

# STATE BOARD OF ELECTIONS

## MINUTES

Tuesday, August 18, 2009

### MINUTES

PRESENT:

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

ALSO PRESENT:

Daniel W. White, Executive Director  
Steve Sandvoss, General Counsel  
Rupert Borgsmiller, Assistant Executive Director  
Darlene Gervase, Administrative Assistant II

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Chairman Schneider called the regularly scheduled monthly board meeting to order at 10:30 a.m. and lead everyone in the pledge of allegiance. All members were present with Vice Chairman Rednour present via telephonic conference.

Chairman Schneider removed 3.a.14, *SBE v. Citizens to Elect Andre Thapedi*, S9041, 09DS251; and 3.1.16, *SBE v. Will County Democratic Central Committee*, S560, 08AG037 for continuance to the September meeting. Hearing no objection both cases were continued.

The minutes of the June 15 and July 1 regular meetings were presented for adoption. Executive Director White noted changes proposed by Member Keith. Member Smart moved to adopt the minutes with the changes proposed and Brady seconded the motion. The motion passed unanimously by roll call vote.

Mr. White began his report with a request from VOSS Director, Dianne Felts, for a two year interim approval for modifications to the Sequoia WinEDS 4.0; the ES&S M100 In-Precinct Scan (v5.2.1.0); and M650 (central count scan) and Auto-MARK. Ms. Felts began with asking for modification approval for the 400C central count scan, the Insight Plus, in-precinct scan, the Edge2Plus, DRE, the HAAT, activator of the voter's access card, accumulator of DRE and In-precinct scan totals, and transmitter to central counting location, and also the WinEDS, election management application, which was a major upgrade to their previously approved system. She indicated that the generosity of CMS afforded the start of each of the tests promptly and that CMS provided the facility free of charge. She indicated that the test was extensive and hundreds of thousands of voting ballots were tested with favorable outcome. She thanked CMS for the facility at no cost and excellent assistance from Cook County and the city of Chicago. She asked for interim approval. Member Keith asked about the feasibility of testing before receiving federal approval. Ms. Felts said that testing was conducted by a federally approved lab and they have the results. If approval has been granted and there is a federal change we would require Chicago and Cook County to make changes. Mr. James Scanlon, attorney for the Chicago Board and Mr. Lance Gough, Executive Director of the Chicago Board were present and Mr. Scanlon was asked to comment on the issue at hand. Mr. Scanlon found no federal or state law requiring that a voting system be approved by the EAC. It must meet certain requirements as set out by voting system standards 2002 which the board adopted in 2003 and it was tested and it meets all the requirements and certain functional requirements as in section 24B optical scan and 24C electronic test screen system. It also requires that 24C be tested by a federal approved testing lab and that is what occurred. Mr. Sandvoss concurred with Mr. Scanlon's findings. Chairman Schneider clarified for the record that interim approval is for 2 years

from the date of the motion. Member Smart moved and Member McGuffage seconded a motion to approve the modification as recommended by VOSS Director Felts for a 2-year interim approval. The motion prevailed by 6-2 vote with Members Brady and Keith voting against the motion.

Ms. Felts presented her report on the test for the undervote feature on the ES&S M100 In-Precinct Scan (v5.2.10). She said that passage in 2007 of SB662/Public Act 95-699 resulted in 5/24B-16 to include identifying when a voter has not voted for all statewide constitutional offices. The ES&S system returned tabulated all one thousand test ballots correctly. To protect the secrecy of the voter, General Counsel Sandvoss requested changing the screen to not be specific on which office was under-voted. Director Felts asked the Board to approve the system's constitutional officers undervote feature. Member Porter moved to recommend that the Board approve the undervote feature on the ES&S M100 and grant a 2-year interim approval. Member Smart seconded the motion which passed 8-0 by roll call vote.

The final approval requested by VOSS was for diminimus changes to AutoMARK environmental hardware changes. Ms. Felts indicated that this involved parts that were not longer available and provided those parts in a memorandum. She asked for 1 approval to the M100; 4 for the AutoMARK and the entire page for the M650 and confirmed that the tests were performed by a federal accredited lab. Ms. Sue Munguia, Director of Certification with ES&S' Omaha office was present by telephone to respond to any questions the Board might have. Member Smart moved and Member McGuffage seconded a motion to approve the requested 2-year interim approvals. The motion passed by 6-2 with Members Keith and Walters voting no.

Mr. White was pleased to announce that the Business Entity Registration Program "BEREP" program went live on the SBE website and offered a short update of the program. He said that the legislature granted an extension to provide for the electronic filing and we have 3,000 business entities that have reregistered and they continue to flow. He asked Sharon Steward, present in the Springfield office, to respond to the Board's questions. Some of Ms. Steward's comments covered: registrations coming in steadily and they have impacted the daily operations of campaign disclosure staff; support for Phase I may diminish after September 30<sup>th</sup>; timeline demands were met; large and small businesses are accommodated on the website; and she received a registration from a company in Germany. She thanked the disclosure staff and IT.

The Executive Director asked Cris Cray, present in Springfield, for a legislative update. She indicated that five election related bills were signed by the Governor, as well as one of the Freedom of Information bills. However, HB 7 regarding campaign disclosure and SB51, BEREP are sitting on the Governor's desk. Ms. Cray said special sessions are being heard regarding redistricting. Mr. Sandvoss continued with a summary of SB 1938, a bill creating additional judgeships in several judicial circuits. Discussion ensued about the additional judgeships. Due to the complexity of interpretation of SB1938, Member Keith moved to delay this matter until the September meeting; send letters to the 4 leaders; and publish responses on our website to make everyone aware of any issues or problems before the Board votes on it. Member Walters seconded the motion which prevailed 5-2-1 with Members Porter and Smart voting no and Member Brady abstained.

Mr. White presented an update on the budget that included a summary and charts. Chart 1 was divided into 2 parts: basic operation and special items, lump sums and grants. He said the FY10 budget appropriation request for basic agency operations is fully funded minus the state paid retirement. Special items, lump sums and grants are funded at 50% of the total amount requested. He requested full funding for the HAVA maintenance and FY09 additional HAVA money to qualify for additional federal funds. Mr. White proposed reducing the decennial redistricting project to the remainder of the contract and requested the remainder of the lump sum appropriation for the antiquated IDIS system, which is running on borrowed time. Discussion among the board included funding for: election consolidation and the polling place extended hours, election judge stipends, the e-can mandate, BEREP, and furloughs. Ms. Cray responded to a question regarding the legislature taking furlough days. She indicated that the General Assembly is required to forfeit 12 days of compensation, and the forfeiture required is not considered a change in salary and shall not impact pension or other benefits. However, their staff is not required to take any furlough days. Member Porter moved with respect to the lump sum on the nonoperating funds to adopt the budget as proposed by the Executive Director. Member Smart seconded the motion. The

motion prevailed by 5– 3 with Members Brady, Keith and Chairman Schneider voting no. To monitor the budget situation closely, the Chairman asked that this matter be updated monthly and that the 70 questions asked and answered be submitted to the entire board.

The Executive Director introduced Kyle Thomas, IVRS Director, who presented an update for informational purposes. He confirmed that the site features “Am I Registered” and “Check Polling Place” are up and running and there have been 1200 hits on them. He indicated that the project State Data Base continues with personnel training.

Mr. White continued with informational reports on the fiscal status. He said that a complete report of FY09 will be available at the September meeting; that there was little activity with HAVA; and the Data Collection Grant was continued to June, 2010.

Item 2.f of the Executive Director’s report was informational purposes.

The Report of the General Counsel was considered. Member Smart moved to grant the appeals in 3.a.1, 5, 6, 7, and 8 consistent with the recommendations of the hearing officer and general counsel. Member Walters seconded the motion which passed unanimously. Appeals were granted in: *SBE v. Citizens for Joe Moore*, L2617, 09DS010; *SBE v. Committee to Elect Denny Gardner*, L14562, 09DS235; *SBE v. Citizens for John Cullerton*, S1866, 08AG027; *SBE v. Democratic Party of Illinois*, S4866, 08AG035; and *SBE v. Senate Democratic Victory Fund*, S9796, 08AG057.

General Counsel Sandvoss summarized *SBE v. Citizens for Karen McConnaughay*, L3899, 08AG018. He said the Hearing Officer recommended granting the appeal based on the respondent having a death in the family group. Because the report was received on October 28 and the death occurred on October 31<sup>st</sup>, Mr. Sandvoss disagreed with the recommendation. Mr. Andy Raucci, attorney for the respondent committee was introduced and indicated that respondent was involved in the daily care of the family member. Member McGuffage moved to deny the appeal, but assess 25% of the fine or \$250. Member Walters seconded the motion which passed 7–0–1. Member Brady abstained from the vote.

Mr. Sandvoss continued with *SBE v. The new 29<sup>th</sup> Ward Democratic Organization*, L9791, 09MA007 wherein the hearing examiner recommended granting the appeal. Mr. Sandvoss disagreed, and noted that it is commendable that the committee brought the discrepancies to the attention of the board, but it does not excuse the penalty and no defense is offered. Mr. Jim Nally, was present for the respondent and indicated that a CPA was hired to audit the committee back to 2003. He said that the violations were beyond 2 years and that they were reported, but the timing was off. He asked that the appeal be granted. Member McGuffage moved to grant the appeal. Member Smart seconded the motion which prevailed by 6–2 vote with Members Keith and Walters voting no.

Mr. Nally asked the Board if they would hear item 3.1.18, an outside complaint following public hearing, as he represents the complainant in this case. The Board agreed and Mr. Sandvoss summarized *Orland Township First Party v. The Orland Township Board*, 09CD011 a complaint of election interference in the production and distribution of a Newsletter by the Orland Park Township. He indicated that the hearing officer recommended that the Board find a violation of 10 ILCS 5/9–25, and that the members return their share of the production of the newsletter to the Township and he concurs with that recommendation. Mr. Sandvoss advised the Board that finding a violation of the Act would require them to refer this matter to the State’s Attorney’s Office. Member Brady moved to adopt the recommendations of the Hearing Officer and General Counsel; that the members reimburse their *pro rata* share of \$1,333.00 to the Orland Park Township; that the final order be directed to the individual’s named as respondents in the complaint as opposed to the Orland Township Board; and that this matter be referred to the appropriate State’s Attorney’s office. Member Keith seconded the motion which passed unanimously by roll call vote.

Mr. Sandvoss continued with *SBE v. Maine Teachers Assn PACE*, L14252, 09DS235 and indicated that medical hardship is usually denied. In this case, the semi-annual report was received 34 days late and a \$1700 fine was assessed. In addition,

a penalty of \$125 for late filing of the June 2008 semiannual report was assessed. The hearing examiner recommended the appeal be granted for medical hardship experienced by the treasurer and his family. General Counsel Sandvoss disagreed and recommended the appeal be denied. The Board was concerned that the respondent might think the appeal was granted because of the hearing examiner's report. Mr. Sandvoss indicated that all parties are advised that recommendations may be adopted or rejected. Denying the appeal would lift the \$125 stayed penalty. Member Walters moved and Member Smart seconded the motion to approve the recommendation of the General Counsel and deny the appeal. The motion passed unanimously by roll call vote.

The Board considered items 10, 12, 13 and 15; new appeals wherein the hearing officer recommended be denied. Mr. Sandvoss concurred with the recommendations and noted a Scrivener's error in #10 where the fine should be \$206. Member Smart moved and Member Keith seconded a motion to accept the recommendations and deny the appeals. The motion carried unanimously and appeals were denied in *SBE v. Citizens for Flores*, L14641, 08AG022; *SBE v. Citizens for Arthur Turner*, S1841, 08AG026; *SBE v. Volunteers for Delgado*, S6409, 08AP090; and *SBE v. Friends of Tom Cullerton*, S9784, 09DS251.

Mr. Sandvoss continued with 3.a.9., *SBE v. West Frankfort Area Democrat Club*, L2025, 09SD227 and 3.a.11., *SBE v. Friends of the Cornbelt Fire Protection District*, L14920, 09DS113. The hearing examiner recommended the appeals be denied but reduce the penalties and the General Counsel concurred. Member Keith moved and Member Smart seconded the motion to deny the appeal, but reduced the penalty as recommended by the hearing examiner and general counsel. The motion passed unanimously by roll call vote.

The General Counsel summarized *SBE v. The 27<sup>th</sup> Ward Regular Democratic Organization*, S6805, 08AG043 and concurred that the appeal should be granted in part and denied in part and further that the \$75 penalty be reduced to 10% of the original amount and as a first violation the \$8 penalty is stayed. Member Keith moved to adopt the General Counsel's recommendation and Member Smart seconded the motion. The motion passed unanimously.

Mr. Sandvoss presented complaints following public hearing and agreed with the hearing officer's recommendations. The recommendations included Board staff assessing an amount calculated by statute. Member Smart moved to accept the recommendation and staff to assess penalties with respect to: *SBE v. George O. Wendt Campaign Committee*, 09CD034; *SBE v. 8<sup>th</sup> Ward Regular Democratic Organization*, 09CD038; *SBE v. Pulaski County Republican Boosters Club*, 09CD040; *SBE v. Citizens for Jenisch*, 09CD043; and *SBE v. Committee to Elect Dennis Barnard*, 09CD055. Member Brady seconded the motion which passed unanimously.

Pages 260–262 of the Board packet were presented for assessments and final orders. Member Keith moved and Member Smart seconded the motion to assess and issue final orders to the committees on the referenced pages. The motion passed unanimously.

Payments of civil penalties were presented for informational purposes only.

The memorandum on apparent conformity was continued to the September meeting.

Chairman Schneider asked for a motion to recess to executive session to discuss campaign disclosure matters, litigation and personnel. Member Brady so moved and Member Walters seconded the motion. The motion passed by 8 voices in unison. The meeting recessed at 1:24 p.m.

The Board returned to open session at 2:09 p.m. with all members present by roll call vote.

Member Keith moved to find the complaint in *SBE v. Independent Democracy*, 09CD036, was filed on justifiable grounds and a public hearing will be set more than 31 days after today. Further, that if the final report is electronically filed within

30 days, the public hearing will be cancelled and the matter dealt with administratively with appropriate fines. But, if the final report is not filed electronically within 30 days, it will be deemed not filed and a public hearing will commence. Member Brady seconded the motion which passed unanimously by 8 ayes in unison and none opposed.

As to *Stocks v. Friends of Tim Dudley for Senate*, 09CD033, Member Keith moved to find the complaint was filed on justifiable grounds and based upon the stipulations and admissions of the complainant, an order be entered that no penalty will be imposed for the violation admitted to, but that any subsequent violation of 10 ILCS 5/9-9 within 12 months from the entry of the order will result in a fine to be assessed up to and including \$5,000. Member Smart seconded the motion which passed unanimously by 8 ayes in unison and none opposed.

There being nothing further before the Board, Member Brady moved to adjourn. Member Smart seconded the motion and the motion passed unanimously by 8 ayes in unison and none opposed.

The meeting adjourned at 2:12 p.m.

Dated: August 31, 2009

Respectfully submitted,

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Daniel W. White, Executive Director

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Darlene Gervase