

STATE BOARD OF ELECTIONS
BOARD MEETING
Friday, December 3, 2004
Chicago, Illinois
Noon

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 12:16 p.m. with 7 members present. Member Schneider arrived at 12:50 p.m. Vice Chairman Smart held his proxy until his arrival.

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

Chairman Keith asked Mr. White to accept cards and gifts for the Chicago and Springfield staffs on behalf of the Board and to convey the Boards' best wishes for happy holidays and a wonderful new year.

Chairman Keith presented the minutes of the October 25, 2004 and November 15, 2004 regular monthly board meetings. Member Murray asked for changes to be made regarding a comment that he made. Vice Chairman Smart moved to adopt the minutes as corrected by Member Murray and Member Roupas seconded the motion which carried unanimously.

Mr. White stated that the board was meeting today to certify the results of the November 2nd general election at approximately 12:30 p.m. The Director began his report with the statement that today is the last day to certify the results of the General Election and that certification would be addressed at approximately 12:30 p.m.

Mr. White advised the board that a response was received from the Election Assistance Commission (EAC) regarding the Statewide Voter Registration Database, but it was not as helpful as hoped. He offered a brief history of the project and stated that before a response was received, the fall veto session passed legislation which will change implementation of the system. This legislation has passed both houses and is awaiting the Governor's signature. On November 17, 2004 Steve Sandvoss, Cris Cray and Mr. White appeared before the Senate election committee. Mr. White testified in opposition to the bill. Messrs. Saar, Kreloff and Hoffman appeared in support of the bill. On November 18, Ms. Cray testified before the House election committee in opposition to the bill. The EAC's November 19, 2004 response to the board's May 25th request acknowledged that we requested their input, but referred us back to a letter from the Department of Justice, which was not helpful. Mr. Sandvoss will review the legislation and its impact on the agreement with the Secretary of State. We have been asking for direction and the direction we received was from the Illinois legislature. The Board's task now is to be consistent with the federal and state directives. Acting General Counsel Sandvoss reported that Al Zimmer will provide a formal memorandum whether the legislation that was passed is in conflict with the HAVA guidelines and if we are in compliance with the federal or state requirements. This memorandum will be ready in approximately 2 weeks and will be forwarded to the board members and addressed at the January regular meeting. Director White stated that a change of direction and costs is difficult to evaluate in terms of costs. Fortunately, the VISTA/IDEA Project laid the groundwork. We envision moving forward with a system which would comply with the HAVA legislation. Mr. White reiterated that hard work has gone into this project and the board's intent was always to develop a system for the people of Illinois and that remains our goal. Vice Chairman Smart was concerned that we would not meet the deadline, but was assured that we are in better shape than most states as the ground work is in place. Mr. White agreed that not having guidelines in place delayed progress and the intent is to make it work as quickly as possible. The Chairman queried Mr. Sandvoss on the Federal Supremacy Clause. Mr. Sandvoss agreed that if there is a direct conflict between a state law and the federal law, then the Supremacy Clause would apply. Chairman Keith asked Mr. Kreloff, who represents Cook County Clerk Orr, if he would like to address this matter. Mr. Kreloff assured the board that the clerks stand shoulder to shoulder with the board towards completion of the statewide voter registration system. He said the shift in the flow of information ensures that all information is valid before sending to the SBE's statewide Voter registration database. Upon questioning, Mr. Kreloff assured the board that the registrations would be forwarded on an expedited basis. He could not confirm a timeline, but agreed to get an answer. The board members discussed rule making to define what an expedited basis means. Vice Chairman Smart commented that the clerks did not cooperate with the board in the development of the database, and was offended when he found out that the clerks were holding secret meetings and withholding essential details regarding compliance from the board. He asked why that information was not and has not yet been shared with the board, especially a letter from Washington that Mr. Saar purportedly had in his possession stating that this bill is in compliance, etc. Mr. Kreloff replied that the board is very clear and he appreciates the board's comments but he did not recall that representation being made and that he would need to refer to the transcript. He stated that the Justice Department's letter that the clerks and the board has tells the clerks that they moved the right way and that the language is compliant with HAVA. The Vice Chairman asked for a copy of the Justice Department letter previously referenced.

Director White presented the Official Canvass to the board for their signatures. He stated that a record number of 5,350,000 voters turned out for the November 3rd which was 71.36% turnout. A close election in the Peoria area with a 235 vote margin will result in a recount as soon as the election is certified. The election authorities were surveyed to find out how many provisional votes were cast and counted. Champaign and White Counties are the only two that are outstanding. There were about four times as many provisional ballots at the general election as the primary. Over half of those provisional ballots at the general election were counted as opposed to the primary where 18% were counted. Mr. White complimented Pat Freeman, Director of Election Information, and staff on a job well done and commented on the tedious work involved in preparing the official canvass and the short time she has to get it prepared. Ms. Freeman commented that this is the first General Election since certification changed and that this timing will not work in 2006 as the canvassing date is after the judges take office. She intends to have suggested dates for the next meeting. On behalf of the Board, Chairman Keith thanked her, staff and Election Authorities on their hard work at all levels. Member Rednour moved to adopt the canvass as submitted. Member Murray seconded the motion which passed unanimously.

Mr. White introduced Rod Zech, of Catalyst who reported on the VISTA program. Mr. Zech introduced Arvin Talwar, Scott Hilkerk and Carmen Robes who were in the audience. Mr. Zech was pleased that the VISTA/IDEA program was proven to work and is available to 105 of the 110 election authorities and that only one county will need internet access before it is up and running. He explained that the IDEA portion is the software, the Illinois Data Export Application software that has been deployed to the election jurisdictions where it resides on their personal computers. It hooks into the databases of the voter registration systems at the different election authorities and extracts voter information, history data, and signature data and converts it into the standardized format that encrypts compresses and sends the data over the Internet to the statewide system. This system also reports on issues with data purity identified. From that point, the VISTA System, Voter Information Statewide System takes the files, unencrypts it, uncompresses it, pulls that data into the centralized database of voter information and users of the system are allowed to access the voter information, use on line services for provisional ballots as well as looking at duplicate voter lists and other information as well. On behalf of the Catalyst team he wanted to thank the SBE staff, Election Authorities and vendors who played an active role and especially Steve Flowers and his IT staff who created the program. Mr. Zech acknowledged that there were challenges that had to be overcome including standardized data format, database, and timeliness. Rather than voter information updated only twice a year, this system ensures that information is updated daily and another benefit is that every election authority will have internet access. Member Roupas asked about a maintenance program. The Catalyst contract provides for service through June and includes the many other changes in systems or if a system goes down. But that contract included that the SBE staff be trained in maintenance as this system belongs to the SBE, not Catalyst. Member Murray complimented Catalyst on a great job. Mr. White stated that the Catalyst staff was accessible and flexible which was a much needed quality.

At 1:10 p.m., Member Murray moved and Member Rednour seconded a motion to recess to executive session to discuss a campaign disclosure complaint. The motion carried unanimously.

The board returned to open session at 1:24 p.m. with all 8 members present.

Returning to the Executive Director's report, Mr. White asked Cris Cray to update the board on proposed legislation for spring 2005 legislative session. Ms. Cray indicated new items are marked in red and to note Members McGuffage and Schneider requests. Also, Rep. Jim Watson introduced Electoral College legislation that may be reintroduced in spring which bases the electoral votes

proportionately by congressional districts. Member Murray stated that he would like to change verification for provisional voters to include the last four numbers of the SSN, rather than Illinois Drivers License and noted that it is easier to prosecute someone for fraudulence with a social security number.

The Chairman introduced Mrs. Mary Lou Aagard, Election Laws Specialist for the League of Women Voters of Illinois. Their intent is to request amendment of the Election Code governing the issuance of poll watcher credentials and specifically suggesting that the definition of the civil organizations permitted to poll watch be changed and that the SBE define and determine which civic groups members may serve as poll watchers. The LWV was denied poll watcher credentials by some election authorities because the election code states that civic organizations have among its purposes or interests the investigation or prosecution of election frauds and the LWV does not have that purpose. Mrs. Aagard said that the League would pursue this legislative change during the upcoming session and would like the Board's support. The Board agreed with their position and will act on a motion at the January meeting when the legislation packet is confirmed.

Chairman Keith introduced Mr. Dan Johnson Weinberger of the Midwest Democracy Center who requested the board's support on HB4129 which will be introduced early next session regarding absentee, military and overseas ballots. This Bill would authorize sending both the February ballot, which is a normal ballot, and the April ballot which is a rank run off ballot. The board agreed that this is a good concept and will consider endorsing it at the January meeting.

Members Roupas and McGuffage asked Pat Freeman to propose dates for withdrawals to be discussed at the January meeting.

Mr. White asked Ms. Cray to continue with the legislative report. Two bills would be of particular interest to the board. The first bill is to extend the time to register from 28 to 14 days; it has passed both houses and has been sent to the governor for his review. The second, HB 757 amends the school code ballots for school boards. Pat Freeman has worked with the Illinois School Board to get the language cleaned up and on the agenda for the January 10 and 11, 2005 session. House Bill 757 does not solve all the problems, but cleans up Senate Bill 2810. Ms. Cray presented the General Assembly's spring 2005 session calendar for informational purposes. She also advised the board that the 110 Election Authorities were asked to respond to a survey regarding the Board's request to count the military and overseas ballots during the 14 days after the election, with only 42 election authorities responding. The responses were pretty evenly split, whether they followed the Board's recommendation or not, out of 22,000, only 103 were rejected. Ms. Freeman added that narrowing the time frame for counting provisional ballots should also include counting the military otherwise there will still be a problem with canvassing.

Director White did not have updated fiscal reports for November and December due to the short term period between the meetings and current updates will be available at the January 18th meeting.

Mr. White concluded his report with submission of the two-year plan of staff activity.

Mr. White confirmed that there would not be a board meeting on December 20th.

Acting General Counsel Steve Sandvoss stated that the Administrative Complaint Procedures rule had been submitted as an emergency rule to the Secretary of State, Index division for publication in issue 50 of the Illinois Register with an effective date of December 10, 2004.

The Chairman called the matter of the *ISBE v. Friends for Flores*; 04 MA 06 appeal. Mr. Sandvoss was the hearing officer and reviewed the activities of the committee noting that the committee failed to file several A-1 reports and was assessed a penalty equal to 100% of the value of the unreported and delinquent filings. Mr. Richard Means, who represents the respondent, agreed with the recommendation and proposed for a settlement agreement of 10% of the assessed amount or \$4,360. Elizabeth Beckman, Deputy General Counsel agreed with the Hearing Officer's recommendation. After discussion, Member Murray moved and Member Porter seconded a motion to accept the recommendations of the hearing office and Deputy General Counsel. The motion passed by a roll call voter of 8-0.

The Chairman introduced *ISBE v. Citizens for Marovitz*, 00JS61 and 00GP142 which are appeals of civil penalty assessments. Mr. Sandvoss offered a brief history of the complaint. Mr. Michael Lavelle represented the respondent and Mr. Marovitz was present to answer any questions. Mr. Lavelle proposed a settlement agreement in the amount of \$3,300.00 and indicated that the committee will dissolve shortly. Ms. Beckman agreed with the recommendation of the hearing officer. Member Murray moved to accept the recommendations and the settlement offer proposed by the respondent. Member McGuffage seconded the motion which passed 8-0.

The Chairman presented *ISBE v. People for Natarus*; 03AC39. Mr. Sandvoss reviewed the history of the committee and recommended that the appeal be denied as to the \$600 October contribution and that the appeal of the \$1500 assessment be granted. Mr. Mathias Delort appeared on behalf of the committee and was accompanied by Nathan T. Meyer of the Hay Market Group which provides consulting and bookkeeping services. Mr. Meyer investigated the circumstances of the late reports. The total assessment recommended is reduced to 10% of the assessed amount \$60. Ms. Beckman agreed with the recommendation. Member Porter moved and Member Roupas seconded a motion to accept the recommendations and reduce the fine to \$60, the motion failed after a roll call vote of 4-4 with Members Murray, Schneider, Vice Chairman Smart and Chairman Keith dissenting. After further discussion, Member Murray moved to adopt the recommendation of the hearing officer to deny the appeal of the \$600 and contrary to the recommendation of the hearing officer to deny the appeal to the \$1500 check, to reducing the \$2100 possible fine to \$210. Vice Chairman Smart seconded the motion which carried 7-1 with Member Porter dissenting.

Chairman Keith presented the *Saewert v. Santana*, 04CD 38 complaint for the board's consideration following public hearing. Hearing Officer Phillip Krasny recommended pursuant to 5/9-3 that Respondent, as the individual who paid for the expenditures, became a local political committee and was obligated to file a statement of organization and disclose the money expended. Mr. Sandvoss reviewed the recommendation of the hearing officer. The Board considered the recommendation of the hearing officer and comments of Mr. Mathias Delort, who represented the complainant. After discussion Member Murray moved and Member Schneider seconded a motion to find that the Respondent is a political committee as defined in the Act and ordered that Victor Santana file a D-1 Statement of Organization which reflects a date of creation no later than March 9, 2004 and file all required campaign disclosure reports by December 31, 2004; that the Respondent appear before the Board at the January 18, 2005 meeting and show cause as to why this case should not be referred to the State's Attorney's Office or the Office of the Attorney General; that a penalty of \$4,648.00 will be assessed for a contribution totaling \$4,648.00 that was received by the Respondent but was not listed on a Schedule A-1 report, and further assessments will be levied for failing to file the D-1 Statement of Organization, the March 2004 Pre-election Report and the June 2004 Semi-annual Report. The motion passed 8-0.

At 2:55 the Chairman asked for a motion to adjourn to executive session to discuss personnel and litigation. The motion passed unanimously. The Board returned to open session at 3:50 p.m. All members present except Member Rednour and the Chair holds her proxy.

The last item of business is the litigation pending in the Appellate Court between the Board and AFSCME. The Chairman asked for a motion as to the issues. Member Murray moved and Member McGuffage seconded a motion to enter into the settlement agreement proposed by our counsel and approved by the board counsel which was discussed during executive session. The motion passed by a roll call vote of 8-0.

There being no further business before the Board, Member Schneider moved to adjourn until the January 18, 2005 next regularly scheduled meeting in Springfield, IL. Member Murray seconded the motion which carried unanimously. The meeting adjourned at 3:52 p.m.

Respectfully submitted,

Darlene Gervase, Assistant to the Director

Daniel W. White, Executive Director