

STATE BOARD OF ELECTIONS

MINUTES

Tuesday, October 20, 2009

MINUTES

PRESENT: Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman
Patrick A. Brady, Member
John R. Keith, Member
Albert S. Porter, Member
William M. McGuffage, Member
Jesse R. Smart, Member
Robert J. Walters, Member (arrived at 11:12 a.m.)

ALSO PRESENT: Daniel W. White, Executive Director
Steve Sandvoss, General Counsel
Rupert Borgsmiller, Assistant Executive Director
Darlene Gervase, Administrative Assistant II

Chairman Schneider called the regularly scheduled monthly board meeting to order at 10:49 a.m. and lead everyone in the pledge of allegiance. Seven members were present with Member Keith present via video conference in the Springfield office. Member Smart held Mr. Walters proxy until his arrival at 11:12 a.m.

The minutes of the September 21 regular meeting were presented for adoption. Executive Director White noted changes proposed by Member Keith. Member Porter moved to accept the minutes as revised and Member Smart seconded the motion which passed unanimously by 8 voices in unison.

To clarify a motion from the September 21st, Member Keith moved to confirm the action taken in executive session in September and offer the position of Director of Campaign Disclosure to Sharon Steward. Member Smart seconded the motion which passed unanimously by 8 voices in unison.

The Director indicated an addition to the agenda, a proposal by staff to move the November Board meeting, will be addressed when we get to that item.

Mr. White began his report seeking support of a resolution presented to McHenry County Clerk Kathy Schultz, who celebrated 50 years in government service, serving 31 years as Clerk. Ken Menzel and the Director attended a reception in Clerk Schultz' honor Friday, October 16th. Member Smart moved to approve the resolution and Vice Chairman Rednour seconded the motion. The motion passed unanimously by roll call vote.

Mrs. Felts, VOSS Director, was asked for an update on the Accu-Vote under vote feature. Mr. Steve Pearson and Ms. Kathy Rogers of Premier/ES&S were present via teleconference. My Felts confirmed that she has had several contacts with both Mr. Pearson and Ms. Rogers and that progress has been made, however, according to the vendor's plan, the voter will be notified of all under and over voted offices. At that time the voter may override those votes, or change the ballot. Discussion ensued among the board regarding secrecy of the ballot if the voter has to leave the voting booth; costs to the counties; and the possibility of a special meeting to consider approval of the voting system. Director Felts indicated that this change is going through an EAC approved lab, and her staff will test at the same time. Mr. Bob Saar, Executive Director of the DuPage County Board of Election Commissioners asked to speak to this matter. He indicated concerns regarding software changes; if it audits the ballot for every office, not just constitutional offices, we may run into a very

serious problem. He said that the Department of Justice had many questions regarding equal protection if all counties did not audit for undervotes in federal offices. Mr. Tim Berthel from Vermillion County asked if the Board had any information on internet voting in Illinois. The Chairman advised him that would be an issue for the legislature. Mrs. Felts concluded that no action is required today, but a special meeting may be necessary when iBeta and the SBE complete their testing.

Mr. White brought the news of serious financial problems plaguing Alexander County to the Board's attention and indicated that he invited Clerk Kline to attend the meeting to discuss the matter and consider options for assistance. He said that the SBE and Alexander County have a partnership in aiding elections. Election Information Director, Mark Mossman, contacted Alexander County officials and was informed that ES&S had been paid and they are fully prepared for the February Primary. Mr. Mossman confirmed that we will send staff to Alexander County to assist them during the primary.

Preparations for the February 2 General Primary Election, including candidate petition filing and judges of election schools were presented for informational purposes. Mr. White added that this is where he added consideration of changing the November Board meeting. He recommended conducting the SBE and the State Officers Electoral Board (SOEB) meeting simultaneously in Chicago on Tuesday, November 17th as that would accommodate any objection filed on the second to the last date. The Board agreed to the schedule the November meeting as recommended.

To enforce Business Entity Registration Reporting, Mr. White presented a written report and Assistant Executive Director, Rupert Borgsmiller, reported on 7 steps implemented for compliance. The complaint procedure would follow the hearing procedure and schedule outlined in section 9-20 of the Election Code. He added that pre complaint letters have been sent to business entities that registered on paper but have not re-registered with the SBE. One outstanding issue regarding publishing businesses who have not re-registered on the SBE website and when it should be posted was discussed at length. Member Keith moved to publish business names on the SBE website who have not re-registered after completion of the complaint procedures. Member McGuffage seconded the motion which passed unanimously by roll call vote.

Director White asked Cris Cray, Director of Legislative Affairs, to report on legislation. Ms. Cray said that a Constitutional Amendment, dealing with Recall, will be on the November 2010 ballot. HB 723, states that a managing committee may still make an appointment, but that person must go-out and collect-signatures. This bill was overridden in the House and will go to the Senate next week. We can expect to see a trailer bill in the spring session. SB 51 regarding Business Entity Registration Program "BEREP" has a trailer bill, SB1732. This is still a work in progress. SB1466, Ethics, is now unofficially on Amendment #4 and has not passed either chamber. There will be a supplemental, however one appropriation-director stated that they will only add money that the Governor cannot sweep. This includes our Retirement line, Election Judges, etc. Also, there will be a bill to sweep and increase funds for the Departments of Agricultural and Natural Resources.

Mr. White continued his report with a review of the minutes of Executive Session. He indicated that General Counsel Sandvoss and he reviewed the minutes and concluded that with the exception of April 20, 2009, Discussion of *Jerry Lemmons v. Douglas Aurand*, 09CD 008, following closed preliminary hearing; and May 18, 2009, discussion of *Jerry Lemmons v. Douglas Aurand*, 09CD014 following closed preliminary hearing, confidentiality does not exist as to the remaining minutes. He added that release of the minutes for public inspection does not release the verbatim recording of the session and specific authorization from the Board is required to release such recordings. Member Smart moved and Member McGuffage seconded a motion to make the executive session minutes public other than the items on page 29 of the Board's packet. The motion passed unanimously by roll call vote.

The Director presented an IVRS report on pages 30 through 33 as a regular monthly item from Kyle Thomas, Voting Registration Services Director. Chairman Schneider noted that the report is helpful information and shows the power of the statewide database. The Board had no questions for Mr. Thomas.

Director White noted that there has been little budget activity and presented a revised FY10 Lump Sum Appropriation and a copy of the summary page of the monthly fiscal report containing the allocations and spending activity to date.

Fiscal status reports for FY10 month ending September 30; Help Illinois Vote Fund' and EAC Data Collection Grant; as well as the two-year plan of staff activity for October and November were presented for informational purposes. This concluded the Executive Director's Report.

Steve Sandvoss, General Counsel began his report with a violation of a board order and summarized the *SBE v. Friends of Alderman Madeline Haithcock*, 08CD036 matter. He said that a Final Order was issued by the Board on May 19, 2009 where the committee was ordered to correct discrepancies within 90 days of the Order. He recommended that the Committee be given an additional 60 days to correct discrepancies. Mr. Robert L. Andersen was recognized as an attorney for the Respondent. He indicated that the committee has been working towards a goal of clarifying certain information with a goal to get the amended report filed. Member Porter moved to adopt the recommendation of the General Counsel and issue a second Order to file completed reports within 60 days. Member Smart seconded the motion which passed unanimously by roll call vote.

Mr. Sandvoss continued with an appeal carried over from August wherein the Hearing officer recommended the appeal in *SBE v. Will County Democratic Central Committee*, S560, 08AG037 be denied. The Hearing Examiner recommended granting the appeal of a \$10,000 contribution that was received, but not honored by the bank. But, that the appeal be denied for newspaper ads of \$4500. Further, to reduce the \$4500 penalty by 50% equaling \$2250 and Mr. Sandvoss concurred. The Chairman recognized Ms. Natalie Manley, an accountant and Diane Nyman for the Committee. Ms. Manley indicated that her firm had been hired by the Committee to handle future filings and they will try not to let this happen again. Member Smart moved to adopt the Hearing Examiner and General Counsel's recommendations to deny the appeal and assess the 50% of the fine resulting in a civil penalty of \$2250. Member McGuffage seconded the motion which passed unanimously by roll call vote.

The General Counsel agreed with the Hearing Examiner that the appeal be granted in *SBE v. Citizens to Elect Andre Thapedi*, S9041, 09DS185. He said that the documents were damaged in a flood and the committee submitted evidence supporting that fact. Chairman Schneider acknowledged Mr. John Fogarty, attorney for the Respondent. Member Porter moved to adopt the recommendations of the hearing examiner and general counsel and grant the appeal. Member Walters seconded the motion which passed 8-0 by roll call vote.

SBE v. Mason County Democratic Central Committee, S388, 08DS122; *SBE v. St. Clair County Republican Central Committee*, S962, 08GE060; *SBE v. Citizens for Rosemary Mulligan*, S4707, 08AG032 & 08AG065; and *SBE v. Coulson Campaign Committee*, S6476, 08AG068 were presented wherein the hearing examiner recommended the appeal be granted and Mr. Sandvoss concurred. Member Smart moved and Vice Chairman Rednour seconded the motion to grant the appeals. The motion passed unanimously by roll call vote.

Mr. Sandvoss presented *SBE v. GOP Action Team*, L15257, 09AE008. He noted that documents were submitted to support the electronic error and agreed with the Hearing Examiner that a "cloning error" caused the report to be timely filed. Further that the appeal be granted, but that any future electronic problems will not be looked on favorably. Member Keith so moved and Vice Chairman Rednour seconded the motion which passed 7-0-1 with Member Brady's abstention.

A new appeal in the matter of *SBE v. Citizens for Durkin*, S6345, 08AG068 was filed. The hearing officer found that the documents and statements submitted were received following the close of the Schedule A-1 filing period and no filing was required. He recommended the committee amend its December 2008 semiannual report to correct the date the contributions were acknowledged within 30 days of the Board's order. Further that the appeal be granted and the General Counsel concurred. Mr. John Fogarty filed an appearance on behalf of the committee and was present. Member Walters moved to accept the recommendations of the Hearing Examiner and General Counsel to grant the appeal and the

committee be required to file amended reports within 30 days of the Board's Order. Member McGuffage seconded the motion which passed unanimously by roll call vote.

General Counsel Sandvoss summarized *SBE v. The Committee to Elect Jeremy Karpen for State Representative*, S9734, 09DS249. The hearing examiner recommended granting the appeal as the treasurer had a new computer that was not compatible with Vista. Further, to be consistent with previous Board decisions when electronic filing is used as a defense, since the problem has been resolved this defense will not be looked on favorably a second time. Mr. Sandvoss agreed with the recommendation. Member Smart moved to grant the appeal based on the recommendations of the hearing examiner and general counsel. Vice Chairman Rednour seconded the motion which passed 7-1 with Member Keith voting no.

New appeals of campaign disclosure fines wherein the hearing examiner recommends denial were presented. Mr. Sandvoss concurred with the hearing examiner's recommendation. Member Smart moved and Member Keith seconded the motion to deny the appeals in the following cases: *SBE v. Westmont Village Committee*, L12726, 09CD013; *SBE v. Committee to Elect Pamela Palmer*, L13577, 08GA20; *SBE v. The PEP Party*, L 15097, 09AE006; *SBE v. Graham for 202*, L15242, 09CE051; *SBE v. Committee to Elect Rickey Hendon*, S6825, 08AP041; *SBE v. Friends of Mattie Hunter*, S8427, 08AG046; *SBE v. Citizens for Beaubien*, S6518, 08AG070; *SBE v. Committee to Elect Laura Morask*, S9501, 08AG051; and *SBE v. Cook County Bar Association PAC*, S9836, 08DS252. The motion passed unanimously by roll call vote.

The General Counsel presented a summary of *SBE v. Vermilion County Democratic Party*, S1100, 08AG082. Mr. Tim Berthel, treasurer for the respondent, was present and reiterated his reasons for the appeal that he thinks that a new treasurer should be given a clean slate. Mr. Sandvoss agreed with the Hearing Examiner that the appeal be denied for lack of an adequate defense and allowing each new treasurer to begin with a clean slate would potentially open a large loophole in enforcement. Further that the violation was inadvertent and unintentional and that the penalty be reduced 50% of the assessed civil penalty, or \$1000 since this is a second penalty assessment. Member Keith moved to deny the appeal and adopt the recommendations of the Hearing Examiner and General Counsel. Member Brady seconded the motion which passed 8-0 by roll call vote.

Mr. Sandvoss presented *SBE v. Citizens for Ronald A. Wait*, S2926, 08AG082. He indicated that the committee was fined \$71,960 for failure to timely file A-1s. Mr. John Fogarty filed an appearance for the respondent, but left the premises. The Hearing Examiner recommended the appeal be denied, but since this is the first delinquent filing of an A-1 by this committee the penalty being reduced to 10% of the original assessment or \$7,197. The General Counsel concurred. Member Porter moved and Member Keith seconded a motion to adopt the recommendations of the Hearing Office and concurred by the General Counsel to deny the appeal and assess the penalty. The motion passed unanimously by roll call vote.

General Counsel Sandvoss presented an appeal for a delinquent filing of an A-1 and concurred with the recommendation of the Hearing Examiner. The committee did not present a valid defense, but since this was a first violation the civil penalty be reduced to 10% of the original assessment or \$290. Further the stay be lifted from the \$142 civil penalty totaling \$432. Mr. Rich Kelly was present, he said that the first fine was a mistake and should not have been assessed. Mr. Sandvoss indicated that the committee has 7 days to appeal an order of the Board and Mr. Kelly did not appeal that order. Member Walters moved to accept the recommendations of the Hearing Examiner and General Counsel and deny the appeal and assess the penalty. Member Keith seconded the motion which passed 7-1 with Member Smart voting no.

With the exception of one committee, Citizens Organized for Public Safety, L4214, who paid their fine, Mr. Sandvoss asked the Board to issue Final Board Orders to committees listed on pages 221, 222, and 223 of the Board packet. Member Keith so moved and Member Smart seconded the motion. The motion passed 8-0 by roll call vote.

Chairman Schneider asked for a motion to recess to executive session to discuss campaign disclosure matters, litigation and personnel. Member Brady so moved and Vice Chairman Rednour seconded the motion. The motion passed by 8 voices in unison. The meeting recessed at 12:53 p.m.

The Board returned to open session at 1:35 p.m. with all members present by roll call vote.

Member Keith moved to accept the recommendation of the Hearing Officer in finding justifiable grounds, but no public hearing and refer *Adam Moodhe v. Committee to Elect Lisa Stone Buffalo Grove Trustee*, 09CD061; *Jeff Kissinger v. Party for Yesterday, Today, Tomorrow*, 09CD062; and *Gerry Walsh v. Nunda Neighbors for Open Space*, 09CD063 to the Campaign Disclosure staff for assessment. Member Brady seconded them motion which passed unanimously by roll call vote.

Member Keith moved to approve a new four year term for Director of Elections, Mark Mossman and Member Brady seconded the motion. The motion passed unanimously by roll call vote.

Member Walters moved to authorize the Executive Director to allot annual increases to the directors as directed in Executive Session. Member Brady seconded the motion which passed 8-0 roll call vote.

There being nothing further before the Board, Member Brady moved to adjourn. Member Smart seconded the motion and the motion passed unanimously by 8 ayes in unison and none opposed.

The meeting adjourned at 1:40 p.m.

Dated: October 26, 2009

Respectfully submitted,

Daniel W. White, Executive Director

Darlene Gervase