

STATE BOARD OF ELECTIONS

BOARD MEETING

Monday, October 25, 2004

Chicago, Illinois

11:00 a.m.

MINUTES

PRESENT:

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

ALSO PRESENT:

Daniel W. White, Executive Director
Steve Sandvoss, Acting General Counsel
Elizabeth Beckman, Acting Deputy Counsel
Darlene Gervase, Assistant to the Director

The meeting of the State Board of Elections was called to order at 11:10 a.m. with seven members present. Mr. Schneider arrived at 11:15 a.m.

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

Chairman Keith presented the minutes of the August 27 and September 20 regular monthly board meetings and the October 8 board conference call. Mrs. Roupas moved to adopt the minutes as amended and Vice Chairman Smart seconded the motion which carried unanimously.

The Executive Director began the meeting the Public hearing on the updated Help America Vote Act 2004 State Plan. He explained that the updated plan has been presented to the 73 members of the Planning Committee, and has been available on the Board's website; also it has been sent directly to all Election Authorities and published in the Chicago Daily Law Bulletin for the past 30 days. Comments from some of the Board Members and others have been incorporated into the version in the board packet. Mrs. Roupas asked for a change to page 3, section 302 under Provisional Voting the toll free phone number and website are for provisional voters who may check to see if their vote was counted. Also on page 4 under 402 under Administrative Complaint Procedure, Mrs. Roupas would like the words Rules and Regulations to be in small case. Mr. Murray suggested entitling the phrase, *i.e.*, *HAVA Administrative Complaint Rules and Regulations*, which was agreeable to Mrs. Roupas. Mr. White asked for comments from the general public, but no one appeared. Mr. White thanked Becky Glazier for her work on this document. Vice Chairman Smart moved to adopt the HAVA plan with the changes suggested and Mrs. Rednour seconded the motion. The motion passed 8-0.

A schedule of Election Day activities was presented to the Board by the Director. He gave a short summary of the pre election meeting that was held on Oct. 20th with representative from the U.S. Attorney's office, the Illinois Attorney General's office, the Cook County Clerk's office and the Chicago Board of Election Commissioners office. Hot line phone numbers for Election Day and contact numbers were exchanged. A discussion of "hot spots" with regard to areas where we may have problems showed that there were no significant areas of concern. Staff pre election meetings are scheduled for Thursday in Springfield and Friday in Chicago.

The Director was pleased to report that the IDEA/VISTA website is deployed to all jurisdictions and over 70 local election authorities have accessed the website to look up voters, practice entering information and review other features. The feedback so far has been positive, although some jurisdictions have opted for their own websites and toll free telephone numbers rather than those provided by the SBE. Mr. White said that the site is not active at the moment, but will be "live" by the end of the week. Mr. White thanked the IT staff headed by Steve Flowers for the work that went into creating this website. The Chairman asked about problems addressed in Mr. Flowers' monthly report wherein ES&S refused to supply data on Galesburg Election Commission and Woodford counties and the fact that Kendall and Rock Island counties had unplugged their systems. Mr. White stated that unplugging the systems was a form of protest and asked Mr. Dan McGinnis of ES&S, who was in the audience, if he had any input into this problem with Galesburg Election Commission and Woodford County. Mr. McGinnis confirmed that the data files were stored in Omaha Nebraska and that it would be too time consuming and too late to get the information. The Director also advised the board that Calhoun and Edwards counties do not have access to the VISTA project due to their lack of computers. The Board asked Mr. White to impress upon the counties who unplugged their system that the board would like full compliance as their HAVA funds may be affected by their protest.

Mr. White submitted a list of 50 television stations that were sent the public service announcements about registering to vote and getting out the vote. The audio public service announcement was sent to 181 radio stations and will continue to run until Election Day.

Director White believed that it was particularly important to have as many schools as possible during the General Election year and reported that 114 Judges of Election schools have been held with 5,388 participants. Mr. White thanked Eric Donnewald and his Training and Resource staff for their hard work.

Mr. White asked Dianne Felts, Director of VOSS to comment on the tests performed by her staff. Ms. Felts stated that they are still testing and expected to conclude testing by Thursday, October 28th. At that time she would be able to advise the Director if there were any problems. The only problem that has occurred so far is that the paper stock was not the same as the ballots that will be given to voters so the machines were not reading it correctly. She assured the Board that the problem was only with the paper stock and not the machines.

The Board asked Mr. White if he had any indication of how many voters registered directly with the agency this year through Motor Voter. He responded that staff has processed 71,400 registrations since August of this year. In 2000, staff processed 7,500 of these registrations for the entire year. Director White stated that he wants to advise voter registration groups, *i.e.*, *Rock the Vote*, etc., that registrations should be promptly sent to our office for processing as we have received registrations for other states in error and it is imperative that we process the registrations in a timely manner. It was estimated that \$20,000 in postage was used to process the registrations received since August.

The Director asked Steve Sandvoss to report on provisional voting law suits in other states. Acting General Counsel Sandvoss stated that all the cases are in the Midwest. In Missouri, provisional voting statutes require that voters be registered in that precinct. If a voter votes in the wrong precinct, officials are not required to count it, but Judges must direct the voter that they are in the wrong polling place. Taking a different stand are Ohio and Michigan where the right to vote is paramount and as long as they are in the correct county, officials must count their provisional ballot. In Florida, provisional ballots would not be counted by voters in the wrong precinct. Mr. White concluded with the statement that in Illinois the SBE recommends that the ballot be treated as a federal fail-safe ballot and be made only for federal offices. The ballot should be made for offices of President and U.S. Senate, and if the precincts share the same congressional district for Congress also.

The Chairman introduced a letter from Cook County Clerk David Orr dated October 20, 2004 wherein Clerk Orr asked the Board to recommend that the counting of absentee ballots be extended to 14 calendar days after the election. Mr. Clem Balanoff, Executive Director of the Cook County Board of Elections presented the appeal to the Board. Discussion was had among the Board. Vice Chairman Smart moved and Mrs. Roupas seconded a motion to deny this request. The motion carried unanimously.

At 12:00noon, Mrs. Rednour moved and Mr. Murray seconded a motion to adjourn to executive session which passed unanimously.

The Board returned to public session at 1:31p.m. with all 8 members present and continued with the Executive Director's report.

Mr. White presented a request for approval of a modification of Election Systems and Software Optech III-PE (Eagle). Dianne Felts, VOSS Director was present to answer any questions. Vice Chairman Smart moved to approve the modification in Galesburg and Rockford Election Commissions. Mrs. Rednour seconded the motion which passed unanimously.

The next three items were presented to the board for informational purposes only: Fiscal status reports for FY05, period ending September 30; Help Illinois Vote Fund; and the 2-year plan of activity for the months of October and November.

The Chairman thanked Mr. White and asked Steve Sandvoss, Acting General Counsel to present his report. Mr. Sandvoss began with consideration of the emergency rules which would be utilized if there was a complaint under Title 3 of HAVA. These rules mirror the campaign finance rules language wherein a determination is made as to the sufficiency of the complaint; it is then assigned to a hearing officer who will make a recommendation to the General Counsel who in turn makes a recommendation to the Board for their decision. Mr. Sandvoss asked the Board to keep in mind that to receive HAVA monies these rules must be in place before the General Election and assured the Board that these emergency rules will be submitted to JCAR this week. Mrs. Roupas commented that the rules were well written, but suggested that all hearing officers be licensed attorneys for both types of hearings (appearance and waiver of appearance). Mrs. Roupas moved to amend the HAVA complaint rules to state that Hearing Officers shall be Illinois licensed attorneys. Mr. McGuffage seconded the motion which passed unanimously. Mr. Murray moved to amend Section 125.950 of the HAVA rules to include associations along with companies and persons. Mr. McGuffage seconded the motion which passed 8-0. The Chairman asked for a motion to adopt the rule as amended. Mr. McGuffage moved and Mrs. Roupas seconded a motion to adopt the rules as amended. The motion passed 8-0.

Acting Counsel Sandvoss summarized the American Taxpayers Alliance (ATA) and Law Enforcement Alliance of America (LEAA) outside complaint that was filed in 2002. Although he had no idea why this matter had taken so long he stated that since Albert Zimmer, was appointed hearing officer, he expected a timely disposition of this matter. Mr. Sandvoss will update the Board on this matter at a later time.

Mr. Sandvoss presented a Motion for Reconsideration of the *SBE v. Peoria County Republican Central Committee*. Although Elizabeth Beckman, Acting Deputy Counsel recommended that the motion be denied, Mr. Murray moved to grant reconsideration of the Board's order and for the Board to hear this matter at its November 15th meeting in Springfield. Vice Chairman Smart seconded the motion which passed unanimously.

Continuance of the *SBE v. Citizens for Marovitz*, 00JS61 and 00GP142 was discussed. Mr. Murray moved and Mr. McGuffage seconded a motion to continue this matter to the December 3, 2004 Board meeting and noted for the record that this is the final continuance. The motion carried 6-2 with Vice Chairman Smart and Chairman Keith dissenting.

Mr. Sandvoss introduced *SBE v. Friends of Maureen Murphy*, 02AP80 which had been continued from the August and September meetings. Mr. Patrick Burns represented the committee and Representative Maureen Murphy also appeared. Mr. Sandvoss concurred with the recommendation of the hearing officer to reduce the fine to \$1,975. Mr. Burns asked the Board to consider that no money had been expended on behalf of the committee as the candidate ran unopposed. Mr. Murray moved to grant the appeal and not to impose a fine. Vice Chairman Smart seconded the motion which carried 7-1. Chairman Keith cast the dissenting vote.

Mr. Sandvoss presented *SBE v. Citizens to Elect William Beavers*, 02AG49 which was continued from the September meeting. Mr. Burt Odelson appeared at the hearing, but was not present at the Board meeting. The defense contended that the contribution was received on October 14th and Mr. Floyd Young stated that he electronically filed the contribution on the 16th and would fax the receipt directly to the SBE office. However, the receipt showed the dates of October 17 and 18. Vice Chairman Smart moved to deny the appeal and to impose a civil penalty of \$925. Mr. Roupas seconded the motion which carried unanimously.

The final appeal continued from the September meeting was *SBE v. Trucking Industry PAC*, 04DS144 & 04GP114. George Billows and Thaddeus J. Makarewicz appeared for the respondent committee. They explained that the PAC had problems with a disgruntled employee, clerical personnel who assured them that the reports were completed and filed, but in fact did not file the reports, and the former chairman who had been embezzling funds from the committee. They also had appointed a chairman who stated that all the forms had been filed and were up to date, but again, had not been filed. The second chairman left the PAC after six months. The present Chairman, Mr. George Billows advised the board that he had attended the IDIS programs offered through staff of the SBE and

was confident that all future reports would be timely and correct. The PAC offered a settlement offer of \$2500 and Mr. Sandvoss concurred with the recommendation to accept the offer. Vice Chairman Smart moved and Mr. Murray seconded a motion to accept the settlement offer of \$2,500. The motion carried unanimously.

New Appeals that the hearing officer recommended be granted were presented for review. The Acting General Counsel concurred with the hearing officers recommendations. Vice Chairman Smart moved and Mr. Porter seconded a motion to grant the appeals in the following cases: *SBE v. Glenview Boosters Association, Inc.*, 04GP17; *SBE v. The Committee to Elect Michael J. Lundy*, 04JS111; *SBE v. Troy Pride Committee*, 04AP17; *SBE v. Friends of Kevin Quinlan*, 04JS83; *SBE v. Committee to elect Terry Kipping Mayor*, 03AC61; *SBE v. DePue Democratic Club*, 04JS88; *SBE v. Friends of George Shadid*, 04AP30; *SBE v. Friends of John Pope*, 02AG110; and *SBE v. Gary Forby Campaign Fund*, 04AP40. The Motion passed unanimously.

SBE v. Friends for Poe, 04AP31, a new appeal that the hearing officer recommended be granted was considered for review. The contribution in question was received on March 9, but not reported until the 17th. An affidavit, prepared by the committee's staff submitted an affidavit that was contrary to the semi annual report that was filed. The Board cautioned the hearing officers to request affidavits from the contributor as to proof of the date the donation was made. Mr. Porter moved to accept the recommendations of the hearing officers and the General Counsel and to grant the appeal. Mrs. Roupas seconded the motion which carried 8-0.

Mr. Sandvoss presented new appeals wherein the hearing officers recommended the appeals be denied. Mr. Sandvoss agreed with the recommendation. Mr. Murray moved and Mrs. Rednour seconded a motion to accept the recommendations and deny the appeals. The motion carried 8-0. The committees are: *SBE v. Cook County Electrical Employees*, 04DS86; *SBE v. Friends of Tom Nicolay*, 04AP14; *SBE v. Holt, Committee to Elect Jeff*, 04JS71; *SBE v. Friends of Francisco Perez*, 04JS76; *SBE v. Committee to Elect Steve Rathbun Sheriff of Will Co.*, 02AP106; *SBE v. Friends of George Cardenas*, 04DS99; *SBE v. Citizens for Frimark*, 03AC63; *SBE v. Hunt for State's Attorney*, 04JS75; *SBE v. Associated General Contractors of IL PAC*, 02AG78; *SBE v. IL Life Insurance PAC*, 04AP21; *SBE v. ILPROPEC*, 04 GP43; *SBE v. 200 for 2000, dba, Tomorrow's Democrats*, 04JS50; *SBE v. Bukowski for Sheriff Committee*, 02AG58; *SBE v. Central Illinois Democrats*, 04JS104; and *SBE v. Committee to Elect Jack Ahola State's Attorney of Macon County, IL* 04AP50.

The appeal of *SBE v. Friends for Florez*, 04MA6, was continued until the December 3rd meeting in Chicago.

Payment of Civil Penalties was presented for informational purposes.

The Chairman asked if Ms. Christine Cegelis or Dan Johnson-Weinberger was present, but no one answered.

The Chairman asked for a motion to recess to Executive Session, Mrs. Rednour moved and Mr. Porter seconded the motion which passed unanimously. The Board retired to executive session at 2:55 p.m.

The Board returned to regular session at 3:10 with 7 members present. Mr. McGuffage held Mr. Porter's proxy.

Mr. Murray moved and Vice Chairman Smart seconded a motion to adopt the motions in closed session regarding 04CD64, and that Part A was filed on justifiable grounds. The motion passed unanimously.

There being no further business before the Board, the Chairman asked for a motion to adjourn until Monday, November 15, 2004. Mr. Murray moved and Mrs. Rednour seconded them motion to adjourn, the motion carried 8-0 and the Board adjourned at 3:15 p.m.

DATED: November 12, 2004

Respectfully Submitted:

Darlene Gervase, Assistant to the Director

Daniel W. White, Director