

STATE BOARD OF ELECTIONS

February 23, 2011

MINUTES

PRESENT:

Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman
Patrick A. Brady, Member
John R. Keith, Member
Albert S. Porter, Member
William M. McGuffage, Member
Jesse R. Smart, Member
Robert J. Walters, Member (via videoconference)

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
Steve Sandvoss, General Counsel
Darlene Gervase, Administrative Assistant II

Chairman Schneider called the meeting to order at 12:05 p.m. and led everyone in the Pledge of Allegiance to the flag. Member Walters was present in Springfield via telephonic conference call and Member Brady arrived at 12:09.

Chairman Schneider began with approval of the minutes from the January 18 and 25 meetings and asked for approval with one correction. Member McGuffage moved and Vice Chairman Rednour seconded the motion to adopt the minutes as corrected. The motion passed unanimously by 8 ayes in unison.

Executive Director, Rupert Borgsmiller commented on the February 22nd Consolidated Primary Election and election assignments. He said there was very little activity in the Chicago office and Mark Mossman, Director of Election Information, indicated there was not much activity in Springfield as well. The Board had no questions for Mr. Mossman or General Counsel, Steve Sandvoss.

Mr. Borgsmiller summarized the pre-test in East St. Louis, which resulted in one tabulator being replaced and an issue with the Automark, however the test went very well. He added that Dianne Felts, Director of VOSS listed the tests she will be conducting for the April election. There were no questions for Ms. Felts.

The Executive Director submitted an updated listing of Judges Schools and indicated that 96 people attended the Election Judges School in E. St. Louis prior to the election.

Mr. Borgsmiller introduced Director Felts who asked for approval for the Intab pen and added that the pen tested accurately on over 1400 ballots with 58,000 marks on the Dominion's Insight 2 Plus tabulator used by Cook and Chicago. The pens also worked well with the Insight ballots; however Accu-Vote ballots with three columns on its reverse side had smear problems. Tom Causey was present via telephone for Intab and Lance Gough, Executive Director of the Chicago Board of Election Commissioners was present in the Chicago conference room. Mr. Gough responded to a question from the Board that the cost of the Intab pens was almost one-half the price of the other markers. Member Keith moved to grant 2-year interim approval of the Intab pens provided that they are not approved for use in the Accu-Vote ballots due to smear problems on ballots with three columns on its backside. Member Smart seconded the motion which passed unanimously by roll call vote.

Ms. Felts requested approval for the commercial off the shelf barcode scanner with its judge's booth controller for the Hart Intercivic, Inc. system and said that the Peoria Board of Election Commissioners requested its testing and approval. Mr. Travis Harrell, Director of Parts Management and Compliance of Hart Intercivic, Inc., was available via conference call for any questions. A test conducted for this feature on February 15th showed the scanner worked well. A motion to grant 2-year interim approval for the commercial off the shelf barcode scanner with its judge's booth controller for the Hart Intercivic system was made by Member Smart and seconded by Vice Chairman Rednour. The motion passed unanimously by roll call vote.

At the Board's request, Ms. Felts submitted a response to questions regarding certain Chicago and Cook precincts that had not been tabulated by 2:00 a.m. Ms. Felts said that Lance Gough, Executive Director of the Chicago Board of Election Commissioners was present to answer any additional questions and she had expected Noah Praetz from Cook County, but he was called away on a medical emergency. She noted that a major concern was if the audit log could be changed. A representative of Dominion said that even if someone knew what they were doing it would be almost impossible to do in the voting place, if not impossible. A question of how many clerks were involved in the error resulted in only 1 person that accidentally thought they transmitted it to 10 precincts and they had not. Jan Kralovek of Cook County submitted a document on when different precincts transmitted or failed to transmit on election night. Mr. Keith asked Ms. Felts to follow up with Cook, Chicago and the 22 other areas where elections occurred to see if any issues occurred during the Consolidated Primary Election and again to offer any help not only to Cook and Chicago but any other jurisdictions on this issue.

Mr. Borgsmiller continued with his report on the Heartland Conference, which is an international conference modeled after COGEL. He said there was a request to hold the 2011 conference in Springfield which would be no cost to the Board or state. During the conference, topics of interest including new laws are discussed and it would be cost effective for the both Springfield and Chicago staff. He invited all Board Members to attend the conference and offer any comments during the conference itself.

The Executive Director commented on the Governor's Campaign Disclosure Task Force and submitted a list of members. The members asked that we outline or list the issues regarding any concerns we see with the implementation or with the new Campaign Finance Reform law for its meeting in March. Although a date has not yet been set, Mr. Borgsmiller assured the Board that staff will be prepared with the outline and assist in any way they can.

Mr. Borgsmiller updated UOCAVA compliance of Military absentee ballots. Although not required under the consent decree for the non-federal elections, Cris Cray sent a reminder to all election authorities on the requirement to timely send out the ballots and the applicable dates; she said the reminder was appreciated by several respondents. Discussion ensued among the board and General Counsel, Steve Sandvoss, regarding the content of the template for the federal election and the Attorney General would assist the Board with compliance from the jurisdictions. Ms. Cray added that feedback from the County Clerks has been very well received because there are 29 new clerks and a new State's Attorney in St. Clair County. She added that a reminder will be timely sent to the Election Authorities before the April election. Chairman Schneider asked Mr. Sandvoss to map out a plan and revisit this matter at the April board meeting.

Continuing with the Military Ballot update, Mr. Borgsmiller commented on the federal decree investigation into why the ballots were not sent in a timely manner and asked Ms. Cray to comment on the progress. Ms. Cray attended the Clerks Conference in January and reminded everyone of the consent decree; that she would be contacting them soon; and the timeline for their response was February 28th. The Department of Justice sent a letter reminding us of the March 15th deadline and the DOJ requested a telephone conference to discuss the investigation. She anticipated no problems with the report and due date.

Legislative Director, Cristina Cray, offered her thoughts on House Bill 278 wherein constitutional candidates would have to provide their last 5 years of income tax returns or risk ballot forfeiture. Legislative staff requested the board to take a formal position on the bill. Ms. Cray cited several reasons the board does not take positions on bills, and although there is no problem with the preference of the bill, the Board of Elections may not be the correct agency. She added that this bill is very vague; several questions immediately arose; and the bill is assigned to the House Elections Committee. Member McGuffage moved to oppose House Bill 278. Member Keith said that historically the Board does not get involved in policy determinations, but is available to assist in providing comments relative to the technical requirements necessary to provide for successful implementation of proposed policy. He suggested that the Board should take no position on the policy resulting from the bill and indicate that it is unworkable in its present form. Chairman Schneider added that vagueness, lack of clarity and technical difficulties could be difficult. After discussion, Mr. McGuffage withdrew his motion and Ms. Cray was directed to speak with the sponsor and report back to the Board.

Executive Director Borgsmiller continued with military legislation and complimented Ms. Cray on her memo explaining our history with this legislation. It was indicated that the staff's involvement is specifically as clean up and ensuring the bill fits our Election Code. She also offered examples of prior technical involvement.

Ms. Cray's final item was her summary of election bills. She indicated that there were more bills to be filed in the coming week and she would email them. She reminded the board that the deadline in the House for bill introduction was February 24th.

The IVRS update was reviewed.

Mr. Borgsmiller offered an update of the lump sum appropriation and asked the Board to note the chart on page 66 which shows the clerks refunded at 5/12 and there is approximately \$2.4 million remaining in the judges' money for the election judges, but not for early voting judges. He said there was enough money to ensure payment for all judges in both February and April. He also confirmed that \$250,000 is set aside for equipment for implementation of the Systems Integrity Center if CMS finds an office for it.

The fiscal status report and two-year plan of activities was presented for information purposes.

Chairman Schneider asked General Counsel Sandvoss to begin his report summarizing item 3.a.1, *SBE v. Committee to Elect Paul Mitchell*, 10AP078 and noted that Mr. Mitchell was present. Mr. Sandvoss said this matter was carried over from the January meeting involving an appeal of an assessment for failing to file a series of in-kind contributions on a Schedule A-1 report. These filings involved rent for office space for the campaign office. The hearing officer said the report was correct, but the in-kind contributions should have been reported on an A-1 and therefore recommended the appeal be denied. Since it was inadvertent and unintentional, he recommended the penalty be reduced to 10% of the original amount, resulting in a \$405 assessment and Mr. Sandvoss concurred. Mr. Mitchell spoke to the matter and introduced his new treasurer, Robert Bednar. Mr. Bednar added that the committee's reports were accurate to the penny. Discussion ensued among the Board. Member Smart moved to grant the appeal and thank the respondents for their time and effort. Member Keith seconded and asked to amend the report to show the lump sum contribution by March 31st. The amendment was accepted. Mr. McGuffage added to the Board's decision that Mr. Mitchell was paying an inflated rent. Chairman Schneider called the motion, which passed 7-1 with Member Walters voting no. Mr. Keith asked that staff research this issue and report back to the Board prior to the April board meeting.

Chairman Schneider granted the request from the respondents in *SBE v. Citizens to Elect Raymond W. Mitchell*, 10AP061, to continue the matter to the March meeting.

Chairman Schneider granted a request from the hearing officer in *SBE v. Patrick for Illinois*, 22116, 10APO60 and continued the matter to the April meeting.

New appeals of campaign disclosure fines wherein the hearing officer recommended the appeal be granted were considered. No one appeared for 3.a.3, *SBE v. Friends of Garza, 19196, 10JS225*; 3.a.4, *SBE v. Preckwinkle for President, 21644, 10APO54*; or 3.a.5, *SBE v. Raja for Illinois, 22077, 10APO58*. Member Keith moved to grant these appeals; and as to items 4 and 5, Preckwinkle and Raja, that the amended reports requested by the hearing officer be filed no later than March 31, 2011. Member Smart seconded the motion which passed unanimously by roll call vote.

Member Brady asked for clarification of the technical defense from item 3.a.2, *SBE v. Kane County Democratic Central Committee, 711, 10AG004*. Sharon Steward, Director of Campaign Disclosure, explained that the new IDIS system would end the confusion this committee had about creating a report. He moved to grant the appeal and Member Smart seconded the motion which was adopted unanimously by roll call vote.

Chairman Schneider called item 3.a.8, *SBE v. IL Affordable Housing Institution PAC, 21145, 10APO51*. Mr. Brady questioned the amount and this matter was continued until later in the meeting to give Ms. Steward time to confirm the amount while it would proceed to consider other matters.

In the meantime, the Chairman called item 3.a.9, *SBE v. Moving Forward for Riverdale, 21994, 10MA024* and noted the appearances of Ms. Zenovia Evans and Ms. Frances Richard-Bey for the committee. Mr. Sandvoss indicated that the committee had a series of violations and the committee's defense was the committee was inactive; the bank account is empty; and the committee is no longer in operation; however, they provided proof regarding the A-1s. The hearing officer recommended and the General Counsel concurred to deny the appeal as to the pre election report and the semiannual report, but grant the appeal as to the second, third and fourth contributions which would mean a \$100 penalty; and a \$1,100 civil penalty for the pre election report, and a \$5,000 penalty for the semiannual report. The committee filed a final report on September 16, 2010, but it was still responsible for the civil penalty unless they stayed inactive for two years at which time the find would be abated. The Board allowed time for staff to explain the options to Ms. Evans and Richard-Bey.

As neither 3.a.8 nor 3.a.9 were ready, Chairman Schneider called Item 3.a.10, *Friends of Vi Daley v. Friends of Michelle Smith, 10CD074*, a complaint following public hearing. Mr. Sandvoss summarized the complaint as a violation of Section 5/9-17, which prohibits the use of a committee's reports for the purposes of conducting solicitations among other things. At the public hearing the respondent admitted to one of the instances of improper use of the committee's information and did not contest as to the other two uses. The hearing officer recommended the committee be found in violation of 9-17 and the Board issue an order requiring the committee to refrain from further violations of that section or face a penalty up to \$5,000. Mr. Sandvoss concurred and added that if the Board finds a violation, it is subject to a criminal penalty and it would be appropriate to refer it to the agency that would prosecute it. He noted the appearances of Mr. Michael Dorf for the complainant and Richard Means for the respondent. Mr. Dorf supported the recommendation of the hearing officer and took no position on the criminal referral. Mr. Means indicated that the person responsible has been fired, but it was an accidental mistake. Member Keith moved to adopt the recommendations of the General Counsel and hearing officer as to the position of an admonition and Board order regarding future violations as contained in the recommendation. Member Brady seconded the motion which passed unanimously by roll call vote. Member Brady moved to do nothing as to the recommendation as it relates to the criminal referral to the State's Attorney's office. Member Smart seconded the motion. In response to a question, Mr. Means indicated that the person who committed the act was not a member of the Bar and *Himmel* would not be an issue closed discussion on this matter. The motion was adopted 8-0.

The Chairman returned to item 3.a.8, *SBE v. IL Affordable Housing Institution PAC*, 21145, 10AP051. Ms. Steward corrected the amount to \$19,000 and the 10% assessment would be \$1,900. Chairman Schneider asked for an amendment to page 264 of the Board's packet in the report of the hearing officer, changing the total assessment to 19,000 and changing 10 percent in the last line from \$7,090 to \$1,900. Member Brady moved to accept the recommendation of the hearing officer and General Counsel and deny the appeal and impose the penalty as articulated by the Chairman. Member Porter seconded the motion and commended Member Brady for being astute in doing good arithmetic. The motion was adopted 8-0.

The Chairman recalled item 3.a.9, *SBE v. Moving Forward for Riverdale*, 21994, 10MA024. Ms. Evans indicated that she understood the motion and thanked staff for being so thorough in explaining that 2 years of inactivity would abate the fine. Member Keith moved to adopt the recommendations of the hearing officer as contained in the minutes reported and approved by General Counsel. Member Smart seconded the motion which passed unanimously by roll call vote.

General Counsel Sandvoss indicated that page 291 of the Board Packet, Payment of civil penalties, was informational.

The Chairman moved to Item 4, Other Business and called *Sheperdson v. Morrison*. Adam Lasker was present for the complainant and John Fogarty for the respondent. Mr. Lasker indicated that settlement terms had been agreed upon, the necessary action has occurred and the parties are in agreement. Mr. Fogarty concurred.

Mr. Chairman returned to item 3.b., proposed amendment to BERP rulemaking. Mr. Sandvoss made adjustments indicated by strikethroughs and underscores per Members Brady's and Keith's suggestions. Member McGuffage moved to approve the rulemaking and Member Brady seconded the motion which passed unanimously by roll call vote. After further discussion the Chairman clarified Mr. Brady's motion and second by Mr. McGuffage, wherein adding this to the Board's legislative packet is the most efficient and appropriate procedural manner to get it accomplished. The motion was adopted unanimously by roll call vote.

Member Keith moved to proceed to Executive Session for purposes of considering personnel matters, matters following closed preliminary hearings and litigation. Member Brady seconded the motion which passed unanimously by 8 ayes in unison and none opposed.

Regular session recessed at 2:07 p.m. and reconvened at 2:45 p.m.

Roll call was taken to confirm presence of a quorum with 8 members in attendance.

Member Keith moved as to 11CD001, the matter brought on by closed preliminary hearing, that it be dismissed for want of prosecution. Vice Chairman Rednour seconded the motion which passed 8-0 by roll call vote.

Mr. Keith moved to approve the promotion of David Grubb from Microfilm Specialist I to Microfilm Specialist II; to approve the promotion of Jason Kilhoffer from Information Specialist II to Information Specialist III; to approve the promotion of Kalpana Krishnamurthi from Information Specialist II to Information Specialist III; to approve the promotion of Kim Matrisch from Information Specialist III to Information Specialist IV; and to approve the promotion of Carole Skaggs from Information Services Technician to Information Services Technician II, all effective March 1, 2011 with payroll adjustments in accordance with those adopted in closed Executive Session. Member Smart seconded the motion which was adopted unanimously.

Under #4, Other Business, Chairman Schneider indicated that he was proposing a change to the agenda as a courtesy to attendees, to front the campaign disclosure matters, and then go to the

Executive Director's Report, then return to the General Counsel's report and the non contested portions of his report.

There being nothing further before the Board, the next meeting is March 21, 2011 at 10:30 a.m. and the primary location is the Springfield office with video connection in Chicago or the call of the Chair, whichever occurs first. Mr. Brady moved to adjourn accordingly, seconded by Mr. McGuffage and 8 ayes in unison adopted the motion to adjourn. The Board adjourned at 2:50 p.m.

DATED: March 21, 2011

Respectfully submitted,



Rupert Borgsmiller, Executive Director



Darlene Gervase, Administrative Assistant II