

STATE BOARD OF ELECTIONS
Board Meeting
Monday, November 21, 2005
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
Becky 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. Member Brady was present via telephone.

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

Chairman Smart presented the minutes of the October 17 regular monthly Board meeting. Member Keith indicated one change on page three to reflect Vice Chairman Rednour rather than Vice Chairman Roupas. He then moved that the minutes be approved as amended. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

Chairman Smart presented the minutes of the November 7 special Board meeting. Member Porter asked that the word "been" be added to the first sentence in the third paragraph between "have filed". Vice Chairman Rednour moved to approve the minutes as amended. Member Schneider seconded the motion which passed by roll call vote of 8-0.

Prior to the meeting Chairman Smart presented Amy Calvin with a 15 year service award, Steve Flowers with a 20 year service award, and resolutions to retiring employees Kathy DuBois, Pat Freeman, and Mickey Gillespie.

The Executive Director asked Board members who had not yet submitted their signed ethics statements to submit prior to the end of the year to the SBE ethics officer.

The Executive Director presented a legislative update indicating that during veto session there was much discussion but not much action. Director White indicated that the Open Meetings Act will require five of the Board members to be physically present at one location at any meeting. This will be revisited in the Spring session. Cris Cray discussed other legislative items including the Open Meetings Act. Member Keith suggested that staff make contact with the Governor's office and explain the Board's concerns that working under an accelerated campaign disclosure calendar prior to an election as well as objection periods will place a burden on the Board members and will cause more travel costs to be incurred. The Press Association is the proponent of this bill but does not care if the Board is removed from the obligation. Both offices are open to the public for all conference calls the Board conducts. Perhaps if the Press Association puts something in writing it may help our cause. Ms. Cray distributed a calendar for the upcoming legislative session. Member McGuffage discussed ballot forfeiture language and Ms. Cray indicated she would have something prepared for the December meeting.

Director White indicated that staff has been gearing up for candidate petition filing which begins on Monday, December 12. Staff filing assignments are outlined in the Board packet. Recent legislation requires that the public be allowed to view the statewide data lists in the Springfield office. Staff will be available to oversee this during the filing period. Training began last week in the Chicago office and there will be a full staff walk-through on December 6. Pat Freeman and Mark Mossman have worked together on the job assignments for petition filing. Ms. Freeman indicated that for the first time the public can print off candidate lists from our website. This will save time and money on copying expenses. In response to a question from Member Keith, Mr. Mossman explained that 70 of the 110 election jurisdictions have issues (mostly technical) that will make it impossible for them to have signatures available by December. Staff is working on alleviating as many of the problems as they can prior to filing. The legislative leaders will be notified of this situation.

The Executive Director provided an update on the certification of voting systems. Staff is updating the voting system certification chart every two weeks and it is available on our website.

There are many systems currently being tested by VOSS staff and it is important to note that these involve very thorough testing which takes time.

Director White presented for Board consideration a modification to Election Systems and Software (ES&S) M-100 in-precinct optical scan system. Dianne Felts indicated the modification simply tightens up the ovals so that more election contests can be on one sheet. Pat Whalen was present representing ES&S. Vice Chairman Rednour moved to grant two year interim approval of the modification. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

Director White presented for Board consideration a modification to Diebold's AccuVote. Ms. Felts indicated the change is to the firmware so the AccuVote can become a central count system to be used for counting absentee ballots. Over 15,000 ballots were run through without a miscount. The only restriction is that only six machines may be connected to the host computer as that is the maximum number of machines tested by VOSS staff. Jay Bennett and Ken Gibson were present to represent Diebold. Member Keith indicated he was on record from a couple years ago asking that the President of Diebold be present for any voting system business. Member Keith was concerned with newspaper accounts of various issues with Diebold equipment. He requested this be continued to the December meeting so that Diebold's President could be present. Chairman Smart asked if this would cause anyone problems by putting it off. Mr. Bennett explained that it would cause training issues and the company would not ship any product into a state where the equipment is not yet certified. Discussion continued on the system and the fact that it is a two year interim approval. Member Keith requested that Diebold supply the board with everything that has been disclosed to other states before certifying this modification. After further discussion it was indicated that this is used in conjunction with the AccuVote DRE system which is not yet certified. Member Schneider moved to accept the staff recommendation and grant interim certification. Member McGuffage seconded the motion subject to certification of the DRE. Discussion continued and Chairman Smart asked Member Keith to put his questions of Diebold in writing. Member Schneider withdrew his motion indicating if there was no advantage to approving the system now to wait until both systems come before the Board together for certification. It was agreed to hold this over to the December meeting.

The Executive Director presented an update of HAVA activities. Director White indicated that he, Chairman Smart and staff met with the ILVR committee. Representatives from the Secretary of State's office and Catalyst were also present. Staff is prepared to take the next step and submit a proposal to CMS for consideration as a sole source contract. Chairman Smart indicated that it was a very positive meeting and everyone was in agreement with the direction of the project.

The Executive Director presented an update on the distribution of funds for accessible voting equipment. To date 25 applications have been submitted – most are pending until certification of the voting equipment. Staff is receiving many calls regarding the availability of further funds as the election draws nearer. Discussion ensued on the deadline which was imposed in order to evaluate the funding needs of the jurisdictions. Extensions are being granted if a jurisdiction needs additional time to evaluate certified voting systems and to await certification of a certain voting system. It has become clear that the jurisdictions will need additional funding and would like to know what funding might be available in order to assist them in budgeting. Director White discussed materials contained in the Board packet relating to distribution of remaining Requirements money. Discussion ensued on possibly releasing 60-75% of an allocation and Chairman Smart asked Director White to provide further information for Board consideration at the December meeting.

Director White then discussed the possibility of providing funding to the jurisdictions that received no money via the federal punch card buyout. The chart provided in the packet outlines the amount of money each of these 13 jurisdictions would have been eligible for had they not changed voting systems prior to the November 2000 general election. It also includes amounts they spent on their voting equipment. This would create another application process. Director White also discussed allocating funds for the three jurisdictions that still have the central count optical scan so that they could comply with the 2002 error detection standards.

The Executive Director presented for informational purposes 1) the FY06 fiscal report for the period ending October 31, 2) the fiscal report for the Help Illinois Vote Fund, and 4) the two year plan of activity for the months of November and December.

The Executive Director presented a proposed resolution prepared by Member Brady regarding Iraqi parliamentary elections. Member Brady discussed the resolution indicating that it offers limited assistance from SBE staff with the Iraqi elections as Chicago is one of the out of country locations for the December 2005 election. Chairman Smart indicated that candidate petition filing and the voting system testing program has staff busy for the next couple of months and any assistance would be minimal. Member Porter felt this was outside the scope of what the agency was created and that although the purpose sounded good it might be stepping outside our roles. It was agreed rather than to provide a resolution, the Executive Director will make contact with the organization and will take any necessary action as issues of this sort have been taken care of in the past.

Meeting recessed at 12:30 and reconvened at 1 p.m.

The General Counsel presented *SBE v. Friends to Elect John Hayden*, 05CD042, a complaint following public hearing. The committee filed a final report prior to the public hearing. Mr. Sandvoss discussed the matter and indicated the hearing officer has recommended the matter be dismissed and noted that even though they failed to file a statement of nonparticipation which committees are required to do in lieu of filing a pre-election report, they didn't do that. But the State Board of Elections does not assess civil penalties for failing to file a statement of nonparticipation. Mr. Sandvoss disagreed with the hearing officer's recommendation that Trowbridge is the correct standard, but did agree with the overall recommendation that the complaint be dismissed in light of the fact that the final report has been filed. Vice Chairman Rednour moved that this matter be dismissed. Member Porter seconded the motion which passed by roll call vote of 8-0. In response to a question from Member Keith, Mr. Sandvoss indicated that this is the last matter under the old statute so it would not be setting a precedent.

The General Counsel presented a complaint following public hearing in the matter of *SBE v. Committee to Elect Joe W. Lewis Jr.*, 05CD039 indicating the committee failed to file a semi-annual report. A public hearing was held and the hearing officer indicated the defenses the respondent provided were not persuasive and recommended the committee be assessed a \$4,550 fine. Mr. Sandvoss agreed with the recommendation. Member Keith moved to adopt the recommendation of

the hearing officer and General Counsel and deny the appeal and assess the fine. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *Lavelle v. LEAA/Burkett*, 02CD65; *Timoney v. Garman/ATA*, 02CD68; and *Timoney v. ATA*, 02CD69. Mr. Sandvoss reviewed the background of these complaints and past action taken by the Board. These were two organizations that were alleged to have spent large sums of money in connection with the airing of what would now be described as electioneering communication. However, at the time it was a piece that placed certain candidates for office of Attorney General and Supreme Court justice in a very favorable light. A significant amount of time has passed and a new hearing officer was assigned. Mr. Al Zimmer thanked the Board for the opportunity to work on these cases. He reviewed the activities of the matters since he took over as hearing officer. He indicated that after discovery all parties involved decided they wished to dismiss the cases and accept the record as it had developed up to that time that the record is public record. He further explained why he decided to try the cases under the old statute. Mr. Zimmer recommended that the cases be dismissed and Mr. Sandvoss agreed with the recommendation. Discussion ensued on the substitution counsel and Mr. Zimmer indicated all counsel were licensed in Illinois and that he had accepted this substitution as counsel did not seek the Board's leave. Discussion continued on the withdrawal of counsel and it was agreed in the future it should probably be brought before the Board. Member Porter moved that the hearing officer's recommendation to accept the stipulation to dismiss be granted. Vice Chairman Rednour seconded the motion which passed by roll call vote of 7-0-1 with Member McGuffage voting present. Member McGuffage felt that the parties were getting off without a sanction.

The General Counsel presented appeals of campaign disclosure fines that the hearing officer has recommended be granted. Mr. Sandvoss agreed with the recommendations of the hearing officer. Member Schneider moved to grant appeals in the matters of *SBE v. Citizens to Retain a Physician as a Coroner*, 04AG027; *SBE v. Citizens for OTHS 203 Students*, 05AE047; and *SBE v. Citizens for Moffitt*, 05JS099. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Illinois People First*, 05JS105. Mr. Sandvoss disagreed

with the hearing officer's recommendation to grant this appeal and indicated he did not feel this was an electronic filing issue. He recommended that this being a first violation the penalty be stayed and if they remain dissolved for two years following the Board order the penalty be automatically abated. Vice Chairman Rednour moved to accept the recommendation of the General Counsel. Member McGuffage 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. Mr. Sandvoss agreed with the recommendations of the hearing officer. Vice Chairman Rednour moved to accept the recommendations and deny the appeals in the matters of *SBE v. Citizens for Jack Minner, 04AG034*; *SBE v. Committee to Elect Allen W. James, 05JS023*; *SBE v. Friends of Ed Ketcham, 05AE029*; *SBE v. Citizens for Brooke Harmony, 05D113*. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a proposed settlement agreement in the matter of *Illinois Campaign for Political Reform & Dr. Kent Redfield v. Justice for All Foundation, 05CD002*. The parties involved have entered into a stipulation that would dismiss this or result in a withdrawal and dismissal of the complaint with the understanding that the voluntary disclosures that were made by the respondent would become public information. The hearing officer recommended the Board accept the settlement agreement with the added submission by the respondent of a verification signed under oath by the person that was responsible for compiling these voluntary disclosures. The parties indicated that the verification would be forthcoming and it was indicated today that the party who will be signing the affidavit is out of the country but this document should be received today or tomorrow. They requested the Board conditionally approve the settlement contingent on the affidavit being filed within 24 hours. Mr. Sandvoss concurred with the recommendation. Member Keith moved to accept the recommendation of the hearing officer and General Counsel to the extent that we accept the stipulation provided the verification is received by the close of business Wednesday, November 23rd. Member Schneider seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a request for a payment plan from the Canteen Township Democratic Organization. They propose paying \$504 today and the remaining \$1,500 be divided into

three quarterly payments. Mr. Sandvoss indicated they did acknowledge the appeal dates were exhausted but due to mitigating factors would like the fine to be reduced or eliminated. He recommended denying the reduction and accepting the payment plan. Ray Coleman was present on behalf of the committee and indicated the committee does not have much money. Member Keith moved to adopt the recommendation of the hearing officer without Mr. Coleman representing the committee unless he is a licensed attorney so that issue will not be before the Board. Mr. Coleman indicated he was not a licensed attorney. Member Porter seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented sample ballot forfeiture letters which Campaign Disclosure will be sending to 1) candidates/committees that may be subject to ballot forfeiture and 2) election authorities indicating the Board's intention regarding the candidate(s). Mr. Borgsmiller indicated he has attempted to identify potential candidates that could face ballot forfeiture. No Board action is necessary.

The General Counsel presented proposed legislation dealing with the obligation of committees in receipt of in-kind donations and what efforts they would need to do to secure the information so they can file accurate reports. Member Keith questioned a timeline for a committee to submit the written statement or it would be unenforceable. Mr. Sandvoss suggested five business days. Member Keith then moved that with that amendment to adopt the language and submit as part of the legislative packet. Vice Chairman Rednour seconded the motion. Mr. Brady had concerns with language regarding other services and when committees are deemed to be in receipt of goods. He agreed to provide suggestions to staff to tighten this language. Member Keith withdrew his motion and the matter will be continued to the December meeting.

Rupert Borgsmiller presented a listing of committees that did not file an appeal and penalties will be assessed based upon previous practices.

Member Keith moved to recess to executive session to discuss agenda items 4a.17-38 and to consider minutes from the last executive session. Vice Chairman Rednour seconded the motion which passed unanimously. Meeting recessed at 1:45 p.m. and reconvened at 2 p.m.

Upon reconvening, Member Keith moved that in the matters of *SBE v. Committee to Elect Charles Powell, Jr.*, 05CD060; *SBE v. E. St. Louis City Central Democratic Comm.*, 05CD062; *SBE v. Citizens for a Two-Party System*, 05CD065; *SBE v. The American Party*, 05CD072; *SBE v. District 21 Referendum Committee*, 05CD079; and *SBE v. Friends of Dorothy Reid*, 05CD082 be found to have been filed on justifiable grounds and proceed to public hearing. In the matters of *SBE v. Park for States Attorney*, 05CD063; *SBE v. Committee to Elect Angel Hernandez*, 05CD066; *SBE v. Committee to Re-Elect Eddy Garcia*, 05CD067; *SBE v. Vote Stone*, 05CD073; *SBE v. Citizens for Mark Henrichs*, 05CD074; *SBE v. Citizens for Theodore Thomas*, 05CD076; *SBE v. Citizens to Elect Stan Urban*, 05CD078; *SBE v. Grundy County Women's Republican Club*, 05CD080; *SBE v. Illinois Latino Leadership Council PAC*, 05CD081; and *SBE v. Committee to Elect Cynthia Cooper*, 05CD083 be found to have been filed on justifiable grounds and that no further action be taken by the board and any internal action will be taken by staff as may be appropriate; and in the matters of *SBE v. Citizens for Robert A. "Bob" Lutz*, 05CD064; *SBE v. Committee to Retain Justice Hopkins*, 05CD068; *SBE v. Committee to Elect Robert B. Donaldson*, 05CD070; *SBE v. Bellwood Pride Party*, 05CD085; *SBE v. Citizens to Elect Alex Bojovic*, 05CD086; *SBE v. Friends of Kimberli Laasch*, 05CD087 be found to have been filed on justifiable grounds and that orders be entered into and a violation of filing electronically within the next two years will result in a civil penalty under the statute as made and provided. Member Schneider seconded the motion which passed by roll call vote of 8-0.

Before proceeding to the next agenda item, The General Counsel asked the Board to consider granting the division of Campaign Disclosure staff the authority to withdraw complaints on their own if the respondent committee filed the required report prior to the public hearing taking place. Staff would then assess the monetary penalty. The Board asked staff to present something at the December meeting for consideration.

The General Counsel discussed a bill the legislature passed that allows for public review of the centralized statewide voter registration list in the Springfield office and requires the Board to adopt measures regulating public viewing. Staff has prepared proposed language for such policy. In response to a question from Member Keith, Mr. Sandvoss did not think there was anything that would

prohibit us from requesting a copy be made of a photo ID. Member Keith was also concerned with someone bringing in a cell phone camera and taking pictures of the information which is prohibited. Mr. Sandvoss felt that could be addressed in our security procedures and indicated it would be reviewed. The General Counsel presented for Board consideration a proposed rule concerning appearances before the Board by non-Illinois attorneys. Steve Sturm prepared proposed revisions to Section 125.60b that would allow non-Illinois attorneys to apply to the Illinois Supreme Court to practice before the Board. Member Porter suggested eliminating the reference to "Supreme Court Rule 707." Discussion continued and it was agreed that written confirmation from the Clerk of the Court would be sufficient notification. Member Keith moved to adopt and authorize the rules subject to approval of a subcommittee of Members Porter and Schneider. Member McGuffage seconded the motion which passed unanimously.

Director White referred to today's discussion on the policy of the statewide voter registration list with the two revisions suggested by Member Keith and indicated staff would like to have this policy in effect beginning in December for filing. Member Keith moved to adopt the policy subject to the changes. Vice Chairman Rednour seconded the motion which passed unanimously.

The General Counsel discussed an amendment to Part 125 of the rules and suggested language changes that would give the Board discretion on whether to hold public hearings. Mr. Sandvoss discussed the proposed changes and indicated it would streamline the rulemaking process. Member Keith moved to proceed with these changes. Vice Chairman Rednour seconded the motion which passed unanimously.

Member Keith returned to the ballot forfeiture discussion and indicated it appears the parties will be given a date of January 19 to resolve their problems or forfeit. Discussion ensued on whether anything special needs to be done with making sure hearings are resolved before the December 20 meeting. Mr. Borgsmiller indicated that Board orders will be prepared in advance of the December 20 meeting and will be postmarked that day. It was agreed to hold campaign disclosure matters at the beginning of the December 20 meeting.

Chairman Smart commented on the quick responses received from legal staff these days. He

also welcomed Members Brady and Walters and thanked Member Keith for representing the Board at the retirement dinner.

The next regular meeting of the State Board of Elections will be held on Tuesday, December 20, 2005 at 10:30 a.m. in Chicago.

With there being no further discussion, Member McGuffage moved to adjourn. Member Walters seconded the motion which passed by roll call vote of 8-0. The meeting adjourned at 2:30 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director