

STATE BOARD OF ELECTIONS
Regular Board Meeting
Tuesday, June 14, 2011

MINUTES

PRESENT:

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

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
Steve Sandvoss, General Counsel
Amy Calvin, Administrative Assistant II

The meeting convened at 10:14 a.m. via videoconference with seven Members present in the Chicago office and Vice Chairman Rednour present via teleconference.

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

Member McGuffage moved to recess to executive session to discuss litigation and personnel matters. Member Brady seconded the motion which passed unanimously. The meeting recessed at 10:15 a.m. and reconvened at 11:10 a.m. A second roll call was taken with the same attendance noted in the initial roll call.

Member Keith moved to make salary adjustments to the compensation packages for Mr. Borgsmiller and Mr. Sandvoss and technical changes to their continuing contracts as discussed and approved in executive session. Member Brady seconded the motion which passed by roll call vote of 8-0.

The minutes from the May 23 meeting were presented with revisions as noted. Member Smart moved to approve the minutes as submitted. Member Porter seconded the motion which passed unanimously.

Chairman Schneider recognized the five outgoing Board Members whose terms were expiring on June 30 and said he enjoyed working with them as colleagues and wished them the best in their future endeavors. The Executive Director also thanked the outgoing Members for their service and for bringing unique ideas to the table. He also wished them the best and thanked them for providing the opportunity to work with them over the years.

The General Counsel presented *SBE v. Citizens for Jill Bush*, 23274, 11D1-03, which was a carryover appeal from the May meeting. The General Counsel concurred with the hearing officer recommendation that the appeal be denied but stayed as a first violation. No one was present on behalf of the respondent committee. Member Smart moved to accept the recommendation of the General Counsel and hearing officer and deny the appeal. Member Brady seconded the motion which passed by roll call vote of 8-0.

The Chairman presented the following appeals of campaign disclosure fines that the hearing officer recommended be granted; Agenda items 2.a.2-6: 2) *SBE v. Franklin County Democratic Organization*, 6168, 11DS029; 3) *SBE v. Citizens for Sweeney*, 20608, 11DS112; 4) *SBE v. Citizens to Re-Elect Kathy Svoboda*, 21438, 11DS139; 5) *SBE v. Friends of Jeff Smith*, 21740, 11DS160; and 6) *SBE v. Friends of Charles Landers*, 22449, 10AG028. The General Counsel concurred with the hearing officer in all of the matters and the only person present was Jeff Smith on behalf of the *Friends of Jeff Smith* Committee. Mr. Smith indicated

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that he concurred with the recommendation as well. Member Smart moved to grant the appeals for Agenda items 2.a.2-6. Member Brady seconded the motion which passed by roll call vote of 8-0.

The Chairman presented the following appeals of campaign disclosure fines that the hearing officer recommended be denied; agenda items 2.a.9-11, 13-15: 9) *SBE v. Committee to Elect Justin Hood*, 21097, 11DS127; 10) *SBE v. Committee to Elect Carol Clark*, 22296, 11DS188; 11) *SBE v. Committee to Elect Sally "Oeffling" Wiggins*, 22678, 11DS211; 13) *SBE v. Committee to Elect Denise Winfrey*, 22742, 10GE043; 14) *SBE v. Friends of David L. George*, 23008, 11MA011; and 15) *SBE v. Friends for Edward D Yoder*, 23241, 11MA012. The General Counsel concurred with the hearing officer in all of the matters and no one was present on behalf of any of the respondent committees. Member Brady moved to accept the recommendation of the General Counsel and hearing officer and deny the appeals for agenda items 2.a.9-11, 13-15. Member Walters seconded the motion with passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Mercer County Democratic Central Committee*, 5164, 11DS026 and indicated that the hearing officer had recommended the appeal be denied because even though the Committee experienced difficulties in uploading the report electronically which caused the late filing, such defense was inapplicable because the report was not required to be filed electronically in the first place. The General Counsel did not agree with this recommendation because past Board practice has been to grant the appeal when the violation was a result of an electronic filing issue. He felt that committees should not be penalized for something that they are being encouraged to do (filing electronically) and recommended the appeal be granted. Member Smart moved to accept the recommendation of the General Counsel and grant the appeal. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Citizens for Lightford*, 13872, 11MA004. The General Counsel concurred with the hearing officer recommendation that the appeal be denied, but that the penalty be reduced to \$3,025, (a 90% reduction for the Schedule A-1 assessments), and that combined with the assessed penalty for the late filed semi-annual report would be a little over \$8,000. Senator Kimberly Lightfoot was present in Chicago and said it was not her intent to violate the law and she thought she had a reliable person taking care of the filings for her. Discussion ensued concerning Board policy on Schedule A-1 violations and the calculation of penalties. Member Keith moved to deny the appeal and order a total fine of \$10,000. The motion died due to lack of a second. It was suggested that Senator Lightfoot seek counsel and that the matter be continued to the next meeting. Member McGuffage moved to place the matter on the August meeting agenda at the request of the committee. Member Porter seconded the motion which passed by roll call vote of 7-1 with Member Walters voting in the negative.

The General Counsel next presented *SBE v. Friends of Ron Marx*, 22701, 11MA009. The General Counsel concurred with the hearing officer recommendation to deny the appeal in regards to the late filed 2010 pre-election report, deny the appeal concerning the failure to file a schedule A-1 but reduce that penalty to 10% of the original assessment which would result in a \$92.00 civil penalty, for a total penalty assessment of \$2,292. The General Counsel explained that since the committee filed a final report and was therefore dissolved, any penalty assessed would be abated as long as no successor committee is formed during the ensuing two year period. Ron Marx was present in Chicago on behalf of the committee and indicated his committee was dissolved and that he agreed with the recommendation. Member Keith moved to accept the recommendation of the hearing officer and General Counsel to deny the appeal, and added that the effective date of June 15, 2011 would begin the two year period for the Committee to remain inactive. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel then presented *Hammond v. Save 5 Acres*, 11CD005, a complaint following public hearing. He concurred with the hearing officer recommendation that the Board find that the committee violated Sections 9-9 and 9-9.5 and direct the committee to comply with all reporting requirements in the future. Failure to comply with this Board order would subject the respondent to a civil penalty not to exceed \$5,000. Attorney Richard Means was present on behalf of the complainant and attorney John Fogarty was

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present on behalf of the respondent. Both concurred with the recommendation of the hearing officer. Member Brady moved to accept the recommendation of the hearing officer and General Counsel. Member Porter seconded the motion which passed by roll call vote of 8-0.

The General Counsel next presented *Shueppert v. Save 5 Acres*, 11CD006, a complaint following public hearing. The General Counsel agreed with the hearing officer recommendation that the Board find that the committee violated Sections 9-8.5 and 9-25 and direct the committee to comply with all reporting requirements in the future. Failure to comply with this Board order would subject the respondent to a civil penalty not to exceed \$5,000. Attorney Richard Means was present on behalf of the complainant and attorney John Fogarty was present on behalf of the respondent. Both concurred with the recommendation of the hearing officer. Member Brady moved to accept the recommendation of the hearing officer and General Counsel and also direct staff to review the reports for any possible violation of contribution limits. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a motion for reconsideration initiated by Member Keith in the *Sherman v. Indian Trails Public Library District*, 11CD019. Attorney Richard Means was present on behalf of the complainant and attorneys Ken Florey and Roger Ritzman were present on behalf of the respondent. The General Counsel deferred the case to Member Keith who moved as to the motion adopted by the Board at its April 19th meeting disposing the matter of Robert Sherman versus Indian Trails Public Library District (hereinafter, the Library District) and Friends of Indian Trails Library District (hereinafter, the Library District Committee) Case Number 11CD019, to reconsider same for the purposes of clarifying said motion. Member McGuffage seconded the motion which passed by roll call vote of 8-0. Member Keith moved to rescind the order issued on April 19, 2011, and further moved: Item 1, that as to the Library District, the allegation of a violation of Section 9-8.10 was not filed upon justifiable grounds as the material at issue does not meet the definition of electioneering communication and there was insufficient evidence to find that the Library District made illegal expenditures of funds to house and host the Library District committee; Item 2, that the allegation of a violation of Section 9-25.1 of the Election Code by the Library District has some basis in fact and law regarding the issue of advocacy and was therefore filed upon justifiable grounds; Item 3, that the allegation of a violation of Section 9-10 by the Library District was filed upon justifiable grounds as there was sufficient evidence presented to show that the respondent failed to timely report the receipt of funds used to pay for the material at issue; Item 4, that as to the Library District Committee, the allegation of a violation of Section 9-2(e) was filed upon justifiable grounds as this allegation has some basis in law and fact regarding the issue of the name of the committee; Item 5, that as to the Library District Committee, the allegation of a violation of Section 9-10 was filed upon justifiable grounds as evidence was presented to suggest that the respondent failed to file a Schedule A-1 showing the receipt of \$10,000 on or about March 7, 2010; Item 6, that as to the allegations where justifiable grounds were established, that no public hearing be conducted in light of the Library District and Library District Committee having filed campaign disclosures reports; Item 7, that the Library District Committee be ordered to amend its statement of organization to include the support of the referendum in the committee name and to list its beginning funds available as \$0; Item 8, that the Library District Committee be ordered to amend its final report filed on April 14, 2011, for the period from the date of the committee's creation which was on or about March 7, 2011, through March 31, 2011, to show receipt of the \$10,000 received on or about March 7, 2011; Item 9, that said ordered amended filings be ordered to be filed no later than 5:00 p.m. on July 15, 2011; and Item 10, that such amended filings and all other filings made by the Library District and Library District Committee each be referred to staff for the assessment of any appropriate civil penalties. Member Brady seconded the motion which passed by roll call vote of 8-0. After discussion, and a request from Respondent's counsel to set the matter for public hearing (which was agreed to by counsel for the Complainant), Member Keith moved to find that the complaint was filed upon justifiable grounds as to all issues and the matter proceed to a public hearing. Member Brady seconded the motion which passed by roll call vote of 8-0.

The General Counsel indicated that at the Board's last meeting two committees were ordered to file amended reports or face a civil penalty of up to \$5,000 for failure to comply with a board order. One

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committee, Citizens for James Michael Bailey did file an amendment to their report and are now in compliance. The other committee, Citizens for Bassi did not file the amended reports and were given notice that they faced a civil penalty and could appear before the Board today to challenge the assessment. No one was present on behalf of the committee. Member Keith moved as to the Bailey committee, to find they have shown sufficient cause as to why they should not be assessed a penalty for failure to comply with a Board Order and that the proceeding be dismissed subject to review of the amended reports that were filed. Member Brady seconded the motion which passed by roll call vote of 8-0. As to the Bassi committee, Member Keith moved to find the committee in violation of a Board Order and to assess a \$1,000 fine and an additional fine of \$100 a day for each workday after June 30, 2011, not to exceed \$5,000, that the ordered amended report or reports are not filed. Member Brady seconded the motion which passed by roll call vote of 8-0.

The payment of civil penalties was presented for informational purposes.

The General Counsel discussed the proposed rule regarding procedures to contact candidates regarding their participation in the internet voters guide and indicated that Member Keith's comments were incorporated into the version presented today and asked for Board approval to submit the rule to JCAR. Member Keith moved to file the proposed rule as specified by the General Counsel. Member Brady seconded the motion which passed by roll call vote of 8-0.

Next on the agenda was the report of the Executive Director. He gave a brief update on the electronic canvass and indicated that progress was being made and staff was meeting with vendors.

Cris Cray began her legislative update and said that the Spring Session ended on May 31 but that a special session was possible next week. She indicated that four election bills passed and that the fifth, which included the agency budget also passed. She then reviewed her memo highlighting those bills that were included in the Board packet.

The Executive Director discussed the FY12 budget and said that even though the budget has not been signed he felt that a spending plan should be discussed and he referenced the chart that the Members previously received. He indicated that the amounts in column four were being proposed for FY12 and indicated that the agency would be receiving the budget in a lump sum amount for operational expenses. This allows the Board some discretion on how the funds will be divided in the spending plan. The Executive Director indicated that this proposal includes COLA and step increases that mirror the minimum amounts of those included in the current collective bargaining agreement between AFSCME and the majority of State employees. The Executive Director then highlighted other personal services expenses in the plan, which included funds to move the Springfield office to another building, increase in utilities, equipment necessary for petition filing, funds to maintain the agency car, etc. The Executive Director said that he received many comments from the county clerks thanking the Board for fully funding their stipends and they were very appreciative of the Board's consideration. He also indicated that a supplemental might be a possibility to assist with funding of the election judge reimbursement, however there would be more to report on the FY12 budget at the July 1 meeting.

Next on the agenda was a power point presentation on an Election Management System (EMS) conducted by Kyle Thomas. The SBE was approached by Mr. Gough regarding a partnership to develop a new EMS which would be available to the Chicago Board and all election jurisdictions in Illinois. This system would include among other things, voter registration systems for the jurisdictions. The goal is to establish an ad hoc committee to explore and determine if this is something the SBE might want to pursue. After the presentation, discussion ensued concerning costs, maintenance fees, length of time for development and deployment, etc. Member Porter moved to enter into the exploration phase of the possibility for creating an EMS. Member Smart seconded the motion which passed by roll call vote of 8-0.

The IVRS update was presented for informational purposes and Kyle Thomas indicated that the

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numbers have decreased. As to the census update, he said those jurisdictions with over 100% registered voters versus voting age population have been contacted and asked for their plan to clean up the rolls. Discussion ensued on procedures for such a purge and compliance from the election authorities.

The Executive Director informed the Board that the 2011 Heartland Conference was hosted by the SBE and participants from many states were in attendance. The sessions were informative and constructive and indicated Missouri would host in 2012 and Kentucky in 2013.

The Springfield office facility update was discussed and it was noted that the bid opening was scheduled for June 16.

The Executive Director presented the lump sum update and indicated that approximately \$460,000 remained in awards and grants. He proposed that these funds be distributed for early voting judges on a pro-rated basis. Member Keith moved to approve the expenditures and proposed distribution of the remaining funds. Member Brady seconded the motion which passed by roll call vote of 8-0.

The fiscal reports and two year plan of staff activity for the months of June and July were presented for informational purposes.

The counting of State Employee Retirement Systems (SERS) Trustee Election ballots was discussed and the Executive Director noted that a memo was in the Board packet that included the projected costs to the SBE. It was noted that the SBE has also been provided meeting room space by SERS several times to conduct Board meetings when space was not available in the Springfield SBE office. It was also noted that SERS is looking into an electronic means for conducting their next election, which will be in three years.

Sharon Steward gave a brief update on the amnesty proposal for first quarterly report delinquent filers. She indicated that per the Board's instructions, notices were sent by any means possible notifying committees of the one-time amnesty and the number of late filers is now down to 140 and the complaint procedures against them has begun.

Ms. Steward then discussed the assessment of civil penalties for exceeding contribution limits and reviewed her memo on pages 165-166 of the Board packet proposing the consequences for violation. She said no committee would be required to pay the penalties until a final Board order was issued assessing the same. Discussion ensued on the intent and interpretation of the law and it was agreed to place on the July 1 meeting Agenda as a follow up item.

The Executive Director indicated that a letter was sent to the Democratic National Committee regarding the selection of delegates and the SBE has not as of yet received a response. Per the Board's direction, staff prepared a draft of a request for an Attorney General's opinion. The matter was also placed on the July 1 meeting Agenda as a follow up item for discussion.

Member Keith moved to recess to executive session to consider matters following closed preliminary hearing. Member Brady seconded the motion which passed unanimously. The meeting recessed at 2:15 p.m. and reconvened at 2:20 p.m. Upon reconvening a second roll call was taken with all Members present as noted in the initial roll call.

As to *Gonzalez v. The Friends of Joseph Faso*, 11CD018, Member Keith moved to dismiss the matter for want of prosecution and the late filing of the Schedule D-1 be referred to staff for appropriate assessment of a civil penalty if any is appropriate. Member Brady seconded the motion which passed by roll call vote of 8-0.

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With there being no further business before the Board Member Smart moved to adjourn until July 1, 2011 at 10:30 a.m. in Springfield and Chicago via videoconference or until call of the Chairman, whichever occurs first. Member Porter seconded the motion which passed unanimously. The meeting adjourned at 2:25 p.m.

Respectfully submitted,



Amy Calvin, Administrative Assistant II



Rupert F. Borgsmiller, Executive Director