

STATE BOARD OF ELECTIONS
MINUTES
Tuesday, November 17, 2009

MINUTES

PRESENT: Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman (via Video Conference)
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

The Chairman called the meeting to order at 10:51 a.m. and lead everyone in the pledge of allegiance. All members were present; with Mrs. Rednour present in the Springfield office via video conference.

Member Keith moved to recess the State Board of Elections at 10:53 a.m. Member Walters seconded the motion which passed unanimously by 8 voices in unison.

The State Board of Elections returned to regular session at 11:36 a.m. Roll call was taken for attendance with all members present.

Executive Director White began with the presentation of the October 20th minutes from the regular meeting and explained revisions proposed by Member Keith. Member Smart moved and Member McGuffage seconded a motion to approve the minutes as corrected. The motion passed 8 voices in unison.

Mr. White reported that nomination and petition filing is the heart of our preparations and our administrative responsibilities. He first thanked the staff and particularly Mark Mossman and said that as the Board knows, the agency was mobilized for this one day. The office was reconfigured to ensure the filing moved smoothly. We used walkie-talkies and utilized Chicago staff as well as Springfield. It was a very good day for us and we are very proud. As he introduced Mark Mossman, Director of Election Information, he said that Mr. Mossman has taken great pride in making this the best day for the agency. Mr. Mossman thanked Dan for his kind remarks, but said he wanted to give all the praise and thanks to all the staff for the most successful filing ever. He added that 859 filed between October 26 and November 6 with 568 filed on the first day. Of those, 542 were 8:00 a.m. filers. Over 700 requests for copies resulted in staff working to 11:00 p.m. He thanked IT staff as petitions were copied and scanned at the same time and all petitions were scanned allowing us to have a permanent record and the ability to make copies from the scanned document rather than the original petition. In closing, Mr. Mossman thanked his staff for their long hours and all of the staff that assisted. Chairman Schneider joined in echoing all the thanks and praise. Mr. White explained the objection phase noting that it went very well even though a large number were filed and we processed all of the objections. Mr. Mossman drove back to Springfield with IT Director Steve Flowers and Kim Matrisch. They arrived at the Springfield office and 1:00

a.m. and were back at work the next morning. Mr. White concluded that the lottery was conducted and within 15 minutes, all the 8'clock candidates were in ballot order on our website and then subsequent filings.

Mr. White continued with a request for a special board meeting date for the filing of objections to the special judicial filing period. With the filing November 16 – November 23, staff proposed December 10 or 11 as the first day to meet as the State Officers Electoral Board if necessary. The Board set December 10 at 3:00 p.m. to the extent necessary for a meeting. The meeting will be held at Chicago, Springfield and Godfrey, IL.

Election Judges training schools were presented for informational purposes.

Mr. White said that Public Service Announcements were being prepared to bring awareness to early voting.

The next item on the Executive Director's report was Voting Systems issues and Mr. White indicated that the under vote feature was of particular interest and recognized several clerks present in both Springfield and Chicago. Also, representatives from the vendors are present or on the telephone.

The Director asked Dianne Felts, Director of Voting Systems and Standards to address the Board on the Sequoia Voting System modification to WinEDS version 4.0.148. She explained that this modification involved minor code changes that address three issues: increasing the speed of uploading Early Voting cartridges; there was a mapping file missing for the HAAT equipment; and stacking or sorting write in ballots in the different bins of the ballot box. VOSS ran a test on the optical scan in-precinct and HAAT's with no errors. She recommends Board approval of this permanent modification and introduced Eric Coomer of Sequoia, who was available to answer any questions for the vendor. Member McGuffage moved to adopt the permanent modification and Member Smart seconded the motion which passed unanimously by roll call vote. Mr. White thanked the City of Chicago and Cook County for their cooperation and use of their facilities and Mr. Coomer for attending.

The next item on the agenda was the AccuVote modification. Mr. White said that testing was ongoing when the board packet was being prepared. He asked Ms. Felts for an oral report and recommendation on the under vote statutory requirement. Director Felts introduced Mr. Todd Weber of ES&S, who was present in the Chicago office and Steve Pearson, Kathy Rogers and Herb Deutsch who were on the phone. She said that fixing the under-vote feature would require replacing 2 chips on each tabulator at a cost of \$135 each and the cost of the 2800 chips needed for the counties involved would be borne by the election authority. While testing the previous weekend, they did not receive a tabulation error, but they discovered a slight "bug", but, it should be corrected and testing would only take one and one-half days. Mr. Pearson, Vice President of ES&S indicated that his staff uncovered a flaw over the weekend. This flaw is located in a low level utility. The flaw has been diagnosed and quality controlled; and they will be submitting it to the EAC Lab so they may resume testing. He added that Ms. Felts would be able to continue testing Monday, November 23rd. Chairman Schneider called Mr. Bob Saar, Executive Director of the DuPage County Board of Election Commissioners. Mr. Saar began by saying that "it didn't matter how we got here, there is no good solution and no happy ending." He added that the Accuvote was never intended to record under voting, and it was never intended for this wear and tear. Further, that the state legislature was very specific, they wanted the constitutional offices checked for under votes, period. They did not want the federal government – federal offices, county offices, local offices, local races or anything else on the ballot verified for under vote. He stated that they intend to file a law suit in Federal Court and he has been empowered by his board to tell the SBE that they will not comply unless they lose in court. Ms. Kathy Schultz, McHenry County Clerk was recognized. Her concern was the time frame. She stated: that the election is only 77 days away; her county does not have the \$26,000 for the chips in their budget; Absentee and Overseas Voting ballots will be mailed out December 24th; January 11th is the first day for early voting and she has 190 units in McHenry County and 2 chips in each to be changed. Ms. Schultz said

that she does not know how they can get all of this done and that she believes they will be opening themselves up for lawsuits. Mr. McGuffage sympathized with her, but suggested the clerks contact the legislative leaders between now and the primary to make their case to delay this and open the door for discussion. Mr. Saar said that he has given the leaders a 23 page document that explains all the problems related in this and he has had hours of conversation with them. However, the best way to resolve this before February is a law suit as they will only be in session for three days in January. Member Keith suggested contacting the Illinois Attorney General and Attorney General Holder to see if HAVA funds could be jeopardized and if HAVA funds would be available to solve some of these problems. The Chairman asked if anyone in the Springfield office would like to be recognized on the record as appearing on this issue. The following clerks Steve Bean, Macon County clerk; Bill Downey, Clark County clerk; Tom LaCaze, Clinton County clerk; Sharon Hoelscher, Chief Deputy, Clinton County; Pat Laramore Randolph County clerk; Terri Braun, Fayette County Clerk; Linda Curtin, Christian County clerk; Georgia England, Moultrie County clerk; Kathy Lantz, Shelby County clerk; and Mark Sheldon, Champaign County clerk are aligned with Mr. Saar and Ms. Schultz. Ms. Felts confirmed that the vendor requested testing. The Board will meet Wednesday, November 25, 2009 to hear the results of the test.

The next matter for discussion was an update on the financial difficulties in Alexander County. Mr. White advised the Board that County Clerk Nancy Klein resigned and as acting county clerk, Frances Lee has been appointed. Mr. Mossman added that he has spoken with the State's Attorney, the new clerk and Angela Greenwell indicating that staff was ready to assist them. Mr. White will keep the Board advised of any developments in Alexander County.

Mr. White introduced Rupert Borgsmiller, Assistant Executive Director, to report on the BEREP filings. He said that JCAR approved the rules and it reflects the language removing minor children which was an issue with a lot of people. Of the 7500 businesses that are registered, approximately 530 business entities have not yet registered and staff is contacting them to get as many off the list before complaints are filed for failure to register. Member Brady inquired as to annual registering and Mr. Borgsmiller responded that they will have to file quarterly as current legislation required on the last day of January, April, July and October. However the law does not account for ending their involvement. He also clarified the duty to update, and if they don't have a contract, even if there has been a change, they would not be required to continue updating their registrations.

The Director continued with a legislative and veto session update. He said that Cris Cray, Legislative Liaison supplied a review; synopsis of some of the acts that were passed; a complete summary of the campaign finance bill' listing of the dates, the calendar for the legislative session and new legislation from the federal level that we will be required to implement for military and overseas voters. He added that the president signed a bill that requires procedures for electronic transmission of absentee voter registrations and absentee ballots as well as a web site for tracking. This is an additional mandate that will have to be in place for the November 2010 election. Mr. White then asked Cris for her comments. She said that vetoes of SB51 and HB723 were overridden and we had two trailer bills, SB146 and SB1732 that dealt with those bills. When SB146 is sent to the Governor, SB51 will become effective January 1. We're waiting on SB1456 and HB723 to be sent to the Governor and signed. SB1466, the campaign finance bill, will become effecting in 2011 and for the first time in Illinois, there will be contribution limits. A trailer bill, SB1466, had a few minor technical issues, but we expect it to be approved, we simply ran out of time. An ambitious calendar has been submitted as scheduled adjournment is May 7th. Ms. Cray concluded with her intention to present next spring's legislative agenda at the December meeting. Member McGuffage asked for a meeting with Mr. Borgsmiller, Mr. Sandvoss and Ms. Steward when the bill is in place to fully understand the bill.

Chairman Schneider asked for an IVRS update. Mr. White asked Kyle Thomas, Director IVRS for his report. Mr. Thomas indicated that the jurisdictions work on it daily and are diligently going through the system.

Mr. White continued with fiscal status reports and indicated there was no change with lump sum appropriations. He said IDIS will definitely have an impact, but it must be moved forward. He added that work is being done regarding VSIC. Although this is the busiest time for the agency, Mr. White said that the budget is in good shape and he foresees no problems. HAVA and EAC data collection grant had very little activity and the two-year plan of activity was included for informational purposes.

General Counsel Sandvoss began his report with a motion to reconsider filed by the Friends of Kris Wasowicz Committee. He said the committee denied receiving one notice, but acknowledged another which was confusing. Mr. Sandvoss recommended granting the motion and allowing the committee to file an appeal of the \$800 penalty for late filing of the June, 2009 semi-annual report. No one appeared for the movant either in Springfield or Chicago. Member Smart moved to grant the motion to reconsider so the movant could appeal a \$100 penalty. To clarify, Mr. Sandvoss said it would be appealing of the \$100 assessment. There was a \$700 amount that remains unpaid from past assessments. So it would be granting the appeal or granting the motion to reconsider so that they could appeal that \$100 penalty. Member Brady seconded the motion passed unanimously by roll call vote.

Another motion to reconsider the imposition of a civil penalty that was alleged against the New Broadview Tea Party was presented. Mr. Sandvoss indicated the matter was similar to the previous motion. Member Brady moved to accept the recommendation of the General Counsel and grant the motion for reconsideration. Mr. Smart seconded the motion which passed 8-0 by roll call vote.

The Chairman recognized Frank Avila who filed an appearance on the previous case and asked him to clarify his appearance. Mr. Avila indicated he was present on another matter where New Broadview Tea Party is listed as well as American Campaigns, and he represents the latter. After discussion, the board decided to consider #16, a hearing officer's report on unauthorized practice of law involving New Broadview Tea Party and American Campaigns. Mr. Sandvoss concurred with the hearing officer and his report, that there was enough evidence that this may have constituted the unauthorized practice of law to at least merit referral to the ARDC. After testimony from interested parties and discussion of the Board, Mr. Sandvoss reiterated his concurrence with the hearing officer's recommendation. Member Keith moved to table this matter for future consideration and Member Brady seconded the motion. After discussion the motion was withdrawn. The General Counsel clarified that the matter considered is not a complaint; it is consideration of a hearing officer's supplemental recommendation. Member Brady moved to reject the recommendation of the hearing officer and General Counsel in this matter and not refer this to the ARDC. Member Smart seconded the motion. Discussion ensued among the Board and General Counsel. The motion was adopted 5-3 with Members Keith, McGuffage, and Chairman Schneider voting no.

Continuing with the General Counsel's Report, Mr. Sandvoss recommended taking 3(a)3 and 3(a)4 together as they were identical circumstances. Both respondents were ordered by the Board to file their December 2009 semi-annual report within 30 days from the date of the order. They failed to do so and the order stated if they did not comply they would be subjected with a fine not to exceed \$5,000. Mr. Sandvoss recommended a penalty of \$5,000. Member Smart so moved and Vice Chairman Porter seconded a motion to impose a penalty of \$5,000 in *Citizens for Munoz*, 09CD039 and *SBE v. 22nd Ward Democratic Committeeman Fund*, 09CD042. The motion was adopted unanimously by roll call vote.

Mr. Sandvoss presented items 5, 6, 7 and added item 15 as the hearing examiner withdrew her recommendation and substituted a recommendation similar to the others. The General Counsel agreed with the recommendations of the hearing examiner to grant the appeals. Member Smart moved to grant the appeals in all four cases and as to the Washington matter, added filing an amended report. Member Porter seconded the motion which passed unanimously. Those matters are: *SBE v. Pangle for the People*, L13223, 09JS045; *SBE v. WCHS District 308*

Referendum Committee, L15085, 09JS093; *SBE v. Friends of Rachel Shattuck*, S9731, 08AG017; and *SBE v. Citizens to Elect Eddie Washington*, S8022, 08AG074.

New Appeals wherein the hearing officer recommended the appeals be denied were considered and the General Counsel concurred. No one appeared for any of the committees. Member Porter moved to accept the hearing officer and General Counsel's recommendation and deny the appeals on 8, 9, 11, 12, 13 and 14. Member Walters seconded the motion which passed unanimously. Member Brady abstained from items 9 and 11. Appeals were denied in: *SBE v. Citizens for O'Halloran*, L5248, 09JS011; *SBE v. Burns for Mayor*, L10125, 09JS022; *SBE v. Friends of EED*, L13221, 09JS044; *SBE v. Citizens for Naperville Township Republicans*, L15109, 09CE037; *SBE v. The Fifth District Ward PAC*, S6369, 09JS152; and *SBE v. The Fifth District Precinct Fund*, S7115, 09JS 156.

Mr. Sandvoss presented item #10 *SBE v. Citizens to Elect Sue Low*, L12396, 09CD009. Mr. Tom Low, Chairman and Mr. Steven Murgatroyd, Treasurer of the committee were present to address the Board. Member McGuffage believed the committee made a good faith effort and warranted an offer of settlement rather than the entire fine. Member McGuffage moved to accept the recommendation of the hearing officer and General Counsel and settle this matter for a fine of \$250 indicating that there was no willfulness and unidentified staff may have given this committee incorrect information. Member Walters seconded the motion which passed 5-3 with Members Brady, Keith and Chairman Schneider voting against the motion.

The General Counsel continued with a request for a payment plan from the Cunningham Campaign Committee. They paid \$500 and will pay the remainder in \$200 installments. Mr. Sandvoss agreed with the acceptance of this payment plan. Member Keith moved to accept the payment order of \$200 per month on the last day of each month commencing November, 2009 until paid in full.

Items 18 and 19 were presented for informational purposes. Page 146 of the Board's packet lists candidates who filed petitions with the SBE and are candidates who have campaign committees or candidate committees that could face ballot forfeiture for nonpayment of fines. The committees on the remaining pages, 147-152 are general candidate campaign committees that are local and could face ballot forfeiture also.

The Chairman called Item 3(b), Request for an Attorney General Opinion on acceptance of resolutions to fill vacancies in judicial nominations. Mr. Sandvoss said it clarifies House Bill 723 which requires judicial candidates who are selected by the managing committee to also file nominating petitions which could be considered to satisfy the deficiency explained in the *Bonaguro* decision. Mr. Sandvoss asked the Board to allow him to request an AG opinion whether or not we are empowered to accept them or if there is another reason why we shouldn't accept them. Member Brady moved to grant the General Counsel's request to ask for an Attorney General opinion. Member McGuffage seconded the motion. The motion was agreed to by 8-0 roll call vote.

Member Keith moved to recess into Executive Session for purposes of campaign disclosure, closed preliminary hearing and potential litigation. Member seconded the motion which passed by 8 ayes in unison.

The Board recessed into Executive Session at 2:28 p.m. and reconvened at 2:35 p.m. Seven members were present, Member Smart held Member Walter's proxy.

Member Keith moved as to 09CD065, for a finding of not being filed upon justifiable grounds and there is no necessity to proceed to any further hearing and the case be dismissed. Member Smart seconded the motion which passed by 8 ayes in unison.

Member Keith moved to direct the General Counsel to handle potential litigation as discussed in Executive Session with the Attorney General as discussed in Executive Session. Member Smart seconded the motion which passed by 8 ayes in unison.

Chairman Schneider asked if there was an objection to moving the December meeting to the Wednesday, the 2nd. If the Board meeting was moved to the 2nd, Mr. White asked for the Board to authorize staff to accept withdrawals on the 3rd, up until the close of business. Also, that staff be authorized to accept fines owed regarding ballot forfeiture and amend the certification appropriately with regard to payment of those fines and amend the certifications for any withdrawals as well. He added that if withdrawals are received after the 3rd, close of business the board would need to reconvene to consider those. Mr. White said the certification would be mailed and sent electronically after the close of business on the 3rd.

Preparations for the November 25th special meeting were discussed. Director White indicated that the video equipment and conference room were not available for that date, but arrangements were made with the Capital Development Board to use their room and equipment. Chairman Schneider left meeting arrangements to Mr. White and his staff.

Mr. Sandvoss advised the Board that not many objection matters will be ripe for discussion by December 2nd.

There being nothing further before the Board, Chairman Schneider asked for a motion to adjourn to Wednesday, November 25th at 9:00 a.m. or the call of the chair, whichever occurs first. Member Keith so moved and was seconded by Member Brady. The motion passed unanimously by 8 ayes in unison. The meeting of the State Board of Elections adjourned at 2:45 p.m.

DATED: December 9, 2009

Respectfully submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Assistant II