

State Board of Elections Board Meeting*
Tuesday, February 22, 2005*
11:00 a.m.*

MINUTES

PRESENT:

John R. Keith, Chairman
Jesse Smart, Vice Chairman
William McGuffage, Member
David E. Murray, Member
Albert Porter, Member
Wanda L. Rednour, Member
Elaine Roupas, Member
Bryan A. Schneider

ALSO PRESENT:

Daniel W. White, Executive Director
Steve Sandvoss, General Counsel
Darlene Gervase, Assistant to the Director

The regular monthly meeting of the State Board of Elections was called to order at 11:00 a.m. with 7 members present.

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

The Chairman presented the minutes of the January 18 regular meeting and February 3 special telephonic conference meeting. Mrs. Rednour moved to approve the minutes as presented. Mrs. Roupas seconded the motion which passed by roll call vote of 8-0. (Mr. McGuffage arrived at 1:10 a.m.)

Director White reported that notice of hearing was published in the newspapers regarding the HAVA Administrative Complaint Procedure Rules, 26 Ill. Adm. Code 150, the notice indicated that oral and written comments would be accepted at today's meeting. Last November, the Board adopted the Administrative Complaint Procedure Rules on an emergency basis and that two public hearings would be held. This is the first meeting open for written and oral comment. The next public hearing is scheduled for the March 21st board meeting in Springfield. General Counsel Sandvoss affirmed that the rule is on file with JCAR. Chairman Keith asked if anyone in the audience would like to comment on the rules. No one responded to his request. Discussion ensued among the board members regarding authorized representation versus attorney representation, and the order of mediation and binding arbitration. Mr. Keith acknowledged comments from Rebecca Kraemer, Edgar County Clerk, and Equip for Equality. Mr. Sandvoss added that JCAR has provided some suggestions and that he would summarize all comments at the March regular meeting.

The Executive Director offered a brief statement regarding the Consolidated Primary Election day assignments. Although Chicago and Springfield staffs were prepared for answering calls, relatively few calls had been received. Forty-five counties are conducting primaries with precincts varying in size from 5-100 actually voting. This election usually does not have a large turnout. The only problem reported was a matter in Champaign County Mayoral Election. Also, election judge training schools and pre-election voting system testing were presented for informational purposes.

Mr. White began the Legislative Update to the Board with a synopsis of SB738 which exempts the Board from the CMS Personnel Rules and Personnel Code. The bill has been passed and is awaiting the Governor's signature. All indications given to staff ensure that the Governor will sign the bill before the April 9th deadline.

The Director acknowledged an update from Elizabeth Beckman on changes to the Open Meeting Act. The Board is already complying with requirements of the Open Meeting Act by keeping audio tapes and making sure that practice continues. Mr. White asked the Board to allow him and the General Counsel to review the executive session minutes and make a determination of anything that should be made public. Vice Chairman Smart made a motion for the Executive Director and General Counsel to meet biannually to determine if any matters discussed in executive session should become public knowledge. Mrs. Rednour seconded the motion which passed 8-0.

Campaign Disclosure legislation was presented orally to the Board. Lengthy discussion ensued among the members. Mr. McGuffage and Rupert Borgsmiller, Director of Campaign Disclosure will continue to work on the legislation and have it ready for a conference call to be determined at a later time.

Mr. Murray moved and Vice Chairman Smart seconded a motion to adjourn to Executive Session to discuss personnel matters and litigation. The motion carried unanimously and the Board recessed at 12:15 p.m.

The Board returned to open session at 12:55 p.m. with all 8 members present. Director White continued his report with an update on the Help America Vote Act (HAVA). A chart was prepared by staff detailing Section 102 – Entitlement Payments and Punch Card Reimbursements and Jurisdictions that are not yet connected to IDEA and the status of their HAVA grants. This listing indicates when we received application, when it was processed and deposited, and how much the new voting system cost. Jurisdictions were advised to err on the side of caution when considering purchasing or leasing equipment until we get guidelines from the EAC. The EAC guidelines will be ready by the end of April. These guidelines will go to the Standards Board members and all other board members and they will be reviewed and it will be adopted. At the conference they did indicate that we have standards that which the Board adopted in 2002 that are still in place. These standards are available. The chart indicates the jurisdictions who have applied for the funds and of the 10 only 13 are ineligible for the funds. Vice Chairman Smart commented that the report was good, but that he finds it distressing that some jurisdictions refused to participate in the IDEA/VISTA project as a protest. Further he stated that these jurisdictions should not receive any future funds. Director White stated that the project was completed prior to the November General Election and allowed many jurisdictions to check for duplicates and verify provisional voters. He also explained that ineligible jurisdictions already replaced their punch card systems. Chairman Keith moved that staff's discretionary authority to approve HAVA money to jurisdictions not connected by IDEA/VISTA is suspended. These jurisdictions will have to come before the board for approval of reimbursements. Mr. Murray seconded the motion which passed unanimously by roll call vote. Mr. White explained that 13 local jurisdictions have had problems because they have changed something, albeit innocently, but that change disconnected the program. Mr. Murray questioned the status of the Galesburg and ES&S' storage of information off site and Mr. White stated that ES&S will work with staff for a remedy. Mr. Porter asked why some jurisdictions were not connected and Mr. White offered to send the most up to date dist from Catalyst detailing the design, development and implementation of the IDEA connection modules with any exceptions noted to the Board members under separate cover.

The next matter presented by the Executive Director was an update of the Statewide Voter Registration Database and the development of a Request for Purchase to solicit bids from qualified vendors to assist in creating a voter registration database that complies with HAVA and state requirements. Mr. White will ask Mark Mossman, HAVA coordinator to prepare a brief report, a timetable when we will have it up and running, and to appear before the Board at its March regular meeting. Further, Mr. White stated that the RFP is time consuming and labor intensive and that we are looking to get help in the next step of database.

The Board has received the \$98 million as promised in HAVA funds to fulfill the requirements under HAVA. Most expensive is to make sure the voting systems are available to handicapped voters and to replace voting equipment. We have requirements money that is working towards compliance which is similar to distribute money for voters with disabilities. This Federal Grant form is similar to the application and monies would be disbursed from us to them. The Board requested an update as to when we will get the 5% match and asked the staff to proceed to secure that as soon as possible as we shouldn't spend the 98 until we have the 5. Vice Chairman Smart suggested using some money to purchase a computer for counties that do not have a computer system.

The Executive Director presented VIS Submission of phone numbers on voter registration applications that was carried over from the January meeting. Will County is the only other jurisdiction with holding phone numbers, but that this is slightly increasing. Dianne Felts, Director of VOSS was not sure how it happened and does not know that this is a problem with Will County and will update the board on Will County's compliance.

The annual Campaign Disclosure Downlink Seminar was conducted on February 5, 2005 and included 11 sites around the state. A few problems surfaced during the presentation, but these problems will be corrected for the next seminar. We anticipate cutting back the number of sites in the future. The workshop presentation is archived on the Campaign Disclosure home page for anyone who would like to view it. A spreadsheet was presented for informational purposes.

Director White presented a report and the agendas from the Election Assistance Commission (EAC) Standards Board meeting and the National Association of State Election Directors (NASED) meeting in Washington which he attended from February 2nd through February 7th. As a member of the Standards Board, he participated in a search for an Executive Director and expects to have a recommendation by early March. Mr. White spoke with Hans von Spakovsky of the Department of Justice and asked about the statewide voter registration system and that in Illinois legislation passed that we think may not conform with HAVA requirements. Mr. von Spakovsky stated that ultimately federal law would give guidance per the Supremacy Clause. Other matters noted were that some states were not making progress and indicated other problems and many states may not meet the deadlines to comply with the provisions. The Executive Board of the Secretary of States adopted a resolution when the EAC ceases funding and that they do not believe the EAC needs to be refunded. Further, after 5 years they should cease to exist. The Secretary of State's are fearful that the federal government would go further into state territory and that there was enough intervention in the states' issues.

Fiscal status reports for the FY05 period ending January 31 and the Help Illinois Vote Fund were presented for informational purposes.

The Executive Director's report ended with the presentation of the two-year plan of staff activity for the months of February and March.

Chairman Keith called *Sawert v. Santana*, 04CD38 and asked General Counsel Sandvoss to present the case. This matter was ready to be heard on a Rule to Show Cause as a result of an order entered on December 3, 2004 following public hearing. The hearing officer found that the respondent was a political committee and ordered to file a D-1 Statement of Organization dated March 9, 2004 and all relevant filings, which respondent has filed. Mr. Michael Lavelle, Lavelle and Motta, Ltd., appeared on behalf of Respondent Santana, who was also present at the board meeting. Mr. Lavelle asked for permission to file a Motion for Rehearing because Mr. Santana did not receive proper notice of the December 3, 2004 Board meeting possibly due to a mistake in the postal address. However Mr. Santana did receive the Board's December Order. Mr. Lavelle further cited cases to support his claim that the order was not a full and final order and that his client was denied due process and that the Board did not have the benefit of the transcript of the public hearing, nor the hearing officer present to question his findings.

Mr. Mathias Delort of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., appeared on behalf of Complainant Saewert. Mr. Saewert did not attend today's meeting. Mr. Delort stated that the Respondent was present at the hearing and admits that he received the Order of the Board. Since the Notice and Order were sent to the correct address, the Respondent should have filed for rehearing within 7 days of the notice. Discussion ensued among the board members. Mr. Murray moved and Mr. Porter seconded a Motion to grant the Motion to reconsider filed on behalf of Mr. Santana as to the December 3rd hearing. The motion passed by 6-2 vote with Mr. Schneider and Chairman Keith dissenting. Mr. Murray moved to grant the Motion for Rehearing, have the matter placed for hearing on the April docket and have all fines and assessments before that time, and to have the Transcript of the December 3rd hearing and/or the Hearing Examiner present. Mr. McGuffage seconded the motion which passed 8-0.

The Chairman called the Appeal of *SBE v. Citizens for Patricia Young*, 04AP12. Ms. Patricia Young appeared on behalf of the committee asking for reconsideration of the January 18, 2005 Order of the Board wherein the appeal was denied and the assessment was reduced by 90% of the initial assessed penalty because she felt the penalty was still too high. During her presentation, Ms. Young made an oral, informal, motion to reconsider the Order. Mr. Murray moved and Vice Chairman Smart seconded a motion to deny the motion to reconsider. The motion passed unanimously.

Mr. Keith called the Appeal of Civil Penalty Assessment in the *BSE v. Friends of Grady Humphrey*, 04AP19 matter. Mr. Grady Humphrey was present. Mr. Sandvoss reviewed the activities of the committee and agreed with the recommendation of the hearing examiner. Mr. Humphrey offered a settlement in the amount of \$250 which was accepted. Mr. Murray moved and Vice Chairman Smart seconded the motion to accept the \$250 reduced penalty and to grant the appeal. The motion carried 8-0.

The Chairman presented *SBE v. William Davis for State Representative*, 04AP41. Mr. Dan Johnson-Weinberger appeared on behalf of the Respondent committee. General Counsel Sandvoss reviewed the activities of the committee and agreed with the recommendation of the hearing examiner. Mr. Sandvoss remarked that this is the 8th filing offense relating to A-1 reports by this committee and that the civil penalty should be \$1,000 with no reduction. Mr. Johnson-Weinberger stated that Representative Davis is working with the treasurer to rectify the problems and asked for one-half assessed value. Mr. Murray moved to accept the \$500 offer proposed by the respondent and to deny the appeal. Mrs. Roupas seconded the motion. The motion failed by a vote of 4 yeas, 3 nays of Mr. Schneider, Vice Chairman Smart, and Chairman Keith; and 1 present vote of Mrs. Rednour. This matter was passed until Mrs. Rednour returned to the meeting.

The Chairman called for appearances in the consolidated appeals of *SBE v. Glenwood Preferred Party*, L3477, 04MA8 and *SBE v. United Glenwood Party*, L5297, 04MA7. Mr. Mathias Delort appeared for the respondent as well as Jeanne Maggio, Mayor of Glenwood and the person responsible for appointing the Treasurer of the committee. Mr. Sandvoss reviewed the activities of the committee and the recommendation of the hearing examiner. Mr. Delort reiterated matters that had been addressed in the report and recommendation. Mr. Murray moved and Vice Chairman Smart seconded the motion to adopt the recommendation of the hearing examiner and general counsel and to deny the appeal, but that the penalties for each of the committees be stayed. The motion carried 8-0.

Mr. Keith asked for reconsideration of the appeal of 04Ap41. Discussion ensued among the members and Mr. Murray moved to deny the appeal on the basis of the defense and to grant the \$500 reduced penalty offer. Mrs. Roupas seconded the motion which passed by a vote of 5-3 with Mr. Schneider, Vice Chairman Smart and Chairman Keith dissenting.

The Chairman asked for appearances in the *SBE v. Maine Township Regular Republican Organization*, 04GE77. Ms. Ellen A. Yearwood, Treasurer, appeared on behalf of the respondent committee. General Counsel Sandvoss reviewed the committee's activities and agreed with the recommendation of the hearing examiner. Ms. Yearwood stated that she

volunteered for the position and asked that the penalties be waived or reduced. She offered a settlement of \$50. Mr. Murray moved to deny appeal finding a violation and to reduce the fine to the \$50 offer of the Treasurer. Vice Chairman Smart seconded the motion which passed by a vote of 7 to Chairman Keith's 1 no vote.

Mr. Keith presented an appeal in the matter of *SBE v. Joseph Mario Moreno for Cicero*, 67822, 04MA4 and noted that Mr. Mathias Delort filed an appearance on behalf of the committee. Mr. Moreno also appeared at the board meeting. The Chairman asked Mr. Sandvoss to summarize the activities of the committee and the hearing officer's recommendation. Discussion was had among the board members. Mr. Murray moved and Mr. McGuffage seconded a motion to deny the appeal and accept the committee's offer of \$1,000. The motion failed by a vote of 4 yes; no votes of Mr. Schneider, Vice Chairman Smart and Chairman Keith and the abstention of Mr. Porter. Mr. Schneider moved and Vice Chairman Smart seconded the motion to adopt the General Counsel and Hearing Officers recommendations and affirm the \$4955 penalty. The motion failed by a 4-1 vote with Mr. McGuffage, Mr. Murray, Mrs. Rednour and Mrs. Roupas voting against the motion and Mr. Porter abstaining. The Chairman asked for reconsideration of the vote and called for a roll call poll in which the motion passed by a 7-1 vote with Mr. Porter abstaining.

The Chairman called the Affidavit of Explanation from the Citizens to Elect Jacqueline Y. Collins. Mr. Sandvoss explained the unusual circumstances surrounding this affidavit. Ms. Janet Sankey, a Certified Public Accountant and Treasurer for the committee spoke to the merits of her request. However, the last day to appeal the decision of the board was February 19, 2004 and the appeal was not filed until March 3, 2004. Mr. Porter moved and Mr. McGuffage seconded a motion to grant Ms. Sankey's Motion to Reconsider as the circumstances are unusual and allow the appeal to be refilled. The motion failed by a 4-4 vote with Mr. Murray, Mr. Schneider, Vice Chairman Smart and Chairman Keith dissenting. The motion failed, and the appeal is not considered.

Mr. Keith presented an appeal of a fine in *SBE v. Schaumburg Area Democrats*, 04GP121. Mr. Edward W. Oles, Treasurer of the Committee was present and addressed the board. Mr. Sandvoss reviewed the hearing officer's recommendation and the history of the committee. Mr. Murray moved and Mr. Porter seconded a motion to adopt the recommendation of the hearing officer and general counsel, to reduce the initial penalty to \$500, deny the appeal, and stay the penalty as it is a first violation. The motion carried by a 7-1 vote with Mr. Keith dissenting.

The Chairman asked for a motion to return to executive session to hear a complaint following closed preliminary hearing, 05CD1. Mrs. Roupas moved, Mr. McGuffage seconded and the motion passed unanimously. The board recessed at 4:05 p.m. and returned to public session at 4:15 p.m. with all 8 members present.

Mr. Schneider moved in accordance with action taken in executive session to accept the general counsel and hearing officer's recommendation and to find that the complaint was filed on justifiable grounds and to impose a \$5,000 civil penalty. Vice Chairman Smart seconded the motion which passed unanimously.

The Chairman called *SBE v. Citizens for Robert Hughes*, 04CD46. No one appeared on behalf of the respondent. Mr. Sandvoss recommended that the Board impose a civil penalty not to exceed \$5,000 for violation of a Board Order. Mr. Schneider moved and Vice Chairman Smart seconded a motion to adopt the General Counsel's recommendation and impose a \$500 fine and order the respondent to file the required documents. The motion passed unanimously.

Mr. Keith presented a Motion for Reconsideration by Chairman of the Scott County Democratic Central Committee because there were errors in the total. The Committee has paid \$500 and offer to pay the remaining balance in equal amounts over the next 24 months with the possibility of accelerating the schedule if possible. Mr. Murray moved and Vice Chairman Smart seconded a motion to accept the Motion to reconsider and that the records should reflect that \$1325 was the initial penalty, minus the \$500 payment and \$825 remains to be paid over a 24 month period. The motion passed 8-0.

The chairman consolidated two appeals received after deadline, *SBE v. Friends of Jeffrey Donelson*, 04JS141 and the *SBE v. Swansea New Progress Party*, 04GE16. Mr. Sandvoss recommended denial of the motion to reconsider. Discussion ensued among the board members. Vice Chairman Smart moved and Mr. McGuffage seconded a motion to Deny the motion to reconsider and assess the penalty. The motion carried 8-0.

Mr. Keith presented *SBE v. Citizens for Paul Wechet*, 04GE1; *SBE v. Friends for John "Corky" Birdoes*, 04GE33; *SBE v. Breman Township Regular Democratic Org.*, 04GE82, *SBE v. Friends for Verschoore*, 04GE90; and *SBE v. Citizens for Ed Washington*, 04GE92. Mr. Sandvoss agreed with the hearing examiner and recommended that these Appeals be granted. Mr. Murray Moved to adopt the recommendations of the General Counsel and hearing examiner and grant the appeals. Vice Chairman Smart seconded the motion which passed unanimously.

The Chairman presented *ASBE v. Citizens to Elect Eric J. Kellogg*, 04GE55 and *SBE v. Citizens to Elect Parick O'Shea*, 04GE80. General Counsel Sandvoss recommended denying the appeals. Mr. Porter moved and Mrs. Rednour seconded the motion to adopt the general counsel and hearing officer's recommendations. The motion passed unanimously by a roll call vote.

Mr. McGuffage offered a motion to publish the Campaign Finance offenders list on the internet. Mrs. Rednour seconded the motion. After further discussion Mr. McGuffage withdrew his motion and Mrs. Rednour withdrew her second. The matter will be set for the March meeting. Mr. McGuffage stated that March 10th is the last day to submit legislation and suggested March 7th for the conference call regarding the new language for the campaign disclosure rules.

The last matter on the board agenda was the proposed draft of administrative rules regarding personnel. Mr. Jim Withers and Ms. Kelley Gray were present to answer questions. Mr. Withers summarized the changes and stated that the rules will become effective the day the Governor signs the bill. He thanked Mrs. Gray for the time, research and work that she put forth with these rules. The rules were modeled after the Auditor General, Comptroller and State Senate personnel rules, all of which are constitutional agencies and not under the Governor's rule. Mr. Sandvoss stated that the Rules have been submitted to JCAR with minor changes. After lengthy discussion Mr. Murray moved and Mr. Porter seconded a motion to adopt draft #2 as the temporary rules from the time the Governor signs the bill before March 7th when the final draft will be ready. Draft #2 will be in effect upon signing of the legislation by the Governor.

The chairman announced that the next meeting of the Board will be a special teleconference call on Monday, March 7, 2005 at 12:30 p.m. Interested parties may attend in either the Springfield or Chicago offices and that the next regular meeting of the Board is March 21, 2005 at 1:00 a.m. in Springfield.

The chairman asked for a motion to adjourn. Mr. Murray moved, Mrs. Rednour seconded the motion which carried unanimously. The board adjourned at 4:50 p.m.

DATED: February 25, 2005

Respectfully submitted,

Darlene Gervase, Assistant to the Director

Daniel W. White, Executive Director

Other persons in attendance were:

Robert Saar, Charlotte Mushow and Jeanne McNamara, DuPage County Election Commission; Mary Lou Aagaard and Maria McConnell of the League of Women Voters.