

STATE BOARD OF ELECTIONS
Regular Board Meeting
Monday, September 19, 2011

MINUTES

PRESENT:

William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Ernest L. Gowen, Member
Judith C. Rice, Member
Bryan A. Schneider, Member
Charles W. Scholz, Member

ALSO PRESENT:

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

The meeting convened at 10:40 a.m. via videoconference means with the Chicago office. Chairman McGuffage, Vice Chairman Smart and Members Byers, Coffrin, Gowen and Scholz were present in Springfield. Member Rice was present via teleconference until her departure at 11:20 a.m. and Chairman McGuffage held her proxy. Vice Chairman Smart held Member Schneider's proxy until his arrival at 11:50 a.m. via teleconference.

The Chairman opened the meeting by leading everyone in the Pledge of Allegiance to the flag.

Chairman McGuffage presented a resolution to Jim Withers, who is retiring from the State Board of Elections on September 30, 2011. The Chairman commented that Mr. Withers has worked for the Board for twenty-three years and thanked him for his outstanding dedication and service. Mr. Withers thanked the Board, and previous Board Members, for giving him the opportunity and that he greatly appreciated it. He also thanked his staff for all of their hard work and acknowledged the friendships that have developed over the years within the Agency. Mr. Borgsmiller thanked him for his service throughout the years and commended him for his work in his role in the Springfield office relocation matters.

The minutes from the August 16 meeting were presented. Member Scholz moved to approve the minutes as presented. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Kane County Republican Advisory Council*, 11MA015, which was a motion for reconsideration of a final order. No one was present on behalf of the committee. The General Counsel recommended the motion be granted and the Board vacate its final order assessing the civil penalty and remand the matter to the hearing officer. Vice Chairman Smart moved to accept the recommendation of the General Counsel. Member Byers seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *Zurek v. Pedersen*, 11CD025, which was a motion for reconsideration of a final order. Ken Zurek was present in the Chicago office and no one was present on behalf of the respondent. The General Counsel recommended the motion be denied and no further action be taken in the matter. Mr. Zurek reviewed the allegations contained in his motion and felt the Board erred in its decision. The General Counsel noted that Mr. Zurek was re-arguing his case and did not present anything new to consider. Member Gowen moved to accept the recommendation of the General Counsel. Member Scholz seconded the motion which passed by roll call vote of 8-0.

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The General Counsel presented *SBE v. IL Coin Machine Operators Assoc. PAC*, 712, 11AM012, which was a carryover appeal of campaign disclosure fines from the August meeting. The hearing officer recommended the appeal be denied for lack of an adequate defense. However, the General Counsel recommended the appeal be granted because the committee raised a defense based primarily on computer issues which is typically accepted by the Board. Attorney Kevin McFadden was present in Springfield on behalf of the committee and did not offer any comment. Vice Chairman Smart moved to accept the recommendation of the General Counsel and grant the appeal. Member Coffrin 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 3.a.3-9: 3) *SBE v. McLean County Republican Central Committee*, 276, 11AM004; 4) *SBE v. Associated General Contractors of IL PAC*, 649, 10AG065; 5) *SBE v. Brady for Senate Inc.*, 7537, 10AG072; 6) *SBE v. Friends of Susana Mendoza*, 18308, 11AM037; 7) *SBE v. Friends of Wayne Rosenthal*, 21785, 11MA021; 8) *SBE v. Committee to Elect Chuks Onyezia*, 22702, 11AM049; and 9) *SBE v. Friends of John Phelan*, 23434, 11AM152. The General Counsel concurred with the recommendations of the hearing officer. Attorney John Fogarty was present on behalf of the committee in Agenda item 3.a.7 and also agreed with the recommendation. Member Byers moved to accept the recommendation of the hearing officer and General Counsel and grant the appeals. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.10, *SBE v. Sangamon County Republican Central Committee*, 1132, 11MA013 and summarized the appeal. The hearing officer recommended the appeal be denied and the General Counsel concurred. Attorney Justin Reichert and Tony Libri were present on behalf of the committee. Mr. Reichert stated that the committee was unaware of the new reporting laws that went into effect January 1, 2011 and filed the Schedule A-1 immediately after it learned of the new requirements. He then made an offer to reduce the fine to \$1,000. After discussion, Vice Chairman Smart moved to deny the appeal and reduce to the penalty to \$1,000 to be paid within thirty days. Member Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.11, *SBE v. Democratic Party of Illinois*, 6239, 10AG070 and concurred with the hearing officer recommendation that the appeal be denied. Attorney Mike Kasper was present on behalf of the committee and said the penalty should be stayed as a first violation as both checks were deposited at the same time. The General Counsel stated that the statute treats each contribution as a separate violation and as such, the penalty for the two contribution violations could not be stayed. Discussion ensued regarding the language in the statutes. Vice Chairman Smart moved to deny the appeal, reduce the penalty to \$1,000 and stay the amount. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.12, *SBE v. Vote for Sam Cahnman*, 15077, 11MA029 and concurred with the hearing officer recommendation that the appeal be denied. Sam Cahnman was present on behalf of the committee and said that the three missed A-1 filings were inadvertent and asked the Board to stay or reduce the penalty assessed for the third missed filing to 10%, consistent with the assessment for the first two delinquently reported contributions. Vice Chairman Smart moved to deny the appeal and reduce the penalty to \$250. Member Byers seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.13, *SBE v. Citizens to Elect Lewis W. Powell III*, 16532, 11DS328 and concurred with the hearing officer recommendation that the appeal be denied. Lewis Powell, III was present on behalf of the committee and said the committee has reconciled the records and will be dissolving soon and asked the Board to abate the fine. Member Byers moved to deny the appeal and abate the fine then withdrew his motion. Mr. Powell then offered a settlement of \$500. Member Byers moved to deny the appeal and accept the settlement offer of \$500 to be paid within thirty days. Vice Chairman Smart

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seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.14, *SBE v. Citizens for Segvich*, 17403, 11AM091 and concurred with the hearing officer recommendation that the appeal be denied. Carl Segvich was present on behalf of the committee and indicated the failure to file the A-1 was unintentional and that the committee did not have sufficient funds to pay the fine. Mr. Segvich then offered a settlement of either \$50 or \$100. Member Byers moved to deny the appeal and reduce the penalty to \$100. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.15, *SBE v. Committee to Re-Elect Larry R. Rogers Jr.*, 18001, 11AM093 and concurred with the hearing officer recommendation that the appeal be denied. Chairman McGuffage recused himself from the matter. No one was present on behalf of the committee. Member Byers moved to accept the recommendation of the hearing officer and General Counsel and deny the appeal. Member Coffrin seconded the motion which passed by roll call vote of 7-0 with Chairman McGuffage passing his vote.

The General Counsel presented Agenda item 3.a.16, *SBE v. 613PAC*, 19647, 10AG076 and concurred with the hearing officer recommendation that the appeal be denied. No one was present on behalf of the committee. Vice Chairman Smart moved to accept the recommendation of the hearing officer and General Counsel and deny the appeal. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.17, *SBE v. Friends of John Bracamontes*, 22106, 10GE033 and concurred with the hearing officer recommendation that the appeal be denied. No one was present on behalf of the committee. Vice Chairman Smart moved to accept the recommendation of the hearing officer and General Counsel and deny the appeal. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.18, *SBE v. Chang for Change Committee*, 22418, 10AG086 and concurred with the hearing officer recommendation that the appeal be denied. No one was present on behalf of the committee. Member Coffrin moved to accept the recommendation of the hearing officer and General Counsel and deny the appeal. Member Byers seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.19, *SBE v. Vanguard Health Management IL PAC*, 22673, 11AM120 and concurred with the hearing officer recommendation that the appeal be denied. Attorney Esther Seitz was present on behalf of the committee and said the late A-1 filing was inadvertent and the committee was operating under the old laws that were in effect prior to January 1, 2011. She asked the Board to dismiss the violation in its entirety because a second appeal was in the pipeline for a future meeting. The Board informed Ms. Seitz they could not consider something that was not before them at this time. Member Byers moved to accept the recommendation of the hearing officer and General Counsel and deny the appeal. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.20, *SBE v. RPAC*, 1126, 10AG068 and concurred with the hearing officer recommendation that the appeal granted in part and denied in part. Attorney Steve Bochenek was present on behalf of the committee and also agreed with the recommendation. Member Scholz moved to accept the recommendation of the hearing officer and General Counsel to deny the appeal. Member Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.21, *SBE v. Friends of "AJ" Wilhelmi*, 18614, 11MA016 and concurred with the hearing officer recommendation that the appeal granted in part and denied in part. Attorney Mike Kasper was present on behalf of the committee and also agreed with the

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recommendation but asked for a settlement in the amount of \$1,000. The General Counsel did not object to the settlement offer. Vice Chairman Smart moved to accept the recommendation of the hearing officer and General Counsel and accept the reduced penalty of \$1,000. Member Byers seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.22, *SBE v. Friends of William J. Kelly*, 22238, 10AP066 & 10JS229 and concurred with the hearing officer recommendation that the appeal granted in part and denied in part. Attorney Andrew Finko was present on behalf of the committee and asked that the fine be recalculated in the amount of \$1,251 taking into account the small excess over the \$3,000 threshold in its ending balance, and offered \$500 to settle the outstanding fine. The General Counsel did not object to the settlement offer. Member Byers moved to accept the recommendation of the hearing officer and General Counsel and accept the reduced penalty of \$500. Vice Chairman Smart amended the motion to accept the revised offer of \$600 and it was agreed by Member Byers. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

A request for a payment plan was submitted by the *Friends of Marla Wilson* committee. No one was present and the General Counsel agreed with the plan outlined in Miss Wilson's letter on page 155 of the Board packet. Vice Chairman Smart moved to accept the payment plan as presented. Member Byers seconded the motion which passed unanimously.

The General Counsel presented a listing of assessments necessitating a final Board order for the committees included on pages 156-158 of the Board packet. Andre Smith was present on behalf of the *Friends of Andre Smith, Jr.* committee and asked to suggest a settlement offer. The Board explained that the penalty would first have to be assessed through a final Board and that Mr. Smith could then file a motion to reconsider after that time. Member Schneider moved to issue final Board orders for those committees. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

A listing of payment of civil penalties was presented for informational purposes.

The General Counsel presented Agenda item 3.a.26, *Holzer v. Friends for Dobrzycki*, 11CD210, a complaint following closed preliminary hearing. Michael Holzer and Mark Dobrzycki were both present and agreed to address the matter in open session. The General Counsel concurred with the recommendation of the hearing officer for the respondent to file additional amended reports to address the beginning balance and ending balance discrepancies and to report all contributions that may have been received including contributions made by the respondent to his own committee, and to do this within 30 days of the board order. The hearing officer further noted that failure to comply with the Order would not only subject the committee to a possible sanction but would also result in the committee being ordered to conduct an audit of its financial records. Mr. Holzer indicated he accepted most of the responses from the respondent but did not agree that the committee did not receive the contributions in question. Mr. Dobrzycki agreed with the recommendation of the hearing officer. Vice Chairman Smart moved to accept the recommendation of the General Counsel and hearing officer. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 3.a.27, *Sorock v. Citizens for Wilmette Schools and Thomason*, 11CD026, a motion for reconsideration of a final order. The complainant, Herbert Sorock, was present and attorney Mike Kasper was present on behalf of the respondent. Both parties agreed to address the matter in open session. The General Counsel recommended the motion be denied as the complainant is re-stating arguments that the Board previously denied and does not raise any additional points to consider. Mr. Sorock highlighted some points in his motion and reiterated that the \$3,000 plus contribution for the electioneering website should be reported as an in-kind contribution. He also felt the website design should fall under the 'anything of value' section of the statute and should have been reported based on that language as well. Mr. Kasper indicated that the motion was only a restatement of arguments previously rejected by the Board and that the motion for reconsideration should be denied. Discussion ensued regarding the statutory

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language defining 'anything of value' and what types of services fall underneath that section. Vice Chairman Smart moved to deny the motion to reconsider. Member Scholz seconded the motion which passed by roll call vote of 7-1 with Member Gowen voting in the negative.

After a five minute recess the Board moved to the report of the Executive Director. Mr. Borgsmiller began with a report on the Advisory Committee Meeting which was held at 9:00 a.m. just prior to the Board meeting. This was the first meeting of the new Committee and Member Coffrin sat as the representative of the Board. Some Items discussed included zone meeting updates, legislation, retabulation of early voting devices and suggestions for reminding the jurisdictions of the provisions of the federal consent decree regarding the timely sending of absentee ballots to UOCAVA voters.

Mr. Borgsmiller next reported on the electronic canvass and noted that good progress has been made and that Brent Davis has a good handle on the project. Mr. Davis said that he is working with the vendors to obtain specific data elements in order to implement the various reporting requirements of the system. He noted that there are technological issues, but that this was expected at the forefront of the project and that the jurisdictions were being very cooperative as well.

Mr. Borgsmiller asked Ken Menzel to address the declaration of judicial vacancies. Mr. Menzel reviewed his memo that was included in the Board packet and said that most judicial vacancies are declared by the Supreme Court. He explained that the Board certifies the newly created positions that arise from legislation and at this time there are four positions for the Board to declare. They are as follows: in the 16th Judicial Circuit, 2nd Subcircuit, Additional Judgeship A; in the 19th Judicial Circuit, 2nd Subcircuit, Additional Judgeship A; also in the 19th Judicial Circuit, 3rd Subcircuit, Additional Judgeship B; and in the 23rd Judicial Circuit, Resident Kendall County, Additional Judgeship A. Member Scholz moved to certify the additional judgeships. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0. The Chairman then thanked Mr. Menzel for his hard work on the matter.

Dianne Felts presented for consideration engineering change orders for ES&S voting equipment and said these were very minor changes that have been reviewed and approved by the testing laboratory who found did not warrant a test. Ms. Felts explained that it has been past Board practice that if the laboratory does not require a test, then the SBE does not required testing. The changes include use of a better glue, a restriction of hazardous substance and a couple of manufacturer changes. Member Coffrin moved to approve the engineering change orders for ES&S voting equipment. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

Cris Cray began her legislative report and informed the Board that the last three pieces of election legislation listed in her memo from the Board packet were signed by the Governor and also thanked Mr. Menzel for his assistance with Senate Bill 63. Ms. Cray noted that the numbers for the supplemental appropriation were sent to the Governor's office on September 6th and she thanked Mike Roate and Kyle Thomas for their assistance in compiling the numbers on such short notice. Mr. Borgsmiller pointed out that the most important priority on the supplement is the election judge reimbursement and the next priority being the IVRS reimbursement to assist the local jurisdictions in remaining HAVA compliant.

Ms. Cray stated that the Campaign Finance Reform Task Force Committee met on September 15th and Mike Kasper volunteered to draft the legislation which will be voted on at the next meeting scheduled for October 13th. The public financing report is due by December 31st and the Committee is looking at an outline of proposed legislation that they would like to name "The Lincoln Act for Public Financing in Illinois" which would determine who will qualify under the Act and where the funding would come from. Ms. Cray said she would discuss the threshold limits with the Committee at a future meeting to get an idea of their thoughts on the issue.

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Mr. Borgsmiller gave an update on the metes and bounds project and said Bob Lindquist from GIS Solutions has been employed and they have overlaid the metes and bounds onto an interactive map. Eric Donnewald noted that 76 metes and bounds descriptions for the House of Representatives have been completed to date and anticipates the completion of the remaining descriptions by the end of September. Mr. Borgsmiller hopes to release the interactive maps by the end of this week and that the Information Technology staff was present to conduct a demonstration of the program. Kevin Turner explained that this program will replace the district locator program currently on the SBE website and upon entering the new program a disclaimer pops up indicating that the representatives will not be known until they are sworn in after the 2012 General Election. Jason Kilhoffer then gave brief demonstration of the capabilities of the interactive maps program. Mr. Turner said that the local election authorities will have the option to put a link to the program on their own websites so the public could access it through those means. Mr. Borgsmiller indicated that a Press Release will be sent out when the program is ready to be released to the public and that it would also be sent to the Board Members and local election authorities.

Kyle Thomas presented the IVRS update for informational purposes and noted that last month staff resurrected some of the duplicate matches and reviewed each one to determine if they were truly duplicates so the jurisdictions could take the proper action. Mr. Thomas said that East St. Louis was making progress and their duplicate numbers have decreased. The census data versus registered voters report was discussed and Mr. Thomas indicated that the jurisdictions are working hard on their purges and each month at least one jurisdiction has dropped below one hundred percent.

Mr. Borgsmiller discussed the HAVA site visits and explained that as a result of a single audit finding in 2006, Becky Glazier and Amy Calvin began conducting site visits around the state to locate voting equipment and other equipment items purchased with HAVA funds to verify that the jurisdictions actually have the items they say they purchased. The counties are randomly chosen by zones and to date approximately twenty-one visits have been conducted and several more are already planned throughout the end of the year. Ms. Glazier noted that most of the jurisdictions generally have their equipment in order and if not they are instructed to correct their inventory sheets. If they are missing a piece of equipment that was supposedly purchased then they might have to return the funding with interest or if there were other items previously purchased from their grants that was in excess of their allocation those could be adjusted as well. Mr. Borgsmiller said that staff does a very thorough job managing the grants and only approving items that qualify under the statute.

Jim Withers gave an update on the Springfield office facility and indicated that Central Management Services was in the process of drafting the lease and the cabling issues have been resolved as well. The expected move-in date is scheduled for the weekend of January 28, 2012 but is subject to change.

Mr. Borgsmiller presented the fiscal status reports for informational purposes. The final FY11 report will be submitted at the end of the calendar year once the Comptroller's office finalizes all of the payments. Spending for FY12 is right on target as anticipated in the spending plan.

The two year plan of activity for the months of September and October was presented for informational purposes.

Next on the Agenda was a follow up item on the Statewide Election Management System update. Mr. Thomas indicated there are many volunteers from each zone around the state and the first meeting is scheduled for September 27th.

Mr. Borgsmiller informed the Board that the next meeting scheduled for October 18th in Chicago would only have videoconference capability from 9:00 a.m. until 2:00 p.m. and recommended the meeting begin at 9:30 a.m. instead of 10:30 a.m. The Board agreed to change the meeting time to 9:00 a.m. Mr. Borgsmiller also noted that the November 21st meeting will be held at the State Employees' Retirement System due to

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petition filing activities in the Board's Springfield office. There will not be a videoconference hookup for this meeting due to lack of equipment availability.

Vice Chairman Smart moved to recess to executive session to discuss litigation and personnel matters. Member Gowen seconded the motion which passed unanimously. The meeting recessed at 2:05 p.m. and reconvened at 3:25 p.m.

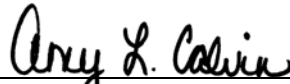
Upon reconvening a roll call was taken with all Members present as noted in the initial roll call except Members Rice and Schneider were absent and Chairman McGuffage and Vice Chairman Smart held their proxies respectively.

Member Scholz moved to authorize legal counsel to request a stay of proceedings with the ILRB and the Illinois Appellate Court, and also to file an appeal. Member Byers seconded the motion which passed by roll call vote of 8-0.

Vice Chairman Smart moved that the Board, after successfully interviewing the three candidates for Jim Withers' position, authorize the Executive Director to offer the position to Mike Roate at a salary for them to work out. Member Scholz seconded the motion which passed by roll call vote of 8-0.

With there being no further business before the Board Vice Chairman Smart moved to adjourn until October 18, 2011 at 9:00 a.m. or call of the Chairman, whichever occurs first. Member Byers seconded the motion which passed unanimously. The meeting adjourned at 3:30 p.m.

Respectfully submitted,



Amy Calvin, Administrative Assistant II



Rupert T. Borgsmiller, Executive Director