

**STATE BOARD OF ELECTIONS
Board Meeting
Monday, September 19, 2005
Springfield, Illinois**

MINUTES

PRESENT:

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

ALSO PRESENT:

Dan White, Executive Director
Steve Sandvoss, General Counsel
Becky Glazier, Assistant to Executive Director

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

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

Chairman Smart presented the minutes of the August 15 regular monthly Board meeting. Member Rednour moved that the minutes be approved. Member Murray seconded the motion but asked that language be changed to reflect his remarks regarding 1) the voter registration database and a sole source contract on page two of the minutes, and 2) his vote against the motion in the discussion on out of state legal counsel found on page three. The motion passed by roll call vote of 8-0.

Chairman Smart presented the minutes of the September 13 special Board meeting. Member Porter moved to approve the minutes as presented. Member Murray seconded the motion which passed by roll call vote of 7-0-1 with Member Roupas voting present.

The Executive Director reported on the first meeting of the newly appointed SBE Advisory Committee noting it was very well attended. Legislation and a HAVA update were the main topics of the meeting. Considerable discussion centered on early voting and where the ballots should be counted. The election authorities feel that they should be given some discretion as to where to count

the ballots. Director White also indicated the clerks would like the Board to consider promulgating rules for recounts for DRE's in instances with a voter verified paper trail and whether that becomes an official ballot, whether it is used in recounts or how those recounts are conducted. Chairman Smart indicated it was a most constructive meeting.

The Executive Director provided an update on the certification of voting systems. The AutoMARK was approved by the Board at a September 13 meeting. A request for approval of the certification of Sequoia is on the agenda today. Director White noted that Dianne Felts and staff have been testing the Sequoia AVC Edge for the past several weeks. A status report was faxed to the Board on Friday. Ms. Felts reviewed the testing procedure indicating no major problems were found concerning the count. The system tabulated correctly but does not have the best usability functions for the disabled community. In response to a question Ms. Felts indicated she tests independently of an election authority. Representatives present from Sequoia included Mike Frontera, Jack Blaine and Alfie Charles. Mr. Frontera responded to concerns voiced about the system by Ms. Felts noting that Sequoia has already taken steps to remedy such issues. They have met with the disability community in Chicago and Cook County and are working on improving the system to help the disabled community. Ms. Felts indicated if any modification is made to the system the vendor must return to the SBE for testing on the modification only. Discussion ensued on the card activator which merges the results of the DRE with the results from the optical scan voting equipment. Ms. Felts explained that the Independent Testing Authority (ITA) tested the voting equipment based on the 2002 standards. Once a system is certified by the ITA, the SBE can begin testing the system. Director White explained that the 2005 standards will not be effective until two years after the date that they are approved. Melissa Urda representing the Illinois Ballot Integrity Project discussed why they do not believe this system should be certified as they feel it is unreliable. After lengthy discussion, David Orr, Cook County Clerk, indicated that this group does not want any DRE's as they would rather have people vote on paper. Greg Rowden, representing the Coalition of Citizens with Disabilities in Illinois, was present and spoke briefly about the need to work with the disability community. Member Schneider then moved to grant interim approval of the Sequoia AVE Edge in the form it was tested by SBE staff

for a period of two years. Member Porter seconded the motion. Prior to the vote, Member Keith indicated he received an ex parte communication on this matter on Friday and he reported such as required under the Ethics Act. The motion was called and passed by a vote of 8-0.

The Executive Director presented an update of HAVA activities. He reminded the Board of the vote at the August meeting to pursue a sole economic feasible source in continuing with work on the voter registration database. The packet contains a detailed listing of deliverables which have been forwarded to Catalyst Consulting for review. At some point staff will meet with Catalyst and the election authorities to develop a final listing of deliverables. Director White thanked Mark Mossman and Steve Flowers for compiling this information.

The Executive Director indicated at the July Board meeting the Board approved the distribution of Title II Requirements funds in an amount of \$5,000 per precinct for the purchase of accessible voting equipment. A deadline was imposed in order to evaluate the funding needs of the jurisdictions. At this time no applications have been received as election authorities are waiting on the certification of voting systems which continues. Extensions are being granted if a jurisdiction needs additional time to evaluate certified voting systems. It has become clear that the jurisdictions will need additional funding and would like to know what funding might be available in order to assist them in budgeting. Director White asked the Board to take another look at distribution of the remaining \$2,260 per precinct. Discussion ensued on the jurisdictions that received no money via the federal punch card buyout program and Member Keith indicated he was not in favor of changing courses at this time until we can secure some equality among the jurisdictions. Director White indicated he would compile additional information on the 13 jurisdictions that did not receive punch card money and also the 30 jurisdictions with voter registration program needs and place this matter on the October agenda.

The Executive Director presented a progress report on the indirect cost recovery plan that the Board approved at the March 2005 meeting. The bottom line figure is \$444,506 in federal funds which once submitted and approved by the federal government, can be used as a reimbursement to the State Treasury. Discussion ensued on the qualifying expenses and Mike Roate, Fiscal Officer, indicated that the consultant did extensive work on the cost allocation program with other state agencies as well as

other states. The cost to the SBE is \$13,000. Member Schneider moved to submit the report for reimbursement. Member Murray seconded the motion which passed by roll call vote of 8-0.

Director White reported on the meeting of the EAC Standards Board which he attended in Colorado. The major portion of the meeting was on the 2005 voluntary voting system guidelines. He also met the newest Election Assistance Commissioner Donetta Davidson as well as the new EAC Executive Director Tom Wilkey.

The Executive Director presented for informational purposes 1) the final fiscal report for FY05, 2) the FY06 fiscal report for the period ending August 31, 3) the fiscal report for the Help Illinois Vote Fund, and 4) the two year plan of activity for the months of September and October. Member Murray commended staff for returning money yet again to the State Treasury.

Member Murray moved to recess to executive session to discuss personnel matters. Member Roupas seconded the motion which passed unanimously. Meeting recessed at 12:30 p.m. and reconvened at 1 p.m. with all members present.

Member Murray moved to approve action taken in executive session concerning the appointment of Mark Mossman to the position of Director of Election Information effective upon Pat Freeman's resignation at the salary approved in executive session. Member Roupas seconded the motion which passed by roll call vote of 8-0. Chairman Smart indicated he was extremely pleased with the interview. Mark Mossman quoted Thomas Jefferson comment when he was replacing Franklin as ambassador to France "that I can never replace him; I can only hope to succeed him" in terms of succeeding Pat Freeman. He expressed his gratitude for this opportunity and the confidence the Board has placed in him.

The General Counsel introduce Steve Sturm the newest attorney on staff. Mr. Sturm indicated he was happy to join the SBE.

The General Counsel presented two carryovers from the July meeting: *SBE v. Illinois Homebuilders Political Education Committee, 04AG059*, and *SBE v. Laborers Local 703 Political PAC, 04AG093*. In both instances the defense that the amount in question should have been listed under unitemized contributions as having come from numerous small donors, none of which exceeded \$500.

It was remanded back to the hearing officer to substantiate the claim. The recommendation of the hearing officer is to grant the appeal which is consistent with the first recommendation. Mr. Sandvoss concurred with the recommendation. Mark Harrison was present on behalf of Illinois Homebuilders Political Education Committee and agreed with the recommendation. Member Porter moved to adopt the recommendation of the hearing officer and General Counsel in both cases. Vice Chairman Rednour seconded the motion. Discussion ensued on the contributions and Member Murray felt it was incumbent upon the committee to track these contributions and the names of the contributors. Mr. Harrison indicated he was not aware prior to this what the potential abuses could be and that it was not their intent to violate the law. The committee will be keeping better records in the future. The motion was called and passed by a vote of 8-0 with Member Porter voting Member McGuffage's proxy as he had stepped out of the room.

The General Counsel presented *SBE v. Citizens for Moreno Committee*, 04GP123, a carryover from August. The recommendation of the hearing officer (which Mr. Sandvoss did not concur with) was to hold off on rendering a decision until the Governor had addressed HB 1968 since the legislation addresses the circumstances. If legislation is approved the hearing officer further recommended that the appeal be granted and no fine be assessed. The committee has offered a \$300 settlement and the General Counsel recommended accepting it in addition to the \$500 penalty which had previously been stayed. Discussion ensued and Campaign Disclosure Director Rupert Borgsmiller indicated that in speaking with Matt Delort, attorney for the committee, it appears he knew both fines would be due and owing but he wished that the matter be held over to October. Member Murray moved to table the matter to the October meeting. Member Porter seconded the motion which passed by roll call vote of 7-1 with Chairman Smart voting in the negative.

The General Counsel presented the matter of *SBE v. Citizens for Nikolaos Manousopoulos*, 05CD007. Mr. Sandvoss reviewed the matter and asked the Board to amend its order that was issued at the August meeting to reflect this was not a stayed penalty. In referring to the August minutes it was noted there was not a vote included and Member Keith asked that this be clarified in the official set of minutes. Discussion ensued and Member Roupas indicated in the past committees have been

allowed a one-time defense when they have had a computer problem when filing. After further discussion Member Roupas moved to reconsider the prior ruling from the August meeting and rethink the decision of the fine and give the committee their defense of the late reporting due to an electronic mistake and the fine be recalculated to \$500. Member Porter seconded the motion which passed by roll call vote of 7-1 with Member Keith voting in the negative and Chairman Smart voting Member Murray's proxy.

Member Keith then moved to officially amend the minutes to reflect the vote in the above matter and other cases as set forth on page four of the August minutes. Member McGuffage seconded the motion which passed unanimously.

The General Counsel presented a settlement offer from the *Citizens for Lightford* committee. Mike Kasper was present as was Senator Lightford. Mr. Kasper discussed the penalties assessed the committee and asked the Board to accept the offer of 10% of the proposed penalty which would amount to approximately \$4,600 which would be paid by the end of the week. The General Counsel concurred with the offer. Member Porter moved that the recommendation of Mr. Kasper as accepted by the General Counsel be supported by the Board and that the total settlement be in the amount of \$4,665 payable by the end of the week. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented *SBE v. John Sullivan for Senate*, 04AG079. The General Counsel reviewed the matter indicating this is similar 05CD007. At the August meeting the Board voted that the recommendation be accepted and the appeal be denied, the penalty be assessed but stayed. Anytime there is more than one violation it is a due and owing penalty so he recommended it be reduced to \$152 but not stayed. Member Murray moved to accept the recommendation of the hearing officer and assess the penalty at \$152. Member McGuffage seconded the motion. Discussion ensued on the violations, assessments and Board orders. Member Murray withdrew his motion and moved to accept the recommendation of the General Counsel and find a violation of October for the contribution of October 8 of \$775.16 and a second violation in October for the contribution of October 13 in the amount of \$742.10 and a penalty be assessed for the two violations at ten percent of

the total which would be \$152. Member McGuffage seconded the motion which passed by roll call vote of 8-0.

Chairman Smart presented appeals of campaign disclosure appeals that the hearing officer has recommended be denied. Member Keith moved to accept the hearing officer's and General Counsel's recommendations in the matters of *SBE v. Friends of Matt Melucci*, L3593, 05AE002; *SBE v. Citizens for Graham*, L7756, 04GE111; *SBE v. Canteen Township Democratic Org.*, L9756, 04AG033; *SBE v. Citizens for Margaret Ann Gramlich*, L12302, 04AG019; *SBE v. Decatur Township Democrats*, L12269, 05AE007; and *SBE v. Adams County Women's Republican Club*, S8861, 05MA002. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

Rupert Borgsmiller presented a listing of committees that did not file an appeal and penalties will be assessed based upon previous practices.

Mr. Borgsmiller indicated that the D-1 form is now available in a format that can be completed before printing it out. Staff is working on making all disclosure forms that are not subject to electronic filing available in this format.

Mr. Borgsmiller discussed the previous Board conversations regarding proceeding against a contributor for failing to provide the in-kind contributor form in a timely fashion. In the matter of Illinois Life Insurance Council PAC, the committee has indicated that the time of the event they did not know any amount to report. The group has been very cooperative and have provided all requested information and there was no intent to not supply the information. Mr. Borgsmiller indicated in this case the contributor was a PAC and questioned what could be done if it is an individual or a non political entity. Discussion ensued and it was agreed staff would prepare a proposal,, either legislative or by rules, for the Board to review.

Chairman Smart presented *Napp v. Phillips for Mayor*, 05CD043, a complaint following closed preliminary hearing. Mr. Phillips was present and did not mind proceeding in open session. However, since the complainant was not present to waive his right to proceed in closed, Member Keith moved to recess to executive session to consider this matter. Member Roupas seconded the motion which passed unanimously. Meeting recessed at 1:50 p.m. and reconvened at 1:55 p.m.

Upon reconvening Member Keith moved to adopt the recommendation of the hearing officer and General Counsel in the matter of *Napp v. Phillips*, as done in executive session. Vice Chairman Rednour seconded the motion which passed by roll call vote of 8-0.

A status report on the issue dealing with subcircuit judicial vacancies was presented. Chairman Smart indicated that the Speaker's office and the Minority Leader's office have decided they will resolve this matter and the Board no longer needs to take any action.

Brief discussion was held on the Executive Appointment Committee and it was indicated nothing has been scheduled at this time.

The next regular meeting of the State Board of Elections will be held on Monday, October 17, 2005 at 10:30 a.m. in Chicago.

With there being no further discussion, Member Murray moved to adjourn. Member McGuffage seconded the motion which passed by roll call vote of 8-0. The meeting adjourned at 2:00 p.m.

Respectfully submitted,

Assistant to Executive Director

Executive Director