

**STATE BOARD OF ELECTIONS
Board Meeting
Monday, September 20, 2004
Springfield, Illinois**

MINUTES

PRESENT:

**John R. Keith, Chairman
Jesse Smart, Vice Chairman
William McGuffage, Member
David E. Murray, Member
Albert Porter, Member
Wanda L. Rednour, Member
Elaine Roupas, Member
Bryan Schneider, Member**

ALSO PRESENT:

**Dan White, Executive Director
Colleen Burke, General Counsel
Rebecca Glazier, Assistant to Executive Director**

The regular monthly meeting of the State Board of Elections was called to order at 11:10 a.m. with seven members present. Member Murray was delayed and it was noted Vice Chairman Smart held his proxy until his arrival.

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

Chairman Keith presented the minutes of the August 19 and September 3 special meetings. Chairman Keith indicated a first draft of the August 27 minutes was distributed to Board members for comments and would be presented at the October 25 meeting for final approval. Member Roupas moved to approve the minutes. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The Executive Director indicated that legislation passed in 2003 that provided the Lincoln Land Community College trustees be elected from districts rather than at-large as they currently are. The State Board of Elections is required to conduct a lottery to determine which seats will be elected from districts at next year's local election. Steve Sandvoss, Deputy General Counsel, has reviewed the matter and indicates there is a question as to how many seats will be up for election. Two seats have terms that end in 2005 and are subject to the lottery. At question is a vacancy with an expiration term of 2007 and whether it should be subject to the lottery. Mr. Sandvoss felt that even though this seat will be filled in 2005 by election, it should not be subject to the lottery. Lincoln Land Community

College President Jack Daniels was present along with LLCC Counsel Eric Grenzebach. Mr. Grenzebach discussed the issue and felt that the vacancy should be subject to the lottery. (Member Murray arrived at 11:15 a.m.) Discussion continued and it was indicated there is no legislative history and no guidance from the transcripts or tapes of the legislative hearings. Member Murray then moved to conduct the lottery under Section 805/3-7 of the Public Community College Act to identify the three at-large Board seats for Lincoln Land Community College that will convert to trustee district seats in 2005, the two at-large Board seats that will convert to trustee district seats in 2007 and then the final number picked (the sixth number) would be the seat that would convert from at-large to a trustee district seat if a vacancy occurs between now and 2009. Member Murray indicated he wasn't sure that Steve was not right, but there was no need to complicate this any more if there is an option. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

Mr. Grenzebach discussed the problem with the way the legislation was crafted that there is some territory of the state included in the legislation that is not in the community college district and there is some territory that is in the community college district that was not included in the legislation. Although he indicated he did not think there would be any implications for the 2005 election. The lottery then commenced by pulling numbers based on the numbers of the districts assigned by SBE staff to the maps. The numbers were drawn in the following order: five, three, one, four, two, six and seven. The districts will go from being elected at-large to elected by district in that order.

The Executive Director presented a Guide for Election Authorities which is not meant to be all-encompassing, but rather it provides a brief background on HAVA and its funding and focuses on HAVA provisions such as voter registration, provisional voting and polling place accessibility and highlights recent changes in Illinois state election law. Member Roupas felt it was a good use of our resources. Director White thanked all staff who contributed to the project. Peggy Ann Milton, McLean County Clerk, indicated that if the Board wished, the election authorities would take a look at it at their convention next week. The Board agreed to delay publication of the Guide until the clerks have reviewed it at their meeting September 28 and have had a chance to comment on the contents.

The Executive Director presented a listing of election judges schools being conducted indicating this is a record number of schools scheduled this early.

Director White reviewed the distribution process for HAVA funds indicating how much has been distributed to date. Mr. White indicated that staff is in the final stages of testing the Voter Information System Application (VISTA) for the November general election. The website will allow election authorities to access voter information anywhere in the State, notify other jurisdictions of transfers of registration, look up and determine duplicate registrations, identify registrations with incorrect or missing information and administer HAVA provisional voting requirements. He also indicated that staff is in the process of updating the HAVA State Plan, which is required every year we receive federal funds for HAVA. This will be presented to the Board for approval at the October Board meeting.

The Executive Director reported on this morning's meeting of the Advisory Committee indicating Chairman Keith, Vice Chairman Smart and Member Schneider attended along with SBE staff. Issues discussed included the grants being distributed and legislative proposals. Chairman Keith noted that a suggestion was made that we include in a legislative package unification of the registration procedures. Director White continued and indicated the election authorities were asked to provide us with a small number of election authorities who would be interested in advising the Board and staff as we proceed with the statewide voter registration system. Mark Shelden, Champaign County Clerk, was present and discussed the unification of registration issue. Mr. Shelden indicated he was speaking for himself on this issue, but would like to see the state voter registration form and the NVRA registration form unified where there would be one form and one set of rules. With the state form there can be no politicking while registering voters; NVRA puts no limitations on that so people who want to politic at the same time use the NVRA form.

Director White introduced Dan Johnson-Weinberger who had requested to be placed on today's agenda to discuss Louisiana Style Ranked Ballots. Mr. Johnson-Weinberger discussed the near impossibility of getting absentee ballots sent, cast and returned for municipal election years for voters living overseas. He offered the solution of sending both ballots at once, the last ballot being a

ranked ballot. This would require legislative change in Illinois. Member McGuffage suggested this as an agenda item at the next Advisory Committee meeting.

The Executive Director presented for informational purposes proposed legislation that may be included in the fall veto session.

Director White introduced Barb Gross, Morgan County Clerk. Chairman Keith noted that he attended a celebration of her 30 years of service as county clerk. Mrs. Gross invited the Board to attend the conference of County Clerks and Recordors, September 28 and 29 in Bloomington. The Election Assistance Commission has been invited and Commission DeGregario will be attending.

Director White discussed the ethics training program and indicated the on-line training began on September 9 and must be completed by October 8.

The Executive Director presented for informational purposes the final FY 04 fiscal status report indicating we are returning \$877,192.58 to the State Treasury. Director White thanked Mike Roate and staff for watching all expenditures this fiscal year. The FY05 fiscal status report, the HAVA funding report, and the two year plan of activity for the months of September and October were presented for informational purposes.

Director White indicated that a campaign disclosure matter was added to the agenda earlier this week involving a candidate who paid his fine but his check was returned for insufficient funds. This will be discussed as part of the General Counsel's report.

Vice Chairman Smart moved to recess to executive session for the purpose of discussing personnel and litigation matters. Member Rednour seconded the motion which passed unanimously. Meeting recessed at 12:20 p.m. and reconvened at 1:40 p.m.

Member McGuffage moved to recess as the State Board of Elections and convene as the State Officers Electoral Board for the purpose of approving minutes. Member Murray seconded the motion which passed by roll call vote of 8-0. Meeting recessed at 1:40 a.m. and reconvened at 1:45 p.m.

Upon reconvening, Member McGuffage moved to enter into a contract of employment with Executive Director Dan White retroactive to July 1, 2004 as voted on in executive session. Member Porter seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented for Board consideration an amendment to Campaign Disclosure Rule 100.120. Steve Sandvoss stated the reason for the amendment is to eliminate a perceived loophole in determination of when a political committee is deemed to have received a contribution. He indicated this amendment was based on a proposed rule from several years ago, but he changed the language of the rule so it covers any official or person affiliated at all with the committee. Discussion ensued on possession and acceptance as well as who can accept the contribution. Mr. Sandvoss noted that the amendment may be inconsistent with Section 9-6(a) that allows five days after receipt of any contribution in excess of \$20 to be reported. This amendment would require a contribution to be reported within two days after receipt.

The meeting was interrupted for a moment as there was a shooting at the State Capitol. It was noted the doors to the building were locked but staff was available to let anyone in that was attending the Board meeting.

Discussion returned to the rules and Member McGuffage felt the language was too broad and was concerned about a committee getting burned by a volunteer who might have accepted a contribution on behalf of the committee. In response to a question from Member Roupas regarding an inconsistency in the rule and in the statute, Rupert Borgsmiller explained that Section A refers to in-kind contributions and the certificate of in-kind contributions given by the contributor has to be more than \$50. Section 9-6 of the statute refers to what the agent's must maintain as it is the actual treasurer's responsibility to properly report as required by law. After further discussion it was agreed that this be refined taking into account everyone's comments and trying to do a separate one for the A-1's, including checks, credit card disbursements and wire transfers as contributions.

The General Counsel presented ATA and LEAA and requested approval to consult with Al Zimmer to see if he could be available to be the hearing officer in this matter. If so, Steve Sandvoss would then make the General Counsel's recommendation. With no objection the Board gave this approval.

The General Counsel then presented *SBE v. Cicero Regular Democratic Organization*, 04CD24, a complaint following public hearing. No one was present on behalf of the committee. Ms. Burke

reviewed the activities of the committee and concurred with the hearing officers' recommendation that since this semiannual report is now on file, the complaint should be dismissed but staff be authorized to assess a \$5,000 penalty for the delinquent filing. Member Murray moved to accept the recommendation of the hearing officer and General Counsel. Member Rednour seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Friends of Maureen Murphy* and indicated correspondence was received asking that this matter be held over to the October meeting so they could attend in person. This was previously carried over from August. Member Roupas moved to grant the request for continuance. Member McGuffage seconded the motion. Discussion ensued on hearing the matter today as the parties knew this month's meeting was in Springfield. It was indicated the request was faxed this morning so perhaps it might have been a last minute problem. The motion was then called and passed by roll call vote of 7-1 with Chairman Keith voting in the negative.

Chairman Keith presented agenda items 3 b) 2-15. No one was present in any of the matters. Item 3 b) 2 was pulled from group consideration as new information has been presented. The General Counsel concurred with the hearing officer's reports in cases 3-15 and recommended they be adopted. Member Murray moved to accept the recommendation of the hearing officer and General Counsel in cases 3 b) 3-15. Member Roupas seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. Citizens to Elect William Beavers* and reviewed activities of the committee. The hearing officer had requested the committee provide a copy of a receipt showing the date of the upload. His recommendation was if they could provide the receipt the appeal be granted. Mr. Sandvoss noted it was received 15 minutes ago. The due date was October 16 and the receipts which correspond to the Schedule A-1's indicate one was uploaded October 17 and the other October 18. Mr. Odelson who represents the committee had received notice of today's meeting. The General Counsel concurred with the recommendation of the hearing officer that the appeal be denied and the ten percent penalty applied. After further discussion Member Porter moved to give notice to Mr. Odelson that the receipt was not satisfactory and continue the matter to the

October meeting. Member Murray seconded the motion. With no objection to the motion, it passed unanimously.

Chairman Keith presented agenda items 3 c) 16-40. Brad Burnett was present in the matter of *SBE v. Illinois Republican Party*, 00AP118 (agenda item 28). Jon Ellis was present in the matter of *SBE v. Insight Committee for Telecommunications Excellence*, 02AG125 (agenda item 40). Both agreed to have their cases taken with the group. After discussion on which cases to pull and take separately from agenda item 3 c) 16-40, the General Counsel indicated she concurred with the hearing officer's recommendations in agenda items 3 c) 16, 17, 18, 21, 23, 26, 27, 28, 30, 32-40. Vice Chairman Smart moved to concur with the recommendations of the hearing officer and General Counsel. Member Murray seconded the motion which passed by roll call vote of 8-0.

The General Counsel then discussed agenda items 19, 22, 24 and 31 and concurred with the hearing officer's recommendation in all. Member Roupas felt that the defense in all four cases were computer problems. This has been allowed in the past as a one time defense. Although this was a different hearing officer she felt that to be consistent these be given the same treatment. Rupert Borgsmiller discussed these particular matters indicating some of them waited until the last day to even get a password and enter the system. This was not necessarily a computer glitch. Member Murray agreed and questioned if we would accept this excuse when a big fine has been assessed. No one was present for these committees and Vice Chairman Smart felt if they did not care to come argue it, why the Board should change the recommendation. After further discussion that the committees did try to file prior to the deadline, Member Roupas moved to reject the recommendations of the hearing officer and General Counsel and grant the appeals in these four cases. Member Murray seconded the motion which passed by roll call vote of 5-3 with Member Porter voting Member McGuffage's proxy as he had stepped out of the room. Member Schneider, Vice Chairman Smart and Chairman Keith voted in the negative.

The General Counsel presented *SBE v. Canteen Township Democratic Organization* and indicated the chairman of the committee stated he was in the hospital and no one else had access to his mailbox. The hearing officer recommended the appeal be denied for lack of an adequate defense.

Ms. Burke disagreed and felt that the appeal should be granted to be consistent with previous practice. Member Roupas moved to grant the appeal. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Chairman Keith presented *SBE v. School District 123*, 02AG155. Member Roupas noted that she requested this case be pulled from group consent as the hearing officer applied the old penalty rather than the new penalty which would be stayed. Ms. Burke noted there would be nothing improper with going with Member Roupas recommendation and reducing the fine to the ten percent. The fine would be reduced to \$200 and stayed because it is a first time violation. Member Roupas then moved to deny the appeal and a fine of \$200 be assessed but stayed. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The General Counsel indicated that in the matter of *SBE v. Trucking Industry PAC*, 04DS144 & 04GP114, the attorney could not make it today and asked for a continuance to October. Member Porter moved to continue this matter to the October meeting. Member Rednour seconded the motion which passed unanimously.

Chairman Keith presented *SBE v. Citizens for Joe Moore*, 02AG51 and *SBE v. Committee to Elect Don Lamps*, 02AG65. The General Counsel concurred with the hearing officer's recommendations that the appeals be granted in part and denied in part. Member Roupas noted that the fine in 02AG65 should be \$89 instead of \$88. Member Murray moved to accept the recommendation of the hearing officer and General Counsel and the fine be \$89 in 02AG65. Member Roupas seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a memo from Rupert Borgsmiller where three committees have been assessed penalties for late filing and have not appealed. Therefore, final orders need to be issued. Member Murray moved to accept the recommendation of the General Counsel. Member Rednour seconded the motion which passed by roll call vote of 8-0.

Chairman Keith discussed these kinds of appeals and the fact that if no one appeals perhaps the Board should consider giving Mr. Borgsmiller authority to proceed without having to bring them

before the Board. Member Murray moved to adopt a resolution as indicated on page 251 of the Board packet. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

The General Counsel discussed the matter of Mark Brown, candidate for the 58th representative district. Mr. Brown paid his fine on the day of ballot certification via two checks. Both checks were sent back nonsufficient funds. Mr. Brown indicated he would bring a certified check to the Chicago office. Mr. Borgsmiller indicated he has not brought the check yet. Member Murray moved that if Mr. Brown has not brought the certified funds or cash by 5 p.m. on September 21, we amend the certification by striking his name and authorizing staff to use the autopen in signing the certification. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

Executive Director White referred to a letter sent to the Board from Martin Lawless on behalf of the Boards of Election Commissioners. At issue is the receipt of voter registration applications from the Secretary of State. Chairman Keith asked that Mr. Lawless be advised it has been referred to our legal counsel.

Member Schneider discussed absentee ballot applications and publication of such. Discussion ensued on past legislation requiring this information be posted on the Internet but the legislation went nowhere. The SBE was in opposition of this legislation as it was felt it could be an invitation for trouble for the people that were out of town.

Vice Chairman Smart noted that everyone has received an invitation to the Clerks' meeting in Bloomington and indicated that Commissioner DeGregario is expected to speak in opposition to our position on the statewide voter registration database. After discussion it was agreed that if this does happen, he would be requested to provide this in writing so our legal counsel could review.

Member Murray moved to recess to closed session to discuss the three remaining campaign disclosure matters. Member Rednour seconded the motion which passed unanimously. Meeting recessed at 3:10 p.m. and reconvened at 3:14 p.m.

Upon reconvening Member McGuffage moved to adopt the motions in closed sessions on cases *Saewert v. Santana*, 04CD38, *SBE v. Committee to Elect Paul Jakes*, 04CD17 and *SBE v. Citizens*

to *Elect David J. Young, 04CD28*. Member Murray seconded the motion which passed by roll call vote of 8-0.

The next regular meeting of the State Board of Elections will be held on Monday, October 25, 2004 at 11 a.m. in Chicago.

With there being no further discussion, Member McGuffage moved to adjourn. Member Murray seconded the motion which passed unanimously. The meeting adjourned at 3:15 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director