

**STATE BOARD OF ELECTIONS
Board Meeting
Monday, September 15, 2003
Springfield, Illinois**

MINUTES

PRESENT:

John R. Keith ,Chairman
Jesse Smart, Vice Chairman
William McGuffage, Member
David E. Murray, Member
Philip O'Connor, Member
Albert Porter, Member
Wanda L. Rednour, Member
Elaine Roupas, Member

ALSO PRESENT:

Dan White, Executive Director
Colleen Burke, General Counsel
Rebecca Glazier, Assistant to Executive Director

The regular monthly meeting of the State Board of Elections was called to order at 11:20 a.m. with eight members present.

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

Chairman Keith then presented the minutes of the August 18 regular monthly Board meeting with some minor revisions which had already been made. Vice Chairman Smart moved to approve the revised minutes as presented. Member Roupas seconded the motion which passed by roll call vote of 8-0.

The Executive Director reviewed activities from the August meeting regarding the Help America Vote Act and the direction from the Board to query the election authorities on the punch card buyout options. Mr. White reviewed the different comments received from various election authorities regarding the options and indicated the most favored option was option one. Mr. White indicated he convened the HAVA Administration Team consisting of several staff members to assist in moving forward with the punch card buyout and the application process. He then discussed two final options the team considered including the most desirable option (option #2) to permit a 50% payment to qualifying jurisdictions upon successful completion of the Voting System Replacement Application and a 50% payment upon completion of the purchase project, pending proper documentation being submitted, and the packet being reviewed and approved by the SBE. Mike Roate, Fiscal Officer, has

researched guidelines for the dispensing of federal funds and the Bureau of the Budget agreed this was an advisable approach. The HAVA Administration team has also drafted language for a proposed voting system replacement application which is included in the board packet for consideration.

Robin Harper Whitehead, Johnson County Clerk and President of the Clerk's Association, thanked for the Board for allowing them the opportunity to speak at the meeting today. She introduced Dick Leibovitz, Rock Island County Clerk; Lance Gough, Executive Director, Chicago Board of Election Commissioners; and Bob Saar, Executive Director, DuPage County Election Commission. Each briefly discussed the options and indicated appreciativeness for the Board's work on this important program. They agreed this option was very workable and wished the application process to proceed expeditiously. After discussion on the voting systems certified in Illinois and the certification standards, Member Murray moved to adopt option number two and proceed with the application process as soon as reasonably possible. Vice Chairman Smart seconded the motion and commended staff and the election authorities for working together to arrive at a workable solution for all. Member O'Connor questioned steps that will be taken upon receipt of the application to verify that a jurisdiction is purchasing a compliant system. Dianne Felts indicated that any system that was used in 2000 can still be used as long as it is modified to meet HAVA requirements. She expressed more concern about requirements of SB 428 than HAVA and also indicated she was going to test based on 2002 voting system standards. Discussions continued on the contracts and also the fact that should a jurisdiction not comply, the federal government will seek reimbursement of the money for that jurisdiction. The motion was called and passed by roll call vote of 8-0. The Board agreed to have Members Murray and Porter work with staff on the application itself and address any problems or concerns prior to the release of the application packet.

Member Smart asked that appropriate staff respond to questions relating to HAVA as incorrect or inconsistent information had been given out to election authorities and the public.

The Executive Director presented a revised voter registration application for Board consideration. Pat Freeman discussed the revisions and indicated the form incorporates provisions of NVRA, HAVA and SB 428. Ms. Freeman thanked all the election authorities for their comments and

also layout ideas. She further discussed a provision in SB 428 that requires inclusion of a Secretary of State (SOS) ID number and the fact it is not clear why this was included because in order to receive an ID #, you must have a social security number. The SBE can either 1) look at another part of SB 428 which indicates any form the SBE designs has to be compliant with HAVA, NVRA and the FEC's form and we eliminate the SOS ID# from our form or 2) follow other states that have taken a position that in the spirit of HAVA these state ID numbers be treated the same as driver's license numbers. Since HAVA refers to driver's license and social security only, does the Board feel confident in the interpretation that gives both the driver's license number and the SOS number equal weight. Member Murray expressed his confidence in the form as it was presented today. Member Roupas questioned if a person assisting the person registering should have to include their phone number also. Ms. Freeman indicated she would review the FEC form but actually it is Illinois law that requests a person registering to have the option of listing their phone number. Discussion ensued on the telephone number disclosure issue. Mr. White indicated this was discussed at the advisory committee meeting and some clerks expressed concern about being bothered by political phone calls close to an election, but on the other hand also felt it was necessary information for the clerks at the time the person registers. Member Murray moved to approve the voter registration form subject to staff's ability to make nonsubstantial changes. Member Roupas seconded the motion which passed by roll call vote of 8-0.

Jill Zwick and Nathan Maddox, representing the Secretary of State's office, were present and addressed the Board about their current back stock of voter registration applications. Ms. Zwick discussed proposed changes to the cards and requested as a temporary fix, the Board allow them to make changes to existing language on the registration cards to comply with HAVA and allow them to deplete this stock. Member Murray moved to accept the changes proposed by the Secretary of State's office in this form. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The Executive Director presented an update on the VISTA project, the SBE systems development project, indicating the in-house team assembled by Steve Flowers has been meeting and is well along in establishing goals, identifying risks and setting deadlines.

The Executive Director reported on the Advisory Committee meeting held this morning. Mr. White indicated the meeting was very well attended and discussions included legislation, the voting by minors act, judges reimbursement, telephone numbers on voter registration cards, and provisional voting. He indicated the policy question, "shall voters be allowed to have their telephone numbers removed from the voter registration records," was presented to the election authorities. Chairman Keith indicated that because there was pending litigation no discussion came of the actual issue itself. He continued that there was lengthy discussion on the SBE 428 electioneering provision, and clustering precincts. The next Advisory Committee meeting will be January 15, 2003 in Springfield.

David Orr, Cook County Clerk, briefly commented on provisional voting and the need for the Secretary of State to provide information to the election authorities so they could verify the provisional voters quickly. He hoped that part of the HAVA money could be used for this.

The Executive Director presented for discussion a legislative report. Cris Cray discussed SB 428 indicating it was signed the week following the August Board meeting. She is currently working on a trailer bill to clean up the language on several provisions of the bill. The Governor amendatorily vetoed SB 699, the bill that would require the Board to meet in person for all meetings including conference calls. Staff is hopeful the legislature will accept the veto. HB 3412, the ethics bill which includes disclosure language, was vetoed and will remain in House rules committee. Chairman Keith thanked all the election authorities for their support on SB 428.

The Executive Director presented a list of potential objection hearing dates prepared by Pat Freeman for Board consideration . Ms. Freeman discussed the upcoming filing and objection periods and the hearing dates. Vice Chairman Smart moved to accept the meeting dates. Member Rednour seconded the motion. Discussion continued on the date of certification which is January 15 and the fact that in the past the Board has certified the ballot with "objection pending" next to names that the objections have not been resolved. The motion called and passed by vote of 8-0.

The Executive Director reported on the COGEL conference that will be held September 21-24 in Austin, Texas. Mr. White, the Chairman, the Vice Chairman, Rupert Borgsmiller (who is a panel

presenter) and Sharon Steward will be representing the agency at the conference. This agency has been long time members and active participants in this professional organization.

The Executive Director presented an informational report on the use of the state vehicle used by the Executive Director. Mr. White discussed the costs and benefits of the car and indicated it is cost beneficial in five months. Member Murray noted that this report convinced him this is a worthwhile expenditure and noted his appreciation for the breakdown.

The Executive Director presented a final FY 03 fiscal status report for the period ending August 31 indicating even in the tight fiscal year \$117,900 is being returned to the state treasury. Member Murray indicated he is very proud of the agency. Mr. White presented for informational purposes the FY 04 fiscal status report for the period ending August 31 and the two year plan of staff activity for the months of September and October.

The General Counsel presented a status report on *Donahue v. Moreno* indicating staff contacted a certified public accounting firm to conduct the audit. A representative from the firm agreed to contact the parties and quoted a price of \$7,500 for the project. Mr. Moreno felt the cost estimated by the accounting firm was too high. Discussion ensued on the cost of the firm hired to conduct the audit. If an agreement cannot be reached, the parties will be required to appear before the Board in October for further action on this issue. Member McGuffage moved to continue the motion to reconsider to the October Board meeting in Chicago and require both parties to be present. Member Rednour seconded the motion which passed by roll call vote of 7-0-1 with Member Porter recusing himself.

The General Counsel presented for information a campaign disclosure waiver program prepared by staff in response to SB 428. SB 428 provides that certain political committees that file electronically would not be required to file copies with the county clerk if the clerk has a system that provides access to the SBE website. Ms. Burke indicated this will be on the October agenda for further action. Member Roupas suggested clarifying language in the written correspondence to make it more clear.

The General Counsel presented a campaign disclosure complaint following public hearing, *Casey v. Somerville*, 03CD08. Member McGuffage recused himself from this matter. Ms. Burke reviewed the background of the complaint which alleges that a volunteer for the Somerville committee provided and distributed materials attributed to a third party candidate in an attempt to mislead voters and to create confusion among the electorate. These materials did not identify the individual or organization that authorized and paid for the materials. Ms. Burke noted that this case concerns Section 9-9.5, disclosure on political literature which previously included criminal penalty provision but was declared unconstitutional. This provision was reenacted by the Gift Ban Act but omits the criminal penalty provision and has not yet been challenged in court and until challenged it is presumed to be constitutional. Michael Kasper was present via telephone on behalf of the complainant. Richard Means was present via telephone representing the respondent. Ms. Burke indicated the respondent discovered the allegations are true and accepts full responsibility for them. The hearing officer has recommended the subpoena request be denied and the Board enter a finding that the committee did violate Section 9-9.5 and further that the Board issue an order directing the committee and the respondent from engaging in any further activity that would give rise to a violation of the act. Ms. Burke agreed and recommended the request for discovery be denied, and the Board enter an order finding the committee in violation, that future violations are subject to a civil penalty of up to \$5,000.

Mr. Kasper indicated no significant objection to the hearing officer's recommendation as Mr. Somerville has admitted to a violation of the Code. There are no current penalties under Section 9-9.5, but Mr. Kasper felt this matter would fall under Section 29-12 as to disregard of the Election Code. He asked the Board to refer this matter to the Attorney General and State's Attorney for appropriate action. Mr. Kasper indicated although the hearing officer denied his request for subpoena, he would prefer to conduct the discovery himself to determine an outcome.

Mr. Means discussed the complaint and the fact that his client was not aware of this act by the volunteer and was embarrassed by it. He is basically trying to apologize and take responsibility. Mr. Means agreed with the recommendation of the hearing officer as it is a reasonable recommendation.

Member Murray then moved to adopt the recommendation of the hearing officer and General Counsel and add a proviso to direct the committee from engaging in any further activity. Discussion continued on negative campaigning. Member Porter expressed concern regarding the knowledge and participation of Mr. Somerville and the fact that he has to take no personal liability. Member O'Connor seconded the motion. Discussion continued and a substitute motion was offered. Member Porter moved and Member Rednour seconded the Board allow for subpoenas to be issued. Member O'Connor noted that even if Mr. Somerville had prior knowledge it is highly unlikely to make a referral under any condition. It was also noted that the issue of knowledge was not part of the original complaint. The substitute motion was then called and failed by roll call vote of 3-4-1 with Members Murray, O'Connor, Roupas, and Vice Chairman Smart voting in the negative, and Member McGuffage recusing himself.

Member Murray's motion was then called which passed by roll call vote of 7-0-1 with Member McGuffage recusing himself.

The Executive Director received compliments from the Board as his first two months have been tough months and it was noted his work is appreciated.

Member Murray then moved to recess to executive session to discuss pending litigation and personnel matters. Member Roupas seconded the motion which passed unanimously. Meeting recessed at 1:40 p.m. and reconvened at 2:04 p.m.

The next regular meeting of the State Board of Elections will be held on Monday, October 20, 2003 at 11 a.m. in Chicago.

With there being no further discussion, Member Roupas moved to adjourn. Member Rednour seconded the motion which passed unanimously. The meeting adjourned at 2:05 p.m.

Respectfully submitted,

Rebecca L. Glazier
Assistant to Executive Director

Daniel W. White
Executive Director