

STATE BOARD OF ELECTIONS
Regular Meeting
Monday, September 21, 2015

MINUTES

PRESENT:

Charles W. Scholz, Chairman
Ernest L. Gowen, Vice Chairman
William J. Cadigan, Member
Andrew K. Carruthers, Member
Betty J. Coffrin, Member
John R. Keith, Member
William M. McGuffage, Member
Casandra B. Watson, Member

ALSO PRESENT:

Steven S. Sandvoss, Executive Director
James Tenuto, Assistant Executive Director
Kenneth R. Menzel, General Counsel
Amy L. Calvin, Administrative Assistant II

The meeting convened at 10:35 a.m. via videoconference with all Members present. Chairman Scholz, Vice Chairman Gowen and Members Carruthers, Coffrin and Keith were present in Springfield. Members Cadigan, McGuffage and Watson were present in Chicago.

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

Vice Chairman Gowen moved to approve the minutes from the August 18 meeting with a minor correction. On page five, the third to last paragraph, that statement should read "Finally, funding has been requested in the FY16 budget to join the Electronic Registration Information Center (ERIC)." Member Keith seconded the motion which passed unanimously.

The General Counsel noted that the motions for reconsideration for Agenda items 2.a.1-2: *SBE v. West Aurora Volunteers for Education (WAVE)*, 16063, 15AM017 and *SBE v. Glenwood Peoples Party*, 26044, 15MA074 were withdrawn because the committees planned to dissolve.

A request for settlement offer for Agenda item 2.a.3, *SBE v. Regular Republican Party of River Forest*, 226, 14SQ003, was presented and the General Counsel recommended the offer be rejected because the amount was significantly less than 50% of the assessed penalty. Thomas Cronin was present on behalf of the committee and explained they were not a fundraising committee and their work is volunteer based. He indicated that the late filings were inadvertent and the committee has retained a new accounting firm as well to handle the filings. Mr. Cronin felt the \$500 was a reasonable offer based on the yearly average of the committee's history. He noted that a \$500 check was sent with the settlement offer letter and after subtracting that amount the committee has a funds balance of \$1,053.60. After discussion, Member McGuffage move to accept the \$500 because of the circumstances where the committee does not have the money in to pay the fine nor do they have ability to raise funds in the future to pay on a payment plan. Member Watson seconded the motion which passed by roll call vote of 7-1 with Member Keith voting in the negative.

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.4, *SBE v. New Trier Republican Organization*, 244, 14AM004 and concurred with the hearing officer to grant the appeal. He further recommended the committee be ordered to amend the quarterly report to reflect the correct date. Attorney John Fogarty was present on behalf of the

committee and concurred with the recommendation. Member Keith moved to accept the recommendation of the General Counsel. Member Carruthers seconded the motion which passed by roll call vote of 7-0 (Member Cadigan recused himself from the matter).

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.5, *SBE v. Farmers Employee Agent PAC*, 17748, 15AD076 and concurred with the hearing officer to grant the appeal. Member Keith moved to accept the recommendation of the General Counsel. Member Carruthers seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.7, *SBE v. Gallatin County Republican Central Committee*, 380, 15DQ166 and summarized the matter. He concurred with the hearing officer recommendation to deny the appeal. Attorney John Fogarty and Lawrence Wooden were present on behalf of the committee. Mr. Fogarty indicated that the committee will take action to avoid future late filings and offered a settlement of \$600, which was 50% of the assessed penalty. Mr. Wooden indicated that the late filing was unintentional and was out of state for an extended period. He noted that he did not receive the form even though his mail was forwarded to his Florida residence. Member Keith moved accept the recommendation of the General Counsel and accept the \$600 settlement offer. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented and appeal of campaign disclosure fines for Agenda item 2.a.17, *SBE v. Citizens for Rauner, Inc.*, 25185, 15AD041 and reviewed the matter. He concurred with the recommendation of the hearing officer to deny the appeal. He also noted that applying the standard fine schedule would assess an unusually large fine in the amount of \$274,580 and the sheer size of the fine warrants some consideration of whether a reduction might be appropriate. Staff review of past A-1 assessments in the six-figure range indicate that, of those that were ever paid, all were paid at 10% or less (one instance as low as 1%). Although those were generally first violation situations where the standard fine structure would call for a 10% imposition. In addition, the one late A-1 report that was due on October 30, 2014 was filed approximately eight hours late and the General Counsel noted, that in the past, the Board has occasionally excused filings made minutes past the deadline. He recommended that the appeal be denied but that the Board consider imposing a fine not to exceed 10% of that \$274,580 amount. Attorney John Fogarty was present on behalf of the committee and said, over its existence, the committee has taken in approximately \$81 million and had timely filed over a hundred A-1 reports. He felt they had an excellent record since the committee hired a professional compliance firm in November of 2013 and this was the first error they have made since then. Unfortunately, the committee had two more minor errors prior to that. Mr. Fogarty explained the staff person from the compliance firm who was responsible for the daily reporting and record keeping experienced a medical emergency and went to the hospital the day the report was due. Upon her release later in the day, she attempted to log in remotely to her company's software and was unable to connect. Rather than call her boss, she simply notified him the next morning not realizing what was at stake. As soon as it was realized, the report was filed before the opening of business the next day. Mr. Fogarty indicated the late filing was inadvertent and felt the goal of compliance and disclosure was still achieved by 8:00 a.m. the next day. He indicated that he did concur with the recommendation of the hearing officer, however, in light of the circumstances, he asked for leniency in the final assessment of the civil penalty. In response to an inquiry regarding the computer defense provision, Mr. Fogarty responded that the provision could be read to include technical computer issues on the respondents side and not just on the end of the State Board of Elections. The General Counsel indicated the computer defense is usually applied when the user experiences a technical problem with either the SBE's IDIS software or some kind of a connection issue into our system in order to file the reports. He noted that this situation was an instance where the staff member in the firm had trouble connecting into the firm's computers. After discussion, Member Watson moved to accept the recommendation of the General Counsel and

impose a fine at 10% of the assessed civil penalty. Member Cadigan seconded the motion which passed by roll call vote of 7-1 with Member Keith voting in the negative.

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.18, *SBE v. Anderson for Illinois*, 25649, 15AD089 and summarized the matter. He concurred with the hearing officer recommendation to deny the appeal and noted that in a few weeks the committee could possibly be in the range to make a settlement offer. Attorney John Fogarty was present on behalf of the committee and indicated they have hired a new treasurer to handle the reports. Member Keith moved to accept the recommendation of the General Counsel. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.10, *SBE v. Citizens for Jesse White*, 14632, 14AJ062. After reviewing the matter he concurred with the hearing officer recommendation to deny the appeal and assess 50% of the civil penalty. Attorney Mike Kasper was present on behalf of the committee and asked that the contributions in question be treated as one violation because they were all part of a single deposit. Mr. Kasper also requested this be treated as a first violation since the committee has not had any late filings in almost two years and asked the fine be stayed. In the alternative, he asked that the fine be assessed at a 10% rate. Member McGuffage moved to deny the appeal and impose a penalty of \$1,500 which was 10% of the total fine. Member Watson seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.14, *SBE v. Friends of Robyn Gabel*, 22260, 14AJ061 and summarized the matter. He concurred with the hearing officer recommendation to deny the appeal and assess 50% of the civil penalty. Attorney Mike Kasper was present on behalf of the committee and asked that the fine be assessed at 10% of the civil penalty. He explained the late filings occurred because the staff member experienced a medical condition and the person filling in was new to the process. Member McGuffage moved to deny the appeal and impose a fine at 10% of the assessed civil penalty. Member Watson seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.15, *SBE v. Friends to Elect Kathleen Willis*, 23528, 14AS043 and summarized the matter. He concurred with the hearing officer recommendation to deny the appeal. Attorney Mike Kasper was present on behalf of the committee and concurred with that recommendation. Member Keith moved to accept the recommendation of the General Counsel. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented an appeal of campaign disclosure fines for Agenda item 2.a.19, *SBE v. Friends of Litesa Wallace*, 26025, 15AD055 and concurred with the hearing officer recommendation to deny the appeal. He further recommended that since the contributions were included in one deposit, this be treated as one violation and the civil penalty stayed as a first violation. Attorney Mike Kasper was present on behalf of the committee and concurred with the recommendation of the General Counsel. Member Keith moved to accept the recommendation of the General Counsel. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

Agenda item 2.a.16, *SBE v. Slocum for Senate*, 23909, 15MA061, was pulled and will be placed on the October meeting agenda.

Agenda item 2.a.11, *SBE v. Holland & Knight LLP IL Committee for Effective Government*, 16109, 15AD0763 was presented and Members Cadigan and Keith recused themselves from the matter. Vice Chairman Gowen moved to accept the recommendation of the General Counsel and

deny the appeal. Member Carruthers seconded the motion which passed by roll call vote of 6-0.

The following appeals of campaign disclosure fines where the General Counsel concurred with the hearing officer recommendation to deny the appeals were presented for Agenda items 2.a.6, 8, 9, 12, 13 & 20:

- 6) *SBE v. York Township Democratic Organization*, 206, 15MQ003;
- 8) *SBE v. Sheet Metal Workers' International Association LU #73 PAC*, 639, 15AM005;
- 9) *SBE v. Mercer County Democratic Central Committee*, 5164, 15MQ019;
- 12) *SBE v. Plainfield Township Democratic Organization*, 17761, 15MQ041;
- 13) *SBE v. Citizens for Hutchinson*, 19076, 15MQ045;
- 20) *SBE v. Clean Slate for College of DuPage Committee*, 29468, 15AM063.

Member Cadigan moved to deny the above noted appeals. Member Keith seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 2.a.21, *SBE v. Illinois Republican Party*, 292, 15AD005 and concurred with the hearing officer recommendation to grant the appeal in part and deny the appeal in part. Attorney John Fogarty was present on behalf of the committee and concurred with that recommendation. Member Keith moved to accept the recommendation of the General Counsel. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 2.a.22, *SBE v. Caroline for 43*, 26052, 15MA077 and concurred with the hearing officer recommendation to grant the appeal in part and deny the appeal in part. No one was present on behalf of the committee. Member McGuffage moved to accept the recommendation of the General Counsel. Member Cadigan seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented Agenda item 2.a.23, *SBE v. Garcia for Chicago*, 26214, 15MA083 and summarized the matter. He concurred with the hearing officer recommendation to grant the appeal in part and deny the appeal in part. The treasurer of the committee, Tony Favela, was present and indicated he experienced password issues but was able to get those resolved though NGP staff. He also asked that the A-1 violations be treated as one offense and civil penalty stayed as a first violation. Discussion ensued regarding delinquently filed A-1 reports relating to multiple in-kind contributions and if they could be considered as one violation. Member Keith moved to carryover the matter to the October 9 meeting agenda. Member Carruthers seconded the motion which passed unanimously.

The General Counsel presented an appeal of contribution limit fines for Agenda item 2.a.24, *SBE v. Friends of Roderick T. Sawyer*, 22875, 14JQ-CL002 and concurred with the hearing officer recommendation to grant the appeal. No one was present on behalf of the committee. Member Coffrin moved to accept the recommendation of the General Counsel. Member Watson seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a failure to comply with a board order for Agenda item 2.a.25, *Marino v. Friends of Sherman C. Jones*, 14CD113 and indicated that the committee has not completed the audit of their financial records as ordered. He concurred with the recommendation of Tom Newman, Director of Campaign Disclosure, to issue a rule to show cause why a penalty of up to \$5,000 should not be imposed for failure to comply. Mr. Newman also recommended the matter be referred to the Attorney General's office for appropriate enforcement action. Attorney Mark Scarlato was present on behalf of the committee and asked the matter be

continued to the next board meeting to allow additional time to file the D-2 reports. Mr. Scarlato indicated that this was his first appearance on behalf of the committee and they have hired a CPA to amend the reports from scratch. Member Keith moved to continue the matter to the October 9 board meeting. Member Carruthers seconded the motion which passed by roll call vote of 8-0.

A listing of civil penalty payments was presented for informational purposes.

Member Keith moved to take a short break and then recess to executive session to consider complaints following closed preliminary hearing and a personnel item. Member Coffrin seconded the motion which passed by roll call vote of 8-0. The meeting recessed at 12:15 p.m. and reconvened at 1:20 pm. with the same attendance as noted in the initial roll call.

As to Agenda item 2.a.27, *Streit v. Bury*, 15CD100, Vice Chairman Gowen moved to find that that complaint was not filed on justifiable grounds and the matter be dismissed. Member Keith seconded the motion which passed by roll call vote of 8-0.

As to Agenda item 2.a.28, *Savage v. Clean Slate for College of DuPage Committee*, 15CD101, Vice Chairman Gowen moved to find that the complaint was filed on justifiable grounds and the matter be referred to staff for imposition of a civil penalty. Member Keith seconded the motion which passed by roll call vote of 8-0.

Vice Chairman Gowen moved to grant a four year term appointment renewal to Mike Roate, Director of Administrative Services. Member Carruthers seconded the motion which passed by roll call vote of 8-0.

The Executive Director began his report with an update on the September 10, 2015 Special Election in the 18th Congressional District. He said that voter turnout was very low and the unofficial results indicate Darin LaHood as the winner. Staff received less than ten phone calls and all concerned polling place lookup. The results will be certified at the Board's October 9, 2015 meeting. Kyle Thomas, Director of Voting & Registration Systems said his staff, along with a couple of staff members from the Division of Election Operations, performed pre-election tabulation system testing in several jurisdictions. For the Special Primary Election, Tazewell and Sangamon Counties were tested and for the Special Election, Morgan, Woodford, Adams, Hancock and McLean Counties were tested. A few normal issues were encountered involving human error and cleaning of the machines and were resolved during the testing process.

Mr. Thomas next presented a voting systems approval for the ES&S 5300 Voting System, which includes the DS200 digital scan tabulator, DS850 central count digital scan tabulator and the ExpressVote ballot marking device. He referred to the three page detailed report included in the board packet and said Mark Manganaro from ES&S was present via teleconference. Mr. Thomas said testing began with marking of the ballots in May and concluded just last week. Most issues encountered were due to human error and one in particular was due to a spot of debris on the optical scan. He explained that the 2002 Standards require no more than one error in a minimum of 500,000 ballot positions. As indicated in the report, staff encountered one error in 41 million ballot positions. Mr. Thomas also noted that this was the first new full voting system to be approved in Illinois in almost nine years and the first system approved that complies with the e-canvass requirements. He said that the ExpressVote is a new accessible marking device and staff demonstrated it to the ADA community for their feedback. Mr. Thomas then recommended a two year interim approval of the EVS 5.3.0.0 system. Member Keith moved to grant the two year interim approval to the system. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The Executive Director reported that the Advisory Committee Meeting was held prior to the Board Meeting and referred to the Advisory Committee Member listing included in the board packet. Topics discussed included: the special election in the 18th Congressional District; pending legislation; online and election day voter registration; National Change of Address (NCOA) procedures; and SBE division reorganization. The next meeting will be held on a date to be determined in January 2016.

Next was the legislative update and the Executive Director reported that staff introduced House Bill 558 to set up a fund for the PEW Grant. The grant will help pay for a portion of the massive mailing that staff will be required to conduct pursuant to the terms of the Election Registration Information Center (ERIC) agreement. The cost of the mailing is approximately \$800,000 and the registration fee to join ERIC is \$25,000. However, we do not have spending authority until the agency receives a FY16 budget. The Executive Director noted that the House is scheduled to meet on Thursday, September 24 and the Senate is scheduled to meet on Tuesday, October 6.

Mr. Thomas gave an update on Senate Bill 172 and said he gave an instructional presentation on implementation of NCOA at the Board of Election Commissioners Conference last week. He also plans on doing the same at the County Clerks Conference next week and has scheduled training in several other jurisdictions that have requested it. Mr. Thomas noted that the Illinois Department of Employment Security (IDES), the last of five state agencies the State Board of Elections (SBE) is required to connect with for the receipt of electronic registration applications pursuant to SB 172, has now agreed to participate. Kevin Turner, Director of Information Technology, reported that the operating systems have been loaded on four new database servers located in the data center in the Springfield office with further configuration planned. He hopes to have that completed in four to six weeks and then physically locate them to the Central Management Services (CMS) data center to begin testing. Mr. Turner noted that staff is almost finished with the specifications on the ERIC portion of Senate Bill 172, which is the batch submission from the participating agencies. He also said the meeting with IDES went very well and expects full cooperation from them.

The Executive Director indicated that the agency is currently undergoing an audit and one area of the Information Technology (IT) audit is the use of the credit/debit card machine used to accept electronic payments. The vast majority of those charges are for petition copying fees which occur twice every two years. He noted that a tremendous amount of staff time is required to process petition copy requests and referred to page 173 of the board packet which described the entire process in detail. There are also other concerns such as network security, data breaches, privacy of personal information and possible lawsuits if unauthorized persons were to access sensitive information as a result of a credit card transaction. The Executive Director said a minimal amount of revenue is generated through petition copy purchases, approximately \$6,000 - \$8,000, and that amount is offset by operating expenses. He recommended elimination of the \$5.00 fee for petition copy requests and discontinue the use of the credit/debit card machines for the use of any payments made to the agency. Discussion ensued regarding the machines being used for payments of civil penalties and Mr. Newman said approximately 2-3% of committees pay those fines via a credit/debit card. It was noted that the machines were only used for petition copy requests and payments of civil penalties. Discussion turned to the use of a vendor to accept online payments through a website, the use of pay pal or online through the Illinois State Treasurer's Office. Mr. Turner noted that the auditors indicated that elimination of the machines would save a tremendous amount of time in the biannual audit and suggested the Treasurer's Office online payment program would be a suitable alternative. It was agreed that Mr. Turner would conduct some research on the E-Pay program and report on the matter at the October 9 board meeting. Member Keith moved to eliminate the fee for petition copy requests until

December 31, 2016. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

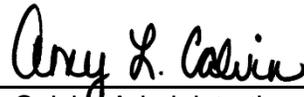
A report on the Election Center National Conference was presented for informational purposes.

The Executive Director presented updates to the SBE policy manual pertaining to the Overtime and Smoking Prohibition sections contained on pages 176-178 of the board packet and additional material sent prior to the meeting. The update to the Overtime section basically clarifies which employees are eligible for overtime, when it begins and ends, and overtime during certain types of travel status. The update to the Smoking Prohibition section includes electronic cigarettes in the definition of smoke and smoking consistent with the Smoke Free Illinois Act. Vice Chairman Gowen moved to approve the policy manual updates as presented. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

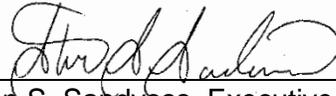
The fiscal reports and two year plan of staff activity were presented for informational purposes.

With there being no further business before the Board, Member Coffrin moved to adjourn until 10:30 a.m. on Friday, October 9, 2015 in Chicago. Member Carruthers seconded the motion which passed unanimously. The meeting adjourned at 1:10 p.m.

Respectfully submitted,



Amy L. Calvin, Administrative Assistant II



Steven S. Sandvoss, Executive Director