

New York State Supreme Court
County of Albany

Premier Election Solutions, Inc.
Petitioner

Against

Affidavit

New York State Board of Elections, et al

State of New York
County of Albany

Buck Jones, being duly sworn, deposes and says that: I am a Regional Manager for Premier Election Solutions.

We have been pursuing certification in the State of New York since the summer of 2006. In order to receive certification in the state of New York it is necessary to first apply for certification, submit equipment and Technical Data Packs to the State Board of elections for their use in the various types of testing that they require. They refer applicants to the NYS law and Regulations for the requirements that are to be satisfied. In our first submission to the state we offered our TSX touch screen with a voter verified paper audit trail to assure that we were meeting that requirement as the ADA solution with our voting system. After entering into the process Premier decided that the TSX would not satisfy the full face requirement for either paper based system or the electronic system as defined in the requirement. Premier voluntarily withdrew the TSX from the process.

In the fall of 2006 we offered the AutoMARK as our ADA Ballot Marking solution to be tested for certification in the state. We submitted this product in lieu of a voting system for the purposes of ADA compliance. We submitted the 5,000 dollars for the application fee, and deposited \$560,000 for the expected cost for the certification testing. None of such funds have been returned to us.

We chose the AutoMARK because it was currently in use in 14 counties, as an ADA solution in the State of New York, 34,000 of them were in use in 30 other states and according to statements by the New York State Board of Elections it satisfied the New York State Law for full face ballot requirements for paper based systems.

This was confirmed during a Vendor Summit on December 21, 2006 by Peter Kosinski, the then Republican Co-Executive Director. He confirmed this in a room with about 40 people. One of the other vendors raised a question about whether the AutoMARK satisfied the full face requirement. He stated that it complied because it was a paper based system. The voter would be using a full face paper ballot to insert to the

AutoMARK and the marked ballot would also serve to satisfy the full face audit media requirement.

Soon after this meeting the vendor's were required to offer their systems for usability studies that were conducted by AIR. We also submitted equipment for testing by Ciber and NYSTEC. The purpose of the AIR was to determine the user rate of each of the systems as required by NYS requirements. It was the purpose of Ciber to determine that we satisfied both the 2005 VVSG HAVA requirements and the NYS law and Regulations. They would do their evaluations and advise us of anomalies. We never received any notification from the state that there was a concern about us needing to also display the full face ballot on the screen of the AutoMARK. NYSTEC was doing mainly consulting and security testing. We never received notification that NYSTEC had a concern about a need to also display the full face ballot on the screen of the AutoMARK.

The AutoMARK performed very well in AIR studies and well as the CIBER and NYSTEC studies and there was never an issue concerning a full face on the screen.

In 2007 we were notified that CIBER, the independent testing authority that had been selected by the New York State Board, was not going to be able to continue certification testing because they did not receive their accreditation from the Election Assistance Commission for doing 2005 Voluntary Voting Systems Guidelines Testing which was a New York State Board of Elections requirement.

During the year of 2007 almost nothing happened to move toward certification. We had regular conference calls with the state and numerous meetings. There was never any mention of a need for putting a full face image of the ballot on the AutoMARK screen. In December of 2007 the NYSBOE selected an independent testing authority and issued, as part of the federal court ordered process, another IFB through OGS as they had a new testing agency. The requirements do not include any item stating that it is required for a system to present both a full face ballot on the screen and a full face paper ballot. For requirements the NYSBOE referred us to the NYS law and regulations.

On January 20 we learned, not from the Board of Elections, that the Commissioners were planning to disqualify both the Liberty and the Premier AutoMARKS because the Republicans now felt that the requirement should be that all systems would have to present both a full face on the screen and a full face ballot as the audit media. While it is not a requirement, we worked with the engineers at AutoMARK to get it done. At the Election Commissioners Association of New York conference at Saratago Springs beginning January 22 the Republicans were made aware that we had done this modification and choose not to look at it. On January 23rd the NYSBOE Commissioners held their meeting at Saratoga Springs because the County Election Commissioners from around the state were meeting there. During this meeting it was there plan to advise the counties of the systems that would be proceeding with testing.

On the 23rd the Commissioners were deadlocked. On the 24th at about 2:00 PM the Commissioners voted to allow the Premier AutoMARK to move forward.

At this point we decided that we needed to quickly put together a plan to reach as many counties as possible now that we had this approval. We still never received any notice from the NYSBOE that this was a requirement nor did we receive anything advising us of a deadline for its delivery.

I began working with our inside sales department, marketing and conference coordinator to book meeting rooms, call and fax information to all of the counties inviting them to attend 7 seminars around the state so we could talk with them about the voting systems, services, training, project management and all of the other aspects of implementing a new voting system. We planned demonstrations of the equipment and conferences calls into the seminars including seven key people that could speak on these subjects. Lots of counties were planning to attend. Then on January 29th one of the counties advises us that they have been told by the state to not consider the Premier AutoMARK or anybody's AutoMARK.

The letter said that it was still required that they receive a ranked list by February 8th and there would only be one company that they could choose from. In the letter that was sent out to the counties it was explained that the Co-Directors were in disagreement about whether the AutoMARK met this new request. The Republican said no and the Democrat said yes that it did satisfy the request. Based on this disagreement the Co-Directors took the unusual action that appeared to reverse the vote of the Commissioners. The letter also said that the NYSBOE would be advising SYSTEST, the testing authority, to not move forward with any AutoMARK testing and that the Dominion would be the only system they could rank on their list.

Our first seminar was in Albany at the Desmond on January 29th, the same day the state sent out their letter to the counties. We had four counties that did attend of the fifteen that were invited. During the rest of the week we had only one county attend our seminars. Counties were not willing to disobey the directive from the NYSBOE about considering our proven solutions.

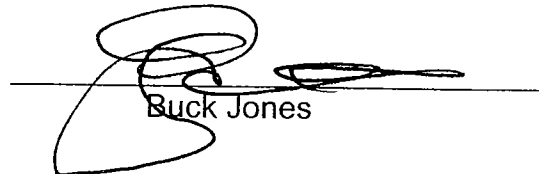
The NYSBOE never notified us that our approval had been rescinded. The NYCBOE never advised us of a deadline concerning this full face on the screen request.

At no time during the certification testing that was done in 2006 did the board ever advise us that our system did not satisfy the full face requirement. In fact, they made statements that it did satisfy the requirements.

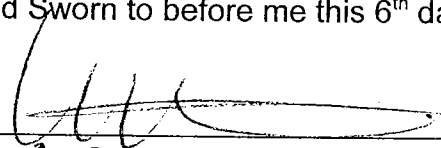
At no time during 2007 during the numerous conference calls and meetings did they ever communicate to us in any way that it did not satisfy the requirements.

At no time during the end of 2007 and the beginning of 2008 during the IFB submission or during the submission of equipment and TDPs for testing was it ever communicated to us in any way that we do not satisfy the requirements.

Regarding the IFB requirement in the specifications for a full face display and full face paper ballot from the same system, it does not exist and if it did it would be in conflict with the requirements that they have pointed to in the law and the regulations since the summer of 2006.


Buck Jones

Subscribed and Sworn to before me this 6th day of February, 2008.


Notary Publics MATTHEW M. MATULLO
ABILENE COUNTY
Comm. Expires 3/30/10