

October 20, 2003

State Board Meeting
10100 Coastal Highway, Ocean City, MD 21842

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Mark Wittstadt, Member
Susan Widerman, Member
Linda Lamone, Administrator
Tim Augustine, Deputy Administrator
Ross Goldstein, Director, Candidacy and Campaign Finance
Pam Woodside, Chief Information Officer, IT Division
Joe Torre, Voting Systems and Procurement
Donna Duncan, Director, Election Management Division
Mary Cramer Wagner, Deputy Director, Election Management Division
Nikki Trella, HAVA Coordinator
Jan Hejl, Voter Registration Manager
Tracy Agnew, Voter Registration Coordinator
Sharon Proctor, Personnel
Judith Arnold, Assistant Attorney General

Also Present: Debbie DeVore, Election Registrar, Allegany County Election Board
Kitty Davis, Election Director, Allegany County Election Board
Diane Loibel, Election Registrar, Allegany County Election Board
William Varga, Attorney, Baltimore City Election Board
Wanda Glenn, Election Supervisor II, Cecil County Election Board
Evelyn Potter, Election Director, Cecil County Election Board
Stuart Harvey, Election Director, Frederick County Election Office
Nancy Dacek, Board President, Montgomery County Election Office
Sara Harris, Deputy Election Director, Montgomery County Election Board
Pat Hill, Substitute Board Member, Montgomery County Election Board
Dianna Long, Office Services Coordinator, Montgomery County Election Board
Margie Roher, Admin. Specialist, Montgomery County Election Board
Paul Valette, Mgr. Elections Operations, Montgomery County Election Board
Walter Greggis, Substitute Board Member, Queen Anne's County Election Board
William Rankin, Board President, Queen Anne's County Election Board
Brenda Williams, Election Director, Queen Anne's County Election Board
Ruth Wangus, Substitute Member, Talbot County Election Board
Dorothy Kaetzel, Election Director, Washington County Election Board
Marianne Schneider, Board Member, Washington County Election Board
Hinson Finney, Board Member, Worcester County Election Board
Kay Hickman, Substitute Board Member, Worcester County Election Board
Patricia Jackson, Election Director, Worcester County Election Board
Wilton May, Substitute Board Member, Worcester County Election Board
Teresa Riggin, Election Deputy Director, Worcester County Election Board
Billye Townsend, Election Admin Assistant, Worcester County Election Board

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Armstead B.C.Jones, Sr., Board President, Baltimore City Election Board

Sam Statland, Board Member, Montgomery County Election Board

DECLARATION OF QUORUM PRESENT

After establishing the presence of a quorum, Chairman Burger called the meeting to order at 4:00 p.m. Mr. Burger thanked everyone for attending.

APPROVAL OF MINUTES OF MEETING OF September 3, 2003

Susan Widerman made a motion, with a second from Joan Beck, to approve the minutes.

CLOSED SESSION on September 3, 2003 at approximately 3:30 p.m., on a motion by Joan Beck, seconded by Mark Wittstadt, the Board members present unanimously voted to adjourn to discuss a personnel matter and to consult with staff and legal counsel about pending or potential litigation. The authority for closing the meeting as State Government Article, sec. 10-508(a)(1), (7), and (8).

At an initial portion of the meeting from 3:30 – 5:00 p.m., Board members Burger, Beck, Wittstadt and Widerman were present. A personnel matter was discussed. No formal action was taken. At a second portion of the meeting from 5:00 to 6:00 p.m., the same Board members, as well as Linda Lamone, Tim Augustine, Donna Duncan, Joe Torre, Pam Woodside, David Heller, Mary Wagner and Judy Arnold, were present. Pending or potential litigation relating to implementation of the Diebold voting system was discussed. No formal action was taken. A copy of the statement for closing meeting was attached to the September 3, 2003 minutes.

ADDITIONS TO THE AGENDA

None

ADMINISTRATOR'S UPDATE

Ms. Lamone stated that SBE staff had been very busy with planning the Biennial conference and starting the implementation of the voting system.

Ms. Lamone briefed the Board on the following issues:

- The Judge's manual has been distributed and Ms. Nikki Trella has received good constructive comments;
- MVA data verification is in process;
- ES&S voter registration software has been upgraded and Ms. Tracy Agnew is assisting with the testing;
- A third party, BSC Systems Incorporated, has been hired to conduct the acceptance testing of the voting equipment;

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- Ms. Trella, Ms. Hejl and Ms. Agnew trained 144 local board employees on the personal identification requirements of HAVA;

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- Election Management Division staff is now fielding a considerable number of questions on Presidential candidates and Circuit Court Judges;
- The new van has been delivered;
- Mr. Alan Craig of CSC Corporation is working on the interface between SBE's EMS and GEMS for the downloading of the ballots;
- The 5 HAVA contractual positions have been approved, as well as a replacement Voter Registration Project Manager;
- ElecTrak software update is being sent to campaign treasurers;
- Voter registration training requests are increasing;

Chairman Burger requested that Ms. Judy Arnold explain the Court of Appeals Green Party opinion. Ms. Arnold advised that the case invalidated several provisions of the Maryland Election Law, which prescribe the manner in which a minor political party nominates its candidates for offices other than President. The court determined that once a minor political party meets the requirements for recognition (10,000 signatures, approved constitution and bylaws, and naming a 25 person governing body), the party cannot be required to submit additional petitions to nominate its general election candidates.

As significantly, in reaching its decision the court also looked at the reason a particular Green Party candidate had not obtained ballot access in 2000. Under § 3-504(f)(5) and other provisions of the Election Law Article and COMAR, inactive voters are not to be counted if they sign a petition, even if they provide a current Maryland address that satisfies petition requirements. The court held that this violated the Maryland Constitution.

The court went on to state that, under Article I of the Maryland Constitution and Articles 7 and 24 of the Maryland Declaration of Rights, establishing an "inactive voter" category and removing the names of voters from the rolls without "affirmative proof" of their ineligibility was prohibited. Ms. Arnold advised that a Motion For Reconsideration regarding the inactive voter portion of the opinion had been filed, and that the Court of Appeals had agreed to send the case back to Anne Arundel County Circuit Court for further proceedings on these issues. While the Attorney General's Office continues to believe that the procedures that the local boards have been following with regard to placement of voters onto the inactive list are consistent with the NVRA and thus binding on the State and the Board, Ms. Arnold has prepared a memorandum advising that certain procedures need to be modified to comply with the court's opinion. Specifically, (1) count the names of inactive voters on petitions; and (2) do not place any voter's name onto the inactive list without affirmative proof that the voter has moved to an address outside Maryland (e.g., a local board should not place a name onto the inactive list merely because there is no information about where the voter currently resides).

Ms. Arnold advised the Board that this issue was discussed at length during the voter registration seminar held earlier in the day.

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Some local board concerns are noted here although they were not specifically discussed during this meeting:

- (1) the voter registration lists will contain an increasing number of "bad" addresses;
- (2) candidates and political parties obtaining voter lists to conduct campaign mailings will be angry when a considerable number of mailings are returned undeliverable; this will prove costly, especially for small campaigns and they will begin to question the work and integrity of the local board;
- (3) local board mailing costs will continue to rise when they send sample ballots or other types of voter notifications, and the volume of returned mail will continue to increase;
- (4) local board staff, filing space and storage will all need to be increased; and
- (5) including inactive voters in statistical calculations may be problematic (e.g., voter turnout will drop considerably).

The Board questioned whether this advice needed to be adopted by the Board as policy. Ms. Lamone explained that interpretation of election law and court decisions has always been the role of the Attorney General's Office, and SBE staff and local election directors are accustomed to accepting that advice without necessarily adopting it as a policy or directive. A motion from Mr. Wittstadt for the State Board to adopt Ms. Arnold's written advice as formal SBE policy did not receive Board support.

ASSISTANT ATTORNEY GENERAL'S UPDATE

Ms. Arnold reported that, with the decision to move forward with Phase II implementation of the DRE voting system, the federal district court had issued an indefinite postponement in the Poole case. A monthly status report must be submitted to the court, and it is possible that the case could be revived on absentee or provisional ballot issues or on a claim for legal fees.

The State Board has been named as a defendant in a lawsuit filed by Mr. Robert Antonetti. Mr. Antonetti is in a salary dispute with the Howard County Board of Elections.

REGULATIONS

Mr. Joe Torre presented the following items for proposed or final adoption of regulations for Board approval:

- 33.05 – Voter Registration to comply/clarify HAVA and VRA's – Motion to approve made by Mr. Burger and seconded by Ms. Widerman, motion passed with Mr. Wittstadt voted no;
- 33.12 – Recounts – specifying precincts – Motion to approve made by Mr. Wittstadt and seconded by Ms. Beck, moved unanimously;

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- 33.15 – Office requirements for Local Boards of Elections – Motion to approve made by Ms. Widerman and seconded by Ms. Beck, moved unanimously;
- 33.07 – Election day activities – voter ID and challenge procedures under HAVA – Motion to approve made by Mr. Wittstadt and seconded by Ms. Widerman, moved unanimously;
- 33.07.06 – Define ID – Motion to approve made by Mr. Wittstadt and seconded by Ms. Beck, moved unanimously;

- 33.11 – Absentee Ballots – HAVA and clarifies canvassing – Motion to approve made by Mr. Wittstadt and seconded by Ms. Beck, moved unanimously;
- 33.11.03 – Absentee Ballots – Timely receipt defined – Motion to approve made by Mr. Wittstadt and seconded by Ms. Beck, moved unanimously;
- 33.16 – Provisional Voting and HAVA – Motion to approve made by Ms. Beck and seconded by Ms. Widerman, moved unanimously;
- 33.16.04 – Canvass of Provisional Ballots – Motion to approve made by Mr. Wittstadt and seconded by Ms. Widerman, moved unanimously.

ABSENTEE VOTING

Ms. Widerman requested that, if space permitted, additional lines be added to the address line of the absentee ballot application and late absentee ballot application.

Absentee ballot applications and instructions – Motion to approve made by Mr. Wittstadt and seconded by Ms. Widerman; the board unanimously approved these forms.

Sam Statland, Member, Montgomery County Board of Elections, spoke about the need for no excuse absentee voting.

PROVISIONAL VOTING

The Board considered the Provisional Voting Guidelines developed by SBE staff in consultation with a MAEO work group (§ 9-403 of the Election Law Article requires the Board to establish guidelines for the administration of provisional voting). Ross Goldstein provided an overview of the Guidelines, including:

1. The general policy for when a provisional ballot should be issued to a voter;
2. The provision allowing an election director to determine that a voter is not on the precinct register due to a clerical error (in which case the election director may correct the error and allow the voter to vote a regular ballot);
3. The extended voting hour procedures;
4. That, if a qualified voter votes in the wrong precinct, the specific offices and questions that the voter is entitled to vote will be counted.; and
5. An explanation of the free access system that will be used to inform voters whether their provisional ballots were counted.

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Mr. Goldstein also explained that the Guidelines propose an important change from past practice. In the past, an in-county mover had been allowed to simply update the VAC and then vote a regular ballot. The Guidelines still allow the voter to update the VAC and vote, but the VAC now clearly indicates that if the voter moved more than 21 days prior to the election, he or she must vote a provisional ballot (in which case only the specific offices and questions that the voter is entitled to vote will be counted) or go to the correct precinct and vote a provisional ballot (in which case the entire

ballot will be counted). Mr. Goldstein explained that the reason this approach was taken was due to the Maryland Constitutional requirement that a voter must vote where the voter resides (Mr. Goldstein noted his concern that an election could be challenged based on voters not voting where they reside. This type of challenge is a particular concern since there is documented evidence, i.e. the signed VAC, which the voter voted where he or she no longer resides). Paul Valette, Montgomery County Election Operations Director, spoke at some length about his concerns with this proposal. Primarily Mr. Valette stated that a large number of address changes would require provisional ballots. For example, in the last presidential election Montgomery County had about 12,000 addresses changed on VACs. Mr. Valette argued that this will cost a lot of money in printing provisional ballots, increase processing time in the polling place, irritate voters, confuse judges, create compliance issues, and require more time and personnel to research and canvass this volume of provisional ballots. Mr. Valette also stated his opinion that there was legal justification for maintaining the current approach. Mr. Armstead Jones also expressed similar sentiments. The Board questioned Judith Arnold, who stated that it was her opinion that the more legally defensible approach was the one taken in the Guidelines. The Board requested a memorandum from Ms. Arnold on this subject. The Board discussed this issue and took note of the concerns raised by Mr. Valette. Ms. Widerman noted that since so many other changes were being made, this was the right time to make this change and begin to do it correctly. Mr. Burger agreed and noted that this new approach could be used in the Primary election and then reviewed and reconsidered before the General election. The Board agreed to accept the recommendation proposed in the Guidelines. Ms. Widerman requested a public awareness campaign be launched to focus on voter address issues.

Mr. Goldstein next called to attention to the proposal in the Guidelines that information from the free access system could be obtained by the voter providing his last name and date of birth. Mr. Goldstein noted concerns that this did not do enough to protect the secrecy of the voter. However, Mr. Goldstein argued that given the nature of the information, this level of protection was sufficient. The Board agreed noting that in order for someone, other than the voter, to access the information, the person would have to know that the voter voted a provisional ballot and the voter's date of birth.

Armstead Jones, Chairman of the Baltimore City Board of Election, questioned the policy of requiring the canvass of provisional ballots to begin on the Monday following the election.

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Mr. Jones pointed out that this required Board members to be present for an extra day of canvassing. Mr. Jones noted that this was a significant burden for working board members. Mr. Goldstein explained that the start of the canvass was changed (from the second Friday following the election to Monday) in order to provide more time to complete the canvass. The Board noted Mr. Jones' concerns, but ultimately concluded that the canvass needed to begin at the earlier date. Motion to approve made by Mr. Wittstadt with a second made by Ms. Widerman. The Board unanimously approved the Guidelines.

Next the Board turned its attention to Provisional Ballot Application, the Affidavit by Challenger and Affidavit by Challenged Voter. A motion to approve made by Ms. Widerman with a second made by Ms. Beck. The board unanimously approved these forms.

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INFORMATION TECHNOLOGY

See Monthly Update Report.

OLD BUSINESS

None

NEW BUSINESS

None

The next meeting of the State Board will be held November 20, 2003 at 1:30 p.m.

ADJOURNMENT

The Board voted to adjourn at 6:45 p.m.