

Approved February 15, 2008

**Minutes of The New York State Board of Elections
Wednesday, January 23, 2008**

The meeting of the Commissioners of the New York State Board of Elections held at Holiday Inn, 232 Broadway, Saratoga Springs, New York 12866 was called to order at 10:22 am. The meeting was chaired by Commissioner Neil Kelleher. Commissioners present were Douglas Kellner and Helena Donohue. Staff present was: Stanley Zalen, Todd Valentine, Allison Carr, Paul Collins, Elizabeth Hogan, William McCann, Lee Daghlian, Bob Brehm, Anna Svizzero, George Stanton and Deirdre Hammer. The guest list is attached.

Minutes of December 12, 2007 - approved as written. **All in favor 3-0.**

Unit Updates:

- **Legal Unit:** - Todd Valentine reported on the Department of Justice lawsuit. Todd also stated that we won our case at the Supreme Court having to do with the nominations of Supreme Court Justices.
- **Election Operations:** Anna Svizzero gave an oral report on her unit. They are busy as usual, on several fronts, including voting systems and upcoming election on February 5th and February 26th.
- **NVRA/PIO:** Lee Daghlian gave a short report. Lee announced that he would present the poll worker training program to the Election Commissioners Association tomorrow.
- **Campaign Finance:** Liz Hogan reported on several projects that are continuing.
- **ITU:** George Stanton reported on several projects that are continuing in his unit. The Voter Look Up access is ready to go active. Commissioner Kellner asked about the auditing of the database and how it was going. Commissioner Kellner asked that there be a report on the auditing procedure soon.
- **Old Business:** The resolution of fees for testing of open source was laid over to the next board meeting. The recommendation to the legislature regarding vendor political contributions was also laid over. The recommendation concerning filing deadlines for mailed documents to this board was also laid over.
- **New Business:** Commissioner Donohue announced that Peter Kosinski resigned as Co-Executive Director and that Commissioner Donohue and Commissioner Kelleher appointed Todd Valentine to this position. Also, Commissioner Donohue nominated Allison Carr to fill the vacated slot of Special Counsel. That was in a form of a motion. **All in favor 3-0.**

Proposed amendment of legislation of Part 6200. Filing statements of campaign receipts and expenditures. The proposal is to add to Part 6200.1 a new paragraph (d). This proposed change of the regulation would allow candidates and committees that must file with the state board, and actually do so, to be relieved from filing locally. The amended regulation must go to the Governor's Office of Regulatory Reform (GORR), then to the Department of State for filing. Time is provided for a forty-five day public comment period. There was a motion to send a change for this regulation to GORR for publication. **Vote for 3-0 unanimously approved.**

An additional New Business agenda item included a proposal by Commissioner Kellner to amend regulation Part 6204, Designation and Independent Nominating Petitions to provide for due process in ruling on petitions. So far there have been no staff comments back on this proposal. It will be held over until the next board meeting.

Response to the inquiry from the Citizens Union concerning campaign finance disclosure enforcement. Up for discussion were issues in the letter. Commissioner Kellner, with approval of Commissioner Kelleher and Commissioner Donohue, asked that a response letter be sent by the Enforcement Counsel. Part of what they ask for is dealt with in the Governor's legislation for campaign finance reform. All agreed.

Response to the inquiry from Populex regarding certification. Populex wanted to continue to sell their machine that had been decertified. A response had been sent by the Operations Unit, indicating that Populex must bid on the Lot 2 RFI, and Allison Carr reported that they never submitted a bid.

Commissioner Kellner had an additional item for new business that we adopt a report from NYSTEC on the source code for the escrow requirements. Commissioner Kellner moved that the Commissioners adopt that report. After a discussion, Commissioner Kellner made a motion to approve the NYSTEC report, "Certified Voting System Software and Source Code Escrow Requirements for New York State, and to provide a copy of same to the DOJ.

It was so moved by Commissioner Kellner. The vote was 3-0 in favor.

The preliminary determination and final determination for campaign finance cases. No discussion was needed so there was no reason for Executive Session. It was so moved that the determinations by counsels be accepted in all cases. **It was approved 3-0.**

It was moved by Commissioner Kellner to recess until 1pm. After discussion with the conference organizers, it was decided to resume from the recess at 2:00 pm at the same location. The meeting recessed at noon and stated to come back at 2 pm.

There was an attempt to reconvene the recessed meeting at 2:00 PM. Attending were Commissioner Kelleher and Commissioner Kellner. The meeting remained in recess for lack of a quorum.

At 3:35 PM Commissioner Kellner again attempted to reconvene the recessed meeting. The meeting remained in recess for lack of a quorum. In the absence of a quorum, Commissioner Kellner conducted an information session.

Commissioner Kellner summarized his comments by first reiterating his belief that bipartisan election administration is absolutely the best way to go of all the systems that we have. He further commented on the meeting in Albany on Friday, January 18th with Citizens Election Modernization Advisory Committee to review each machine and provided comments on the devices that were presented during that session.

Commissioner Kelleher reconvened from recess at 5:50 pm. Also in attendance were Commissioner Kellner and Commissioner Donohue. After apologies for the lateness of coming back to the meeting, the determination of the ballot marking devices (BMD) to be made available for selection by the counties commenced.

Commissioner Kelleher proposed a resolution read by Allison Carr. The resolution is that the following voting machines shall be approved as ballot marking devices: Dominion, Liberty and the following ballot marking devices shall be approved with conditions. The Avante DRE, pending approval by the Co-Executive Directors of a scanner to be attached. The Automark pending approval of a firm way of allowing the system to display a full face ballot. **Commissioner Donohue seconded the motion. After some discussion, Commissioner Kelleher and Commissioner Donohue voted yes. Commissioner Kellner voted no. The motion did not pass.**

Commissioner Kellner presented a motion that we approve the Dominion or what should be called the Sequoia Imagecast machine as a BMD. There was no second, therefore the motion failed.

Commissioner Kellner then made a motion that we approve for selection by the counties the ES&S AutoMark and the Premier AutoMark. Again, there was no second offered, therefore the motion failed.

After discussion, it was agreed that DOJ should be notified Thursday morning that there was a failure to agree. Commissioner Donohue suggested that she and Commissioner Kelleher are willing to meet tomorrow for the next meeting to try and resolve this situation.

It was agreed to have another Commissioners' meeting at 11 am in this same location on Thursday, January 24th. It was agreed not to notify Department of Justice until after the meeting.

The meeting adjourned at 6 pm.