

FEBRUARY 23, 2004

STATE BOARD MEETING

151 WEST STREET, SUITE 200, ANNAPOLIS, MARYLAND 21401

Attendees: Gilles Burger, Chairman
Joan Beck, Member
Susan Widerman, Member
Mark Wittstadt, Member
Linda Lamone, Administrator
Tim Augustine, Deputy Administrator
Ross Goldstein, Director, Candidacy and Campaign Finance
Donna J. Duncan, Director, Election Management Division
Mary Cramer Wagner, Deputy Director, Election Management Division
Judith Arnold, Assistant Attorney General
Marty Cravatta, Chief Information Systems Security Officer
Mary Dewar, Communications Director
Jaimie Jacobs, Election Reform Deputy Director

Also Present: Tim Rogers, Consultant, Accenture
Courtney Keith, Consultant, Accenture
Richard Walega, PMO Program Manager, Accenture
Guy Harriman, President, Howard County Board of Elections
Charlie Deegan, President, Prince George's Board of Elections
Robin M. Downs, Elections Administrator, Prince George's Board of Elections
Hugh Alexander, OIT Director, Prince George's Board of Elections
John di Stefano, Member, Prince George's Board of Elections
Doris Jacobs, Member, Prince George's Board of Elections
Henry C. Marshall

DECLARATION OF QUORUM PRESENT

After establishing the presence of a quorum. Chairman Burger called the meeting to order at 1:34 p.m.

APPROVAL OF MINUTES OF MEETING OF JANUARY 28, 2004

Following various edits and corrections to the minutes, Ms. Widerman moved to approve the minutes of the January 28th meeting as amended. Ms. Beck seconded the motion.

ADDITIONS TO THE AGENDA

Ms. Beck called attention to a situation in Prince George's County, but it was decided to table the discussion until Mr. Charlie Deegan arrived.

Mr. Burger noted that the minutes of the board meetings were still not being posted on the website. He emphasized that this was the third meeting in which this issue was presented. Ms. Lamone reminded the Board that priority has been given to those things necessary to conduct the

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ADDITIONS TO THE AGENDA (continued)

primary election and posting of the minutes would be done when time allowed. Mr. Burger countered by pointing out the number of other items that have been posted to the website and voiced his skepticism about the time needed to post board minutes. Mr. Burger requested that the minutes be posted to the website as soon as possible.

At the arrival of Mr. Charlie Deegan, Ms. Beck and Mr. Wittstadt agreed that the Prince George's County issue should be discussed at this time.

Mr. Deegan indicated that he had been notified this morning of a mistake in the ballot for judges on the circuit court. The ballot instructions indicate a voter is permitted to select two candidates, but voters should be able to select three candidates. In response to Mr. Wittstadt's questioning, Mr. Deegan indicated that he did not believe time allowed for correction of the ballot which would include burning 2100 memory cards and repeating the entire Logic and Accuracy (L & A) procedure. When asked how long the process would take to prepare for the primary, Mr. Alexander indicated that six days had been needed to complete the L & A procedure, in addition to the four days needed to burn the memory cards.

Ms. Duncan agreed that it would not be reasonable to correct the error at this point in the process. Mr. Wittstadt emphasized that the corrections needed to be done. Ms. Lamone clarified that, in this particular situation, all three candidates would move on to the General Election and there was no contest. Ms. Duncan stated that the State website would indicate all three candidates as winning.

Mr. Burger asked Ms. Duncan to describe the impact of fixing this problem if there was time to fix the software. Ms. Duncan replied that the error was not with the software but with the contest file. Only the contest files in Prince George's County would need to be corrected, but the time frame did not allow for burning new memory cards.

Following considerable discussion, Mr. Burger stated that the period to make changes had passed and he was not in favor of redoing the L & A and certification procedures. Ms. Beck asked if the certification process could be waived if new memory cards are burned. Ms. Lamone and Ms. Arnold thought that a waiver was a possibility.

Mr. Deegan said that the attorney for Prince George's County was going to talk to all three candidates. Mr. Goldstein indicated that he had spoken to the campaign treasurer for the judges, whose only concern was that the ballot makes it appear that there is a contest when there really isn't one. Mr. Goldstein said that the treasurer seemed satisfied when it was pointed out that all three candidates are advancing to the General Election.

Mr. Burger said that he needed more information on the process and the impact on a local level. Mr. Alexander informed the Board that fourteen people had worked non-stop for four days to burn all of the memory cards, and that thirty-five people had needed six days to complete the

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ADDITIONS TO THE AGENDA (continued)

L & A procedures. Ms. Widerman asked Mr. Burger if extra people could be brought in to help. Ms. Downs pointed out that the machines are being picked up for delivery to polling places tomorrow. Ms. Downs also noted that repeating the L & A process would also require extra time for each machine to be unsealed and each seal's number recorded and verified. They had used temporary employees to complete the L & A before. Ms. Beck and Ms. Widerman indicated to Mr. Burger that they would both work if needed.

Ms. Lamone pointed out that reprogramming would add more risk. Mr. Deegan and the Prince George's County staff agreed with Ms. Lamone. Mr. Alexander said that there would also be more risk and problems caused by compressing the job in the rush to be ready by March 2nd.

Ms. Beck questioned the extent of problems if only one contest had to be fixed. Ms. Lamone and Ms. Downs emphasized that the entire L & A procedure would have to be redone. Mr. Alexander voiced his agreement with Ms. Lamone and Ms. Downs.

Mr. Wittstadt asked the Prince George's County staff for their suggestions. Ms. Downs suggested putting information in the papers and on television. Mr. Burger emphasized that he did not want to inject more risk, but that whatever was done had to be done right.

Mr. Wittstadt suggested that a press release should be issued today. Ms. Widerman agreed on the press release and said that since the error was administrative, it should be emphasized in the press release that the error was not with the voting machines.

Mr. Deegan favored a joint press release from the State Board and the Prince George's County Board. Ms. Lamone pointed out that Ms. Mary Dewar was already drafting the press release as they spoke.

Mr. Burger moved to have a press release drafted. Ms. Widerman seconded the motion. Mr. Wittstadt suggested that the three candidates be brought on board with the press release. Mr. Burger questioned the time needed to coordinate the press release with the candidates, but agreed that they should be contacted. Mr. Deegan reminded the Board that the Prince George's County Board attorney was in the process of contacting all three candidates. Mr. Burger tabled the discussion at 2:20 p.m., until the press release draft was ready for review.

ADMINISTRATOR'S REPORT

Ms. Ernestine Blake-Green

Ms. Blake-Green has opted to retire this month as SBE's Personnel Officer after 30 years of government service. On behalf of the entire Board, Mr. Burger congratulated Ms. Blake-Green and thanked her for her efforts in supporting the reclassification of LBE staff to the State Board of Elections salary structure and for her overall dedication to the citizens of Maryland. Mr. Burger said the Board will miss her and wishes her a fruitful retirement.

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ADMINISTRATOR'S REPORT (continued)

New Employee

Ms. Lamone introduced Marty Cravatta, the new Chief Information Systems Security Officer. Mr. Cravatta is a twenty-year veteran in the field of information security. He was an Information Security Director at both the Siemens Corporation and Americus. He also worked for fifteen years at IBM Global Network.

Office Space

The Department of General Services is negotiating for more office space on this floor. Mr. Augustine and Mr. John Clark are getting estimates on office furniture. The telephone system must be upgraded to handle more users. The Board of Public Works meeting to consider the matter is scheduled for March 24th. The staff will be reorganized when additional space becomes available.

HAVA

Congress has appropriated the money for HAVA for this year and next year. The State Plan was written under the assumption of receiving \$42.2 million. Congress gave us \$50.462 million.

New Voter Identification Requirements

Ms. Dewar is contacting newspapers to spread the word on the new identification requirements for voters. Ms. Arnold said that Ms. Barbara Jackson would be issuing new information to correct erroneous information previously published in the Baltimore Times online.

GEMS

The GEMS-to-EMS interface is being tested this week with databases from all the counties. Ms. Lamone thanked Alan Craig, Sam McAfee, and Donna Duncan for the successful testing of the Sequoia-to-EMS interface.

Ms. Lamone reported that Ms. Pam Woodside and Ms. Duncan participated in two days of training with county and Diebold staff on canvassing procedures. Ms. Duncan reported that there appears to be good working relationships established between many of the local boards and the Diebold county technicians. Mr. Burger was concerned with a few negative anecdotal remarks that he had heard. The Board asked if all counties had been represented at these meetings. Three counties were not represented at the training and Mr. Burger questioned the risks for these three counties.

Updated Security Plan

Ms. Lamone pointed out that updated security plans were in the Board members' packets.

Item #10: The non-disclosure agreement between BSC and DBM for the SAIC report has just been signed. Mr. Cravatta assured Mr. Burger that this risk assessment had no effect on the March 2nd election and that it is a continuous action.

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ADMINISTRATOR'S REPORT (continued)

Updated Security Plan (continued)

Mr. Cravatta is working on Item #23. The counties will be sent some procedures on this issue.

Mr. Burger was pleased with the hard work that had been done to complete the security action plan. Ms. Beck offered her compliments as well.

Election Judge Training Manuals

Some LBEs did not send their final county editions of the judges' manual for review by SBE because they wanted to get them printed quickly. Ms. Lamone answered Mr. Burger's questions by saying that the counties do have some differences in certain sections of the manual. In answer to a question from Ms. Beck, Ms. Lamone replied that Ms. Nikki Trella would have reviewed the county editions of the manual and informed the counties of any errors to be corrected.

Ms. Nikki Trella was asked to join the Board meeting at 2:25 p.m. In response to Ms. Lamone's questions, Ms. Trella reported that the vast majority of the counties had incorporated her corrections into their judges' manuals before printing, but there were three counties that did not submit their manuals for review. Ms. Beck asked how the Board is to know if these three counties included the corrections. Ms. Trella said that we do not know for sure. Ms. Trella said that most corrections were with the provisional ballot guidelines and the new identification requirements. Ms. Trella said she would continue to request copies of the manual from these three counties. Ms. Beck suggested that the counties should be contacted by phone.

New Position for Ms. Lamone

Ms. Lamone announced that she has been elected President-Elect of the National Association of State Election Directors. Ms. Beck offered her congratulations. Mr. Burger said that although he would ordinarily be proud of the news, he was concerned that this may not be an ideal time for Ms. Lamone to spend extra time out of the State. Ms. Lamone assured Mr. Burger and the Board that although the new position would require her attendance at one or two additional conferences, the conferences are generally scheduled on weekends.

ASSISTANT ATTORNEY GENERAL'S REPORT

Definition of a Vote

At Ms. Trella's request, Ms. Arnold distributed copies of a document putting the definition of a vote in writing to meet HAVA requirements. Ms. Arnold noted that the optical scan portion of the document had been taken from 2002 recount procedures. Mr. Burger agreed for the Board members to take the definition home and to reply to him with their thoughts. Ms. Arnold suggested that the definition should be adopted in COMAR after the primary. Mr. Burger said he hoped a vote was not as much guesswork with the Diebold equipment.

Ms. Arnold submitted a written report on her activities since the last Board meeting. (See attached.) The following items from her report were discussed at the Board meeting.

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ASSISTANT ATTORNEY GENERAL'S REPORT (continued)

Litigation

Ms. Arnold summarized the developments in *Poole v. Lamone* (U.S.D. Ct.) for the Board. Mr. Poole attended a Giant Voter Day event near the end of the day. After experiencing some difficulties with the machine, Mr. Poole became frustrated and demanded that someone from Diebold call him. Mr. Joe Torre called Mr. Poole and assured him that everyone, including voters who are visually impaired, would have plenty of time to complete the ballot without any pressure to rush.

A scheduling conference in *Maryland Green Party v Maryland Board of Elections* (Green Party I) is scheduled for March 12th.

Antonetti v. Howard County Board et al. has been settled and Mr. Antonetti will retire. Mr. Burger indicated that he was glad that this problem had been resolved.

A scheduling conference in *Libertarian Party v. SBE* (Circ. Ct. for Anne Arundel Co.) is scheduled for March 18th.

Miscellaneous

The ACLU is claiming that it is unconstitutional to keep unaffiliated voters from participating in the primary elections and voting for circuit court judges. Legislation has been presented in the past to allow unaffiliated voters to participate, but it was not passed. Ms. Arnold characterized judicial elections as partially partisan, although candidates are not listed with a party on the ballot. Ms. Arnold said that the situation is the result of longstanding procedures (since 1941) and the General Assembly's reluctance to change the judicial election system. Ms. Arnold pointed out that the Board has no authority to change this process.

As a last item, Ms. Arnold said that a suit on redistricting came back to the U. S. district court last week. Congressional District 4 Candidate John Kimble is challenging his district. Last week Mr. Kimble tried to keep the March 2nd elections from going forward, but was not successful.

OLD BUSINESS

Ms. Beck asked about a letter from Delegate Dwyer, who wanted to audit votes for the 2002 election from eight random districts and wanted a printout of the votes. Mr. Burger asked for Mr. Dwyer's justification and if he was a paper trail advocate. Ms. Beck was also curious if Mr. Dwyer was a paper trail advocate. Ms. Lamone said that Mr. Dwyer was entitled to the printout only if he paid for it.

Mr. Burger reported on his attendance at an Election Technology Council (ETC) conference two weeks ago. The organization is a part of ITAA and composed of vendors of electronic voting

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OLD BUSINESS (continued)

systems. Mr. Burger attended to provide the perspective and the concerns of the voting community and will keep the Board informed of any future information.

NEW BUSINESS

Ms. Dewar had the press release draft ready for the Board's review. Ms. Beck, Ms. Widerman, and Mr. Wittstadt offered suggestions for editing the draft release. Ms. Arnold noted COMAR regulations regarding late ballot changes, which supported the Board's solution to inform the public of the situation.

During the wait for the new draft of the press release, Mr. Deegan returned to say that Prince George's County's attorney had reached all three candidates and that they were all fine with the situation. Mr. Burger expressed his appreciation to Mr. Deegan and to the attorney, Mr. Morrissey.

As the next draft of the press release was edited, Ms. Lamone questioned to whom the press release would be sent. Ms. Beck suggested the Governor's Office. Mr. Wittstadt said that the story will be picked up anyway. Mr. Burger suggested that the press release be sent to the media in the region of concern and to the major media outlets, but he was not in favor of a statewide distribution.

The press release was accepted by the Board and by the staff of Prince George's County without a formal motion being passed.

Ms. Widerman offered her compliments to those producing the new county bulletin. Ms. Wagner noted that it was Ms. Pam Woodside and Mr. David Heller. Ms. Widerman added that although the counties really appreciated the bulletins, some did not feel confident that they had received every revision or update that was emailed, faxed, or posted to the website. Ms. Widerman suggested that the bulletin also feature a list of revisions and update of documents sent during the week so that the counties could confirm the receipt of such documents.

SCHEDULING OF MARCH MEETING

The next meeting of the State Board will be held on Monday, March 22, 2004, at 1:30 p.m.

Mr. Burger informed the Board members that he would contact them if a post-election meeting was deemed necessary after March 2nd.

ADJOURNMENT

On a motion by Ms. Widerman, seconded by Mr. Wittstadt, the meeting adjourned at 3:40 p.m.

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Gilles W. Burger, Chairman