

Approved
March 21, 2006

Minutes of The New York State Board of Elections
Monday, February 27, 2006

The regular meeting of the State Board of Elections was called to order at 12:21 p.m. at the office of the New York State Board of Elections, 40 Steuben Street, Albany, New York 12207. Commissioners present were Co-Chair Neil Kelleher, Co-Chair Douglas Kellner, Commissioner Evelyn Aquila and Commissioner Helena Donohue (by phone. She is recuperating from surgery). Staff present were: Stanley Zalen, Peter Kosinski, Todd Valentine, Michael Johnson, Lee Daghlian, Anna Svizzero, George Stanton, Pat Murray, William McCann, Robert Brehm and new staff member - Allison Carr (assistant to Anna Svizzero). The meeting was chaired by Neil Kelleher. Guest list is attached.

Minutes of February 14, 2006 - were accepted as written.

Unit Update:

- **Legal Unit:** - Commissioner Kellner asked Todd if he would speak in general about the Justice Department situation and we would speak in particular later. Todd Valentine stated that they had several meetings with Justice concerning the agreement concerning HAVA and discussions are continuing with a few points remaining to be decided. Todd also spoke about the lawsuit concerning the nomination of Justices. There was a hearing held in New York City which Bill McCann attended. They still have to give the court our recommendation on the number of signatures required for candidate's to get on the ballot. Todd will issue a memo to the Board soon. The signature requirements are due to the Court by March 10th. Oral application was made for stay of the PI and that they did in fact appeal the case. Commissioner Kellner asked about the appeal of the FOIL request for information about the Liberty testing. Todd replied that some documents were released that were found since the last search and the Commissioner would get a copy.
- **Election Operations:** Anna Svizzero introduced Allison Carr as her new assistant. Anna also stated that they are receiving many comments about the Rules and Reg's. Her unit is also working on the signature requirement for the Court for the Judicial races. They are also working with Pat Murray on the 2006 calendar to get it ready for Legislative approval. Anna also stated that they are prepared for the seven Special Elections that are being held on the 28th of this month. The Election Operations unit is also collecting annual report data form the counties, there are only a couple of counties missing before they can produce their report. Also, collecting NCOA data, most of that has been forthcoming from the counties. They have proposed a meeting with New York City concerning the regulations.
- **NVRA/PIO:** Lee Daghlian gave a short report on the Election Center Conference in

Albuquerque, New Mexico on the 22nd and 23rd of February on poll worker training and recruitment. He reported that some of the information they found was good and it will be incorporated into our poll worker regimen. Tim Mattice also attended.

- **Campaign Finance:** Michael Johnson gave an update on Campaign Finance seminars that are now posted on the web. There are quite a few all over the state this year. These seminars will begin the middle of May. Michael also stated that the forms they use for campaign finance are being updated to reflect some new regulations and especially for new local filers. Commissioner Aquila congratulated him and the unit for good work. Seconded by Commissioner Kelleher.
- **ITU:** George Stanton stated that the filings are coming in for the Special Elections and are being posted. There have also been some for Village Elections which are happening very soon. George also stated that the unit is updating the networks hardware and software and they are also updating the database in preparation for additional information to be coming in. The IT unit is beginning to implement NYSVoter1 database system. They are talking to NYEnet and Cablevision about connectivity from the counties to the database. Also, have done some pricing for the NYSVoter1 system as far as Oracle goes. They need to update Oracle database here and they are considering contracting for 100 work days for Oracle personnel to advise them on what changes should be made and to actually do some, that would cost about \$150,000.00. George will need Board approval for that and will write up a purchase order. George's unit is also continuing to work on the RFP for the entire voter database and it's almost ready for Board review. It should be to them shortly.
Commissioner Kellner stated that we already voted to pick up the hook-up cost for counties (if there was a change, and if so, they would need it in writing for the Oracle contract). Also, Commissioner Kellner stated that we need a schedule for regulation drafting for NYSVoter1 system database for the Commissioners and they will receive that before July 1st and Todd, Pat and George would be doing that work and that the timing is ok as far as Todd is concerned.

Old Business - Commissioner Aquila moved that they table any vote on Rules and Regulations until the next meeting. She proposed that State Board staff meet with New York City board officials first. Commissioners agreed 3-0 to table. Commissioner Kellner enumerated several steps that needed to be taken before we can finish the Reg's:

Number one: a meeting with New York City Board officials.

Number two: he proposed that the Reg's eliminate references to the 2002 standards and that the Reg's provide that all voting systems comply with the 2005 guidelines. That was moved by Commissioner Kellner and the Commissioners voted 3-0.

On the issue about public access to the testing process, Commissioner Kellner called for the public release of all non-proprietary information concerning machines and that there should be some public participation in the testing process. We will need a formula for the participation and

that it should in fact be in the regulations. Peter Kosinski also stated that there should be testing in public and should be in the regulations. There was some additional discussion following that, concerning the testing and the 2002 vs. 2005 Standards.

Another issue was that the Counties should not be contracting with the vendor for preparation of the ballots. All agreed that the county commissioners should be preparing the ballots not the vendors. Also, the software for the machines and any upgrades to the software should come to the State Board of Elections not directly from the vendors, so that the certification process stays whole and then that would be forwarded to the county boards. That should also be in the draft regs. A vote was taken on that 3-0 yes to do that.

Commissioner Aquila stated that the battery life should be more than the two hours stated because very often the electricity goes out for longer periods of time. Commissioner Kellner stated that we should put that in the Reg's because a more stringent requirement would substantially increase the cost of the machines. Instead, he proposed that it should state in the Reg's that in case of a power outage that lasts more than one hour, that the polling officials should not wait for two hours and should start closing down the machines so that there is no chance of losing any votes on that machine.

Anna stated that we should require all vendors to submit all machines that they make. There was some discussion about that concerns the federal certification that the feds are holding up one or more of these machines for these manufactures and they couldn't deliver both at the same time.

We will need new draft regulations by the end of this week for a Board meeting on March 7th.

Stanley produced a memo concerning the former felons and their procedure to get back on the voting rolls. Stanley said we will update a memo for the use at the May 1st conference and also send them to county boards. This is a memorandum from the Brennan Center concerning this issue and the Commissioners felt that the Brennan center should send us instances specifically of former felons having problems so we could follow-up on that.

New Business : RPI has agreed to work out with this board mathematically the number of voters per machine on the new voting machines. We received a proposal and we should put it in the Reg's. There will be no coast and they will work with us on the actually machines.

At 1:15pm the general meeting was adjourned to closed session to discuss the proposed agreement with the Justice Department of HAVA. At this point, Mr. Odatto - reporter for the Times Union, questioned the legality of closing the meeting to discuss the JD situation. At this point the Chair did not go into closed session but said to break and we would discuss this with the lawyers.

At 2:40pm the Board reconvened and the position of the Chair was that the statute regarding open meetings allows for a closed meeting when considering proposed litigation or possible litigation. There was a short discussion with Jim Odatto, he objected, but, everything held and at 2:45 they went into Executive Session and the settlement was discussed. There were no votes

taken in Executive Session.

Complaint Without Preliminary Determination

CMP04-32 - closed

CMP04-33 - closed

CMP04-36 - closed

CMP04-72 - closed

CMP06-09 - closed

CMP06-12 - closed

CMP06-14 - closed

CMP06-15 - closed

Final Determination

CMP02-72 - tabled

CMP03-62-SC05-04 - closed

The Executive Session meeting was adjourned at 3:35pm.