

STATE BOARD OF ELECTIONS BOARD MEETING

Monday, November 19, 2007

MINUTES

PRESENT: Albert S. Porter, Chairman
Bryan A. Schneider, Vice Chairman
Patrick A. Brady, Member
John R. Keith, Member
William M. McGuffage, Member
Wanda L. Rednour, Member
Jesse R. Smart, Member
Robert J. Walters, Member

ALSO PRESENT: Daniel W. White, Executive Director
Steve Sandvoss, General Counsel
Darlene Gervase, Administrative Specialist II

Chairman Porter called the meeting to order at 10:37 a.m. and led everyone in the pledge of allegiance. All members were present.

Vice Chairman Schneider moved to recess to the State Officers Electoral Board at 10:38 a.m. Member Smart seconded the motion which passed unanimously.

The meeting of the State Board of Elections resumed at 11:15 a.m. with a reading of clarifications or changes to the October 15, 2007 minutes. Member McGuffage moved to adopt the minutes with the changes suggested by Member Keith. Vice Chairman Schneider seconded the motion which passed unanimously by ayes in unison.

Executive Director White noted that the Agenda was amended due to a typographical error at item 31 and he submitted a letter from Chicago's Board of Election Commissioner's Executive Director, Lance Gough, which should have been included in the packet before page 17. Mr. White also presented a complimentary letter from Senate Republican Leader Frank Watson regarding the first day of filings and an article from the Peoria Journal Star that ranks Illinois in the top 10 for its campaign disclosure laws, electronic filing, and accessibility.

The first item on the Executive Director's agenda was preparations for the General Primary Election. He indicated that a record 650 candidates filed by 8:00 a.m. on the first day of petition filing, were processed, and entered into our database by 10:30 a.m. Further, that a total of 960 candidates filed during the week long period including 176 on the last day. He thanked Directors Mossman, Steve Flowers, and the great efforts of the entire SBE staff for making the filing period a great success and reiterated that many compliments were received. Chairman Porter said that the Board is grateful to Mr. White and the staff for all of the good work they have done and that they serve the State of Illinois well.

Mr. White continued with information on the Special Judicial Filing and Presidential Filing periods and corresponding objection periods. He advised the Board of several dates in December when they may have to meet. Finally, Mr. White presented a list of judges' schools for the General Primary 2008 for informational purposes which concluded his pre election report.

A contingency plan for the February Primary Election was revisited. Mr. White said that election officials and the Governor's office had been contacted and McHenry County Clerk Kathie Schultz indicated that this matter will be discussed and a committee formed to address the issue. At the Governor's office's suggestion, we contacted the Illinois Emergency Management Agency for coordination of efforts.

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The Director indicated that staff will be filming a public service announcement, informing the public that we will have the earliest primary in Illinois' history. Also, that we have purchased 150 copies of a video on voters with disabilities. The video will be instrumental in training of election workers and election judges. Mr. White affirmed that the Governor signed the elections omnibus bill 662. Pursuant to law, this bill ensures independent candidates the chance to file in June.

A special congressional election may be required in the 14th District as Congressman Hastert has indicated he may tender his resignation prior to the end of this year.

Member McGuffage commented that this would be the type of election where mail in ballots would save a lot of time without having to open polling places for just one election taking place in eight counties. He also commented on the videos and PSA's and suggested that the videos be made available to the schools and asked the director to research its feasibility. He added that there are a lot of young people that aren't getting the proper education in government and therefore are not voting.

Director White continued his report with a HAVA update indicated that he anticipated receiving a check from the Secretary of State's office. The \$40,000 agreed amount will be paid shortly as the SOS has already cut a check to the Comptroller. This payment will satisfy the last of the 3 reimbursements that were required by the EAC audit.

Mr. White indicated that Dianne Felts, Director of Voting Systems and Standards, recommended three items for interim approval. The first is approval of the marking pens for Sequoia's Optech 400-C (WinETP 1.14.3) and Optech Insight Plus (APX K2.12, HPX K1.44) with WinEDS 3.1.074. The pens are the Eberhard Faber, the Uni-ball Signo RT, and the Uni-ball VISION EXACT. She added that none of these pens were as easy to use as the Micron regarding smudging, but they work well and are cheaper. She recommends approval of the three pens as long as the ballots' paper quality is of the same weight as our test. Vice Chairman Schneider moved for interim approval of the Eberhard Faber, Uniball Visiion Exact and Univall Signo RT marking pens to be used on the Insite and Optech 400C at Sequoia's expense and Cook and Chicago Boards are buying and supplying the pens. Member Rednour seconded the motion which passed unanimously.

The second approval is for hardware modifications to the Edge2Plus, the vendor's direct recording electronic device. The modification centers around the effect of static electricity on the machine's printer. Member Smart moved to grant approval for the General Primary Election of February 5, 2008, for the Sequoia Edge2lus Model 300, Firmware1.2.33 hardware upgrade of the electrostatic discharge protection. Member Walters seconded the motion

The last approval was in answer to a request from Lance Gough, Executive Director of the Chicago Board of Elections, who indicated that they will manually audit and report on vote totals in split precincts in time for the Board's certification of the February 5, 2008 General Primary election results. As the Sequoia WinEDS 3.1.074 has interim approval through January 2009, extension of the approval was not necessary.

The remaining items on the Executive Director's report were for informational purposes. Mr. White said he was pleased to announce reinstatement of the SBE agency newsletter. He indicated that he would eventually like to combine both the Illinois Voter Registration System (IVRS) letter and the Agency Newsletter. Member Walters moved to authorize Mr. White to publish these newsletters. Member Smart seconded the motion which passed unanimously.

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The next item was information on the Campaign Disclosure Downlink Seminar. Mr. White submitted the flyer publicizing the 12 locations statewide and that the seminar will be available as a streaming video broadcast which may be viewed from home computers.

Fiscal status reports, Help America Vote Fund and the two year plan of staff activity for November and December were presented for the Board's information.

Director White told the Board that staff is preparing the FY09 budget already and we will have that for presentation to the Board in January. He said that they will be coming back with an aggressive budget and ask for the resources that we need.

On a final note, Mr. White said that very little HAVA spending activity occurred this past month.

The Chairman recognized Mr. Dennis Allen who filed a Motion for Reconsideration and was present for consideration of civil penalty assessment for failure to comply with a Board Order and asked General Counsel, Steve Sandvoss, to summarize the case. Mr. Sandvoss indicated that this matter was carried over from the October meeting. He said that the Respondent failed to file the February 2007 Pre-election report, that the complaint was filed on justifiable grounds and that the committee filed the June 2007 semi-annual report rather than the required Pre election report. On August 22, 2007, the committee was ordered to file the February 2007 Pre-election report within 30 days of the effective date of the order or face a civil penalty not to exceed \$5,000.00 pursuant to the Election Code. The General Counsel recommended assessing the civil penalty of \$7,950.00. Mr. Allen said that correspondence was going to the secretary and not directly to him. He indicated that the committee members had been replaced and that the monies in the account would be used to pay a judgment. Mr. Allen said that the committee would dissolve and file a final report. Member Keith moved to deny the motion to reconsider and assess no further penalty under the August 22nd Order. Member Brady seconded the motion and the motion passed unanimously by roll call.

General Counsel Sandvoss summarized the matter of *SBE v. Committee to Elect John A. Lartz*, S9158, 07CD038. No one appeared for the respondent. Member Smart moved to assess \$5,000 for failure to obey the Board's Order. Member Rednour seconded the matter which passed by 7-0-1 vote, with Member Brady voting present.

The General Counsel summarized the *SBE v. AARC of Illinois*, S9099, 06DS178 and 07JS057 and noted that this matter was carried over from the October meeting so that the Respondent could confer with the officers of the committee, however no one was present for the hearing. He recommended that the appeal be denied and the committee assessed a civil penalty of \$4,675.00. Member Smart moved and Member Rednour seconded a motion to adopt the recommendation of the General Counsel to deny the appeal and assess a \$4,500.00 civil penalty. The motion carried unanimously.

Chairman Porter called the appeal of *SBE v. Friends of Todd Stroger for President of the Cook County Board of Commissioners*, S9283, 06D119, a matter that was carried over from the October meeting. Mr. Burton Odelson appeared for the Respondent. Mr. Richard Means, attorney for Mr. Peraica in another matter, filed a Motion to Consolidate this hearing with an outside complaint involving Messrs. Peraica and Stroger. The Motion was not considered at this time and was set over to be heard during the time scheduled for the Peraica complaint. The Chairman cautioned Mr. Means not to interrupt when the Board is discussing something. Member McGuffage moved to fine the committee \$14,201 and deny the appeal. Member Keith seconded the motion which failed by 4-3-1 vote, with Member Brady abstaining and Member Smart, Walters and Vice Chairman Schneider voting against the motion. Member Smart moved to deny the appeal and fine the committee \$26,757.00 and Vice Chairman seconded

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the motion. After further discussion a revised amount of \$25,581.64 was suggested. Member Smart amended his motion to reflect the new amount and Vice Chairman Schneider accepted the amendment. The motion carried by 5-1-1 vote. Member Brady abstained; Member McGuffage voted present; and Chairman Porter voted no.

The Chairman called *Peraica v. Friends of Todd H. Stroger for President of the Cook County Board of Commissioners*, 07CD071 a complaint following closed hearing. Both parties agreed to have the matter heard in open session. The General Counsel summarized the case and agreed with the hearing officer's recommendation that the complaint was filed on justifiable grounds but to take no further action in light of the fact that the penalty portion of the matter has been resolved and deny the motion to consolidate. After hearing from both sides, Vice Chairman Schneider moved to adopt the General Counsel and Hearing Officer's recommendations; to deny the Motion to Consolidate and no further action be taken and as the penalty has already been taken care of. Member Rednour seconded the motion which passed 7-0-1 with Member Brady abstaining.

New appeals of campaign disclosure fines that the hearing officer recommended be granted were presented. Appearances were acknowledged for Giovanni Rendacci and Courtney Nottage for Friends of Lewandowski, S8800; Thomas Bastian for the Committee to Elect Johnson, S7853; and Alan King, Chairman for S8984; all three agreed with the hearing officers' recommendations. Vice Chairman Schneider moved and Member McGuffage seconded a motion to grant the appeals. The motion passed unanimously by voices in unison. Appeals were granted in: *SBE v. Friends of Charlotte R. Moore*, L1921, 07AE019; *SBE v. 11th Ward Democratic Party Campaign Committee*, S787, 07AE025; *SBE v. Committee to Elect Johnson*, S7853, 07CE061; *SBE v. Friends of Dan Lewandowski*, S8800, 06AG097; *SBE v. Friends of Kwame Raoul*, S8749, 06AG106; and *SBE v. Riverdale Mayor Finance Committee*, S8984, 07JS013.

Member Keith moved to continue the following appeals to the December 6th meeting. Member Smart seconded the motion. After noting that there were no objections to the motion, Chairman Porter directed that the following matters are continued: *SBE v. Committee to Elect Edward "Ed" Russell*, L13781, 07AE006; *SBE v. Friends of Judy Stearns*, L14206, 07MA018; and *SBE v. Frankfort Township Democratic Organization*, S8789, 07JS052.

The Chairman asked for a vote as to new appeals where the hearing officer recommended and the general counsel agreed the appeals be denied. Vice Chairman Schneider moved to deny the appeals in the following cases: *SBE v. Friends of William J. P. Banks*, L811, 071C040; *SBE v. Community Park of Hanover Park*, L1227, 07AE029; *SBE v. Citizens for Cole*, L9291, 07AE004 & 07AE020; *SBE v. Citizens for Capplemann*, L13487, 07JS076; *SBE v. Fioretti for Alderman*, L13544, 07AC029; *SBE v. Friends for Eric P. McKennie*, L13815, 07JS073; *SBE v. Citizens for Munoz*, S5774, 07AC043; and *SBE v. C.C.D.P. (Catherine, Carle, David & Patricia) Party*, S9365, 07AE027. Member Smart seconded the motion which passed unanimously by ayes in unison.

The Chairman acknowledged the appearance of Peter Zelchenko in the matter of *SBE v. Citizens for Peter Zelchenko*, L13601, 07CP031. Mr. Zelchenko offered his response to the complaint and Mr. Sandvoss differed with the respondent as Mr. Zelchenko was a candidate at the February Consolidate Election and since he was running he was a participating committee and required to file a pre election report regardless of how much money is raised or spent. Further, that Mr. Zelchenko voluntarily filed the statement of organization and has put himself under the jurisdiction of the SBE and is now required to file subsequent reports. The General Counsel recommended the Board deny the appeal and assess the penalty. Member Smart moved and Member Rednour seconded a motion to grant the appeal. The motion carried by 5-3 vote with Members Brady, Keith and Vice Chairman Schneider voting no.

Chairman Porter recognized the *pro se* appearance of Mr. Michael Mayden for *SBE v. Citizens to Elect Michael Mayden*, S9027, 07JS071. Mr. Mayden asked for leniency on the additional \$1,500 that has been assessed. The

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General Counsel agreed with the recommendation of the hearing examiner and noted that 2 previous semi-annual reports were filed late. Member Keith moved to adopt the recommendation of the hearing officer and general counsel and deny the appeal and Member Brady seconded the motion. Mr. Mayden submitted a settlement offer of \$150. Member Keith stayed his motion. Member Smart moved to accept the settlement agreement and Member McGuffage seconded the motion. The motion passed 5-3 with Members Brady, Keith and Vice Chairman Schneider voting against the motion. Member Keith withdrew his motion.

SBE v. Friends of Michelle Harris, S9311, 07AC035 was considered. Mr. Sandvoss agreed with the hearing examiner to grant and deny the appeal. Vice Chairman Schneider moved to accept the hearing officer and general counsel's recommendations to deny and grant the appeal as specified by the hearing officer's report and grant the appeal regarding the \$5,000 check dated February 26, 2007 and deny the appeal regarding the \$1,500 check dated February 9, 2007. Further, that the penalty be reduced to 10% of the original assessment or \$150. Member Smart seconded the motion which passed unanimously by ayes in unison and none opposed.

The General Counsel presented a payment plan for the Asbestos Workers Heat & Frost Insulators Local Union #1. Three hundred twenty five dollars has been paid towards the penalty of \$1,225 leaving a balance of \$900 to be paid in 3 equal payments. Member Smart moved to accept the payment plan. Member Rednour seconded the motion which passed unanimously by ayes in unison.

Mr. Sandvoss indicated that the next two items were informational. One is a list of candidate committees whose candidates potentially face ballot forfeiture for the primary election, Feb. 5, 2008 and the other is a listing of committees who have paid their civil penalties. Potential ballot forfeiture and payment of civil penalties were submitted for informational purposes.

A complaint following public hearing, *SBE v. Citizens for Hawkins, S9222, 07CD046* was considered. Member Smart moved and Member Rednour seconded a motion to issue an order specifically ordering the committee to file semi annual report for December, 2006. Further, that it must be filed within 30 days of the Board's order. The motion passed unanimously.

Item 3.a.29 was continued to executive session.

Mr. Sandvoss presented a review of executive session minutes and indicated that there is no longer a need for confidentiality and public access should be allowed. He added that the Open Meetings Act does not require a disclosure of the verbatim recording even in the event that the minutes themselves are released to the public. A separate Board vote to specifically authorize the release would be necessary. Member Keith moved as to the minutes of the meetings of Executive Session of the State Board of Elections from October 2005 through September 2007, that those minutes be released except for the specific ones contained in the memorandum of Mr. Sandvoss and that apply only to the minutes and not to any verbatim recordings or other notes concerning the meetings. Vice Chairman Schneider seconded the motion which passed unanimously by ayes in unison.

Discussion was had regarding opposition of JCAR to a proposed rule. It was decided to withdraw the rule. Member McGuffage moved to withdraw the proposed rule and seek legislation. Member Brady seconded the motion which passed unanimously.

Vice Chairman Schneider moved to recess to Executive Session for the consideration of a complaint following closed preliminary hearing for litigation, discussion of pending litigation and personnel matters. Member Walters seconded the motion which passed unanimously.

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The Board retired to executive session at 1:39 p.m. and returned to open session at 1:57 p.m.

Member Keith moved on Case 07CSD69 to find that the complaint was filed on justifiable grounds and have the matter moved forward to public hearing. Vice Chairman Schneider seconded the motion which passed unanimously.

Member Keith moved to direct the general counsel in accordance with the discussions in Executive Session as to representation in the case filed by Mr. Schultz against the members individually and as Board members and also relative to the pending request of the Attorney General regarding filing relative to independent candidates that it would be withdrawn. Vice Chairman Schneider seconded the motion which passed unanimously by ayes in unison.

Vice Chairman Schneider moved that the State Board of Elections stand adjourned until December 6th at 10:30 a.m. Member Rednour seconded the motion which passed unanimously.

The State Board of Elections adjourned at 2:02 p.m. and the following commenced at 2:08 p.m.

Chairman Porter asked the Board to come back into session and retake the roll. All members were present. He indicated that they came back into session to hear Ms. Jean Kazmarek, co-chair of the DuPage Chapter of Illinois Ballot Integrity Project. Ms. Kazmarek indicated that substantial evidence has been reported on the lack of security, accuracy and reliability of the Diebold TSX voting systems and submitted a survey for the board's perusal.

Chairman Porter asked for a motion to adjourn. Member Rednour so moved and the meeting adjourned at 2:14 p.m.

Dated: December 5, 2007

Respectfully Submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Specialist II