bulls tickets for a \$50 contribution to the committee and asked the Board to grant the appeal and permit the committee to file an amended report listing this as an in-kind contribution. The General Counsel offered as a part of a motion contain an admonition to the contributor as to the requirements of Section 9-6(b) of the Campaign Finance Act that states within five business days of contributing goods or services of more than \$50 value to a political committee the contributor shall certify the value of the contribution to the political committee on forms prescribed by the SBE and that would have enabled the committee to list on its pre-election report the in-kind contribution of \$1,020 and that the committee be required to amend its pre-election report so that it contains accurate information and had no problem with the Board granting the appeal. Discussion ensued on what constitutes the time of an in-kind contribution. Chairman Smart moved to grant the appeal with the admonition provided by the General Counsel. Member Keith seconded the motion which passed by roll call vote of 8-0. It was noted that Senator Sandoval would also be taken off the ballot forfeiture list.

The General Counsel presented Rules of Procedure for hearings conducted pursuant to Section 28-12 of the Election Code that have been revised after taking into account Board member concerns. Mike Lavelle, Mike Kasper and Mike Kreloff were present in the Chicago office and were connected via telephone. Member Keith reviewed a few other clean-up items on the proposed rules. The Chicago attendees indicated they did not have a copy of the rules with the new revisions and it

was indicated the Board would move on to other issues and return to this after the materials were faxed to Chicago.

Member Keith moved to recess to executive session to discuss pending litigation and campaign disclosure matters. Vice Chairman Rednour seconded the motion which passed unanimously. Meeting recessed at 1:00 p.m. and reconvened at 1:20 p.m.

Upon reconvening Member Keith moved to adopt the recommendation of the hearing officer and General Counsel in the matters of *SBE v. Citizens for Theodore Thomas*, 06CD014 and *SBE v. Andy for Illinois*, 05CD036 and refer both matters to public hearings. Member McGuffage seconded the motion which passed by roll call vote of 8-0. Chairman Smart voted Member Walters proxy as he had left the room.

Member Keith moved to refer representation of the Board members and the Executive Director in the complaint filed by Protect Marriage Illinois in the U.S. District Court for the Northern District of Illinois, Eastern Division which is unnumbered to the Attorney General for representation and request notification as soon as possible of her acceptance or rejection of that request. Member Brady seconded the motion which passed by roll call vote of 8-0. Chairman Smart voted Member Walters proxy as he had left the room.

Member Keith moved to impose civil penalties as previously approved in the following cases Committee to Elect Dianne Hewitt, Citizens for Mike Smith, Committee to Elect Fred Frederking, Friends for Susana Mendoza, Citizens for Fred Crespo, and Committee to Elect Carl Anthony Walkter as found on page 116 of the board packet. Member Brady seconded the motion which passed by roll call vote of 8-0.

Discussion returned to *SBE v. IL 12th Congressional District Republican Comm.*, 06DS127 and the D-1 which states “to promote the Republican party and its candidates in Illinois’ 12th Congressional District and throughout the state.” Based upon that statement, Member Keith moved to deny the appeal, contrary to the recommendation of the hearing officer, with the order to reflect that it is limited only to the Section 9 Committee and not to the Section 7 committee which appears to be a

different committee and it is not to have any effect upon the Section 7 committee and it will still be stayed. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The General Counsel returned to the discussion on the proposed 28-12 rules and discussed Board suggestions for language revisions. Mike Lavelle felt the rules were outrageous and questioned the Board's authority to issue rules on discovery. He had a strong objection to the opponent's participation in a hearing. Lengthy discussion ensued on opponents rights to participate in a hearing and on Section 28-12 and if it speaks to objections. Mr. Lavelle asked the Board to purge from the rules all reference to discovery and all reference to opponent participation.

Mike Kasper asked the Board to vote against the rules in the current form. He felt that Section 28-12 refers to the hearing and the purpose of the hearing. The burden is on the proponent to provide enough evidence to overcome the presumption of invalidity to the extent it is restrictive on the ability of the opponent to participate and test credibility and sufficiency of evidence.

Discussion ensued on the random sampling, Section 10-10 and Section 28-12 and it was argued which would apply. The petition must contain at least 283,111 valid signatures before the Board can certify it. Mr. Sandvoss indicated that Section 28-12 requires a hearing to be held and if there is no agreement on rules it would have to be held with no rules in place. Member McGuffage moved to approve the rules of procedure as amended but withdrew his motion after further discussion. At issue remains whether discovery has any place in the rules and the extent of participation by the opponent. Discussion ensued on creating an adhoc committee and also on whether the objection would be heard and if so under which Statute. Member Keith suggested that the General Counsel draft another set of revised rules dealing with everything that he believes is noncontentious and the alternatives as he understands it on the contentious and submit to Mr. Lavelle and Mr. Kasper. Then the Board will meet to review and discuss. It was reiterated again the issues at hand were 1) whether or not the opponent has the right to participate in the 28-12 hearing, 2) whether the opponent has the right to object if the proponents rehabilitate the petition and 3) if the presumption of invalidity then changes to a presumption of validity. The Board agreed to meet again on Friday, July 21 at 10 am to discuss the pending rules.

Vice Chairman Rednour moved to recess to executive session to approve executive session minutes of July 5 and July 12. Member McGuffage seconded the motion which passed unanimously. Meeting recessed at 4:00 p.m. and reconvened at 4:02 p.m.

The next regular meeting of the State Board of Elections will be held on Friday, August 31, 2006 at 10:30 a.m. in Chicago.

With there being no further discussion, Member Rednour moved to adjourn. Member Walters seconded the motion which passed unanimously. The meeting adjourned at 4:02 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director