

STATE BOARD OF ELECTIONS
Board Meeting
Monday, May 18, 2009
Springfield, Illinois

MINUTES

PRESENT: Albert Porter, Chairman
Bryan Schneider, Vice Chairman
Patrick Brady, Member
John Keith, Member
William McGuffage, Member
Jesse Smart, Member
Robert Walters, Member

ABSENT: Wanda Rednour, Member

ALSO PRESENT: Dan White, Executive Director
Steve Sandvoss, General Counsel
Rebecca Glazier, Assistant to Executive Director

The regular monthly meeting of the State Board of Elections was called to order at 10:35 a.m. with seven members present. Chairman Porter, Vice Chairman Schneider and Members Brady, Keith, Smart and Walters were present in the Springfield office. Member McGuffage was present in the Chicago office and connected via videoconference. Member Rednour was absent and Member Keith held her proxy.

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

The Executive Director presented the minutes of the April 20 regular meeting and discussed revisions to these minutes. Vice Chairman Schneider moved to approve the minutes as revised. Member Smart seconded the motion which passed unanimously.

Director White introduced Bernadette Harrington, new counsel in the General Counsel's office, and welcomed her to the State Board of Elections.

Director White noted the first item on the agenda was to conduct a public hearing on the HAVA revised State Plan. Illinois is now HAVA compliant and the EAC has been informed of this status. A revised State Plan has been prepared which includes our HAVA compliance as well as updates. No one from the public was present for this hearing. Comments were received from the League of Women Voters of Illinois. Director White discussed the League's comments and indicated laptops have already been incorporated in polling places in many jurisdictions and that staff will review education on provisional voting. The Board asked the Director to respond to the comments. If further

comments are received during the three day period following today's meeting they will be forwarded to the Board members for review. Once the revised State Plan is submitted to the EAC and after publication in the Federal Register we are eligible for additional state funding: FY 08 - \$4,822,248. We will also be eligible for additional funding if we receive the state match requested in next fiscal year's budget: FY 09 - \$4,193,259.

A Power Point presentation was given by Kevin Turner and Kyle Thomas on the progress of the IVRS primary site project noting it should be completed by July 1. Staff has been working with CMS and other governmental organizations to finalize the project. CMS will become the primary site and the SBE office will become the secondary/backup site. Discussion ensued on staffing the on-going program and the fact that we will need a full time person on our payroll to be dedicated to this project. The software/hardware security is identical at the SBE as it is at CMS. Mr. Thomas explained that guidelines have been provided to the election authorities through training manuals on the use of IVRS. Discussion moved to duplicate registrations and Member Keith asked staff to provide statistics on duplicate registrations (how many and length of time a duplicate is on the list).

Director White discussed the EAC data collection grant and indicated staff has requested an extension to allow time to fulfill the obligations and to get the best information possible from the election authorities. This project got a late start due to a lack of authorized spending authority. We are hoping for either a no cost extension or an extension of the performance period and hope to have an update by the June meeting.

The Executive Director reported on the Advisory Committee meeting held this morning. Chairman Porter, Member Smart, and SBE staff were present along with 14 committee members. Topics discussed included an IVRS update, legislation, the EAC data collection grant and a HAVA update. A major concern of the clerks as well as SBE staff is Public Act 95-699 which mandates the detection of undervotes for statewide constitutional officers. Premier has made the decision to not move forward with a change that would allow for this on their voting equipment. This vendor has 63 jurisdictions in Illinois. Dianne Felts indicated that this vendor is in the process of moving to a digital system so that is most likely why they won't make any changes to their current system. Ms. Felts indicated that it was her understanding that the system can kick back undervotes for the entire ballot

but cannot kick back just for undervotes for the constitutional offices. Discussion ensued on our testing program and the possibility of decertification of this system. The Board asked Director White to compose a letter to Premier requesting some explanation.

The Executive Director presented a legislative update indicating the legislature is in the final weeks of the session. Cris Cray indicated two election bills have been sent to the Governor's office: HB 4077 adds voter registration language for college students, and HB 3972 includes a notice to be included on absentee applications. Ms. Cray discussed the bill concerning Boards/Commissions and state employees indicating it was posted for committee on Tuesday at 2 p.m. and has been told there is going to be an amendment as to who it will affect. The Governor has not yet submitted his Ethics reform in bill form but the Senate Democrats have been putting together a version. Discussion ensued on the constitutional convention question on the ballot last year. There is a bill in the Senate that is on the 3rd reading and the Board has been asked to review the bill. The Governor's office has concern with one part of the bill as it requires a separate ballot for the constitutional convention question. The Senate can pass the bill as is, hold it for next year (this question only arises every 20 years) or take out the one portion the Governor's office is uncomfortable with. The Board agreed to hold this for discussion at a later date. Member McGuffage suggested staff review the bill regarding Freedom of Information Requests as it may affect our agency.

The Executive Director presented the FY 09 fiscal status report for the period ending April 30, the FY 09 fiscal report for the Help Illinois Vote Fund, the FY 09 fiscal report for the EAC Data Collection grant, and the two year plan of activity for the months of May and June for informational purposes.

The Executive Director informed the Board that he and the General Counsel are in the process of reviewing past executive session minutes and will have the review finished for discussion at the June meeting. This review will take place in April and November each year.

The General Counsel presented a motion for reconsideration in the matter of *SBE v. Citizens for Joe Moore*, 09DS010. No one was present in this matter. Mr. Sandvoss reviewed the request and

agreed that it be granted. Member Smart moved to grant the motion for reconsideration and refer to a hearing officer. Member Brady seconded the motion which passed unanimously.

The General Counsel presented appeals of campaign disclosure fines that the hearing officer recommended be granted. Mr. Sandvoss concurred with the recommendation in agenda items 3.a.2, 3, 5, 7 and 8. No one was present in these matters. Member Smart moved to grant the appeals in the matters of *SBE v. William Davis for State Representative*, 08AG010; *SBE v. Cuba Township Republican Club*, 08JS247; *SBE v. Citizens for Edward Acevedo*, 08AP042; *SBE v. 12th CD Democratic State Central Committee (DSCC)*, 09DS195; and *SBE v. Motion Picture Union Local 476 Political Action Fund*, 09MA006. Member Brady seconded the motion which passed unanimously.

The General Counsel presented an appeal of a campaign disclosure fine that the hearing officer recommended be granted in the matter of *SBE v. Coalition for Property Rights*, 09DS075. No one was present in this matter. Mr. Sandvoss reviewed the appeal and the explanation that the committee failed to receive notices because their post office box was closed. He disagreed with the recommendation that the appeal be granted because the reason the post office box was closed was because they did not pay for it. They had received notices before and knew of their responsibility to file. Member Keith moved to adopt the recommendation of the General Counsel to deny the appeal. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented an appeal of a campaign disclosure fine that the hearing officer recommended be granted in the matter of *SBE v. Wilpower*, 09DS159. No one was present in this matter. Mr. Sandvoss reviewed the matter and recommended the appeal be denied rather than granted. Member Smart moved to accept the recommendation of the General Counsel and deny the appeal. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented appeals of campaign disclosure fines that the hearing officer recommended be denied and concurred with the recommendation. No one was present in these matters. Member Smart moved to accept the recommendation of the hearing officer and General Counsel and deny the appeals in the matters of *SBE v. Glenbard Education Association PAC*, 09MA002; *SBE v. Kankakee County Democratic Central Comm.*, 09DS128; and *SBE v. Illinois Academy of Physicians Assistants PAC* 08GE042. Member Brady seconded the motion which passed by roll

call vote of 8-0.

The General Counsel presented a complaint following public hearing in the matter of *SBE v. Friends of Alderman Madeline Haithcock*, 08CD36. No one was present in this matter. It was noted an error on the hearing officer's report that indicated this followed a closed preliminary hearing. Mr. Sandvoss reviewed the complaint noting there were numerous errors with the report and the hearing officer recommends the complaint was filed on justifiable grounds and the committee engage, at their cost, the services of a professional to assist in the review and correction of the report at issue and this report be completed within 90 days from the date of the Board order. Mr. Sandvoss concurred with the recommendation with the notation this was following a public hearing. Member Walters moved to accept the recommendation of the hearing officer and General Counsel noting it was following a public hearing. Member Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented for consideration a payment plan from the *SBE v. Democratic Central Committee of Stephenson County*. They were assessed a \$2,700 penalty and have tendered a check for \$250. They propose making monthly payments of \$204.17 for a 12 month period. Mr. Sandvoss recommended accepting the payment plan. Member Smart moved to accept the payment plan as presented. Member Walters seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented for informational purposes a listing of committees who have paid civil penalties.

Member Keith moved to recess to executive session for the purpose of discussing campaign disclosure matters following closed hearings. Member Smart seconded the motion which passed unanimously. Meeting recessed at 12:10 p.m. and reconvened at 12:20 p.m.

Mark Shelden, Champaign County Clerk, was present and discussed the issue of the requirement that voting systems kick back undervotes for all constitutional offices. After further discussion the Board asked Mr. Shelden to put together comments for the General Counsel to review and report back to the Board for further discussion.

Member Keith moved in the matter of 1) *Jerry Lemmons v. Douglas R. Aurand*, 09CD014 to find the complaint was not filed on justifiable grounds and recommended no public hearing be ordered in this matter, 2) *Jim Thacker, Citizens for Morrissey v. City Firefighters Local 413 PAC Fund*, 09CD015 that

the matter be dismissed for lack of prosecution without any determination on the merits, and 3) *Nancy Bruening-Koprowski v. Randy White for Lieutenant Governor*, 09CD016 that the complaint was filed on justifiable grounds but no further action be taken. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a request that the Board allow staff to include in any Board order a statement that indicates any reports filed as a result of a complaint filed under the Campaign Disclosure Act will be referred to staff for review to determine whether civil penalties need to be assessed. Mr. Sandvoss indicated that not all hearing officers include this in their report so this will clarify the steps taken. Member Keith moved to adopt the standing order of the SBE. Member Smart seconded the motion which passed unanimously.

The General Counsel addressed previous concerns of the Board that temporary employees be required to follow the restrictions of 10 ILCS 5/1A-13 as it pertains to political activity by SBE employees. He discussed language in the master contract between Alice Campbell and CMS which has been utilized by the SBE to hire temporary clerical type employees. He was not sure this would included on any temporary Chicago employees. The Board directed the General Counsel to draft language consistent with the provisions of 5/1A-13 that each temporary employee would be required to sign prior to their employment with the Board. The Board inquired as to whether the CMS master contract with similar employment agencies contains the same restrictions as the contract with Alice Campbell Company. The General Counsel said he would look into this question.

The General Counsel presented for Board consideration revisions to a proposed rule that would implement Public Act 95-971 "pay to play" legislation. Revisions were made in response to Board and staff comment. This has been distributed to other state agencies impacted by this law and invited to appear at today's meeting to offer comment. No one was present on this matter. Discussion ensued on the Board's ability to impose a consequence as well as failure to update a registration as it seems inconsistent as far as 2 business days (which the law states) or 10 business days. Mr. Sandvoss indicated that his staff as well as disclosure staff have spoken with many hundreds if not thousands of businesses who all indicate it is impossible for them to comply with a 2 day time period to update a registration. After further discussion Vice Chairman Schneider moved to adopt the

rulemaking for submission to JCAR presented subject to Members Keith and Brady's technical revisions. The motion was amended to remove from Section 100.185 (a) the last sentence that the SBE assess penalties under a business offense, adjust rules in Section 100.185 (c and d) where it seems to allow 12 days to update a registration. This amendment includes Member Keith's suggestion that after amending the language staff will submit to the Board for review and if no objections are received by any of the Board members within 7 days the General Counsel can submit to JCAR. Mr. Sandvoss indicated he will communicate to all Board members before submitting the proposed rules. Member Brady seconded the amendment motion which passed by roll call vote of 8-0. Member Smart left the meeting at 1:25 p.m. and Vice Chairman Schneider held his proxy.

Director White reminded the Board of their responsibility of completing the ethics training.

Motion was made and seconded to recess to executive session to discuss personnel issues.

Meeting recessed at 1:25 p.m. and reconvened at 1:48 p.m.

The next regular meeting of the State Board of Elections will be held on Monday, June 15, 2009 at 10:30 a.m. in Chicago.

With there being no further discussion, Member Keith moved to adjourn until June 15 or the call of the chair. Vice Chairman Schneider seconded the motion which passed unanimously. The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director