

State Board of Elections Board Meeting
Monday, April 16, 2007

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
Robert J. Walters, Member

ALSO PRESENT:

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

Chairman Smart called the meeting to order shortly after 10:30 and led everyone in the pledge of allegiance. The Chairman held Mr. Brady's proxy until his arrival at 10:40 a.m. and Mr. Porter held Mr. McGuffage's proxy until his arrival at 11:15 a.m.

The minutes of the March 19th regular meeting and April 5th special meeting were presented and Executive Director White detailed the changes suggested by Member Keith. Mr. Schneider moved to accept the minutes with the changes and the Vice Chairman seconded the motion which passed by roll call vote of 8-0.

The Chairman acknowledged Mr. Lance Gough, Executive Director of the Chicago Board of Election Commissioners, who wished to follow up on a letter he sent to the Board regarding changing the primary date as outlined in HB-426. Mr. Gough stated that his Board, as well as DuPage and other jurisdictions, favor the bill, but that a candidate can withdraw 2 days after the start of early voting. He asked for the Board's support with a 28 day lead time for filing withdrawals. The Chairman stated that Cris Cray will be advised of the request and acknowledged that the Board will do what it can.

Mr. White began his report with information regarding the April 17th Consolidated Primary Election and submitted election day assignments; a report on election judge training schools; and a summary of pretests in Bond, Christian, Jersey, and Schuyler counties. He noted that Jim Lewis from East St. Louis, St. Clair and Alexander Counties requested assistance; that in Alexander County a new clerk was appointed only last week and that we have been in daily talks with their election department; and that 2 staff members were already in Alexander county. Mr. White continued with information regarding the 45 judges training schools and advised the Board that 1,870 judges attended training for the consolidated election. He concluded his Election Day report by acknowledging Rick Fulle, Assistant Director of Voting Systems and Standards, and asking the Board to direct questions about the pretests to him.

The Executive Director continued with a request to amend the 2004 certification from Winnebago County. He explained that the "yes" vote totals in a judicial race were not accurate due to an administrative oversight as the votes from the Rockford Election Commission were not included in the vote total. Including the votes will not make a difference in the outcome of the race and serves only clarify total votes cast. Mr. Porter moved to accept the suggestion to amend the certification to show all the votes and Vice Chairman Rednour seconded the motion. After discussion among the Board, the motion and second were withdrawn and this matter will be reconsidered at the May meeting.

Mr. White had two items on his report on Help America Vote Act (HAVA) funds and indicated that the first one will be resolved very quickly. He indicated that the remaining \$78,950 is on the Cook County Board agenda for expenditures of funds this Wednesday and he expects it to be resolved that day. He also explained that Cook County is not free to spend money on their own. This is the only outstanding HAVA money. The Director indicated that the HAVA program is becoming more manageable.

The second part of the HAVA report included a summary of an audit from the Federal Inspector General's office. Mr. White indicated that it's a very good report considering it's the first time that the SBE has had federal funds to disburse. We have 30 days to respond and/or appeal their findings. First, the report concludes that Illinois generally complied with federal HAVA requirements. Second, that three counties, Tazewell, Adams and Cook were not keeping inventory of equipment purchased with HAVA funds. Third, that approximately \$36,000 in lost interest has to be returned. Fourth, that an improper expenditure of approximately \$3,800 for children's activity booklets, educating young students about voting rights and responsibility must be returned. Although these booklets were well received and in great demand, they were not within the realm of HAVA expenditures and the money will be returned from our general revenue fund to the United States Treasury. Last, that a miscalculation of the State's matching fund appropriation \$5 million requirement resulted in additional \$189,223 matching funds and \$227,996 interest is owed to the State Vote Fund. The EAC states that the state's 5% responsibility should have been calculated at 5% of \$103 million (\$98 million plus 5%). This amount will be appealed as we received no guidance from the EAC and made a good faith effort to comply. Staff continues dialogue with the FEC on all above matters.

The next item on the Executive Director's report was a legislative report. Mr. White indicated that the legislature was on spring recess for the past two weeks, but did pass a number of election bills out of Election Committee before the recess. He indicated that SB-1276 passed out of the Senate unanimously. Director White summarized House Resolution 811, sponsored by Congressman Holt, as a significant federal legislation election reform bill with a number of provisions. This bill has the support of 200 sponsors. It requires a voter verified paper audit trail and that the paper trail is the official ballot, which we already have in Illinois. Other provisions include some accessibility requirements for disabled voters; instructions to some extent; a nonthermal type of durable paper for the paper audit trail; and an independent auditor in each state to test the results after the election. Mr. Keith presented a letter from the National State Auditor Association in opposition to the Holt bill. The auditors' opposition is based in large part upon independence issues. Mr. White added that a number of election authorities are in opposition to the bill's provisions, funding, and timing for the 2008 election.

Director White concluded his report with informational items indicating that the budget is in good shape and questions regarding attorney fees in the *King* case were answered.

The first item on General Counsel Steve Sandvoss' report was a motion for reconsideration on behalf of the DeKalb County Democrats. Mr. Sandvoss summarized the committee's activities and conveyed their proposals. One was to pay \$1,650 of the \$2,550 penalty and stay the remaining \$900 for the following two years and if there were no violations in the two year period, the \$900 would be waived. However, if they commit a violation, the \$900 plus any additional penalty would become due. The second proposal was that they would be able to make quarterly payments over a 12-month period of the \$2,550 that is due. Mr. Richard Baker, the treasurer, appeared for the committee. Mr. Schneider moved to accept \$1,000 in settlement of the total amount of \$2,550 and Mr. McGuffage seconded the motion. The motion failed by 4 to 4 vote with Members Brady, Keith, Walters, and Chairman Smart voting no. Treasurer Baker offered \$1,275 and Mr. McGuffage moved to accept the settlement on half the total fine. Mr. Porter seconded the motion which failed in 3 to 5 vote with Members Brady, Keith, Schneider, Walters, Chairman Smart voting against the motion. Mr. Brady moved to accept the recommendation of the hearing officer and deny the appeal. Members McGuffage and Porter said the Board was treating this committee differently than the others. Mr. Walters seconded the motion. The motion passed 5 to 3 with Members McGuffage, Porter and Vice Chairman Rednour voting no. Chairman Smart asked if anyone wanted to make a Motion to reconsider the Order from the February, 2007 meeting. Mr. Brady complied. Vice Chairman Rednour seconded the motion and the motion carried 5 to 2 with one abstention. Mr. Keith and Chairman Smart voted no and Mr. Walters passed.

Mr. Brady moved to accept a payment plan over one year, quarterly payments in the total amount due and owing of \$2,550. Mr. Schneider seconded the motion. Mr. McGuffage made a substitute motion to accept the settlement offer of \$1650 and to abate \$900 unless the committee has another infraction and put the committee on a payment plan. Vice Chairman Rednour seconded Mr. McGuffage's motion. Chairman Smart indicated that the substitute motion should be voted on first. The motion failed by 3 to 5 vote with Members Brady, Keith, Schneider, Walters and Chairman Smart voting no. Members Brady and Schneider renewed their motion and second. The motion carried 5-3 with Mr. McGuffage, Mr. Porter and Vice Chairman Rednour voting no.

The Chairman called item 3. *SBE v. Citizens for Harry Osterman*, S7529, 06AP016, an Appeal of a Campaign Disclosure Fine. The General Counsel concurred with the hearing officer's recommendation and Vice Chairman Rednour moved to adopt the recommendation of the hearing officer and General Counsel and grant the appeal. Mr. Brady seconded the motion which passed by roll call vote of 8-0.

The Chairman called item 2, *SBE v. Citizens for Dave Sullivan*, S7438, 06MA020 and noted the appearance of Andrew Raucci, attorney for the respondent. The General Counsel agreed with the hearing officer and that absent a rule that specifically prohibits raising issues at the appearance before the Board as opposed to at the initial hearing before a hearing officer, the prudent thing to do would be continue the practice or amend the rules to make such a restriction. Mr. Sandvoss' recommendation differed with the recommendation of the hearing officer because it relieved the committee of the obligation to file a semi-annual report. However, since the committee has already filed their semi-annual report and was assessed a \$200 penalty, if the Board accepts the recommendation of the hearing officer as to the pre election report, the \$200 would be stayed and he proposed that as his recommendation. Mr. Brady moved to accept the recommendations of the hearing officer and General Counsel. Mr. McGuffage seconded the motion which carried unanimously. Mr. Keith asked that staff draft a proposed rule to limit the ability of counsel or parties to raise issues before the Board that weren't raised before the hearing officer and to address if it should be done legislatively or by rule. Mr. Keith's proposal was accepted as a motion and seconded by Mr. Schneider. The motion carried by 8-0.

Mr. Sandvoss agreed with the recommendation of the hearing officer to deny the appeal in *SBE v. Friends for Howland*, S8930, 06AG023. Vice Chairman Rednour moved to adopt the recommendations of the hearing officer and General Counsel and deny the appeal. Mr. McGuffage seconded the motion which passed unanimously.

The Chairman asked if the General Counsel agreed with the recommendations to grant the appeals in *SBE v. Northwest Tax Watch*, S7438, 07DS105; *SBE v. Citizens for Deborah Graham*, S8108, 06GE049; and *SBE v. Committee to Elect Bonita Coleman-John*, S8983, 07DS127. Hearing his concurrence, Mr. Keith moved to adopt the recommendations of the hearing officer and General Counsel and grant the appeal. Vice Chairman Rednour seconded the motion which passed 8-0.

Mr. Keith explained that he does not agree with the recommendation of the hearing officer in item 6, *SBE v. Friends of David Askew*, L13481, 07DS59. Mr. Sandvoss agreed with the recommendation as this was the first time this committee has used this defense and was willing to give the committee the benefit of the doubt. Mr. Porter moved to accept the hearing officer's recommendation and concurrence of the General Counsel. Mr. Walters seconded the motion which carried 7-1 with Mr. Keith dissenting.

The Chairman moved on to items 10, 11, 12, 13 and 14 on the agenda. The General Counsel agreed with the recommendation of the hearing officer to deny the appeals. Vice Chairman Rednour moved that the hearing officer and General Counsel's recommendations be adopted. The motion passed and appeals were denied for *SBE v. Westchester Citizens Party*, 12818, 07DS046; *SBE v. Winnebago County Republican Central Committee*, S380, 07DS085; *SBE v. Equality Illinois PAC*, S5864, 07DS099; *SBE v. Citizens Activated to Change Healthcare*, S8552, 07DS112; and *SBE v. Friends for Levin*, S8797, 07DS118.

A request for payment proposal of an outstanding civil penalty assessed against the Regular Republican Organization of River Forest, S833 was presented by the General Counsel. Mr. Schneider moved and Mr. Walters seconded the motion to accept the proposal. The motion passed 8-0.

Mr. Sandvoss presented item 16, a list of numerous committees that have been assessed civil penalties for failing to file semi annual report for both the first and latter halves of 2006. The violations were not appealed and a final order should be issued by the Board assessing the amounts that have been assessed. The committees were listed on pages 131 through 134 of the Board's packet. The Chairman asked for a motion to issue final orders and assess the fines and Mr. Porter so moved. The motion passed 8-0 and Mr. Keith recused himself from the last committee, S3044.

Rupert Borgsmiller, Director of Campaign Disclosure presented a legislative proposal that would eliminate, clarify or close the fact that if you give several \$500 contributions you must file a pre-election report. Mr. Keith moved to adopt and Mr. Schneider seconded the motion. The motion carried unanimously.

Mr. Keith moved to take a short recess and Mr. McGuffage seconded the motion. The Board voted ayes in unison with none opposed. The Motion carried unanimously and the Board recessed at 12:12 p.m.

The meeting resumed at 12:22 p.m. and Chairman Smart called Items 18, a complaint following public hearing, *Colon v. Burgoa*, 07CD014. General Counsel Sandvoss summarized the activities of the committee and noted that a public hearing had been held the Friday before the Board meeting and the hearing officer, A. L. Zimmer, was present to elaborate on his recommendation and answer any questions. Mr. Zimmer found that 100.10(g)(2) of the Board's rule was ambiguous. Further, that Mr. Burgoa testified that he funded his campaign himself and because of the infirmities in the rule he didn't feel it appropriate to impose a sanction. Richard Means, attorney for the complainant and Mr. Burgoa, *pro se*, presented their case to the Board. Discussion was had among the Board and the General Counsel was asked for his recommendation. Mr. Sandvoss stated that the respondent exceeded \$3,000 in expenditures so he was required to file a statement of organization D-1 and that he participated in the municipal election in February, 2007 so a pre-election report is necessary. Further, that Board staff will review those reports and determine if any civil penalties should be assessed and if they are, Mr. Burgoa will have a chance to appeal. After further discussion, Mr. Schneider moved to accept the General Counsel's recommendation that the committee was created, that there's a responsibility to file a statement of organization and the required reports by the close of business on Friday, April 20th. The documents can then be examined by staff for the completeness and veracity of their contents, and then we can decide the other if there any other timing issues concerning A-1 reports. Mr. Brady seconded the motion which passed unanimously. As to item 4 of the hearing officer's recommendation it was agreed that matters regarding absence of attribution of source or criminal violations should continue to be sent to the Attorney General or State's Attorneys office.

Chairman Smart called item 19, *Colon v. Colom*. Mr. Sandvoss indicated this case was remanded to the hearing officer on two specific issues, one dealing with a violation in relation to political literature that did not contain an attribution of source and the issue of the rent expenses by the committee. This matter was continued to executive session.

The Chairman called item 4, *SBE v. Citizens in Action*, S8792, 05MA007 and recognized Michael Lavelle, attorney for the respondent. Mr. Lavelle argued that the original action was filed against Victor Santana who was order to create a committee and file his reports, which he did. He contended that this is a double jeopardy or *res judicata* action. Mr. Sandvoss explained that this is an appeal of a civil penalty assessed for delinquent filing of a D-1 statement of organization, a semi-annual report and two scheduled A-1 reports for a total of \$7,875. The General Counsel concurred with the recommendation of the hearing officer and explained this as the trial already taking place and now the penalty phase is ready. Further that the Board's duty is to enforce the act and penalties are set by the act. After further deliberation Mr. Keith moved to adopt the recommendations of the hearing officer and General Counsel, impose a fine of \$5,000 for the late filing of a D-1, a find of \$2,250 for the late filing of the semi-annual report and contrary to those recommendations, would not impose any additional fines on the A-1 since they were imposed on the other case. Mr. Schneider seconded the motion which passed 8-0.

Member Schneider exited at 1:50 p.m. and the Chairman held his proxy for the remainder of the meeting.

Mr. Porter spoke with regard to amendment to House Bill 832 where donations of \$500 to candidates would qualify as a committee. He requested that the General Counsel improve upon the wording.

The Chairman asked for a motion to recess to Executive Session at 1:55 p.m. and the Vice Chairman complied. Mr. Brady seconded the motion which passed by 8 ayes in unison with none opposed.

The Board returned to open session at 2:41 p.m. and briefly discussed the issue of whether legal fees are required to be reported on campaign disclosure reports. Mr. Keith moved to have staff procure a rule or statute, whichever is appropriate for the Board's consideration to adopt the opinion as expressed by Mr. Zimmer and clarified by Mr. Means. Mr. Brady seconded the motion which carried unanimously.

The Chairman asked for a motion to ratify actions taken in closed session. Mr. Keith moved to find that the complaint on 07CD13 was filed on justifiable grounds and there is no need for public hearing. Mr. Brady seconded the motion which passed by 8 ayes in unison and none opposed.

Mr. Brady clarified his vote on item number 16 and recused himself from Committee #S8804.

Mr. Keith moved that the Board make a finding in 07CD14 as to whether or not the various counts were filed on justifiable grounds in accordance with the recommendation of the hearing officer and proceed to public hearing. Mr. Brady seconded the motion which passed by 8 ayes in unison and none opposed.

As to item 21, Mr. Keith noted that the complaint was continued and taken off the seven-day calendar by agreement.

Chairman Smart asked for a motion to adjourn to May 21st at 10:30 a.m. in Springfield or the call of the chair. Mr. Porter so moved, Mr. Walters seconded and the motion passed by 8 ayes in unison. The meeting adjourned at 2:46 p.m.

Dated: April 30, 2007

Respectfully Submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Specialist II