

State Board of Elections Board Meeting
Monday, December 1, 2006
10:30 a.m.

MINUTES

PRESENT: Jesse R. Smart, Chairman
Wanda L. Rednour, Vice Chair
Patrick A. Brady, Member
John R. Keith, Member
William M. McGuffage, Member
Albert S. Porter, Member
Bryan A. Schneider, Member

ABSENT: Robert J. Walters, Member

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

The regular monthly meeting of the State Board of Elections was called to order shortly after 10:30 a.m. with 5 members present. Mr. Porter held Mr. McGuffage's proxy until his arrival at 10:40 a.m.; Chairman Smart held Mr. Brady's proxy until his arrival at 10:41 a.m. and held Mr. Walters' proxy.

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

Executive Director White stated that the Board was meeting on December 1st to satisfy the statutory requirement to proclaim the results of the November 7, 2006 General Election and that normally there is an additional week to complete this task. He indicated that results were slow to arrive and as of Tuesday one third of the jurisdictions were missing. But, that he was very pleased to report that through dedication and hard work by our staff we were able to get results from all jurisdictions. Director White recognized Director of Elections Mark Mossman and his staff for an outstanding effort. Mr. White said that although registered voters exceed 7.3 million, the General Elections' turnout was a record low. He also announced that Illinois has a new established political party, the Green Party.

The Director introduced Election Information Director Mark Mossman and asked for his comments. Mr. Mossman thanked all of the staff and Election Authorities' staff who assisted in this project. He confirmed Mr. White's statement that this will be an issue in 2008, 2012, 2014, 2016 and many other general election years thereafter. However it will not be a problem in 2010 because of the date of the election. He added that he hopes the legislature looks into other options. He explained that the canvass is a manual process, it is not computer generated and that he believes electronic transmission is the only option. He stated that his staff worked 16 hours a day and the canvass was not completed until 3 or 4 pm yesterday afternoon. Member Schneider urged Director Mossman to work with Cris Cray and Steve Sandvoss to implement legislation. Mr. Mossman acknowledged that the simplest solution would be to move the date the judges take office. Mr. Keith stated for the record that he was recusing himself from consideration of the elections for Representative for the 97th Legislative District and Judge of the 7th Judicial Circuit in Macoupin County. Mr. Porter moved to accept and certify the results of the November 7, 2006 General Election and certify the canvass. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0. Mr. Keith voted Aye subject to his recusal in two places.

The Chairman presented the minutes of the November 13, 2006 regular meeting. Vice Chairman Rednour moved to approve the minutes of the November 13, 2006 regular meeting. Mr. McGuffage seconded the motion which passed unanimously.

Executive Director White was pleased to present staff awards to staff. Mark Greben, Assistant General Counsel was awarded a 15 year plaque, and Dee Cloonan, Election Specialist II in the Campaign Disclosure Department, received a crystal box commemorating 30 years with the Board. Mr. White noted that the award to Mrs. Cloonan was bittersweet as she was retiring at the end of the year. Mrs. Cloonan thanked the Board and asked that Yvonne Smith, retired Assistant to the Director, be remembered in everyone's thoughts and prayers as she had passed away the previous week.

Mr. White invited representatives of Cook and Kane Counties and the Chicago Board of Election Commissioners to review vote tabulating issues that occurred at the November 7th General Election as well as voting system vendors for their comments and remedies. Mr. Clem Balanoff, Executive Director of Cook County Elections began by introducing Jan Kralovec, Assistant Director of Elections and thanking Dianne Felts for her diligence and attention in getting ready for this election. He noted that early voting went very well and 98% of the 32,000 who voted early reported a good experience. Mr. Balanoff acknowledged that more pens were needed and that cards were sticking but that there were far fewer problems than the General Primary experienced. However, results fell short of what they had hoped for and what was expected. He also said a panel was implemented to review the General Election and offer a review and suggestions. The Board questioned the lack of payment to the vendor and if HAVA money was involved in the hold back. Mrs. Becky Glazier, Assistant to the Director, affirmed that Cook County is not holding any HAVA grant money. Mr. Balanoff said that the vendors had been paid \$19 million but \$11 million was held back. Ms. Kralovec stated that the election review panel would have its results before the end of the month. The panel will address wireless transmission, the county's fire wall and software problems among other things. Other matters discussed were the discrepancies between the way Chicago and Cook tabulating absentee ballots; how early voting sites are selected; testing of the election judges; early and absentee voters compilations; land line versus wireless transmission; exit polling and HAVA grants.

The Chairman indicated that a letter from Commissioner Liz Gorman had been submitted regarding ballot integrity and the November 7th Election and Commissioner Maureen Murphy asked to address the board and comment on Mr. Balanoff's report. Ms. Murphy introduced herself as the outgoing commissioner on the Board of Review and was present in her capacity as Ballot Integrity Chairman for the Cook County GOP. She disagreed with Mr. Balanoff's report and cited problems that were reported to her. Ms. Murphy said that Commissioner Beavers was calling for an investigation and that a bi-partisan commission is necessary in Cook County. She objected that they did not get notice that on November 2nd the machines were taken to a warehouse and further that she wanted proof that the votes for governor were correctly cast and counted. Commissioner Gorman's letter stated that lack of training, lack of pens, break down of the machines; and lack of getting vote lists transferred from the precinct. The Chairman invited Commissioner Murphy and Cook County's Director of Elections, Clem Balanoff, to attend the February, 2007 meeting and offered Mr. Balanoff time to answer Ms. Murphy. Mr. Balanoff said he welcomes the opportunity to respond and that he would attend the February meeting in Chicago. He stated that checks are performed on the systems and canvasses to make sure that the tape and tabulating system match, and the touch screens they have do not operate if there is no paper or if they run out of paper. Member McGuffage stated that he would like to see former State Board of Elections member, Phil O'Connor, appointed to the panel investigating the general election.

Mr. Lance Gough, Executive Director of the Chicago Board of Election Commissioners was asked for his comments and questioned by the board. Mr. Gough attributed quick transmission between the receiving stations and the central computer to the installation of T1 lines to ensure the most accurate transmittal of the data from their receiving stations to the central computer. He noted that Sequoia will be paid when 54 points have been corrected and resolved and rated the election as "good". Chicago mailed approximately 28,000 absentee and approximately 24,000 early votes. He indicated that early voting locations will be doubled for the February Mayoral election and every ward will be an early voting site. The Chairman asked Mr. Gough if he had any responses to Commissioner Murphy's comments. He replied that all absentee ballot requests were fulfilled and they worked very hard with the military to ensure servicemen ballots were counted and every ballot received was counted. Further that no one was denied the right to vote. Mr. Gough acknowledged there were problems, but it was a fair and accurate election and there will be changes for the February election. Another matter noted was that both parties were invited to observe tabulation of the early and absentee votes and were given calendars of events.

Kane County Clerk Jack Cunningham reported that early voting went exceptionally well. He complimented both Chicago and Cook boards on their integrity and the challenges they encountered. He noted that security was enhanced by investing in a larger satellite unit and he complimented the excellent job done by Director Dianne Felts. Problems accessing polling places in buildings, schools, etc., where janitors were not present and election judges not showing up resulted in 44 precincts opening late. All but 14 opened within 25 minutes, but to correct the problem a judge rules that all precincts could be opened until 8:30 p.m. Another problem was that cell phone numbers were not accurately notated. Mr. Cunningham assured the board that all problems and resolutions will be addressed and asked the Board's assistance in advertising early voting for future elections.

The Chairman recognized Mr. Ed Smith from Sequoia. He had no idea why transmission through HAAT was over 90% in the morning and only 56% at night, but they are investigating diligently. To correct the problem they are looking at network carriers, firewall infrastructures, etc., and that they will share all results with Director Felts.

Member McGuffage introduced a gentleman who so impressed him with a presentation he gave at the Chicago Bar Association meeting that he invited him to the December meeting. He continued that Mr. David Robin is an attorney, an actuary and software developer who has done extensive research on voting systems and voting outcomes and thanked him for staying through the lengthy reports that preceded him. Mr. Robin presented a report by the Brennan Center Task force on voting system security. The study was limited to statewide elections, the ability to swing a large election, and large scale attacks. The study included non-technology threats to election integrity and focused on paperless DRE with voter verified paper train and the precinct count optical scan. They concluded that the most serious attacks would be insertion of corrupt software, attacks on centralized accounting service, miscalibration of machines, and denial of service. Mr. Robin noted that Illinois is ahead of other states by having a routine audit and paper trail. He offered 6 main recommendations: automatic routine audits; parallel testing; ban on wireless components; transparent and verifiable random testing; decentralized programming; and having procedures in place if there is a possibility of fraud or error. Further, forensic examination of anomalies, *i.e.*, how many ballots were cancelled...spoiled...are there patterns that require more investigation? Finally he suggested a 10 percent in-precinct sample count, in every precinct on election night.

Director White supplied the legislative update in Ms. Cris Cray's absence. The review included a list of legislative concepts for the Board's review and he noted that comments and amendments will be on the January agenda for a vote. Mr. White reported that a supplemental appropriation was passed out of the Senate and not yet acted upon in the House which addresses the attorney's fees in the *King* case and that the recommendations of the Merit Compensation Review Board included increases for a number of state officers including the Board.

The revised Help America Vote Act Grant Agreement will be considered at the January monthly meeting.

Chairman Smart noted that Item 3(a)2 is being delayed until the February meeting as a representative from the Chicago Southland Chamber of Commerce was unable to attend the meeting.

General Counsel Sandvoss began his report with items 1 and 3 under subcategory A. He noted that these motions for reconsideration filed by the Village Improvement Party, 06JS040 and Committee to Elect Linda Shelton, 06DS112 went more to merits of the original defense as opposed to raising new issues. Mr. Smart noted that Treasurer Terry Carr was present for the Village Improvement Party. Mr. Carr argued the issues in the initial appeal. Mr. Sandvoss noted that no new defense had been offered and he recommended the motion be denied. Mr. Keith moved to deny the motion to reconsider and concurred with the general counsel's statements, except that new evidence should not be considered in a motion to reconsider. Vice Chairman Rednour seconded the motion which passed unanimously.

The Chairman asked if anyone was present on behalf of the Committee to Elect Linda Shelton. Mr. Sandvoss noted no one appeared and recommended that the motion be denied. He noted for the record that no additional information had been provided, Ms. Shelton knew the motion would be heard today; and a request for continuance was not received. The General Counsel recommended the motion be denied. Mr. Keith asked if Ms. Shelton received the information she requested. Mr. Sandvoss responded that the original tape was not available so a new hearing had been given and she received a copy of the hearing officer's notes and recommendation. Mr. Porter moved to deny the motion to reconsider. Mr. Keith seconded the motion which passed unanimously.

Chairman Smart called items 4 through 12. Member Keith asked that item 8 be pulled and moved that the appeals be granted on items 4, 5, 6, 7, 9, 10, 11 and 12, assuming the general counsel concurred with the recommendation. Mr. Sandvoss affirmed his concurrence and Mr. Schneider seconded the motion which passed 8-0. Appeals were granted in *SBE v. Citizens for Karen McConnaughay*, L3899, 06AP034; *SBE v. Friends of Moraine Valley*, L13235, 06AP070; *SBE v. Citizens for Carl Hansen Campaign Fund*, S1775, 06AP047; *SBE v. Friends of Bob Flider*, S8431, 06AP067; *SBE v. Committee to Elect James Michael McGing Judge*, L8601, 06AP080; *SBE v. Dan Kotowski for State Senate*, S89878, 06AP066; *SBE v. Citizens for Oscar Torres*, S8947, 06AP060; and *SBE v. Citizens to Elect Judge Ed Prochaska*, S8969, 06AP084.

Mr. Keith explained his reason to have *SBE v. Friends for Renee Kosel*, S6838, 06AP053 pulled was that financing the campaign by using a credit card creates a loan from the candidate to the committee which is a debt that was not reported. After reconsideration, the General Counsel agreed that the appeal should be denied. Member Keith moved that the appeal be denied and Vice Chairman Rednour seconded the motion which passed 7-1 with Member Schneider voting no.

Member Keith moved to deny the appeals in *SBE v. Citizens for Theodore Thomas*, L11481, 06MA021; *SBE v. Citizens for Lawrence Oliver for Lake County Sheriff*, L13217, 06JS125; *SBE v. North Suburban Teachers Union COPE*, S2175, 06JS072; and *SBE v. DuPage Young Republicans*, S4900, 06MA018. Vice Chairman Rednour seconded the motion which carried unanimously.

The Chairman returned to Item 13, *SBE v. Citizens to Re-Elect Robert Toletino*, L9389, 06JS121. Mr. Keith questioned the first time exception that has been given for electronic filing issues. Mr. Sandvoss explained that the committee was advised on August 10th that the electronic transmission had not been received and the committee did not file their report until September 21st – 28 days late resulting in a \$700 civil penalty assessment. He stated that would be his recommendation. Mr. Keith moved to adopt the recommendation of the general counsel. Mr. Brady seconded the motion which passed 8-0.

The Chairman noted Ms. Valencia E. Ross was present in matter #15, *SBE v. Citizens for Ross* L12353, 06JS037. Ms. Ross explained that she filed at the appropriate time, however she filed the incorrect form. The General Counsel noted that good intentions were sufficient to justify rescinding the penalty and there was an obvious effort to file, she just filed the wrong document. He recommended granting the appeal. Mr. McGuffage moved to grant the appeal and Vice Chairman Rednour seconded the motion. The motion carried 6-2 with Members Keith and Schneider voting no.

Chairman Smart called Mr. Ellis who was present in the matter of *SBE v. Illinois Cable PAC (Comcast Cable)*, S3482, 06AP050. Mr. Ellis introduced Jason Narancich, Director of Member Services at Illinois Cable Political Action Committee. Mr. Ellis took issue with a citation from the statute which sites that the treasurer is responsible for the filings. He submitted that that is not a basis to enforce this penalty and does not support enforcement of the penalty. He reasoned that Joan Etten is the treasurer and she can delegate responsibilities. He noted that Mr. Narancich would be taking over filing duties and asked that the appeal be granted and reconsider the penalty. Member McGuffage noted that previously Member Schneider pointed out that 10% is the minimum that can be assessed and given the facts of this situation that minimum must be assessed. Mr. Schneider nodded in agreement. Mr. Keith agreed with Mr. McGuffage that a recognizable defense was not offered. The General Counsel concurred with the recommendation of the hearing officer. Mr. Keith moved to deny the appeal and impose the fine of 10%. Member Porter seconded the motion. The motion carried 7-1 with Mr. Brady abstaining.

The Chairman noted the appearance request of Sharon Eiseman and asked her to address the board on the matter of *SBE v. Wilpower*, S7378, 06JS085. She explained that she was present at the direction of her board to request an offer of settlement and offered \$300 to satisfy the penalty. Mr. McGuffage moved to accept the settlement offer and Vice Chairman Rednour seconded the motion. Ms. Eiseman added that she would pay the penalty at the Board's office on Monday, December 4, and the motion would reflect her comment. Further that the \$300 would include the \$50 previous penalty. The motion failed by 4-4 vote with Members Brady, Keith, Porter and Schneider voting no. After further discussion Ms. Eiseman offered a \$600 settlement. Mr. Porter moved to accept the \$600 offer and Mr. McGuffage seconded the motion which passed 5-3 with Members Brady, Keith and Schneider voting no.

Payments of civil penalties were presented for the Board's information.

The General Counsel submitted the proposed rule regarding the Open Meetings Act to the Board and mentioned that in paragraph 2 the statute requires notice be given to the recording secretary of the meeting. Mr. Keith moved to adopt the rule as presented by Mr. Sandvoss, amending Paragraph 2 so the notice is only to the recording secretary and, in conjunction therewith, amend the policy manual and name the Executive Director the *ex-officio* recording secretary of each meeting and he is the only person who needs to be noticed. Mr. Brady seconded the motion which passed unanimously.

Mr. Keith moved to recess to Executive Session for purposes of approval of the minutes. Mr. McGuffage seconded the motion which passed unanimously. The Board recessed into Executive Session at 3:06 p.m. and reconvened at 3:10 p.m.

Mr. Keith moved to adjourn and Chairman Smart noted that a motion to adjourn was seconded by the Vice Chairman that the board adjourns until January 16, 2007 at 10:30 a.m. in Springfield or before then at the call of the chair. The December 1 meeting of the State Board of Elections adjourned at 3:12 p.m.

DATED: December 22, 2006

Respectfully submitted,

Darlene Gervase, Administrative Specialist II

Daniel W. White, Executive Director

