

STATE BOARD OF ELECTIONS
Board Meeting
Monday, September 21, 2009
Springfield, Illinois

MINUTES

PRESENT:

Bryan Schneider, Chairman
Wanda Rednour, Vice Chairman
Patrick Brady, Member
John R. Keith, Member
William McGuffage, Member
Albert Porter, Member
Jesse Smart, Member

ABSENT:

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 10:35 a.m. with seven members present. Member Walters was absent and Member Smart held his proxy.

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

The Executive Director presented the minutes of the August 18 regular meeting and September 4 special meeting and discussed revisions to both sets of minutes. Member Smart moved to approve the minutes as revised. Member Brady seconded the motion which passed unanimously.

Director White sadly informed the Board of two recent deaths. Member Walters wife, Jeanne, passed away last week and Eric Donnewald's father, James, also passed away last week. He discussed the funeral arrangements of both.

The Executive Director indicated that Voting Systems staff recently conducted a test of the Accu-Vote as to the kickback of undervotes. Kathy Rogers, Steve Pearson and Cathi Smothers, representatives from ES&S, were present via telephone. Dianne Felts indicated staff ran over 1,000 ballots and the equipment counted accurately. The problem is if there is an undervote and an overvote on the same ballot only the first under or overvote will be identified. If the voter overrides the error the equipment does not identify any other under or over votes. The option at this time are for the vendor to reprogram the equipment and go thru an EAC approved laboratory and SBE staff will test at the same time. Kathy Rogers discussed the equipment noting the equipment will reject all undervoted races on the ballot; however, it does prevent the voter from knowing that there are overvoted races with the remainder of the ballot should they override the ballot. One option would

be to have the voter return to booth and correct ballot. The voter would have to do this each time the machine identified something. These units used in Illinois are old technology and there will be a cost for development, and a cost to the jurisdictions for installation. Some jurisdictions may have contracts that cover that cost but it without looking at each individual jurisdiction's contract it would be hard to say today. Illinois is the only state that requires undervotes for constitutional officers to be rejected. Mrs. Felts noted that 63 election jurisdictions are affected by this. Discussion ensued on when the law passed and the effective date as well as options. Ms. Felts indicated this will take effect with the first election with statewide constitutional offices on the ballot in 2010. Director White noted that during the Advisory Committee meeting they had discussed requesting an extension on the effective date of the law. Jim Nelson, Fulton County Clerk, indicated that the Representative in his district is close to Speaker Madigan and indicated the Speaker is adamant about this bill and not willing to budge. It was agreed for Dianne to put together the requirements ES&S needs to move forward and proceed immediately in case it is not overturned by the legislature.

Director White reported on the Advisory Committee meeting which was very well attended. Issues discussed include the SBE budget, constitutional officers and the kickback issue, and a statewide database update.

Director White noted that Cris Cray prepared the 2009 recap of legislative activity included in the Board packet. Ms. Cray indicated that the next meeting of the Campaign Finance Reform committee is September 29 and believed that we will see campaign reform discussions in the veto session. Senate Bill 51 was amendatorily vetoed to delay the effective date which is something asked for to implement BEREP correctly and to make technical changes. There will be a trailer bill to SB 51 in the veto session.

Sharon Steward presented an update up the Business Entity Registration for Procurement (BEREP) program. The BEREP website went live September 11 and as of today has had close to 5,000 hits. Ms. Steward recapped the timeline of the program and explained the public website. Discussion ensued and it was stated that if a business is no longer required to be registered it still must re-register electronically. Mr. Borgsmiller indicated that the details for the complaint procedure are still being worked out at this time.

Director White presented for Board consideration a two-part proposal from Al Manning for a voter awareness program for the February 2, 2010 General Primary. This program would include HAVA (with a cap of \$5,000), early voting and grace period registration and voting information (with a cap of \$3,000) and extend to the end of the fiscal year. In the recent legislative session grace

period registration was extended by a week and requires permanent early voting polling places to remain open additional hours on holidays and the final weekend of the early voting period. Member Smart moved to accept the proposal for Mr. Manning's services. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0

Per discussions and questions at the August Board meeting, Director White presented a revised lump sum spending appropriations (RSLA) allocation plan for the FY 10 budget appropriation and discussed the revisions including: 1) a significant reduction in the IDIS program allocation as resources will now allow in-house IT staff to devote time to the project; 2) increase for the Voting System Integrity Center; and 3) increase for the E-Canvass program. Director White has asked Jim Withers to coordinate with appropriate agencies to conduct an evaluation of physical space needs. This would be a long range plan as we are in a lease until 2012. The plan also proposes restoration of the full funding for the Clerk's stipends. The RSLA will become a part of the monthly fiscal report. Staff believes the proposed revisions are the best allocation of the resources available this year. In response to a question, Director White indicated that there is no statutory obligation for a testing center but believed staff could run a much more efficient and professional program with a stand alone facility. The SBE is the pass-through for the election judge payments and as every year we have requested full funding. As of right now the election judges will be funded at 50% but supplemental funding will be requested in the fall veto session. Discussion ensued on past election judges funding and the amount returned unspent to the Treasury in FY 09. Member Smart moved to approve the staff revised budget proposal as presented. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

The Executive Director presented for informational purposes the IVRS update, the FY 09 fiscal status report for the period ending August 31, 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 September and October.

The General Counsel presented a motion for reconsideration in the matter of *SBE v. Committee to Elect Eddie Washington*, 08AG074. Mike Kasper was present representing Mr. Washington. He indicated that the committee filed an appeal but it was received five days after the expiration of the 30 day appeal period. There was miscommunication between Mr. Kasper and Mr. Washington and each one thought the other was filing the appeal. Mr. Sandvoss indicated that in light of Mr. Kasper's explanation he recommended the Board grant the motion to reconsider and refer the matter to a hearing officer for disposition of the appeal. Member Smart moved to accept

the recommendation of the General Counsel. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented an appeal of a campaign disclosure fine that the hearing officer has recommended be denied in the matter of *SBE v. Citizens to Elect Andre Thapedi*, 09DS185 and concurred with the recommendation. This matter was carried over from the August meeting. Ms. Llwellyn Thapei, Chairman of the committee, was present. Ms. Thapei had indicated previously she was going to provide supporting documentation to the hearing officer and Mr. Sandvoss was unaware if that had been done so he was withholding recommendation until hearing from Ms. Thapedi. Ms. Thapedi indicated she had provided the hearing officer with the documents this morning and the hearing officer has indicated he would need time to review the submission and revise a report. She asked that the matter be continued to the October 20 Board meeting. Mr. Sandvoss had no objection to continuing the matter. Mr. Porter moved to continue the matter to the October 20 Board meeting. Member Smart seconded the motion which passed unanimously.

The General Counsel presented appeals of campaign disclosure fines that the hearing officer recommends be granted for agenda items 3.a.3-14: 3) *SBE v. 23rd Ward Regular Democratic Organization*, 08AG059; 4) *SBE v. Friends of Pam Helsel Hoffman*, 08AG061; 5) *SBE v. Friends for Henry Vicenik*, 09CE019; 6) *SBE v. Team Nunda*, 09AE003; 7) *SBE v. Bob Hausler 4 Mayor*, 09CE063; 8) *SBE v. Friends of Dianne McGuire*, 08AG062; 9) *SBE v. Citizens for Edward Acevedo*, 08AG071; 10) *SBE v. Citizens for Elaine Nekritz*, 08AG072; 11) *SBE v. Friends of Kwame Raoul*, 08AG075; 12) *SBE v. Citizens for Connelly*, 08AG077; 13) *SBE v. Friends to Elect Jim Hagerty*, 08AG081; and 14) *SBE v. Friends of Riley Rogers*, 09AC003. Mr. Sandvoss concurred with the recommendation of the hearing officer in each case. No one was present in these matters. Member Keith moved to grant the appeals in these matters and as to agenda items 4, 8 and 10 also order that amended reports be filed as suggested by the hearing officer. Member Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented appeals of campaign disclosure fines that the hearing officer has recommended be denied for agenda items 3a.15-24: 15) *SBE v. Cunningham Campaign Committee*, 09MA012; 16) *SBE v. Citizens for Officer*, 04DS082; 17) *SBE v. Citizens for Karen Fields*, 09MA013; 18) *SBE v. The Best 2005 Referendum Committee*, 09DS256; 19) *SBE v. Highwood United*, 09CE029; 20) *SBE v. Citizens to Elect Paul Hinterlong*, 09MA014; 21) *SBE v. Committee to Re-elect Bracco & Graves*, 09AE007 & 09CE049; 22) *SBE v. Committee to Elect Fritz Gohl*, 09CE050; 23) *SBE v. Citizens for Kay*, 08AG078; 24) *SBE v. Citizens for Mark Walker*, 08AG079 and concurred with the recommendations in all matters noting that in item #18 the corrected amount should be \$5,925 and

in item #23, the amount should be \$511. Item #16 will be considered separately as parties were present in this matter. Member Porter moved to accept the recommendations in agenda items #15, 17-24 and the appeals be denied. Member Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Citizens for Officer*, an appeal that the hearing officer recommended be denied and assessing a penalty of \$1,625 which includes a \$25 stayed penalty. Carl Officer, the candidate, and Girthal Clemons, treasurer of the committee, were present. Ms. Clemons did not realize she needed to file a report because there were no transactions. Once she found out a report needed to be filed she did so immediately. She discussed the committee and the fact that over the many years there was only one other problem and asked the fine be reduced to \$500. Member Porter moved to accept the settlement offer of \$500. Vice Chairman Rednour seconded the motion which failed by a roll call vote of 4-4, with Members Brady, Keith, Smart and Chairman Schneider voting in the negative. After further discussion Member Porter moved to accept the offer of one-half the total amount of the fine or \$812.50 and this be paid within 30 days. Member Smart seconded the motion which passed by roll call vote of 5-3 with Members Brady, Keith and Chairman Schneider voting in the negative.

The General Counsel presented *SBE v. Committee to Elect Tom Strickland*, 09AE009 an appeal of a campaign disclosure fine that the hearing officer recommends be granted and denied in part. No one was present in this matter. Mr. Sandvoss concurred with the hearing officer's recommendation. Member Keith moved to adopt the recommendation of the hearing officer and General Counsel and additionally order that amended reports be filed in conjunction with subparts one and two to have the reports consistent with the representations made by the committee resulting in those findings. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented complaints following public hearings, agenda items 3.a.26-33: 26) *Emilio Cundari v. Cicero Equality Committee*, 09CD002; 27) *Judy Brown-Moreno v. New Broadview Tea Party*, 09CD009; 28) *SBE v. 16th Ward Regular Democratic Organization*, 09CD019; 29) *SBE v. Friends of Mickie Polk*, 09CD025; 30) *SBE v. Citizens for Munoz*, 09CD039; 31) *SBE v. 22nd Ward Democratic Committeeman Fund*, 09CD042; 32) *SBE v. Taxpayers United For Fairness*, 09CD051; and 33) *SBE v. Committee to Elect James Larry Karraker*, 09CD031. Agenda item #27 will be taken separately. Mr. Sandvoss concurred with the recommendations in these matters as follows: 3.a.26 no further action since the complainant did not prove that a violation occurred; 3.a.28-33 the hearing officer noted that the report(s) at issue had not been filed and recommended the Board

issue an Order compelling the Respondent to file the report(s) within 30 days of the Board Order or be assessed a civil penalty not to exceed \$5,000. David Miley, Avila Law, indicated his law firm previously filed an appearance on agenda item #26 but did not file a new appearance and he was not present in this matter. No one was present in the other matters. Member Smart moved to accept the recommendation of the hearing officer and General Counsel on agenda items #26, 28-33. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *Judy Brown-Moreno v. New Broadview Tea Party* 09CD009, a complaint following public hearing. Mr. Sandvoss discussed the allegation in the original complaint that the respondent failed to timely file a statement of organization and accompanying campaign finance reports. Following the hearing the hearing officer indicated the committee was responsible for filing the reports that were alleged to have not been timely filed and recommended the reports be referred to campaign disclosure staff for review to see if the amended reports or the reports that were filed are in compliance with reporting obligations. Mr. Sandvoss concurred with the recommendation but added that the reports be further amended to address the characterization of the amounts as either in-kind contributions or as debts that are owed. Judy Brown Moreno, the complainant, was present and Richard Means was present on behalf of the respondent. Discussion ensued on two agenda items being connected but because one party was not present and could not waive the confidentiality they would be taken separate. Ms. Brown-Moreno asked the Board to accept the hearing officer's report indicating that after all of the hearings there is information still missing. Mr. Means discussed the committee's activities and filings indicating that a consultant and printer ran the campaign for the committee and did not file disclosures and the committee was left holding the bag. He also further discussed the problems encountered with filing and felt the committee did everything they should have done and should not be penalized further. Mr. Sandvoss indicated his recommendation would not change. Member Smart moved to accept the recommendation of the hearing officer and General Counsel. Member McGuffage seconded the motion which passed by roll call vote of 8-0. Member Keith discussed comments in the report that suggest there may be some unlicensed practice of law and asked Mr. Sandvoss to instruct the hearing officer to report back to the Board relative to the indications of potential unauthorized practice of law.

The General Counsel presented for informational purposes a listing of committees that paid civil penalties and a listing of candidate committees who face potential ballot forfeiture for 2010.

Member Porter moved to recess to executive session to discuss a campaign disclosure matter following closed hearing, pending litigation and personnel issues. Member Brady seconded the motion which passed unanimously. Meeting recessed at 1:05 p.m. and reconvened at 3:10 p.m. Member Rednour left during executive session and Member Keith holds her proxy.

Member Keith moved that in the matter of *Matt Ames v. Charles Ferral, M. Ferral, Thomas Hendrix, American Campaigns, 09CD059*, the matter was not filed upon justifiable grounds and that it be dismissed accordingly. Member Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented for Board consideration a memorandum on apparent conformity of nominating petitions. Mr. Sandvoss discussed his memorandum indicating his interpretation as it pertains to apparent conformity does apply to Article 7 and Article 8 and he believes provides for a statutory basis for the implementation of his proposed policy. The general process would involve checking for the statement of candidacy, economic interest receipt and signatures. Lengthy discussions ensued involving how to determine which petitions to check, how many signatures/pages would be checked, how to inform candidates of the policy change and how to implement. It was suggested that a subcommittee be formed to explore the logistics of implementing apparent conformity. Member Keith offered a motion that the Board indicate it will be adopting a policy of apparent conformity starting with the upcoming petition filing for the February 2, 2010 primary and November 2010 general election. The motion died for lack of a second. Member Keith offered a second motion that we direct the general counsel to draft a proposed policy taking into account the comments of the Board today and have the Chairman appoint a subcommittee and after submission of something to the Board the general counsel would be given authority to proceed. Discussion ensued on applying apparent conformity on a limited basis but where does the line get drawn. Member Keith's motion died for lack of a second. Member McGuffage then moved to request a comprehensive opinion from the Attorney General concerning our obligations relative to apparent conformity. Member Porter seconded the motion which passed by roll call vote of 8-0. In response to a comment from the Board Mr. Sandvoss indicated he would put together something in preparation of a response from the Attorney General prior to November 1 with regard to apparent conformity.

Member Keith moved to adopt actions taken in executive session as to personnel matters regarding the salaries of the executive staff and general staff members. Member Brady seconded the motion which passed by roll call vote of 8-0.

The next regular meeting of the State Board of Elections will be held on Tuesday, October 20, 2009 at 10:30 a.m. in Chicago or at the call of the chair whichever occurs first.

With there being no further discussion, Member Brady moved to adjourn. Member Keith seconded the motion which passed unanimously. The meeting adjourned at 4:15 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director