

MINUTES

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3 The State Board of Elections Board meeting was held on Tuesday, August 16,
4 2011. The meeting was held in the State Capitol, House Room Two in Richmond,
5 Virginia. In attendance, representing the State Board of Elections (SBE) was Charles
6 Judd, Chair; Kimberly Bowers, Vice-Chair; Donald Palmer, Secretary; Justin Riemer,
7 Confidential Policy Advisor; Joshua Lief, Senior Assistant Attorney General and SBE
8 Counsel; Myron McClees, Policy Analyst; Susan Pollard, Director of Communications;
9 and Chris Piper, Election Services Manager. Chairman Judd called the meeting to order
10 at 3:30PM.

11 The first order of business was the approval of Minutes from the State Board of
12 Elections Board meeting held on July 6, 2011. After careful review of the Minutes, Vice-
13 Chair Bowers made a motion to approve them since there were not suggested changes.
14 Secretary Palmer seconded the motion and the minutes were unanimously approved by
15 the Board.

16 The second order of business was the Secretary's Report delivered by Secretary
17 Palmer. The Secretary's Report is an agenda item for each Board meeting describing
18 recent developments at SBE.

19 Secretary Palmer's report included an update on the August primary and
20 redistricting. The Secretary reported that 50 localities are participating in the primary
21 with all 50 localities complete in their VERIS redistricting updates. Voter cards were
22 mailed to all voters needing them for the primary. In some cases corrective voter cards
23 have been issued. Redistricting will continue with updates to VERIS as they are
24 received. Secretary Palmer noted that the remainder of cards will be sent when
25 redistricting plans are received by the State Board of Elections. Secretary Palmer reported
26 a relatively low error rate in those cards mailed so far. Calls from voters to SBE have
27 primarily referenced redistricting and State Board of Election representatives have
28 provided the guidance relating to the information displayed on the voter cards. The
29 Secretary reported that the *Project Vote* case has been stayed. Filing will occur in
30 September of 2011 and updates will be provided to the Board.

31 The next order of business was a proposed Regulation on Material Omissions on
32 Absentee Ballots presented by Confidential Policy Advisor Justin Riemer. Mr. Riemer
33 explained the history of the draft regulation and that its purpose was to provide standards
34 on the information a voter must include on the Envelope B when completing an absentee
35 ballot. Mr. Riemer explained that following the July 2011 Board Meeting a draft
36 regulation was sent to the localities and posted on the Town Hall regulatory website for
37 public comment. Mr. Riemer explained that SBE received several comments during the
38 vetting process, some supporting the draft regulation and some not. Ultimately, the
39 comments resulted in a revised draft regulation that was sent to the general registrars on
40 the morning of the Board Meeting and provided to the Board at the current meeting. Mr.
41 Riemer said that this revised version strikes a good balance and that, while the Code does
42 give us the discretion that we should have, there is still some room to fashion a
43 reasonable regulation. Mr. Riemer explained that at this point no action was being
44 requested by the Board. Mr. Riemer explained that it is important that the regulation is
45 fully vetted and that we get it right for future elections, especially the presidential
46 election in 2012.

47 Mr. Riemer then explained certain changes made from the previous proposed
48 regulation. Chairman Judd then asked how this regulation differs from the current policy
49 in place. Mr. Riemer explained that the “Substantial Compliance Policy” was currently
50 being utilized by the localities, which existed prior to the previous Board’s regulation.

51 Mr. Riemer noted that the initial responses to this new draft proposed regulation
52 were favorable. Secretary Palmer noted that application of the Substantial Compliance
53 Policy had not been uniform and that the localities were seeking uniformity. Chairman
54 Judd again asked for and Mr. Riemer confirmed that the Board need not take action until
55 the next meeting.

56 At that time Chairman Judd opened up the matter for comment by members of the
57 public. Terri Wagoner, Absentee Coordinator for the City of Richmond, first commented
58 on the usage of the first and last name and its relation to ADA and elderly voters. Ms.
59 Wagoner offered complete support for the announced changes. Next, Robin Lind,
60 Secretary of the Goochland County Electoral Board, questioned the regulation as it
61 relates to the requirement of listing a street address. Mr. Lind expressed concern for

62 homeless voters and voters living in boats. Mr. Lind wondered if it were possible for
63 registrars to give a waiver in instances where no street number exists. After some
64 discussion, Mr. Lief and Secretary Palmer commented that a rural route address provision
65 was included in the version of the regulation posted on Town Hall. Additional discussion
66 between Secretary Palmer and Mr. Lind discussed the boat and homeless address issues.
67 Mr. Wagoner then commented on the homeless voter issue. David Mills, Executive
68 Director of the Democratic Party of Virginia, appeared before the Board and explained
69 that they wanted every vote to be counted. Mr. Mills also expressed concern on the
70 existence of an apparatus on informing a voter when the requirements are not met. Mr.
71 Mills then submitted a list of concerns to the Board.

72 Justin Riemer, Confidential Policy Advisor, then provided an overview and
73 update on the PEW Foundation's ERIC (Electronic Registration Information Center)
74 Project, a proposed, common data exchange sharing system, between the states. Mr.
75 Riemer began by explaining that the Board was previously briefed on this project at the
76 February 2011 Board Meeting by David Becker of the Pew Foundation. Mr. Riemer
77 explained that benefits to the Commonwealth in participating would be the elimination of
78 inactive voters from the rolls, removal of voters' names who have moved from the
79 Commonwealth, the ability to identify potential new voters, and to identify voter fraud.
80 Mr. Riemer also listed some drawbacks to participation in the project, including costs and
81 certain strings attached. Mr. Riemer then explained the timeline for participation in and
82 the launching of the project. Mr. Riemer explained that no formal action was required of
83 the Board at that time.

84 Chairman Judd then commented on the ERIC project and that it is a good tool and
85 he is glad SBE is pursuing it. Secretary Palmer then explained that the regional focus is
86 promising. Secretary Palmer said that his vision of it is that no additional burden would
87 be placed on the localities and that the information would go through the State Board.

88 The next order of business was to conduct the Political Party Ballot Order for the
89 November 8, 2011 General Election. Chris Piper, Election Services Manager, explained
90 the process of drawing the ballot order to the Board. Chairman Judd drew the Republican
91 Party for the first ballot position and Vice-Chair Bowers pulled the Democratic Party for
92 the second ballot position.

93 The next order of business was the Form Presentation on Appointment of
94 Electoral Board Members. Myron McClees, SBE Policy Analyst, cited a 2011 legislative
95 change to § 24.2-106 of the Code that deals with qualifications of electoral board
96 members. The change addresses local electoral board members and their familial
97 relationship with candidates and officeholders. The change to the Certificate of Eligibility
98 form predominantly deals with the affirmation that the electoral board members are not
99 related to an officeholder or candidate for office in the jurisdiction. There is also a
100 clarification that they are not employed by the Commonwealth of Virginia, the county,
101 city or town thus bringing the form in compliance with § 24.2-119 of the Code. Secretary
102 Palmer moved to approve the form, Vice-Chair Bowers seconded the motion and the
103 motion was unanimously approved by the Board.

104 The next order of business was Delegation of Board Authority-Campaign
105 Finance and “Stand by Your Ad”. Chris Piper, Election Services Manager, began by
106 noting that a page in the Board’s binder was incorrectly labeled. Mr. Piper explained that
107 the document before the Board was an addendum to Board Policy, 2004-007A which
108 delegates Board authority throughout Title 24.2 of the Code. Specifically, it was
109 discovered that the document had never been updated to delegate authority to the new
110 Code sections for the Campaign Finance Disclosure Act of 2006. This is simply going
111 through and redelegating. Mr. Piper continued and explained the contents of the
112 document in front of the Board, referencing what duties the Board has delegated to the
113 Secretary.

114 Mr. Piper then pointed out one needed change, specifically in § 24.2-946.3(G).
115 Mr. Piper explained that there are times where staff will incorrectly assess a campaign
116 finance penalty. Mr. Piper asks that the Board, in those clear examples of agency error,
117 delegate the authority to the Secretary to rescind the assessment of the penalty. Chairman
118 Judd inquired as to whether or not an appeals process existed for those cited. Mr. Piper
119 explained that any political committee seeking a waiver for any fines assessed can bring
120 the matter before the Board. Chairman Judd asked for any comments from the Board or
121 the audience. Mr. Charles Garnett then addressed the Board and asked for information
122 regarding a separate matter not related to the delegation. There were no other comments.
123 Chairman Judd moved to delegate this authority described to the Secretary of the Board

124 of Elections. Vice-Chair Bowers seconded the motion and the motion was unanimously
125 approved by the Board.

126 The next order of business was consideration of the “Stand by Your Ad
127 Violation” for Caroline County Sheriff candidate Charles Garnett. At issue were two
128 documents paid for by Charles Garnett, one pamphlet and one letter mailed to citizens of
129 the county. Both documents did not contain the required “Stand by Your Ad” disclaimer
130 statements under, § 24.2-955 of the Code. Both items expressly advocated for the election
131 or defeat of a specified candidate and needed the disclaimer. Mr. Piper recommended the
132 Board fine Mr. Garnett \$50.00 for each disclaimer violation for a total of \$100.00. The
133 maximum penalty is \$200.00. Mr. Garnett appeared before the Board and said that he
134 would like to apologize and is working to rectify the problem. Mr. Garnett explained that
135 this is his first campaign and he has worked to correct things after attending a Democratic
136 summit. Mr. Garnett apologized to the Board. The Board then commended Mr. Garnett
137 for running for office but encouraged him to seek advice from those who have run for
138 office before. Vice-Chair Bowers asked why the staff recommended a \$100.00 fine. Mr.
139 Piper explained that this was a first-time violation. Joshua Lief, Senior Assistant Attorney
140 General and SBE Counsel, noted to Mr. Garnett that campaign contributions are not
141 deductible for federal tax purposes. Mr. Piper clarified that there was a state tax
142 deduction. Secretary Palmer moved to accept staff recommendation of the assessed
143 violation based on the mitigating factors and the steps taken to rectify the issue. Vice-
144 Chair Bowers seconded the motion and the Board unanimously approved the motion.

145 The next order of business was the request to waive the civil penalty assessed to
146 the Virginia Automatic Merchandising Association PAC (91-251). The penalty was
147 assessed on May 20, 2011 for a late filing on the PAC’S April 15, 2011 report. The
148 committee admits the report was filed late. The reason provided for the late filing was
149 that the PAC was not aware of the deadline until the previous management company of
150 the PAC informed the filer of the deadline on the day of the deadline. Mr. Piper noted
151 that SBE notifies the filers of the deadlines and posts the deadlines on the SBE website.
152 Mr. Piper cited Board Policy 2001-003, where the Board affirmately stated that, among
153 other reasons, a committee’s lack of knowledge of the due date of the filing is not a
154 sufficient reason for the agency to waive civil penalties. Staff recommended upholding

155 the civil penalty as assessed. A representative of the Virginia Automatic Merchandising
156 Association was not present and its letter of rebuttal was presented. Secretary Palmer
157 moved to uphold the recommendations of staff on the assessed penalty; Vice-
158 Chair Bowers seconded the motion and the Board unanimously approved the staff
159 recommendation.

160 The next order of business was the review of Ballot Proofing Standards and
161 Verification Procedures presented by Chris Piper, Election Services Manager. Mr. Piper
162 cited Code § 24.2-612 which requires the State Board to verify paper ballots prior to the
163 election. Mr. Piper then explained how this process has worked in the past and how
164 redistricting and the 45 day absentee ballot deadline have made the usual process near
165 impossible. Mr. Piper noted that this request was only applicable to the upcoming general
166 election. Mr. Piper explained that the localities were consulted regarding the procedures
167 before the Board. Chairman Judd opened the discussion to the floor. Barbara Gunter,
168 General Registrar of Bedford County and President of the Virginia Registrars'
169 Association of Virginia (VRAV), offered one suggestion for a change to the language on
170 the final page regarding the ability of the Secretary of the electoral board to designate
171 these duties to an assistant registrar or other staff member. Mr. Piper noted that the
172 suggestion by Ms. Gunter was made before and that the suggestion should be
173 incorporated into the document. Chairman Judd noted that the Board would approve the
174 document with Ms. Gunter's suggestion incorporated throughout the document. Secretary
175 Palmer moved to adopt the ballot proofing standards and verification procedures as
176 amended. Vice-Chair Bowers seconded and the motion was unanimously approved by the
177 Board.

178 Chairman Judd then asked if there was any other business to come before the
179 Board.

180 Mr. Robin Lind, Secretary of the Goochland County Electoral Board, then
181 commented on a recent Opinion of the Attorney General regarding the Freedom of
182 Information Act (FIOA) and electoral board communications. Mr. Lind explained that
183 electoral boards across the state would like guidance on this issue by the State Board,
184 including whether or not to propose a legislative remedy for clarification. Mr. Lief then
185 briefly commented on Mr. Lind's remarks.

186 Chairman Judd then welcomed Barbara Gunter, the new President of the VRAV.

187 The next order of business was introduced by Chairman Judd. Chairman Judd
188 discussed an issue involving double-voting, including 38 instances where there was
189 registration activity in Virginia and then that same new registrant wrote to their home
190 state for an absentee ballot. So far, five of those 37 voted in their home state of
191 Pennsylvania. Chairman Judd said he would like the Board to approve a motion, pursuant
192 to § 24.2-104, to ask the Attorney General's office to investigate this activity based on
193 data that has started to surface and to report back to the Board. Chairman Judd then
194 motioned that the Board formally ask the Attorney General's office to investigate the
195 possible double-voting that occurred in 2008. Vice-Chair Bowers seconded the motion.
196 Mr. Lief then asked that Chairman Judd clarify his motion to ensure that it is done
197 pursuant to the first paragraph of § 24.2-104. Chairman Judd then moved that pursuant to
198 § 24.2-104 the Board will ask the Attorney General's office for an investigation into the
199 possible double-voting that occurred in 2008. The Board then unanimously approved the
200 motion.

201 The next order of business was presented by Chairman Judd. Chairman Judd
202 voiced a concern over what the Chairman has been told is a requirement for Virginia to
203 supply ballots in a foreign language if that jurisdiction has over 5% of a population with
204 English as a second language and to provide interpreters at each polling place. Chairman
205 Judd noted that he had a problem with that requirement, particularly because if one must
206 be proficient in English in order to become a naturalized citizen; why then would one not
207 have to exhibit the same proficiency to vote? Chairman Judd also commented on the cost
208 associated with this extra effort. Chairman Judd said he would like to ask the Office of
209 the Attorney General for an opinion on whether the Commonwealth is bound to do this
210 and whether Virginia somehow opts out, decline, or refuse. Mr. Lief noted that there is a
211 federal statute that mandates this. Mr. Lief noted that he can get back to the Board at a
212 later meeting regarding this matter. Secretary Palmer then noted that a lot of the
213 requirements at the local level, depending on the Census, may come under section 203 of
214 the Voting Rights Act. Secretary Palmer said that the State Board is involved in working
215 with localities that may come under these requirements and that there are different ways

216 to comply. Secretary Palmer noted that his office may not know until later this year
217 which areas will be affected during the 2012 elections.

218 Chairman Judd then asked for any items for the good of the order. Secretary
219 Palmer then introduced and welcomed Rose Mansfield, SBE's new Executive Secretary.

220 Vice-Chair Bowers then made a motion to adjourn. Chairman Judd seconded the
221 motion and the Board unanimously approved the motion. The Board shall reconvene on
222 September 6, 2011 for the next Board Meeting

223 Chairman Judd asked for any further public comments. There being none, the
224 meeting was adjourned at approximately 5:00PM.

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Chair

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Vice-Chair

Secretary