

State Board of Elections Board Meeting
Monday, August 15, 2005
10:30 a.m.

MINUTES

PRESENT:

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

ALSO PRESENT:

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

The regular monthly meeting of the State Board of Elections was called to order shortly after 10:30 a.m. with all eight members present.

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

The Chairman presented the minutes of the July 1, 2005 Regular Board Meeting. Mr. Murray asked for clarification of a sentence contained in the fourth paragraph on page 004. Pat Freeman, Director of Election Information, stated that the sentence should read "They are not in agreement with the 19th and 22nd." Mrs. Roupas moved to approve the minutes with that change, Mr. Murray seconded the motion which passed by unanimous roll call vote.

Mr. White asked Eric Donnewald, Director of Training and Resource Development, to introduce Darcell McAllister to the Board. The board welcomed Mr. McAllister to the staff.

The Executive Director presented the proposed amendment to the Illinois Department of Corrections Sharing Agreement which was carried over from the July Board Meeting and asked General Counsel Sandvoss to explain the changes made to the agreement. Mr. Sandvoss explained that concerns regarding the purging procedure were clarified by adding the language "it is understood that any decision made in regards to the removal of names of registered voters convicted of a felony and are currently incarcerated in a penal institution will be made exclusively by the election authority in whose jurisdiction the incarcerated person resides." It was agreed that in the case of multiple residences the last known jurisdiction where the voter was registered immediately before incarceration would make the decision as to purging. Mr. Sandvoss asked that the agreement be approved with these changes. Mr. Murray stated that this agreement should actually be signed by every election authority. Mr. Murray moved to approve the agreement with the Illinois Department of Corrections. Mrs. Roupas seconded the motion which carried unanimously.

The Director presented a calendar for potential objection hearing dates to the Board and explained that it is possible that no objections will be filed during the Special Judicial filing period that will require the State Officers Electoral Board to convene. He asked Patricia Freeman, Director of Election Information, if she had any additions to this calendar. Ms. Freeman stated that setting the time for the Electoral Board to meet at this early date will allow other election authorities to set their schedules and interested parties would be notified of that date and time as soon as possible. Vice Chairman Rednour moved to confirm January 4 and January 23, 2006 @ 9:00 a.m. via telephonic conference call to meet as the State Officers Electoral Board. Mr. Keith seconded the motion which passed 8-0.

Director White asked Pat Freeman to explain the Internet Voters Guide deadline. She commented that although the bill has not yet been signed, it would allow Staff to complete all revisions to the 2006 Election Calendar immediately following gubernatorial action. Ms. Freeman offered two recommendations. First, that the Board refrains from creating an internet voters' guide for the 2006 General Primary to determine if the policy should differ in 2008; and the second to adopt the deadline in the bill for submission of materials for the general election. Mrs. Roupas moved to adopt Ms. Freeman's recommendations and Vice Chairman Rednour seconded the motion which carried unanimously.

Mr. White presented a HAVA update. He reminded that Board that at the July meeting the Board voted to distribute HAVA funds to local jurisdictions at a maximum of \$5,000 per precinct and that the application and attachments were distributed to the election authorities which puts the process in motion. Mr. Schneider asked if a second application was anticipated for jurisdictions requiring a greater amount. Mr. White affirmed that the next step would be to summarize and evaluate the applications, report back to the board and then devise a second application process. Chairman Smart summarized a meeting that was held with DuPage, Chicago and Cook County and all agreed that a second application for those that have spent more than the \$5,000 would be processed. Chairman Smart acknowledged Mr. Ray Campbell of the Center for Independent Living, and asked if he would like to comment on the accessible voting equipment. Mr. Campbell acknowledged that procedures are moving faster than he thought and thanked the Board. He was concerned that some jurisdictions may have only 2 or 3 people that need that machine and would have only one somewhere rather than one accessible machine per polling place. His main concern is that there is not one machine that can address all their needs and added that accessible machines can be used by all voters, not just the disabled. Mr. Campbell urged the board to contact his and other organizations for their input into decision making regarding implementation of the HAVA requirements. Mr. Campbell stated that he is comfortable with the Board's implementation and reiterated the desire of the disabled to vote independently and by secret ballot. The Chairman thanked Mr. Campbell for his kind words and assistance. Director White also thanked Mr. Campbell and assured him that his concerns will be brought to the attention of the vendors.

Mr. White presented the Statewide Voter Registration Database project and summarized the opposition to the project that resulted in anticipation of the Governor signing HB1968 prohibiting the electronic transmission of voter registration data from the Secretary of State to the SBE. He explained that implementation is impossible, but that the information gathered from the RFP process may be submitted to CMS as a Sole Economically Feasible Source (SEFS) proposal. The Director outlined the positive and negative sides of this matter and asked the Board for a motion directing staff to develop the SEFS proposal for submission to CMS. Discussion ensued among the board. Mike Roate, Fiscal Director, assured the board that utilizing the SERS proposal would cut the timelines and save money. Mark Mossman, Coordinator of the Statewide System, reaffirmed Mr. Roate's statements and answered technical questions regarding the unique identifier and making the system HAVA compliant by becoming interactive. Vice Chairman Rednour moved to proceed with the SEFS proposal. Mr. McGuffage seconded the motion which carried unanimously. However, Member Murray did voice his concern over the SEFS proposal indicating he did not favor a single source bid as he felt the public often gets taken advantage of in this situation.

Mr. White presented two Fiscal status reports for informational purposes. The first was the fiscal status report for FY05 ending July 31, 2005. He indicated that we will meet all FY05 fiscal obligations and will return significant funds to the General Treasury and that expenditures in FY06 have been few and the status report will be presented at the September meeting. The second report, the Help Illinois Vote Fund included submission of a letter that was mailed to the election authorities confirming that each jurisdiction will receive a maximum of \$5,000 per precinct towards the purchase or lease of accessible voting equipment. Each jurisdiction is required to complete and return the application by September 30, 2005. Finally Mr. White offered a chart showing the status of certification for accessible voting equipment.

The Executive Director reported that there were no unexpected HAVA funds to report but did anticipate disbursing significant Requirements Funds within the next sixty days.

Mr. White presented the two year plan of staff activity for the months of August and September for the Board's review and information.

The Director added that a study on internet voter registration had been provided to the Board and the legislature by Cris Cray, Legislative Liaison and Government Affairs Manager. Mr. White thanked Ms. Cray for this information and added that British Columbia is the only place where internet voter registration is available.

Mr. Keith asked if the \$5 million match for HAVA funds had been received. Mike Roate replied that the \$5 million is bonded money and is earmarked for equipment purchase only and that a direct link between receipt of that money and its use for HAVA equipment would be necessary for auditing purposes.

At 11:50 a.m. the Chairman asked for a motion to recess to executive session to discuss litigation and personnel matters. Mr. Keith moved and Mr. Schneider seconded the motion which passed unanimously.

The Board returned to open session at 12:30 p.m. with all members present. The Chairman asked for motions regarding the matters discussed in executive session.

Mr. Murray moved to hire Mr. Steve Sturm as Assistant General Counsel as soon as possible in the Springfield office. Mr. Keith seconded the motion which passed 8-0.

Mr. Keith moved to direct the Attorney General to act in accordance with discussion in executive session regarding the *King* matter. Mr. Murray seconded the motion which passed 8-0.

The General Counsel began his report with the *Canary, et al., v. Illinois Coalition for Jobs, Growth & Prosperity*, 05CD003 case. Ms. Suzanne Novak, attorney for the complainant, requested a decision from the Board regarding her appearance. Mr. Andrew Raucci appeared for the Respondent and noted for the record that Mr. Michael Kasper also represents the Respondent. Mr. Sandvoss recommended that the motion be denied because Ms. Novak withdrew her attempt to be admitted pursuant to the Illinois Supreme Court Rules to practice law in Illinois. Mr. Sandvoss indicated that a status call would be forthcoming. Vice Chairman Rednour moved to deny Ms. Suzanne Novak's request to appear and that the Board stands on the recommendation of Hearing Officer Herman as the basis for denial. Mr. McGuffage seconded the motion which passed 7-1. Mr. Murray explained his vote against the motion. He believes the Illinois Supreme Court Rules and cases were not intended to prohibit the State Board of Elections from deciding who can appear before us in our hearings and feels the Board has the inherent power to decide who may do so and upon what terms. He urged the Board to develop our own rules regarding appearances before the Board.

Mr. Sandvoss introduced Ms. Jan O'Halloran, treasurer for the respondent in *SBE v. Citizens for O'Halloran*, L5248, 05DS010 and summarized the case. He indicated that this was carried over from the June meeting. The General Counsel recommended that the appeal be denied for lack of an adequate defense and to accept the Respondent's offer of \$260. Mr. Murray Moved to adopt the recommendation of the General Counsel. Vice Chairman Rednour seconded the motion which passed 7-1 with Mr. Keith dissenting.

Vice Chairman Rednour moved and Mr. Murray seconded a motion to adopt the recommendation of the General Counsel and grant the appeals in the following cases: *SBE v. Davoust for County Board*, L11828, 04AG007; *SBE v. Citizens for Antioch Party*, L12339, 05D1002; *SBE v. Citizens for Nickey Yates*, L12499, 05DS073; *SBE v. Citizens to Elect Iris Johnson*, L12586, 05CE021; *SBE v. Campaign to Elect Patricia Brown*, L12588, 05CE022; *SBE v. Committee to Elect Rickey Hendon*, S6825, 04AG065; *SBE v. Citizens for Jack Franks*, S7092, 04AG071; and *SBE v. Friends of Bob Flider*, S8431, 04AG081.

The General Counsel summarized the matter of *SBE v. Restore the Revenue Committee*, L12266, 04AG014. He agreed with the recommendation of the hearing officer in that the committee did not pass the \$3,000 threshold and did not meet the definition of a political committee. Mr. Keith moved to grant the appeal on the grounds that the committee was not required to file and register and not on the second ground as recommended by the hearing officer. Mr. Murray seconded the motion which passed 8-0.

Chairman Smart asked Mr. Keith to introduce the next matter. Mr. Keith disagreed with the recommendation in that money transferred to anybody's account, not telling them that it's there and resulting in it not being reported is contrary to the Act. Mr. John W. Countryman was present for the respondent in the *SBE v. Citizens for Churchill*, S2823, 04AG048 and summarized that money was deposited into the respondents account by someone who was not a part of the committee. He further indicated that A-1 was filed on election day which is not a reporting day. The committee knew the money was forthcoming, but did not know when it would be available. Discussion was had among the board members. Mr. Murray moved and Mr. Schneider seconded a motion to adopt the recommendation of the Hearing Officer and General Counsel and grant the appeal. The motion carried 7-1. Mr. McGuffage noted that although he voted yes, legislation was needed on this area. Mr. Keith voted against the motion.

Mr. Sandvoss presented *SBE v. Friends of Michael Madigan*, S2843, 04AG049 and stated that the finding was that the contributor violated the law. General Counsel Sandvoss added that he would like to see a way to remedy the situation where a contributor fails to produce an in-kind notification in a timely manner. Mr. Keith moved to adopt the recommendations of the Hearing Officer and General Counsel to grant the appeal and take such action as appropriate towards the contributor. Mr. Murray seconded the motion which passed unanimously.

The Chairman called Mr. Aaron Allan, who was present on behalf of the respondent in the matter of *SBE v. Citizens for Moreno*, S5920, 04GP123. Mr. Allan requested a continuance until the October meeting in Chicago. Mr. Keith moved to

deny and let the violation and fine stand. Mrs. Roupas seconded the motion. No action was taken on the motion. The Motion for Continuance was granted by the Chairman.

Mr. Sandvoss presented *SBE v. People for Pangle*, S8586, 04AG089. The hearing officer found that the committee listed October 31, 2004, the date of the contribution, rather than November 2, 2002, the date it was received. The A-1 was not required to be filed on Election Day. The General Counsel concurred with the recommendation. Mr. Countryman was present for the respondent. Mr. Murray moved and Mrs. Roupas seconded the motion to adopt the recommendation of the hearing officer and General Counsel and to grant the appeal. The motion passed by a vote of 7-1 with Mr. Keith dissenting.

Mr. Murray moved and Mrs. Roupas seconded a motion to adopt the recommendations of the hearing officer and General Counsel that the appeals be denied in each of the following matters where the hearing officer inferred the denial but didn't state them to be a denial and further that on that on *SBE v. Plumbing Council of Chicagoland PAC*, S5672, 04AG062 that the fine be rounded up to \$458: *SBE v. Citizens to Elect Dale Adams*, L10329, 05CE006; *SBE v. Citizens for Nikolaos Manousopoulos*, L10337, 05CE007; *SBE v. Citizens for Bell Committee*, L12587, 05D1006; *SBE v. Maine Township Regular Republican Organization*, S645, 04AG064; *SBE v. Balanoff Political Fund*, S1206, 04AP057; *SBE v. Friends of Mary E. Flowers*, S4591, 04AG058; *SBE v. Plumbing Industry PAC*, S5740, 04AG063; *SBE v. IL Laborers Legislative Committee*, S6955, 04AG089; *SBE v. Plumbing Council of Chicagoland PAC*, S5672, 04AG062; and *SBE v. Citizens for Perry Moy*, S8555, 04AG087. The motion passed by roll call vote of 8-0.

Mr. Sandvoss summarized *SBE v. Citizens for John Trowbridge*, L4619, 05CD002 and noted that Mr. Michael Lavelle was present on behalf of the respondent. Mr. Murray moved to reject the recommendation of the Hearing Officer and to grant the appeal. Mr. McGuffage seconded the motion which passed 7-1 with Mr. Keith dissenting.

The General Counsel presented *SBE v. Citizens for Debra Olsen*, L10687, 04AG002. There was some confusion as to a \$50 fine from 2002. Mr. Rupert Borgsmiller, Director of Campaign Disclosure affirmed that there was a previous fine. Mr. Murray moved to reject the recommendation of the hearing officer and assess the penalty of \$250 as a first A-1 violation. Mr. Keith seconded the motion which passed unanimously.

The Chairman called *SBE v. Friends to Elect Michael Costa*, L12305, 05CP002. Mr. Sandvoss indicated that the hearing officer recommended reducing the fine to 10%. Mrs. Roupas stated that she was not comfortable with that assessment and that it should include both fines totaling \$1125 as this is a violation of a pre-election report as opposed to an A-1 and there is no automatic reduction. General Counsel Sandvoss agreed and recommended that the appeal be denied and the fine assessed at \$1,125. Mrs. Roupas moved to agree with the General Counsel and deny the appeal and assess the \$1,125 fine. Mr. Keith seconded the motion which passed 8-0.

The Chairman called *SBE v. Friends to Elect Patricia Jones*, L12426, 05MA004 and noted that Mr. Jay Ukenau was present to represent the respondent as well as Patricia Jones and treasurer Dorothy Armsted. The General Counsel presented the facts of the case and stated that the hearing officer recommended denial of the appeal. Mr. Ukenau disagreed with the recommendation of the hearing officer and indicated his own confusion with the \$3,000 threshold requirement. Discussion ensued among the board. Mr. Murray moved to reject the hearing officer's recommendation, assess the fine at \$1,000 and treat it as a first violation and the fine be stayed. Mr. Porter seconded the motion which passed by a vote of 6-2 with Mr. Keith and Mr. Schneider dissenting.

The General Counsel presented *SBE v. Committee to Elect Jay C. Hoffman*, S4202, 04AG054 and noted that Mr. Michael Kasper was present for the Respondent. Mr. Sandvoss summarized the case and agreed with the recommendation of the hearing officer that the appeal should be denied, the fine reduced to 10% of the assessment or \$100 and as a first violation, the penalty should be stayed. Mr. Kasper asked for the same consideration that was given in the earlier case that was presented by Mr. Countryman wherein the committee did not receive notice of the contribution until the day before the election. Mr. McGuffage moved to reject the hearing officer's recommendation, grant the appeal and not consider this a violation. Mr. Porter seconded the motion which passed 7-1 with Mr. Keith voting no.

The Chairman called *SBE v. Friends of Richard Brauer*, S8049, 04AG076 and noted for the record that John W. Countryman appeared for the Respondent. Mr. Sandvoss reviewed the activities of the committee and discussion ensued among the board regarding in-kind contributions. Mr. Keith moved to grant the appeal and direct staff to take such action as is necessary against the contributor as was done in the *Madigan* case. Mr. Schneider seconded the motion which carried unanimously.

Mr. Sandvoss presented *SBE v. John Sullivan for Senate*, S8218,04AG079 Mr. Keith moved that this be considered a first time violation and to adopt the recommendation of the hearing officer and general counsel and to deny the appeal and assess a penalty of \$152 staying the penalty as a first time violation. Vice Chairman Rednour seconded the motion which passed unanimously.

The General Counsel presented the matter of *SBE v. Citizens for Dave Winters*, S5436, 04AG039 and summarized the activities of the committee. Mr. John W. Countryman appeared on behalf of the respondent and answered questions posed by the Board. After discussion, Mr. Keith moved and Mr. Porter seconded the motion to adopt the recommendation of the hearing officer and general counsel. The motion carried 8-0.

Mr. Sandvoss offered a summary of the matter of *SBE v. Citizens to Elect Jack Cook*, L7024, 04AG025. He indicated that the committee has filed a final report and that if they do not form a successor committee within 24 months of dissolution or the Board order disposing of the appeal that any penalties would be abated after that time. He noted that the hearing officer recommended denying the first two violations and granting the third. The General Counsel recommended accepting the hearing officer's recommendation in denying the first two appeals and granting the third, but that a stay would not be appropriate since there was more than one violation. He further recommended a 10% reduction. Mrs. Roupas moved to follow the recommendation of the General Counsel. Vice Chairman Rednour seconded the motion which carried unanimously.

The General Counsel summarized the activity of the respondent in *SBE v. Citizens for Elaine Nekritz*, S7957, 04AG074. The hearing officer recommended that the in-kind A-1 was timely filed and recommended that the appeal be granted in regards to that contribution. Further, Respondent committee asked for a reduction if the appeal was denied. The hearing officer recommended a penalty of 10% of the original assessment or \$515.07. Mr. Keith moved to accept the recommendation of the general counsel and hearing officer, but to round the penalty to \$516.00. Vice Chairman Rednour seconded the motion which passed unanimously.

The Chairman called the matter of *SBE v. Friends of Doug Hayse*, S8486, 05AG084 and noted for the record that Mr. Countryman appeared for the respondent committee. Mr. Sandvoss gave a short history of the committee and agreed with the recommendation of the hearing officer. Mr. Murray moved and Mr. McGuffage seconded a motion to adopt the recommendations of the hearing officer and general counsel. The motion passed 8-0.

The Chairman noted for the record that payment of civil penalties were submitted for informational purposes and asked if the committees were aware that we will be posting their names to our website for non payment of fines. Rupert Borgsmiller, Director of Campaign Finance, acknowledged that all committees have been advised and that it should not come as a surprise if their names appear on our website. He further indicated that the names are removed immediately when the fine has been paid.

Chairman Smart called the matter of declaring additional judicial sub circuits, which was a carryover from the June meeting. The Chairman recognized Michael J. Sullivan, Circuit Court Judge of the 22nd Judicial Court in McHenry County and Christopher Starck, Chief Judge of the 19th Judicial Circuit. Judge Sullivan indicated that they were present to support the Board's prior action and say that they believe the Board followed the law and asked the board to continue to do so. The Chairman noted a packet of materials that had been submitted by the Speaker Madigan, Senate President Jones, Senator Terry Link and Representative Jack Franks which included a transcription debate and legislative intent. Lengthy discussion ensued among the board members. The Board asked Mr. Sandvoss to provide additional information, if possible, prior to the next meeting including any additional transcripts from the hearings. Ms. Freeman was advised to include the three additional vacancies for Lake and two for McHenry on the Board's website until advised otherwise. The matter will be discussed at the September Board meeting.

The Chairman asked for a motion to recess to executive session to consider complaints following closed preliminary hearings. Mrs. Roupas requested that before executive session she would like to acknowledge the Money In Election in Illinois 2004 booklet that the campaign disclosure staff provided to the board members. She stated that it was an excellent booklet, that the information was disseminated with clarity, and that it was easy to read. She thanked the staff for the great job. Mr. Murray moved and Mrs. Roupas seconded the motion which carried unanimously. The board recessed at 3:26 p.m.

The Board returned to open session at 3:33 with 7 members present; Mr. McGuffage yielded his proxy to Judge Porter.

The Chairman asked for a motion to act on the matters discussed in executive session as to Items 38 through 45. Mr. Keith moved to adopt the recommendations of the hearing officers and General Counsel in the matters of *SBE v. Friends of George Miller*, 05CD026; *SBE v. Yes for Pools Committee*, 05CD030; *SBE v. Illinois Latino PAC, Inc.*, 05CD035; *SBE v. Citizens to Elect David J. Young*, 05CD037; *SBE v. Friends to Elect John Hayden*, 05CD042; and that a public hearing will be held if the reports are not filed within 10 days of the Board's Order in the matters of *SBE v. Committee to Elect Susan D. Lyons*, 05CD038; *SBE v. Committee to Elect Joe Lewis, Jr.* 05CD039; and *SBE v. Township Citizens Party*, 05CD041. Mr. Schneider seconded the motion which passed unanimously.

Chairman Smart asked if there was other business. Mr. Schneider stated that he had been asked to pass along congratulations to the staff on a very user friendly Web site and the only request would be editable PDF files, specifically the D-1 form. Mr. Borgsmiller replied that he would speak with the Information Technology staff.

The Chairman asked for a motion to adjourn until the next meeting Monday, September 19, 2005 at 10:30 a.m. in Springfield, and added that a telephonic conference call may be necessary before that date. A short discussion regarding voting equipment testing began and Mr. Keith suggested that if the Sequoia voting equipment that our office is testing is affiliated with the Sequoia that has been hired to perform the federal audit, the board may decide to make a change. Mr. White will look into the matter. Mr. Murray moved and Mr. Schneider seconded the motion which passed 8-0. The meeting ended at 3:37 p.m.

DATED: August 29, 2005

Respectfully submitted,

Daniel W. White
Executive Director

Darlene Gervase
Assistant to the Director