

STATE BOARD OF ELECTIONS
Regular Meeting
Monday, May 15, 2017

MINUTES

PRESENT:

Charles W. Scholz, Chairman
Ernest L. Gowen, Vice Chairman
William J. Cadigan, Member
Andrew K. Carruthers, Member
Betty J. Coffrin, Member
John R. Keith, Member
William M. McGuffage, Member
Casandra B. Watson, Member

ALSO PRESENT:

Steven S. Sandvoss, Executive Director
James Tenuto, Assistant Executive Director
Kenneth R. Menzel, General Counsel
Amy L. Calvin, Administrative Assistant II

The meeting convened at 10:30 a.m. via videoconference with all Members present. Chairman Scholz, Vice Chairman Gowen and Members Cadigan, Carruthers, Coffrin and Keith were present in Springfield and Members McGuffage and Watson were present in Chicago.

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

Vice Chairman Gowen moved to approve the minutes from the April 18 meeting as presented. Member Cadigan seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a request for settlement offer for Agenda item 2.a.1, *Citizens to Elect Frazier Garner*, 25549, 14CD183 and reviewed the matter. He noted that the committee was administratively terminated in August of 2016 with a negative funds balance. The settlement offer indicates the committee had a funds balance of \$2,440 for the past year. He recommended the Board defer action until the committee is reactivated, corrects the reports currently on file and files any other missing reports. No one was present on behalf of the committee. Vice Chairman Gowen moved to accept the recommendation of the General Counsel. Member Keith seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented the following appeals of campaign disclosure fines for Agenda items 2.a.2-6: 2) *SBE v. Livingston County Democratic Central Committee*, 365, 17DQ003; 3) *SBE v. East Central IL Building & Construction Trades Council*, 1193, 17AD011; 4) *SBE v. Friends of County Board Chairman Jim Moustis*, 19546, 17AD023; 5) *SBE v. Friends of Sam Yingling*, 23561, 16AS026; and 6) *SBE v. Committee to Elect Bob Trentman*, 24640, 16SQ134. He concurred with the hearing officer recommendation to grant the appeals. Member Keith moved to grant the above noted appeals and order any amended reports to be filed in a timely manner. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

The General Counsel noted that the committee for Agenda item 2.a.7, *SBE v. IL Automobile Dealer's Association CAR of Illinois*, 283, 17AD007 requested the matter be deferred to the June meeting.

Agenda item 2.a.8, *SBE v. Illinois Optometric Association PAC*, 909, 16AS048 was presented and the General Counsel concurred with the hearing officer recommendation to deny the appeal due to lack of an adequate defense. No one was present on behalf of the committee. Member Cadigan moved to deny the appeal. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented appeals of campaign disclosure fines for Agenda items 2.a.9-14: 9) *SBE v. Builders Association PAC (BA PAC)*, 6830, 17DQ016; 10) *SBE v. IL Motorized Recreational Power Equipment PAC*, 12300, 16SQ017; 11) *SBE v. East St. Louis Republican Central Committee*, 18551, 17DQ035; 12) *SBE v. Citizens to Elect Joe Tirio*, 31739, 17AD040; 13) *SBE v. Friends of Joe Cook*, 31741, 17DQ095; and 14) *SBE v. Friends of Lynn Gray*, 32205, 17DQ124. He concurred with the hearing officer recommendation to deny the appeals. No one was present on behalf of the respondent committees. Member Carruthers moved to deny the above noted appeals. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

Next on the agenda was a complaint following public hearing for item 2.a.15, *Cooke v. Committee for Frank J. Mautino*, 16CD093. Jeff Schwab was present on behalf of the complainant and Anthony Jacob was present on behalf of the respondent committee. The General Counsel indicated that the Board was familiar with the history of the matter and reviewed the recommendations of the hearing officer. At its May 18, 2016 meeting, the Board ordered the committee to amend its past reporting as to the expenditures reported to Happy's Super Service and Spring Valley Bank and further provided that, if the committee failed to amend in a timely manner, the matter would go to public hearing. Out of the public hearing, the hearing officer recommended that the Board proceed to assess appropriate fines against the committee for failing to amend its 2014 and 2015 reports. The records prior to 2014 were destroyed as permitted under the two-year record retention requirement outlined in the Election Code. The General Counsel concurred with the recommendation of the hearing officer. He also noted that normally, when proceeding to assess a fine for failure to follow an order, it is generally required that an explicit reference to the possibility of a fine be mentioned. Furthermore, the person who holds the records that would be necessary to amend the reports has asserted a Fifth Amendment defense against any sort of testimony or production of records. Mr. Schwab indicated he did not agree with the hearing officer's report regarding a couple of issues. As to Happy's Super Service and Spring Valley Bank, he indicated that evidence was provided to show the committee was paying for gas and repairs for personal vehicles, not campaign vehicles. Instead of reimbursing people who own personal vehicles for their travel expenses with the IRS-based travel reimbursement, the committee was just paying for the gas, which is in violation of the Election Code. With respect to Spring Valley Bank, he indicated the committee was writing checks for cash, spending the money without obtaining some receipts and then failing to report the expenses. He said those issues were not addressed in the hearing officer's report and asked that the Board address them. He also asked that the substantive issues in the report be heard as well as the Board fine the committee for failure to comply with the board order in its entirety. The General Counsel explained that Mr. Krasny was not going to re-litigate the Happy's Super Service and Spring Valley Bank issues because it was already established that reporting was deficient all the way back from the closed hearing. Had those reports been amended, the matter would have not proceeded to a public hearing.

Mr. Jacob indicated that this was a long but fair process and thanked the Board for hearing the matter. He indicated the committee complied with requests for information and documents and that the committee did not willfully violate the board order. The committee does not have

officers who can attest and sign off on the amended reports and the committee has been dissolved for over a year. In response to an inquiry regarding the federal investigation, Mr. Jacob stated that no one has been formally charged and had no information that can be provided at this time. He also noted that at the May, 2016 meeting, he did ask for sixty days to file the amended reports but was not able to find a way to do this because of the reasons stated previously. Discussion ensued regarding the Board's authority to pursue dissolved committees and the three point findings contained in the hearing officer's recommendation. Member McGuffage then moved to stay the proceedings. Member Watson seconded the motion which failed by roll call vote of 3-5. Vice Chairman Gowen and Members Cadigan, Carruthers, Coffrin and Keith voted in the negative. The General Counsel restated the three point findings and conclusions of the hearing officer's report. After discussion, Member Carruthers moved to adopt the recommendation of the hearing officer as to points #1 and #3, and find that as to #3, the committee willfully violated the Board's order of May 18, 2016, and impose a fine of \$5,000. Member Cadigan seconded the motion which passed by roll call vote of 6-2, with Members McGuffage and Watson voting in the negative. Mr. Schwab expressed his thoughts on the rulings and felt the merits of the complaint should be addressed. He was advised of the Board's role in the matter and offered suggestions as to other legal avenues that could be pursued. Member Carruthers moved as to point #2, deny the recommendation of the hearing officer and find the committee did willfully violate the May 18, 2016 board order by failing to provide the information whether the committee owned or leased any vehicles. Member Cadigan seconded the motion which passed by roll call vote of 5-3. Chairman Scholz and Members McGuffage and Watson voted in the negative. Member Carruthers moved to send a copy of the file to the Office of the Illinois Attorney General and LaSalle County State's Attorney for potential criminal prosecution of violations of the Election Code as they may deem appropriate. Member Cadigan seconded the motion which resulted in a roll vote of 4-4. Chairman Scholz and Members Keith, McGuffage and Watson voted in the negative.

A listing of civil penalty assessments necessitating a final board order was presented. Member Keith moved to assess the civil penalty against the committee listed on pages 126-130 of the board packet. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

A listing of payment of civil penalty assessments was presented for informational purposes.

Member Keith moved to recess to executive session to consider complaints following closed preliminary hearing. Member Carruthers seconded the motion which passed by roll call vote of 8-0. After a short break, the meeting recessed at 12:20 p.m. and reconvened at 1:45 p.m. with the same attendance as noted in the initial roll call.

As to agenda item 2.a.18, *SBE v. Citizens to Elect Diante Johnson*, 17CD030, Member Keith moved to find that the complaint was filed on justifiable grounds and the matter proceed to a public hearing. Vice Chairman Gowen seconded the motion which passed by roll call vote of 8-0.

As to agenda item 2.a.19, *Weyermuller v. Wilmette Friends*, 17CD052, Member Keith moved to find that the complaint was filed in good faith; that upon hearing no justifiable grounds were found to exist and the matter not proceed to a public hearing. Member Carruthers seconded the motion which passed by roll call vote of 7-0. Member Cadigan recused himself from the matter.

The General Counsel presented proposed changes to Administrative Rule, Section 125.425 Civil Penalty Assessments contained on pages 133-134 of the board packet. Discussion was had regarding the two year period associated with stayed penalties, in particular date of the violation and whether it should read "alleged." It was noted that Attorney Mike Kasper provided input on the language and was supportive of the proposed changes. Mr. Menzel offered to tweak the language a bit more and report back to the Board at its June meeting.

Proposed changes to Administrative Rule, Section 207.50 Deputy Registrars; Bona Fide State Civic Organization was presented and the General Counsel asked Heather Kimmons to review the changes. Ms. Kimmons indicated it is a new modification from what was presented at the April meeting pertaining to the second paragraph of Subsection (b) on pages 135-138 of the board packet. The revised language reads that any new certifications that are granted would be effective for six years. Existing bona fide civic organizations would receive notice of the new Rule and be given six months to reapply for certification with an application. After discussion it was agreed to revise the language and place on the June Board meeting agenda.

The Executive Director began his report with an informational update on the Advisory Committee Meeting that was held prior to the Board Meeting. He said there were approximately eight attendees present and it lasted about forty-five minutes. Discussion was had regarding write-in candidate procedures, legislation, ERIC, AVR and IVRS. The newly formed Advisory Committee is scheduled to meet on Monday, September 18, 2017.

Vice Chairman Gowen left the meeting at 1:10 p.m. and Member Coffrin held his proxy for the remainder of the meeting.

Cris Cray gave a legislative update and indicated the past two weeks have been spent working on the Automatic Voter Registration (AVR) bill. Elections Committee and Senate Appropriations Committee are both scheduled for this week and Executive Appointments Committee is scheduled for May 22. Ms. Cray also anticipates to begin work on the omnibus bill sometime next week.

Next on the agenda was the Senate Bill 172 update and Kyle Thomas reported that the ERIC membership is now being used to perform the National Change of Address (NCAO) updates. He indicated the next step was take the information for the cross-state movers, merge it with the interstate cross-check system and provide that information within IRVS. Kevin Turner discussed the new module, named JET, which will allow the jurisdictions to communicate quickly with IVRS. He also noted that without a budget, there will be a shortage of computer equipment for the upcoming candidate petition filing period. **If a budget is not in place by the first day of filing, staff will not be able to file and scan petitions immediately due to network issues and lack of equipment. Furthermore, the MacAfee antivirus license expires on September 4, 2017. Mr. Turner was unsure if the vendor would even provide a bid since the agency has been in payment arrears for two years. If the license is not renewed, Mr. Turner said it is possible that the agency will have to disconnect from the internet to prevent virus and malware infiltration.**

The required six month review of the executive session minutes was presented. The Executive Director reported that he and the General Counsel reviewed the minutes and determined the necessity of confidentiality does not exist as to the release of such minutes for the period of October 8, 2016 thru March 31, 2017. Member Cadigan moved to accept the recommendation of the General Counsel and remove the need for confidentiality from the minutes noted above. Member Carruthers seconded the motion which passed by roll call vote of 8-0.

The Executive Director said that meetings were still in progress among the subcommittee appointed to discuss the proposals related to staff compensation. Member Cadigan indicated that discussions were underway with the general assembly to propose language for a bill to allow future employees to enroll in a defined contribution plan similar to the State University Retirement System. He felt this option would help recruit and retain talented IT and other employees as well. Member Keith noted that there was a potential issue of whether or not this will be a viable option because SBE employees also participate in social security.

The fiscal status reports and two year plan of staff activity were presented for informational purposes.

Under follow up, discussion was had about apparent conformity reviews of candidate nominating petitions. It was agreed that the matter would be placed on the June board meeting agenda for further consideration.

The Chairman indicated that Kirk Allen, co-founder of Edgar County Watchdogs was present to speak under comments from the general public. Mr. Allen expressed his opinions and concerns regarding the rulings in *Cooke v. Committee for Frank J. Mautino*, 16CD093.

With there being no further business before the Board, Member Cadigan moved to adjourn until Tuesday, June 20, 2017 in Chicago. Member Carruthers seconded the motion which passed unanimously. The meeting adjourned at 1:48 p.m.

Respectfully submitted,



Amy L. Calvin, Administrative Assistant II



Steven S. Sandvoss, Executive Director