

**Minutes of the New York State Board of Elections  
January 24, 2019**

The meeting of the Board of Canvassers of the New York State Board of Elections was convened at the offices of the New York State Board of Elections, 40 North Pearl Street, Albany, New York in the 5<sup>th</sup> Floor Conference Room and was called to order at 12:05 p.m. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner, Andrew Spano and Gregory Peterson.

The Board of Canvassers considered a motion to certify the amended results of the November 6, 2018 General Election. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**

The meeting of the Commissioners of the New York State Board of Elections held at the offices of the New York State Board of Elections, 40 North Pearl Street, Albany, New York in the 5<sup>th</sup> Floor Conference Room was called to order at 12:25 p.m. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner, Andrew Spano and Gregory Peterson. Staff members present were Robert Brehm, Todd Valentine, Brian Quail, Nick Cartegena, Bill McCann, Brendan Lovullo, John Conklin and Cheryl Couser. Guests in attendance were: Bill Mahoney; Politico and Paul Buckowski from the Times Union.

**Minutes of December 14, 2018** – Minutes were approved as written. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**

**Unit Updates:**

**Executive** – Robert Brehm and Todd Valentine reported on several issues including:

- Working with Department of Budget on the budget.
- Due to the government shutdown, the DHS risk assessment on the Board is delayed.
- Worked on the political calendar.

**Legal** – Brian Quail reported on activities related to the Counsel/Compliance Unit including:

- Gave update on litigation cases.
- Made two presentations at the ECA Winter Conference.
- Looking into the requirements for the bills that passed the Legislature.

**Election Operations** – Brenden Lovullo reported that the Election Operations unit is working on several ongoing issues including:

- ES&S provided an overview of their ExpressVote.
- Cyber security team accompanied Grant Thornton to a few counties.
- Presented at the ECA Winter Conference.

**PIO/NVRA** – John Conklin reported that the PIO/NVRA unit is working on several issues.

- Participated in the monthly ECA Conference call.
- Attended meetings on cyber security plans.

**ITU** – Bob Brehm reported on projects IT is working on in the absence of Bill Cross:

- Discussion on the roll out of the new CAPAS-FIDAS system.
- Grant Thornton has completed 44 county site visits.

- Discussion on risk assessment and intrusion detection.

**Enforcement**– Risa Sugarman did not attend the board meeting

### **Old Business:**

- VOTE on changes to the voter registration application based on political parties and groups. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**
- VOTE to adopt Resolution to approve revised affidavit envelope. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**

### **New Business:**

- VOTE on Resolution to appoint hearing officers. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**
- Vote on Resolution to amend regulation 6214. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**
- VOTE to approve Advisory opinion regarding use of campaign funds pursuant to Election Law sec. 14-130. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**
- Next Board Meeting dates will be February 26<sup>th</sup>, tentative March 19<sup>th</sup> and April 29<sup>th</sup>.

**The meeting was adjourned at 1:40p.m.**

**The Commissioners went into Executive Session to discuss a litigation matter.**

**The Executive Session was recessed without date to further discuss litigation.**



## **New York State Board of Elections**

### **APPROVED RESOLUTION – January 24, 2019**

#### **RESOLUTION TO APPROVE REVISED VOTER REGISTRATION FORM**

**WHEREAS**, the New York State Board of Elections (hereinafter “the State Board”), is charged with designing statewide application forms for voter registration purposes as described in New York State Election Law, Sections 5-210.5 and 5-211.13; and

**WHEREAS**, a ‘party’ is defined as any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor as described in New York State Election Law, Section 1-104; and

**WHEREAS**, the Commissioners of the State Board, acting in their capacity of the Board of Canvassers at their December 14, 2018 meeting, certified election results for the November 6, 2018 General Election which showed two additional political organizations, the Libertarian party and the SAM party, which had met the criteria provided for in Section 1-104; and

**WHEREAS**, the certified election results for the November 6, 2018 General Election which showed two political organizations, the Women’s Equality party and Reform party, which failed to meet the criteria provided for in Section 1-104; and

**WHEREAS**, changes to the statewide and agency-based voter registration forms are required to reflect the addition of the two new parties, the removal of two political organizations, as well as the reordering of the existing parties due to the aforementioned certified election results; and

**WHEREAS**, the attached samples reflect the consensus of the State Board staff’s review of said forms;

**NOW THEREFORE BE IT RESOLVED**, that the State Board does hereby approve the sample voter registration forms as attached herewith, and directs staff to distribute said samples immediately to county boards and applicable agencies advising them to use the attached samples forthwith.

Approved January 24, 2019

VOTE 4-0



19-02

## **New York State Board of Elections**

### **Approved Resolution - January 24, 2019**

#### **RESOLUTION TO APPROVE REVISED AFFIDAVIT ENVELOPE**

**WHEREAS**, the New York State Board of Elections (hereinafter “the State Board”), is charged with prescribing a form to be used in polling place on election day by voters who find themselves in circumstances articulated in New York State Election Law, Section 8-302.2c and/or Section 8-302.3e; and

**WHEREAS**, the State Board has previously prescribed such forms, and approved at their December 14, 2018, meeting an amended affidavit envelope which included a voter registration form; and

**WHEREAS**, a ‘party’ is defined as any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor as described in New York State Election Law, Section 1-104; and

**WHEREAS**, the Commissioners of the State Board, acting in their capacity of the Board of Canvassers at their December 14, 2018 meeting, certified election results for the November 6, 2018 General Election which showed two additional political organizations, the Libertarian party and the SAM party, which had met the criteria provided for in Section 1-104; and

**WHEREAS**, certified election results for the November 6, 2018, General Election which showed two political organizations, the Women’s Equality party and the Reform party, failed to meet the criteria provided for in Section 1-104; and

**WHEREAS**, changes to the statewide and agency-based voter registration forms are required to reflect the addition of the two new parties, remove two political organizations, as well as the reordering of the existing parties due to the aforementioned certified election results; and

**WHEREAS**, the attached samples reflect the consensus of the State Board staff's review of said forms;

**NOW THEREFORE BE IT RESOLVED**, that the State Board does hereby approve the sample affidavit ballot envelope form as attached herewith, and directs staff to distribute said sample immediately to county boards advising them to use said sample forthwith.

Approved January 24, 2019

VOTE 4-0



**New York State Board of Elections**

**APPROVED RESOLUTION – January 24, 2019**

**Resolution of the State Board of Elections approving individuals to serve as Hearing Officers in conjunction with Election Law § 3-104 (5)(a)**

**WHEREAS**, the Election Law was modified pursuant to Chapter 55 of the Laws of 2014 to include a hearing process for certain violations of the Election Law that do not otherwise warrant a criminal prosecution; and

**WHEREAS**, said hearing process, as established in Election Law § 3-104(5)(a), calls for the State Board of Elections to establish a list of prospective Hearing Officers, each of whom shall have been approved by a majority vote of the Board; and

**NOW THEREFORE BE IT RESOLVED** that the New York State Board of Elections approves the following additional individuals to serve as Hearing Officers: Maria Matos, Thomas Swyers, and Tanya White.

**NOW THEREFORE BE IT FURTHER RESOLVED** that this resolution expires December 31, 2021.

Approved January 24, 2019

VOTE 4-0



19-04

**New York State Board of Elections  
APPROVED RESOLUTION**

**Resolution to Adopt Emergency Amendments and to Propose Amendments to 9 NYCRR Subtitle V Part 6214.0 Related to Updating Campaign Contribution Limits Required by NYS Election Law Section 14-114(1)(c) Pursuant to State Administrative Procedures Act (SAPA) § 202**

**WHEREAS**, the New York State Board of Elections (hereinafter “The Board”), is legally required by the NYS Election Law Section 14-114(1)(c) to, in 2019, recalculate the contribution limits set forth in 6214.0 Title 9 NYCRR; and

**WHEREAS**, the NYS Election Law requires the Board to publish by February 1st every four years, campaign contribution limits adjusted for the most recent available Consumer Price Index numbers; and

**WHEREAS**, relevant Consumer Price Index data is not available until mid-January, making it impossible for the Board to meet the statutory deadline using the normal rule making procedure; and

**WHEREAS**, based upon the foregoing, it is necessary for the general welfare of the public that Part 6214.0 of Title 9 of the NYCRR be amended on an Emergency Basis, in accordance with SAPA § 202;

**NOW THEREFORE BE IT RESOLVED:** that the New York State Board of Elections does hereby adopt the amended Part 6214 of Title 9 of the NYCRR, and the Office of Counsel is hereby authorized and directed to take steps necessary pursuant to SAPA § 202 to effectuate this ninety-day emergency adoption of the amendment to 9 NYCRR Subtitle V Part 6214.0; and

**BE IT FURTHER RESOLVED:** that the Office of Counsel is hereby authorized and directed to take steps necessary pursuant to SAPA § 202 to provide for the publication of proposed rule making related to the permanent amendment to 9 NYCRR Subtitle V Part 6214.0.

Approved January 24, 2019

VOTE 4-0

**NEW YORK STATE  
BOARD OF ELECTIONS  
ADVISORY OPINIONS  
OPINION No.19-01**

**DATE:** January 24, 2019

**QUESTION PRESENTED:**

Does Election Law § 14-130 permit an office holder to use funds from the office holder's campaign committee to pay for legal fees associated with litigation challenging the actions of the Committee on Legislative and Executive Compensation?

**DISCUSSION:**

Election Law § 14-130, amended by Chapter 56 of the Laws of 2015, reads, in relevant part:

1. Contributions received by a candidate or a political committee may be expended for any lawful purpose. Such funds shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position.
  
3. For the purpose of this section, contributions "converted by any person to a personal use" are expenditures that are exclusively for the personal benefit of the candidate or any other individual, not in connection with a political campaign or the holding of a public office or party position.
  
5. Nothing in this section shall prohibit an elected public officeholder from using campaign funds to facilitate, support, or otherwise assist in the execution or performance of the duties of his or her public office.

The facts, as presented, are as follows: An office holder serves in an office covered by the Report of the Committee on Legislative and Executive Compensation, issued on or about December 10, 2018, established pursuant to Part HHH of Chapter 59 of the Laws of 2018. The Report made various recommendations with respect to the levels of executive and legislative compensation over the ensuing three calendar years.

According to the office holder, the commission has in addition to recommending compensation levels:

- 1) issued restrictions and limits on income earned in the private sector; 2) eliminated statutory allowances for committee and leadership appointments; and 3) created a requirement of passing the budget on time to receive any pay raise. I and other elected officials believe the Committee acted *ultra vires* in dictating what an individual can earn outside of her public office, changing



statutory authority and imposing contingences that alter the balance of power between the branches of government.

Based upon the foregoing, the office holder seeks to make a legal challenge to the Report and certain items delineated therein.

### **HOLDING:**

Our analysis does not require any examination of the underlying merits of this or any other litigation. Our inquiry rather is limited to ascertaining a clear *relationship* between the litigation and the holding of office. As we held in 1989 Opinion# 1, the operative question is whether a "matter arises out of the campaign or the holding of public office." In that opinion we observed legal defense costs in a criminal matter meet this test when "the subject of that matter is within the purview of the public office holder's duties." *Id.* The litigation contemplated here is being brought by the office holder in the office holder's capacity as an office holder and the legislation and Report at issue apply to the office holder only in that capacity.

Long after 1989 Opinion# 1, Election Law § 14-130 was amended in 2015 (Chapter 56, Part CC, § 9) to add additional exclusions. We note the legislature and governor did not provide for any limitations related to legal expenses arising out of a campaign or the holding of office.

It is the opinion of the Board, based upon the facts presented, and applying the applicable provisions of Election Law § 14-130 as outlined above, the use of campaign funds to pay for legal fees associated with litigation challenging the actions of the Committee on Legislative and Executive Compensation would be "provided in connection with the execution of the duties of public office," and is permissible. *See also* Election Law § 14-130 (3) (v).