

**STATE BOARD OF ELECTIONS
Board Meeting
Tuesday, December 16, 2003
Chicago, Illinois**

MINUTES

PRESENT:

John R. Keith ,Chairman
Jesse Smart, Vice Chairman
William McGuffage, Member
David E. Murray, Member
Philip O'Connor, Member
Albert Porter, Member
Wanda L. Rednour, Member
Elaine Roupas, Member

ALSO PRESENT:

Dan White, Executive Director
Colleen Burke, General Counsel
Rebecca Glazier, Assistant to Executive Director

The regular monthly meeting of the State Board of Elections was called to order at 10:05 a.m. with six members present for roll call. Vice Chairman Smart was ill and Member O'Connor held his proxy. Member McGuffage was delayed and Member Porter held his proxy.

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

Chairman Keith presented the minutes of the November 17 regular monthly Board meeting with a minor revision already made and distributed to the Board. Member Porter moved to approve the minutes as presented. Member Rednour seconded the motion which passed by roll call vote of 8-0.

The Chairman asked if any parties were present on campaign disclosure matters. Mr. Ray Diaz was present in the matter of *SBE v. Amigos/Friends for Ray Diaz*, 03CD051. No one was present in the matter of *SBE v. 37th Ward Regular Democratic Org.*, 03CD057 or *SBE v. Orland Township Republican Org.*, 03CD058. No one was present in any of the matters following closed preliminary hearings.

The General Counsel discussed 03CD051 and noted this followed a public hearing. The hearing officer had recommended that the complaint be found filed on justifiable grounds and because the committee had not responded to communications regarding a closed preliminary hearing or the public hearing the committee be ordered to appear before the Board at today's meeting. Mr. Diaz was present and apologized for not filing his report in a timely manner and noted this was his first time as a candidate and he has made certain this would not happen again. He then gave his

completed reports to Tony Morgando. Ms. Burke reviewed the fine procedure noting that it is at the Board's discretion but not to exceed \$5,000. Staff has recommended a fine of \$500 be assessed. It was noted that this was the first time for a violation of this committee. Mr. Borgsmiller noted that he will have to file electronically because the committee exceeded \$25,000. Member O'Connor moved to assess the mandatory fine but it be stayed pending compliance with the electronic filing of the report and it being a first time violation. Member Murray seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a status report on *Donahue v. Moreno*. Grant Farrar, attorney for Mr. Moreno was present and referred to materials distributed to the Board. Mr. Farrar noted that the committee needs to use the backup material provided by the accounting firm to file an amended report and agreed to have the reports prepared by the January meeting. Member Murray moved to require the committee to have everything filed by January 20, 2003 and that the matter be continued to the February Board meeting for final consideration of the complaint. Member Rednour seconded the motion which passed by roll call vote of 7-0-1 (Member Porter has recused himself from this case).

The General Counsel presented 03CD57 and 03CD58. Ms. Burke reviewed the committees activities as both failed to file a June 20, 2003 semi annual report. Both committees were sent notices to show cause at today's meeting as to why they should not be assessed a penalty. They have not responded or appeared at the closed preliminary hearing, public hearing and today's meeting. The hearing officer recommended a penalty of \$500 be assessed to each committee and Ms. Burke agreed with the recommendation. Member Roupas moved that in the matters of 03CD57 and 58 a penalty of \$500 be assessed each committee for failure to appear and show cause at today's hearing. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Member Roupas then moved to recess to executive session to consider certain campaign disclosure matters following closed preliminary hearing. Member Murray seconded the motion which passed unanimously. Meeting recessed at 10:45 a.m. and reconvened at 11:35 a.m. (Member McGuffage arrived at 11:10 a.m.)

Upon reconvening, Chairman Keith noted that it was determined that the matter of 03CD31 was not subject to a closed hearing and would be discussed in open session.

Member Porter moved to dismiss 03CD25 for lack of prosecution, continue the matter of 03CD61 to the February meeting with the condition that Mr. Kellogg is notified of the expenses and he must file an amended report, and 03CD44 was found filed on justifiable grounds but no further action be taken. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Member Murray then moved to accept the recommendation of the General Counsel and find that 03CD62, *SBE v. Howard Samuelson/The Earth Network*, was filed on justifiable grounds and should proceed to a public hearing. Member McGuffage seconded the motion which passed by roll call vote of 6-2 with Member O'Connor and Vice Chairman Smart (by proxy) voting in the negative.

Member Murray moved to authorize the General Counsel to select outside hearing officer for the public hearing to be held in the matter of 03CD62. Member Roupas seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Gay & Lesbian Victory Fund*, 03CD31. The committee has filed 2 ½ years of semi annual reports and the amended reports list all contributions which decreases the limitation to below 33%. The hearing officer recommends no further action be taken and the General Counsel concurred. Member Porter moved to adopt the position of the hearing officer and General Counsel. Member Rednour seconded the motion which passed by roll call vote of 8-0.

The General Counsel discussed emergency rules regarding civil penalty assessments and the proposed changes to this rule 125.425. Ms. Burke discussed the procedures for submission of the emergency rules and noted since they are emergency no public hearings need be held. Discussion ensued on the need to pursue these rules in an expedited manner to deal with the backlog of disclosure matters held in abeyance. Member O'Connor moved to adopt and submit for emergency rulemaking. Discussion continued on the revisions and Mr. Borgsmiller discussed the various sources the changes came from with some being in HB3412. He also indicated the SBE rules need to be consistent. Member Porter asked in the future to have a letter of explanation of the revisions if possible. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The General Counsel noted that although the discussion regarding the letter received from the Republican National Committee requesting to certify the nominees for President and Vice President to the State Board of Elections on September 3 was not on the agenda, proper notice was given. Ms. Burke reviewed this request and felt that a request for a formal opinion from the Attorney General would be preferable at this time. Following discussion, Member O'Connor moved to ask the Attorney General for a formal opinion on the issue of certification of the nominees for presidential and vice presidential candidates following the major party conventions. Member Murray seconded the motion which passed by roll call vote of 8-0. Ms. Burke discussed the difference between a formal and a non-formal Attorney General opinion. Discussion ensued on the binding effect of a formal opinion.

Ray Campbell was present representing the DuPage Center for Independent Living and also noted he is involved with the Illinois Council for the Blind. Mr. Campbell discussed the certification of accessible voting machines for people with disabilities and ask the Board to work hard on developing standards for certifying voting equipment.

The Executive Director reported that the candidate petition filing period concluded yesterday at 5 p.m. which 523 candidates filing. This is far less than two years ago but about the same as four years ago. There was a line for the Monday morning filing with 349 candidates filing simultaneously at 8 a.m. Everyone was processed by 9:30 a.m. and a number of compliments were received from the filers. Chairman Keith was in the Springfield office and congratulated all staff on working together and doing a great job. The Executive Director noted that the objection process begins now for the first of the three filing periods. This is the first time people requesting petitions have to pay in advance and the process seems to be going well.

The Executive Director indicated that the HAVA subcommittee (Vice Chairman Smart and Member Rednour) appointed by the Board met with SBE staff and Secretary of State staff in Springfield on December 5. Preliminary discussions took place on what is required of both the SBE and Secretary of State in regard to the Help America Vote Act. Colleen Burke will meet with the Secretary of State's attorney and draft an agreement to present to the Board. SBE technical staff will

also meet with SOS technical staff and work together on technical details of the system. Mr. White indicated he would bring this before the Board in February or March.

The Executive Director presented for discussion a legislative report prepared by Cris Cray. Ms. Cray indicated the supplemental appropriation bill did not pass, however this will be brought back in January. SB 699 is technically dead which is good news for the SBE as it can continue to meet via conference call. SB 82, the clean-up bill to SB428, became very controversial and did not pass.

Mr. White discussed HB 3412 and explained that in the fall veto session the legislature overrode the Governor's amendatory veto of HB 3412 which made the bill effective immediately. Part of this bill takes language from section 9-23 and incorporates it in a new section 9-30. This language prohibits the name of a person who has not paid a civil penalty imposed against him/her shall not appear upon any ballot for any office in any election while the penalty is unpaid. Discussion ensued on if this would be enforceable on a committee rather than an individual and on legislative intent of this language. It was suggested that staff request an opinion from the Attorney General. Questions arose on what the deadline would be for a candidate to pay a fine and avoid ballot forfeiture. After further discussion Member Murray moved to interpret this part of Section 9-30 to give it some meaning that candidate who would be responsible for that committee name would not appear on the ballot unless it is adjudicated by the Board and the fine paid, candidate not be placed on the ballot and the last day the candidate could pay the fine would be the certification date for the office the candidate is seeking. Member Porter felt more time should be taken to review this matter further before making any decisions. Discussion continued on the definition of a "person" and the language in Section 9-30. Member Murray added to his motion language that the committee "that is authorized to support that candidate." Member O'Connor seconded Member Murray's motion. Attorney John Countryman asked the Board to consider a uniform written policy as ballot access is a constitutional freedom. Member Murray also noted that his motion intends for this to not be enforced for the primary. Discussion ensued and Member Murray renewed his motion to interpret section 9-30 of the Campaign Financing Act to the effect if the candidate himself/herself or his/her primary campaign committee which has been acting with the candidate's permission owes an outstanding fine at the time of certification for

that office which he is seeking that candidate not be certified to the ballot providing that the assessing for the fine has been completed by our Board (final order). Discussion ensued and Member O'Connor indicated he thought he was seconding another motion (and thus withdrew from that motion). Chairman Keith then seconded the motion which failed by a vote of 2-6 with Members McGuffage, O'Connor, Porter, Rednour, Roupas and Vice Chairman Smart voting in the negative.

Member O'Connor moved to ask the General Counsel and staff to promptly inquire into whether there is legislative history or other information that would assist the Board in defining the meaning of this legislation. Member Murray seconded the motion which passed by roll call vote of 8-0. This matter will be placed on the January 5 conference call agenda for further discussion. Member Roupas requested a list of candidates this might affect. After further discussion Member Porter moved to ask the General Counsel to seek an opinion from the Attorney General on this legislation. Member Murray seconded the motion which passed by roll call vote of 8-0.

The Executive Director reminded the board of the legislation that requires recording of executive sessions. When the Board meets again in January tape recorders will be available if the Board recesses to executive session. The tapes have to be kept for 18 months and may then be destroyed.

The Executive Director also reported on part of the ethics legislation which deals with ex parte communication. All staff will be required to attend ethics training and we will have to appoint and ethics officer. Discussion ensued on whether this new ethics legislation is applicable to the State Board of Elections. Ms. Burke noted there are many ambiguities in this legislation and discussed the language. (Member Porter left the meeting at 1:40 p.m. and gave his proxy to Member McGuffage.) After further discussion Member O'Connor moved to request an opinion from the Attorney General as to the extent to which these provisions apply to the State Board of Elections and whether the State Board of Elections created or authorized by law and request a response prior to February 1. Member Murray seconded the motion which passed by roll call vote of 8-0.

The Executive Director presented for informational purposes a status report on assessments and the campaign disclosure satellite seminar.

The Executive Director presented for informational purposes the FY 04 fiscal status report for the period ending November 30 and the HAVA funding report. He also presented the two year plan of staff activity for the months of December and January.

Member Roupas moved to recess to executive session to discuss pending litigation and personnel matters. Member McGuffage seconded the motion which passed unanimously. Meeting recessed at 1:50 p.m. and reconvened at 2:15 p.m. (Member Roupas left during executive session and gave her proxy to Member O'Connor.)

Upon reconvening, Member Murray moved to extend Dan White's contract beyond June 30, 2004 for at least one year with the other terms of the contract to be determined. Member Rednour 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 Thursday, January 15, 2004 at 11 a.m. in Springfield.

With there being no further discussion, Member O'Connor moved to adjourn. Member Rednour seconded the motion which passed unanimously. The meeting adjourned at 2:20 p.m.

Respectfully submitted,

Rebecca L. Glazier
Assistant to Executive Director

Daniel W. White
Executive Director