

STATE BOARD OF ELECTIONS BOARD MEETING

Friday, December 5, 2008

MINUTES

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

VIA TELEPHONE: Robert J. Walters, Member

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

Chairman Porter called the meeting to order shortly after 10:38 a.m. and led everyone in the pledge of allegiance. Member Walters arrived at 11:00 a.m. and Member Smart held his proxy until that time.

The Chairman stated that several people were present regarding the General Counsel's Report and he intended to move to that area to accommodate those people.

Item 2.a.14, *Pfeifer v. Venturi v. Friends of Terry Link*, 08CD040, a closed hearing carried over from November, was the first matter called. John Fogarty, attorney for the complainant and Courtney Nottage, on behalf of the respondent agreed to waive hearing the matter in Executive Session. General Counsel Steve Sandvoss summarized the allegations and responses of the parties. He indicated that the hearing officer found that both Count I and Count II of the complaint were not filed on justifiable grounds. Mr. Sandvoss concurred with the recommendation of the Hearing Examiner. After discussion, Vice Chairman Schneider moved to adopt the Hearing Officer and General Counsel's recommendations and find that Count II was not filed on justifiable grounds and no further action be taken. Member McGuffage seconded the motion which passed 5-3. For reasons articulated by counsel for the complainants, Members Brady, Smart and Walters voted no. As to Count I of the complaint, Vice Chairman Schneider moved to overrule the Hearing Officer and General Counsel's recommendations and find that the complaint was filed on justifiable grounds and Member Smart seconded the motion. The motion failed with a 4-4 vote. For the reasons articulated by the counsel for the complainant, Vice Chairman Schneider voted yes. Member McGuffage moved to accept the recommendations of the Hearing Officer and General Counsel and find that Count I was not filed on justifiable grounds. Member Rednour seconded the motion which failed 4-4. For reasons stated by counsel for the complainant, Members Brady, Smart, Walters, and Vice Chairman Schneider voted no and Member McGuffage stated for reasons articulated by counsel for the respondent, he voted aye. In response to a question from the Chairman, the General Counsel explained that the vote being 4-4, the motion to accept the recommendations of the Hearing Officer and General Counsel, failed. Also, that the previous motion to reject the recommendations of the Hearing Officers and General Counsel had also failed 4-4 and that by operation of Section 9-21, Count 1 is dismissed.

The Chairman called Item 2.a.13, *Stern v. Colgan and the New Wheaton Central Foundation/New Wheaton Central Foundation Brochure*, 08CD038. Complainant Mark O. Stern, an attorney appeared *pro se*, and Paul Colgan, Chairman of the Respondent Committee and attorney Robert S. Graettingen were present for the respondent. Both sides waived hearing in executive session. The General Counsel summarized the activities of the committee and indicated that the hearing officer found that the complaint was not filed on justifiable grounds. Mr. Sandvoss concurred. Parties offered their perspectives on the case and discussion ensued among the Board. After discussion, Mr. Sandvoss amended his

State Board of Elections Minutes

December 5, 2008

Page #2

recommendation to the extent that the first \$5,000 of this amount would not need to be disclosed; that the matter be found filed on justifiable grounds and that a public hearing is not necessary. Member Smart moved to adopt the recommendation of the General Counsel and Member Walters seconded the motion which passed 8-0.

The Chairman called *SBE v. Citizens to Elect Eddie Washington*, 08AP052, a Motion for Reconsideration and noted that Mike Kasper was present on behalf of the respondent. Mr. Kasper presented an affidavit from the committee's treasurer indicating she did mail an appeal request and asked that the matter be remanded to the staff so they may present their case. The General Counsel recommended the Motion be granted and the matter remanded to staff. Vice Chairman Schneider so moved and Member Smart seconded the motion which passed unanimously.

Chairman Porter called *SBE v. Citizens for Judy Fiske*, L12438, 08JS056. Mr. Sandvoss indicated that the hearing officer recommended the appeal be granted and he disagreed. The Board held the matter over so the parties could appear. Attorney Scott Spears, who was recently retained by the committee, appeared for the Respondent. He said that the committee had a problem with the electronic filing and that it was the 2nd late filing in a year. Mr. Sandvoss recommended the appeal be denied as the attempt to file happened after the deadline passed and it was 5 business days late before SBE staff was contacted. Member Keith moved to deny the appeal and adopt the general counsel's recommendation. Member Brady seconded the motion which failed 2-5-1 with Members McGuffage, Rednour, Smart, Vice Chairman Schneider and Chairman Porter voting no and Member Walters passed. Vice Chairman Schneider was persuaded that the committee had legitimate confusion with the filing and moved to adopt the recommendation of the hearing officer and grant the appeal. Member Rednour seconded the motion which passed 6-2 with Members Brady and Keith voting no.

The Board returned to the Report of the Executive Director and Mr. White began with the presentation of service awards to Jim Withers, 20 years; Darlene Gervase, 25 years; and Tom Cloonan, 30 years.

Mr. White asked Dianne Felts to comment on the Premier modification voting system certification. She indicated that the modification was minor, but necessary for security. Further, that the new certificates would have an expiration date of 2013 and VOSS recommends approval of the certificate updates. Member Smart moved and Member Keith seconded a motion to approve the certification. The motion passed unanimously by roll call vote.

The Director explained that Public Law 94-171 requires the U.S. Census Bureau to provide state legislators with census population data for legislative redistricting. Illinois volunteered to participate in Phase 2, which includes providing district plans, codes and other technical data to the Census Bureau. This information is very technical and the SBE doesn't have the resources or expertise to tackle the program and very few contractors are available. After meeting with the 4 legislative leaders, all agreed to contract with Mr. Kimball W. Brace of Manassas, VA, an outside technical expert. A \$350,000 appropriation was approved and is in the current FY09 budget. Member Smart moved to approve the sole source contract with Mr. Brace. Member Keith seconded the motion which passed unanimously.

Director White indicated that Chief Fiscal Officer, Mike Roate, and Administrative Services Director, Jim Withers, were present to answer questions about the FY10 appropriation request. He thanked all the staff for their assistance in preparing their budgets and noted that the FY10 appropriations request was to be submitted early. Mr. White added that the appropriations request is responsive and responsible and is increased by only 1% from 2009. Mr. Roate confirmed that he was contacted in early November that the Budget was sought in 2 weeks. Mr. Keith asked if the federal government had reimbursed our agency for FY04, FY05, FY06 and FY07. The response was no, but when it arrives it will be returned to the General Fund. Also discussed were additional IT staff, Tech Center, IDIS and Ethics were discussed. Discussion was had by the Board and Member Smart moved to approve the FY10 appropriation request. Vice Chairman Schneider seconded the motion which passed unanimously.

State Board of Elections Minutes

December 5, 2008

Page #3

Mr. White concluded his report with informational fiscal status reports and a two year plan.

General Counsel Sandvoss continued his report with a Motion to Reconsider in the matter of Item 2.a.2, *SBE v. Friends of Laura Bertucci Smith*, 08AP053. Mr. Sandvoss indicated that the motion did not address the merits as to why the penalty should not be paid and recommended the motion be denied. He added that 30 days have expired to appeal and they did not do so, therefore the Board no longer has jurisdiction over this matter. Member Smart moved to deny the Motion. Member Keith seconded the motion which passed 8-0 by roll call vote.

Mr. Sandvoss presented four new appeals of campaign disclosure fines and said the Hearing Officers recommended the appeals be granted. He concurred with the recommendation. Member Smart moved to grant the appeals and Member Rednour seconded the motion, which passed unanimously. Appeals were granted for: *SBE v. Nicole Villani for State's Attorney*, L14509, 08AP036; *SBE v. Committee to Elect Andy Goitia*, L14527, 08AP037; *SBE v. Committee to Elect Mary Sue Ruot for Circuit Clerk*, L14646, 08D112; and *SBE v. Friends of Krenz*, S9545, 08AP075.

New appeals of campaign disclosure fines wherein the Hearing Officers recommended the appeal be denied were presented. Mr. Sandvoss concurred with the Hearing Officers' recommendations. Members Smart moved to deny the appeals. Member Rednour seconded the motion which passed 8-0 by roll call vote. Appeals were denied for: *SBE v. Carlisle for Council*, L13921, 08JS227; *SBE v. Build the Future 203*, L14494, 08AP035; and *SBE v. Vermillion County Democratic Party*, S1100, 08JS122.

Mr. Sandvoss submitted a list of payments of civil penalties for the Board's information.

The General Counsel introduced *SBE v. Citizens for David Webb*, 08CD007, a complaint following public hearing. The General Counsel agreed with the recommendation of the Hearing officer. Member Smart moved to issue an order that the respondent file the semiannual reports for June, 2007 and December, 2007 within 30 days of the date of the order and failure to do so will result in a civil penalty not to exceed \$5,000. Vice Chairman Schneider seconded the motion which passed unanimously by roll call vote.

Items 2.a. 15 through 34 were continued to the executive session.

Chairman Porter suggested rewording action to be taken on items 15 through 34 for the future.

Consideration of the Attorney General opinion regarding Debt Collection Procedures was discussed. Member Smart moved to authorize staff to refer unpaid debts to the Debt Collection Bureau. Member Rednour seconded the motion which passed unanimously.

Mr. Sandvoss presented a proposed emergency rule regarding the new ethics legislation called "pay to play" which becomes effective January 1, 2009. Lengthy discussion ensued among the board regarding timelines; lack of funding; public interest; extent businesses must list affiliates; timely hearings to accept written and oral comments; in-house programming or utilizing other state programs, Facebook or, Google; initial paper compliance and storage of the documents, or submission on a disc, etc. Vice Chairman Schneider moved to: 1) instruct staff to seek an immediate opinion from the Attorney General concerning use of a temporary paper based system in substantial compliance pending funding and the development of a complete solution; 2) Investigate and study electronic solutions including discs, electronic data bases, accessing state bases; and paper solutions and report back to the Board one week from today;

State Board of Elections Minutes

December 5, 2008

Page #4

3) instruct legal counsel to identify the final date for Board action with respect to promulgation of rulemaking to be effective January 1, 2009 and report back to the Board in one week; 4) Staff directed to convene a public hearing pursuant to the Open Meetings Act if 3 or more Board Members want to attend and structure said hearing before next board meeting; 5) Legislative Director to continue her efforts to develop a strategy to facilitate the most efficient and workable solution and work with other interested parties to develop said strategy; and 6) Special Board meeting set for Friday, December 12th, in both Chicago and Springfield via videoconference, at 2:00 p.m. Member Smart seconded the motion which passed 8-0 by roll call vote.

Vice Chairman Schneider moved to recess to Executive Session for the purposes of complaints following closed hearing, personnel and imminent and pending litigation. Member Smart seconded the motion and the motion passed by 8 voices in unison. The Board recessed at 1:53 p.m.

The Board returned to open session at 3:15 p.m., with seven members present. Member Smart held Member Walters proxy.

Member Keith moved to adopt the recommendations of the Hearing Officer and General Counsel as to matters 15 through 27 on the General Counsel's report, that the matters were filed on justifiable grounds and no further action is necessary except to return to staff for administrative review and processing of penalties. Vice Chairman Schneider seconded the motion which passed unanimously by 8 voices in unison. The cases are: *SBE v. Coalition for Quality Vocational Education*, 08CD044; *SBE v. Friends for Tommy Brewer*, 08CD045; *SBE v. Citizens to Elect Robert Bank*, 08CD049; *SBE v. Citizens for Mary Margaret Maule*, 08CD054; *SBE v. Citizens for Cass School District 63*, 08CD055; *SBE v. Citizens for Felicia Simmons Stovall*, 08CD056; *SBE v. Harwood Heights Resident Awareness Group*, 08CD061; *SBE v. Committee to Elect Germain Castellanos*, 08CD062; *SBE v. Committee to Re-Elect Mike Slape*, 08CD063; *SBE v. Acorn PAC*, 08CD065; *SBE v. Citizens for April Troope*, 08CD066; *SBE v. Illinois New Party Political Committee*, 08CD067; and *SBE v. Taxpayers United for Fairness*, 08CD078.

As to complaints 28 through 34, Member Keith moved to order them to public hearing. Public Hearings will be held in *SBE v. 16th Ward Democratic Org.*, 08CD46; *SBE v. Citizens for Gaughan*, 08CD047; *SBE v. Friends of David Askew*, 08CD053; *SBE v. Friends of Mickie Polk*, 08CD057; *SBE v. Citizens United for Chagne in the 20th Ward*, 08CD060; *SBE v. Citizens for Mike Psak*, 08CD070; and *SBE v. 25th Ward Democratic Political Alliance*, 08CD076. Vice Chairman Schneider seconded the motion which passed unanimously.

Member Keith moved to direct the Executive Director to take those personnel actions as adopted in Executive Session. The Vice Chairman seconded the motion which passed by 8 ayes in unison.

Member Keith moved to direct the General Counsel to address imminent litigation as directed in Executive Session. The motion was seconded by Vice Chairman Schneider and passed unanimously.

There being no further business before the Board, Member Keith moved to adjourn until 2:00 p.m., Friday, December 12, 2008 subject to a public meeting that may be potentially scheduled in accordance with the Open Meetings Act intervening

State Board of Elections Minutes

December 5, 2008

Page #5

between now and then or otherwise as to the call of the Chair. The Vice Chairman seconded the motion, which passed by 8 yeas in unison.

The meeting adjourned at 3:20 p.m.

Dated: December 12, 2008

Respectfully Submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Assistant II