FORMAL OPINIONS

NEW YORK STATE BOARD OF ELECTIONS

1974 - Present

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New York State
Board of Elections
1974 Opinion #1

Question Presented:

May corporations in New York State make contributions for political purposes for candidates or political committees?

Discussion:

It is the Board's opinion that §480 of the Election Law permits a corporation to contribute up to $5,000 for political purposes for candidates or political committees in any calendar year, provided such a contribution is not otherwise prohibited by law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1974 Opinion #2

Question Presented:

What is the application of §480 of the Election Law to political activities by an unincorporated trade association?

Discussion:

It is the Board's opinion that §480 permits an association and its member companies to contribute up to $5,000 each to political purposes in the same calendar year, so long as the association does not conduct activities that would make it a "political committee", as that term is defined by §467 of the Election Law.

Under subdivision (a) of §467, a person or corporation that makes a contribution to a candidate or political committee is not, by the fact of such contribution alone, deemed to be a "political committee". If, however, an association solicits or accepts funds (other than regular dues) from its member companies and uses such funds for political purposes, or if an association expends or contributes funds [other than as provided in §467(a)] on behalf of any candidate or political committee, it would itself be a political committee, and its expenditures and contributions would have to be prorated against the amounts that its member companies could expend or contribute in the same calendar year for political purposes.

If such proration is required, the $5,000 maximum political contribution permitted to each member company in any year would be reduced by an amount equal to that proportion of an association's political contributions or expenditures which a particular member's contribution to the support of the association during the calendar year bears to the total contributions to such support made by all the members of the association during such calendar year.

Finally, the Board does not believe that §480 would permit an association to act as a conduit for its members in accepting from them political contributions of up to $5,000 per member in a calendar year and then applying those political contributions during such year on their behalf for such political purposes as may have specifically or generally been authorized.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1974 Opinion #3

Question Presented:

If an incorporated trade association makes contributions aggregating $5,000 in a calendar year for political purposes, and if the only source from which it can obtain the $5,000 is from the dues paid by its members, a large number of which are corporations, may a member corporation itself contribute up to $5,000 in the same calendar year for political purposes?

Discussion:

It is the Board's opinion that section 480 of the Election Law permits an incorporated trade association and its member corporations to contribute up to $5,000 each to political purposes in the same calendar year so long as such an association is not a "political committee" as that term is defined by section 467 of the Election Law.

Under section 467(a), a corporation making a contribution to a candidate or a political committee does not, by the fact of such contribution alone, become a "political committee". If, however, an incorporated trade association solicits or accepts funds (other than regular dues) from its member corporations and uses such funds for political purposes, or if such an association expends or contributes funds [other than as provided in §467(a)] on behalf of any candidate or political committee, it would itself be a political committee and its expenditures and contributions would have to be prorated against the amounts that its member corporations could expend or contribute in the same calendar year for political purposes.

If proration is required, the $5,000 maximum political contribution permitted to each member in any calendar year would be reduced by an amount equal to that proportion of an association's political contributions or expenditures which a particular member's contribution to the support of the association during the calendar year bears to the total contributions to such support made by all association members during such calendar year.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1974 Opinion #4

Question Presented:

Does an individual become a "political committee" if he (1) makes a contribution to a political committee; (2) writes a personal letter to a number of his friends stating that he has sent contributions to such a committee, gives his reasons for so doing, and provides the name and address of the political committee; (3) receives no campaign contributions and has no expenditures (other than postage for his letters); and (4) suggests or requests that his friends make contributions to the same political committee?

Discussion:

It is the Board's opinion that the above listed activities do not make an individual a "political committee" as that term is defined by §467 of the Election Law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1974 Opinion #5

Question Presented:

Does the term corporation in §480 of the Election Law include within its meaning not-for-profit corporations?

Discussion:

It is the Board's opinion that the term "corporation" in §480 includes within its meaning not-for-profit corporations and such corporations may contribute up to $5,000 in any calendar year for political purposes, if contributions for such purposes are specifically authorized by the charters of such corporations.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1974 Opinion #6

Question Presented:

Does §480 of the Election Law apply to a loan made by a banking corporation in the regular course of its business?

Discussion:

It is the Board's opinion that §480 does not apply to a loan made by a banking corporation in the regular course of its business.

The Board notes that §479, which sets forth contribution and receipt limitations for candidates and political committees, exempts a loan made in the regular course of a lender's business from being considered as a contribution by the lender, even if such a loan remains unpaid on the date of a primary, general or special election, as the case may be. Since such loans may not be considered contributions, it seems clear that the Legislature did not intend that such loans be considered political contributions and fall under the prohibitions on such contributions found in §480.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #1

Date: January 10, 1975

Question Presented:

Is the fund for Modern Courts Inc. a "political committee" as that term is defined by section 467(a) of Article 16-A or engaged in "any political purposes whatever" for the purposes of section 480 of such Article.

Discussion:

The Fund's restated certificate of incorporation recites the purposes of the corporation as being generally "religious, charitable, scientific, literary or educational" and specifically:

> "...to foster, encourage and conduct research and study in the administration of justice and to publish, disseminate or make available through any medium the results of such research and study, and otherwise to stimulate and develop an understanding among citizens generally of the problems involved in the administration of justice with special reference to the administration of justice in the State of New York;..."

The certificate of incorporation also provides in part, that:

> "no substantial part of the activities of the corporation shall be carrying on propaganda or otherwise attempting to influence legislation; and the corporation shall not participate in, or intervene in (including the publishing and distributing of statements), any political campaign on behalf of any candidate for public office."

Finally, the Fund intends to express opinions for or against various court reform measures including proposals before the State Legislature and proposed constitutional amendments before the electorate.

Applicability of Section 467(a):

The term "political committee" as defined by section 467(a) was not intended (in our opinion) to encompass an organization like the Fund to the extent that it engages in general educational activities unrelated to any vote at a public election. Section 467(a) specifically provides that:

> "...(N)othing in this article shall apply to any committee or organization for the discussion or advancement of political questions or principles without connection with any votes..."

It is our opinion, however, that should the Fund accept contributions or make expenditures to promote the success or defeat of a measure placed before the voters at a constitutional

referendum, the Fund would have to comply with the filing requirements of sections 473 and 481 of the Election Law.

Applicability of Section 480:

In *Schwartz v. Romnes*, 495 F.2d 844 (2d Cir. 1974), the Court of Appeals considered the meaning of the term "political" as found in section 460 of the Election Law the predecessor of the present section 480. In that case, the issue was whether a contribution made by a corporation to an organization established for the purpose of publicizing views with respect to a proposed public transportation bond issue to be submitted to the voters for a referendum vote violated section 460 which prohibited corporate contributions for political purposes.

In *Schwartz*, the Court concluded that the fundamental issue was the meaning of the word "political" as used in the context of the statutory provision prohibiting corporate payments to any corporation or association organized or maintained for "political purposes" or payments for "any political purpose whatever." The phrase "any political purpose whatever," the Court said, was to be examined in the light of the legislative purpose of preventing the corruption of legislators and other elected officials. The Court held that the avowed objective of the statute was not to bar all corporate expenditures with respect to legislative matters generally, but to prohibit corporate contributions to candidates or parties. Accordingly, the corporate contribution in question, since it was in relation to an essentially non-partisan public referendum, was found not to fall within the proscription of section 460.

Pursuant to the *Schwartz* decision, it would appear that section 480 would not proscribe corporate contributions to the Fund should the Fund actively support non-partisan referenda. While such support would not result in a limit on the amount that any corporation could contribute to the Fund, as we have noted previously, contributions and expenditures in support of a referendum would cause the Fund to fall within the definition of "political committee" and result in its being subject to the filing requirements of Article 16-A.

If the Fund were to support a partisan referendum, however, it is our opinion that corporate contributions to the Fund would be governed by the provisions of section 480.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #2

Question Presented:

May a union be a "political committee" as that term is defined by section 467(a) of the New York State Election Law?

Discussion:

Section 467(a) defines a "political committee" to mean:

> "...(a) combination of one or more persons operating or cooperating to aid or to promote the success or defeat of a political party or principle, or of any question submitted to vote at a public election; or to aid or take part in the election or defeat of a candidate for public office or to aid or take part in the election or defeat of a candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of a candidate for any party position voted for at a primary election, or to aid or defeat the nomination by petition of an independent candidate for public office...provided, however, that a person or corporation making a contribution to a candidate or political committee, shall not, by that fact alone, be deemed to be a political committee as herein defined..."

It is our opinion that a union that makes a contribution to a candidate or a "political committee" does not, by the fact of that contribution alone, become a "political committee."

If, however, a union either (a) solicits or accepts funds (other than regular dues no portion of which are specifically collected for political purposes) from its members for the purpose of using such funds for political purposes, or (b) expends funds directly in behalf of any candidate or "political committee" (e.g. posters, mailings, media advertisements, etc.), it would be deemed a "political committee."

Where a union falls within the section 467(a) definition of a "political committee," it does, of course, have to make the filings required by sections 481 and 473.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #3

Question Presented:

Is an authorized political committee a "contributor" for the purposes of §479 (a) (1) of the Election Law, which section relates to the percentage limitations on contributions to candidates and authorized political committees?

Discussion:

Section 479 (a) (1) provides that a candidate for election or nomination to public or party office to be voted on by the voters of the entire state and all authorized political committees other than party committees or constituted committee aiding or taking part in his nomination or election may not accept from any one contributor contributions in the aggregate greater than one percent of the amount that could be expended by or on behalf of any such candidate pursuant to §478 (a).

It is our opinion that an authorized political committee would not fall within the definition of the term "contributor", as that term is used in §479 (a) (1), if it transfers funds to any candidate who has authorized it to aid or take part in his election or to any other political committee that has been authorized by any such candidate to aid or take part in his election.

Section 479 (a) (1) itself appears to differentiate between authorized political committees and contributors. Furthermore, an interpretation that placed a limitation on the amount of a single authorized political committee's expenditures on behalf of a candidate to one percent of the candidate's §478 expenditure ceiling would not appear to be consistent with the application of the one percent expenditure ceiling to the aggregate expenditures of a candidate and all of his authorized political committees.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #4

Question Presented:

Does the prohibition against contributions in excess of $5,000 "in the aggregate, in any calendar year" include contributions by wholly owned subsidiaries of a parent corporation? Additionally, does the phrase "in any calendar year" refer to the actual calendar year of January 1 through December 31 or to a corporation's fiscal year, which may be the same or for a different period?

Discussion:

The board chooses to refrain from the issuance of a formal opinion with respect to the question of the applicability of §480 to contributions by corporate subsidiaries. Instead, we believe that it is more appropriate for the language of §480 to be clarified by a statutory amendment.

With respect to the second question presented, it is our opinion that the phrase "in any calendar year" clearly refers to an actual calendar year of January 1 through December 31 and not to a corporation's fiscal year.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #5

Question Presented:

May a New York corporation pay for the establishment and administration of a separate segregated fund, composed of voluntary contributions solicited from corporate employees and utilized for political purposes (both State and Federal), without having the cost of the fund's establishment and administration charged against the corporation's $5,000 calendar year limit on contributions for political purposes?

Discussion:

The inquiry before us notes that contributions from a proposed fund would be made to candidates running for State or Federal offices and to political or party committees. Additionally, none of the fund's contributions to such candidates or committees would stem from corporate funds, but would come solely from employee donations voluntarily paid to the fund.

Finally, decisions as to the identity of the candidates and committees which would receive funds would not be made by the corporation, but rather by those persons who administered the fund. Who such persons might be and how they would be chosen was not set forth in the inquiry.

Subdivisions (a) and (b) of §480 of the Election Law provide in pertinent part:

> "a. No corporation or joint stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, in aid of, any corporation, joint stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for a nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or properties so used.
>
> "b. Notwithstanding the provisions of subdivision (a) of this section, any corporation or an organization financially supported, in whole or in part, by such corporation may make expenditures, including contributions not otherwise prohibited by law, for political purposes, in an amount not to exceed $5,000 in the aggregate in any calendar year."

It is our opinion that §480 requires that if payment of the aforementioned establishment and administration expenses is made by any corporation, the amount of any such payment must be charged against any such corporation's $5,000 calendar year limit on the amount it may contribute for political purposes. The amount charged against any such limit would be equivalent to the percentage amount of such total expenses determined by a fraction, the numerator of which is the amount of contributions to non-federal candidates and committees and the denominator of which is the total amount of contributions to both non-federal and Federal candidates and committees.

Any fund of the type described would constitute a "political committee" as that term is defined by §467(a) of the Election Law. As a political committee, those expenses incurred in soliciting and distributing moneys in support of non-federal candidates or committees would have to be listed, allocated and reported by the fund as expenditures on behalf of any such candidates or committees. Likewise, the names and addresses of persons providing such a fund with moneys or any other thing of value would have to be listed and reported by the fund as contributors. Clearly, to the extent that administration costs resulted in support being made available to non-federal candidates or committees, and to the extent that such costs were paid for by a corporation, such costs would constitute a contribution for political purposes to the fund by the corporation.

The Board does not exercise jurisdiction over the filing activities of candidates for Federal office and by this opinion does not intend in any way to interpret the provisions of Federal Law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #6

Question Presented:

May a deputy commissioner of elections hold, at the same time, the chairmanship of the New York State Apprenticeship and Training Council?

Discussion:

Pursuant to §7 of Chapter 604 of the Laws of 1974, the New York State Board of Elections has been empowered to issue interpretive opinions with respect to the provisions of the Election Law. We are not, however, empowered to interpret the provisions of other laws that do not relate to matters governed by the Election Law.

There is nothing in the Election Law or other laws relating to the conduct and administration of elections that would prevent a person who is deputy commissioner of elections from serving as Chairman of the New York State Apprenticeship and Training Council.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #7

Question Presented:

May a local legislative body enact a local law in relation to the regulation of campaign financing and practices?

Discussion:

It is our opinion that the New York State Campaigns, Elections, and Procedure Law (Article 16-A) preempts local legislative bodies from adopting laws relating to matters covered by its provisions. Article 16-A is undoubtedly a general law as that term is defined by Article IX, §3 of the New York State Constitution. Pursuant to §2(c) of said Article, a local legislative body may not adopt a local law inconsistent with the provisions of a general law.

Additionally, the transcripts of the legislative debates on the bill enacting Article 16-A, the article's statement of legislative intent, and the differentiation of the article's provisions between those relating to candidates for state offices and those relating to candidates for local offices all lead to the conclusion that the Legislature intended Article 16-A to preempt the entire subject matter area of campaign financing and practices.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #8

Date: May 14, 1975

Question Presented:

What is the applicability of Article 16-A of the Election Law to the following factual situation: The Islip Town Republican Committee plans to print a newspaper on a year-round basis as a "source of information as to political calendar dates, club meetings, committeemen information, fund-raising affairs and other events affecting the clubs and the general public." The newspaper would also contain information relating to office-holders and the actions of the various departments of local and state governments, and its cost would be paid out of the committee's housekeeping account. During primary and general election periods, the paper would carry information about candidates for public office?

The committee also proposes during primary or general election periods to use a separate campaign account to pay the proportionate share of the cost of printing and distributing the paper as determined by the proportion of the paper devoted to information concerning specific candidates.

Also raised is the question of when an incumbent officeholder becomes a candidate for re-election and subject to the Article 16-A requirements.

Discussion:

With respect to any primary period, §19 of the Election Law provides:

> "No contributions of money, or the equivalent thereof, made directly or indirectly, to any party, or to any party committee or member thereof, or to a person representing or acting on behalf of a party, or any monies in the treasury of any party, or party committee, shall be expended in aid of the designation or nomination of any person to be voted for at a primary election, either as a candidate for nomination for public office, or for any party position."

Pursuant to case law, the §19 prohibition against party committees spending money for any primary election nominee has not been applied to expenditures by a separate primary committee. To the extent that the campaign account is the account of a separate primary committee, the Board believes that the use of that committee's funds to pay the proportionate share of the cost of the paper as set forth above would be permissible.

With respect to any general election period, the §19 prohibition would not apply. Further, the proposed method of allocating expenses appears consistent with the provisions of §478(c) of the Election Law.

Additionally, the proposed newspaper might fall within the exception to Article 16-A requirements found in §484-a(a), in which case there would be no need to allocate the cost of the paper. That provision specifically states that the article "shall not apply to any person, association or corporation engaged in the publication or distribution of any newspaper or other publication issued at regular intervals in respect to the ordinary conduct of such business."

Section 467(h) provides that an individual becomes a candidate for re-election when he either (1) takes any action necessary to qualify himself for nomination for election (such as contracting for the printing of nominating petitions or circulating such petitions) or (2) receives contributions or makes expenditures or gives his consent for any person to receive contributions or make expenditures, with a view to bringing about his nomination for election.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #9

Date: July 1, 1975

Question Presented:

Do the provisions of Article 16-A of the Election Law apply to the raising and expenditure of funds for the printing and distribution of a specific newsletter? The newsletter, allegedly, is distributed periodically for the purpose of reporting "to the residents of North Babylon developments in their town government as well as to provide information on general community activities."

Discussion:

Sections 473 and 474 of the Election Law provide that candidates or political committees that raise or expend funds in connection with any election to public office must file financial disclosure statements with the State Board of Elections, or where certain local offices are involved, with the applicable local board of elections.

It is the Board's opinion that so long as a newsletter circulated by an incumbent officeholder only reports matters of general community interest and does not promote the election or re-election of any candidate to public office or the passage or defeat of any issue to be voted upon by the public at a general, special or primary election, the cost of printing and distributing any such newsletter need not be reported under the provisions of Article 16-A. If however, any such newsletter supports or actively promotes the election or re-election of any candidate for public office, or the passage or defeat of any ballot issue, the financial reporting requirements of §§473 and 474 would be applicable.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #10

Date: July 1, 1975

Question Presented:

Are the UAW's Community Action Program (CAP) Councils "political committees" as that term is defined by §467(a) of the Election Law.

Discussion:

The facts presented state that:

> "The UAW Constitution establishes UAW Community Action Program (CAP) Councils. These Councils are subordinate bodies of the International Union...and each local must affiliate with the appropriate CAP Councils...Decisions, including decisions on the endorsement of political candidates and contributions, are made by delegates to the Councils.
>
> "The CAP Councils engage in a wide range of community activities...The bulk of CAP expenditures go toward communication with the UAW's membership, e.g., an international newspaper, leadership meetings and expenses, recreation, mailing costs, etc. These communications deal with a range of topics, e.g., ecology, civil rights, politics, safety, consumer affairs, etc.
>
> "CAP Councils do make contributions of both money and work to state and local political candidates in New York. The amount of these contributions, as well as the proportion they bear to the income of the CAP Councils, varies from year to year.
>
> "More important, however, is that UAW CAP Councils do <u>not</u> themselves solicit membership contributions on behalf of state and local candidates. Instead, CAP Councils are funded from a portion of regular dues...The locals collect regular dues...
>
> "None of these CAP funds are earmarked specifically for political contributions...[T]he bulk of such funds are used for other purposes. Candidate endorsements and contributions are determined by CAP delegates as the need arises."

The Board recently issued a Formal Opinion (1975 Op. #2) which stated that a union that makes a contribution to a candidate or a "political committee does not, by the fact of that contribution alone, become a political committee." If, however, a union solicits or accepts funds (other than regular dues no portion of which are specifically collected for political purposes) from its members and uses such funds for political purposes or if a union expends funds on behalf of any candidate or "political committee," it would be deemed to be a "political committee."
Based upon the description of CAP Council activities, it does not appear that such Councils

solicit funds for political purposes, or expend funds on behalf of any candidates or political committees. Further, the funds that are used for political contributions come from a portion of regular dues. Under these circumstances, and so long as the Councils limit their political activity to making contributions only, the Councils would not fall within the meaning of the term "political committee," and therefore, would not have to make the filings required by §§481 and 473 of the Election Law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #11

Date: August 27, 1975

Questions Presented:

1. May the Metropolitan Life Insurance Company ("Metropolitan") assume that incidental expenses incurred in setting up and maintaining an employee voluntary political contribution fund would not be treated as political contributions within the $5,000 limitation of §480 of the Election Law?

2. If Metropolitan does incur expenses which would otherwise be treated as subject to the $5,000 limit, does the Federal preemption of §453 of Title II of the United States Code supersede the limit or would some proration be required?

3. Is a payroll deduction authorization an adequate writing for an employee contribution in excess of $100?

Discussion:

In 1975 Opinion #5, the Board expressed its opinion that establishment and administration expenses incurred by any corporation in setting up and maintaining a political contribution fund must be charged against any such corporation's §480 limit. Additionally, if any such fund contributes to both non-federal and federal candidates, it would be required to prorate its expenses along the lines set forth in Opinion #5.

Section 481(b) provides that:

> "No candidate, political committee, or agent thereof may receive from any one person an aggregate amount greater than one hundred dollars except in the form of a check, draft or other instrument payable to the candidate, political committee or treasurer and signed or endorsed by the donor." (emphasis added)

The Board believes that if a payroll deduction authorization is signed by an employee and specifically states the full name and address of the employee, the amount of any deduction and the frequency with which any deduction is made, it would constitute a proper "instrument" under §481(b). Further, a copy of any such authorization must be provided the fund treasurer and retained by him as a part of his records.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #12

Date: September 3, 1975

Questions Presented:

1. May surplus campaign funds be transferred from the campaign account to the housekeeping account of a political club?

2. Must contributions made directly to such a housekeeping account be reported if such contributions are used solely to pay the annual cost of the club's operations?

Discussion:

Section 467(e) of the Election Law defines "non-candidate expenditures" as those made by a "party committee" or a "constituted committee," which terms are defined in §§467(b) and 467(c). The term "party committee" is further defined by §10 to consist of "a state committee, county committees and such other committees as the rules of the party may provide."

Assuming the club falls within the definition of a party committee, contributions made and deposited with it could be used for expenditures connected with maintaining a permanent headquarters and staff and with carrying on ordinary party activities not promoting the candidacy of any specific candidate pursuant to §484-a(2), contributions used for housekeeping purposes as well as expenditures for such purposes do not have to be reported so long as such contributions and expenditures are kept completely segregated from all other contributions and expenditures. If the club does not establish a separate account for housekeeping purposes, it would have to report all receipts and expenditures, although housekeeping expenditures could be lumped together and reported as a single figure.

While the law on the subject of the use of surplus campaign funds is unsettled, the Board has on past occasions advised correspondents that such funds may be transferred to a constituted or party committee or a political club, prorated and returned to the donors, or held for use in a subsequent election campaign. Once again, assuming that the club is a party committee and may have both a campaign account and a housekeeping account, the proposed transfer would be permissible.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #13

Date: September 12, 1975

Question Presented:

The specific question is whether the proposed program would make the Chamber a political committee as that term is defined by §467(a) of the Election Law?

A proposed program by the Schenectady County Chamber of Commerce (hereinafter Chamber) to facilitate political contributions by its members has been presented for review to the Board.

Discussion:

It is our understanding that the proposed program will operate as follows: All Chamber members will be sent two cards, two envelopes and a letter. The letter will encourage members to contribute money and/or time to the political party or candidate of their choice. If a member wishes to make a contribution of time and/or money, he will fill out one or both of the cards (a Work Volunteer Card and a Financial Contribution Card), place them in one envelope, seal the envelope and address it to the party or candidate of his choice. He will then place the first envelope in the second envelope and mail them both to the Chamber. The Chamber, in turn will forward the first envelope unopened to the addressee.

It is the Board's opinion that so long as the Chamber does not solicit or expend funds for or on behalf of any specific party(s) or candidate(s), the Chamber would not be a political committee as that term is defined in §467(a). If, however, the Chamber makes such a solicitation or expenditure, it would be a political committee and required to file the statements required by §§481 and 473 of the Election Law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #14

Date: October 3, 1975

Question Presented:

What is the residency requirement for persons seeking election to the New York State Assembly or Senate?

Discussion:

Article III §7 of the State Constitution provides in pertinent part that "no person shall serve as a member of the Legislature unless he or she is a citizen of the United States and has been a resident of the State of New York for five years, and, except as hereinafter or otherwise prescribed, of the Assembly or Senate District for the twelve months immediately preceding his or her election...." (emphasis added).

The specific inquiry is whether the date of any primary election has any bearing on the determination of the twelve-month residential period. It is the Board's opinion that the primary date is not used in calculating the period.

The constitutional provision refers to the election to office of a member of the Legislature. A person may only be elected to be such a member at a general or special election. A primary election merely decides who will be a candidate for the office of member of the Legislature. Additionally, since it may not be necessary for a candidate to run in a primary election as a prerequisite to running in a general election, starting the twelve-month period from the date of the general election assures that the residency requirement will be the same for all candidates whether or not they become candidates through the primary process.

Support for the Board's interpretation is found in the case of *Grieco v. Bader*, 43 Misc. 2d 245, aff'd. 21 A.D. 2d. 751 (1964), which interpreted the Article III §7 twelve-month residency provision to refer to that twelve-month period immediately preceding the November general election.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #15

Date: October 21, 1975

Questions Presented:

1. Does §454 of the Election Law preclude a candidate for judicial office from paying the cost of circulating nominating petitions in his behalf?

2. Does §454 preclude such a candidate from paying for tickets to political affairs such as dinners and cocktail parties and from contributing funds to a political committee to expend on his behalf?

Discussion:

Section 454 of the Election Law provides that "no candidate for judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for judicial office may make such legal expenditures other than contributions, as are authorized by §439 of this Article."

The extent of the §454 prohibition is somewhat unclear, for §439 was repealed by Chapter 604 of the Laws of 1974. Chapter 604, however, substantially reenacted the provisions of §439 in §483-a. A question arises, therefore, whether the reference to repealed §439 in §454 should be construed to be a reference to §483-a.

The General Construction Law (§80) provides: "If any provision of the law be repealed and, in substance, reenacted, a reference in any law to such repealed provision shall be deemed a reference to such reenacted provision." Because the provisions of §439 have in substance been reenacted in §483-a, the Board concludes that §80 of the General Construction Law, requires that the reference to §439 in §454 be construed to be a reference to §483-a.

As noted above, §454 permits a candidate for judicial office to make those legal expenditures set forth in §483-a, including those expenditures involved in circulating nominating petitions. Section 454, however, expressly prohibits any such candidate from making "contributions." If the cost of a ticket to a political affair such as a dinner or a cocktail party exceeds the actual cost of food and beverages provided the ticket purchaser, the total ticket cost would constitute a contribution.

The Board concludes, therefore, that §454 prohibits a judicial candidate from purchasing such tickets where the purchase price is an amount in excess of the cost of any food or beverage provided the ticket purchaser. Since this interpretation may be at variance with established practice, the Board intends that this opinion be prospective only.

The Board, however, does not consider personal funds which are transferred by a judicial

candidate to a political committee and spent on the candidate's behalf to be "contributions." It is the Board's opinion that §454 does not prohibit such a transfer so long as the committee is authorized by the candidate, all transferred funds are spent solely on the candidate's behalf, and all unexpended funds are returned to the candidate.

This opinion letter does not in any way attempt to interpret or comment upon any rule of ethics that may have been formulated for or made applicable to a candidate for judicial office by any other body.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #16

Date: October 24, 1975

Question Presented:

If a committee is established to solicit and distribute funds for political purposes, does it become a political committee (as defined by §467(a) of the Election Law) if it solicits funds and distributes them (a) to any candidate or political committee in the discretion of the committee, (b) to a particular candidate or political committee as specified by the contributor, or (c) to a candidate or political committee of a particular political party specified by the contributor but where the committee is left with the discretion to choose between candidates or political committees of that particular party?

Discussion:

Section 467(a) defines the term "political committee" in pertinent part as a "combination of one or more persons operating or cooperating to aid or to promote the success or defeat of a political party or principle..."

In 1975 Formal Opinion #13, the Board stated that so long as a committee does not "solicit or expend funds for or on behalf of any specific party(s) or candidate(s), the [committee] would not be a political committee as that term is defined in §467(a)." In accordance with that opinion, if a committee merely accepts funds from a contributor that are forwarded in the contributor's name to a particular candidate or political committee as specified by such contributor, it would not itself constitute a political committee. If, however, the committee has the discretion to allocate contributed funds between candidates or political committees, it would itself constitute a political committee.

Where a contributor designates a specific party for his funds but gives the committee discretion to allocate such funds among particular candidates or political committees of that party, it is the Board's opinion that the committee is a political committee. This conclusion results from the fact that the committee has the ultimate discretion to aid or support specific candidate election campaigns, and therefore, could affect the outcome of the selected races.

Finally, if a committee is a political committee, it must file those statements required by §§481 and 473 of the Election Law. Funds transferred from a political committee to a candidate or another political committee must be reported by the recipient as a contribution and by the donor as a transfer.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1975 Opinion #17

Date: December 18, 1975

Question Presented:

Is a charitable contribution by a candidate for a judicial office in violation of §454 of the Election Law?

Discussion:

Section 454 provides that:

> "No candidate for a judicial office shall directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for judicial office may make such legal expenditures, other than contributions, as are authorized by §439* of this article."

The term "contribution", however, is not defined in the Election Law.

Section 454 is located within Election Law Article 16, which Article is entitled "Violations of the Elective Franchise," and the section regulates expenditures made in connection with an election rather than all expenditures made by a judicial candidate. It seems clear from the placement and language of the statute that the Legislature enacted §454 to prohibit political contributions by judicial candidates and not to restrict contributions by such candidates to bona fide charitable institutions.

Thus, it is the Board's opinion that §454 only restricts contributions for political purposes.

* For an interpretation of this reference, see 1975 Opinion #15.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1976 Opinion #1

Date: January 19, 1976

Question Presented:

If a corporation establishes a political committee as a separate entity from the corporation, will any such committee be deemed "an organization financially supported in whole or in part" by a corporation and bound by §480(b) of the Election Law if the corporation utilizes a payroll deduction system to facilitate contributions to the committee, or if the corporation permits its officers or employees to work for the committee on company time?

Discussion:

Section 480(a) provides in pertinent part that:

> "No corporation...doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use...any money or property...in aid of any political party, committee or organization...or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatsoever...(emphasis added)

Section 480(b) provides that:

> "Notwithstanding the provisions of subdivision (a) of this section, any corporation or an organization financially supported in whole or in part by such corporation may make expenditures, including contributions, not otherwise prohibited by law, for political purposes, and in an amount not to exceed $5,000 in the aggregate in any calendar year." (emphasis added)

As noted, the §480(a) prohibition on the use of any corporate funds for political purposes does not apply to "...a corporation or association organized or maintained for political purposes only..." The Board is of the opinion that if a corporation establishes a political committee that is itself a corporation, and if the political committee limits its activities to political purposes only, the committee would fall within the §480(a) exemption.

As the Board noted in its 1975 Opinion #5, expenses incurred by a corporation relating to the establishment and administration of a political committee are treated as corporate contributions to the committee. If a committee exempted under §480(a) receives such corporate financial support, however, it would not be bound by the §480(b) limitation as "an organization financially supported in whole or in part" by a corporation. This is because it would be unreasonable to limit such an exempted committee to $5,000 in aggregate calendar year political expenditures if it accepts corporate contributions. For example, if the $5,000 limit is deemed to apply to political committees established by a political party or its candidates, such committees would be forced to

refuse corporate contributions in order to escape from the $5,000 ceiling on expenditures.

In addition, the Board is of the opinion that the §480(b) provision would not limit a political committee which is not a corporation to $5,000 in calendar year expenditures if it accepts corporate financial support.

lt is clear from the legislative debates on Chapter 604 that §480(b) was enacted solely to permit corporations to make limited political expenditures. The Board believes that the Legislature never intended that §480(b) apply to organizations either not covered by or exempted from the provisions of §480(a) or that corporate contributions have such a restrictive effect on the expenditure limits of political committees which accept them.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1976 Opinion #2

Date: January 19, 1976

Question Presented:

If a contributor to a political committee designates a specific political party for his contribution but gives the committee authority to allocate his contribution among the designated party's candidates or political committees, may the contribution be made in the name of the political committee or must it be made in the name of the original contributor?

Discussion:

Section 482 of such law provides in pertinent part that:

> "No person shall in any name except his own, directly or indirectly, make a payment or promise of payment to a political committee or to any officer or member thereof, or to any person acting under its authority or in its behalf..."

Because both the contributor and the political committee exercise discretion over the selection of the ultimate recipient of the contribution, it is the Board's opinion that §482 requires that the contribution be made and reported in both names.

In addition, the dollar amount of any such contribution would be assessed against the original donor's overall contribution limit under §479(h) and against the maximum amount that the recipient could accept from the original donor under §479(a). If the political committee is not a constituted or party committee and if it has not been authorized by the recipient, the amount of the contribution would also have to be assessed against the maximum amount that the recipient could accept from the committee under §479(a).

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1976 Opinion #3

Date: January 25, 1976

Question Presented:

If a vacancy in the office of state or county committeeman results from a tie vote in a primary election, does §17 of the Election Law require that any such vacancy be filled by one of the persons receiving the tie vote?

Discussion:

Section 17(1) of such law provides:

> "In case of the death, declination, disqualification, removal from district or removal from office of a member of the state or county committee, or failure to elect a member, as by reason of a tie vote, the vacancy created thereby shall be filled by the remaining members of the committee by the selection of an enrolled voter of the party qualified for election from the unit of representation as to which such vacancy shall have occurred."

It is the Board's opinion that a state or county committee may select any "enrolled voter of the party qualified for election from the unit of representation as to which such vacancy shall have occurred..." and is not required to select one of the persons receiving the tie vote that caused the vacancy. While the creation of a vacancy is a precondition to the ability of a state or county committee to exercise its appointive power, the statute is clear that once a vacancy is created, any enrolled member of the same party residing in the same unit of representation is eligible to fill the vacancy.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1976 Opinion #4

Date: April 23, 1976

Question Presented:

How is a political contribution by a partnership treated for purposes of determining the contribution limitations and complying with the reporting requirements of Article 16-A of the Election Law?

Discussion:

Section 482 of the Election Law provides in pertinent part that:

> "No person shall in any name except his own, directly or indirectly, make a payment or promise of payment to a political committee...nor shall any such committee knowingly receive a payment or promise of payment...in any name other than that of the person or persons to whom it is made."

It is the Board's opinion that if a partnership makes a political contribution from partnership funds, §482 requires that the contribution be made and reported in the names of the members of the partnership. Furthermore, for purposes of determining compliance with the receipt limitations of §479, any such contribution must be allocated to each partner according to the percentage of partnership income to which he is entitled under the partnership agreement.

The above allocation need not be followed, however, if a partnership contribution is made together with a writing that the contribution be allocated to specific individual partners in amounts in excess of those partners' percentage entitlements to partnership income, and if the designated partners' claims to accrued or future partnership income are correspondingly reduced by the amounts of any such excess allocations.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1976 Opinion #5

Question Presented:

If an association of lawyers makes expenditures in connection with publicizing its findings as to the qualifications of candidates for judicial office, does it become a political committee as that term is defined in §467(a) of the Election Law?

Discussion:

In an apparent effort to promote the nomination or election of qualified candidates for judicial office and to prevent the nomination or election of unqualified candidates for such office, bar associations traditionally make findings as to the professional fitness of such candidates and expend funds in publicizing such findings among their members and the general public. The Board has received inquiries whether such expenditures make the associations political committees under the Election Law.

Section 467(a) defines the term "political committee" in pertinent part as a

> "...combination of one or more persons operating or cooperating to aid or take part in the election or defeat of a candidate for public office or to aid or take part in the election or defeat of a candidate for nomination at a primary election or convention..."

In 1975 Op. #13, the Board formulated the following test to determine whether or not an organization is a "political committee" under §467(a): Does the organization solicit or expend funds for or on behalf of any specific party(s) or candidate(s)?

We therefore conclude that if an association of lawyers expends funds in excess of $50 (see Title 9, New York Codes, Rules and Regulations Part 6200) in publicizing its findings as to the fitness of candidates for judicial office (other than for a regularly scheduled membership publication containing the findings) among its members or the public, it would be a political committee; for the publication of such findings has the effect of aiding or promoting the success or defeat of particular candidates for judicial office.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1976 Opinion #6

Date: May 5, 1976

Question Presented:

Does a banking institution make a political contribution if it permits a political party, committee or organization to use a room set aside by the institution for use by community organizations?

Discussion:

In the request for an opinion it is noted that some of the bank's branch offices have so-called "community rooms" that are available for use by community organizations for their local activities. It is our understanding that the rooms are made available to any community based group, political or otherwise and that no charge is assessed for their use.

It is our opinion that if a "community room" is regularly made available to any legitimate community organization, no preference is given to one organization over another in scheduling the use of any such facility, and such room is not made available for use by any candidate for public or party office or by any political committee supporting any such candidate, the use of such a room by a political party, committee or organization does not create a political contribution on the part of the banking institution.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1976 Opinion #7

Date: June 2, 1976

Questions Presented:

1. If a state committee holds a meeting for the purpose of designating a candidate for a party primary, does §131 of the Election Law require that the committee meet until such time as a majority designation is made?

2. If such a committee does not make a majority designation, may it certify any candidate who receives 25% or more of the total vote cast on any ballot?

Discussion:

Section 131 of the Election Law provides for the holding of a meeting by a party's state committee for the purpose of nominating candidates for a primary election. Section 131.2(b)(1) provides that "the state committee shall make a designation by majority vote...", and §131.2(b)(3) states that "In addition to such designation a state committee shall also certify each candidate who receives 25% or more of the total vote cast in such committee on any ballot who makes written demand, ...for entry of his name as a candidate for the nomination to be made at a primary election."

It is the Board's opinion that the above cited provisions do not require a state committee to make a designation, but merely provide that if a designation is made, it be by majority vote. Thus, if a good faith effort is made at a meeting of a state committee to attain a majority in favor of any specific candidate, and if the committee is unable to attain such a majority, it is not required by §131 to continue to meet until such a majority is attained.

In response to the second question, it is the Board's opinion that a designation by majority vote is not a condition precedent to a certification of any candidate who receives 25% or more of the total vote cast on any ballot. Subparagraph (3) merely requires a state committee to certify the name of any candidate who receives 25% or more of the total vote cast on any ballot and who makes a duly acknowledged written demand for certification. The committee's affirmative responsibility is separate and apart from any responsibility it may have to certify its designated candidate.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #1

Date: February 16, 1977

Question Presented:

Is a savings bank a corporation within the meaning of §480 of the Election Law, which section permits political expenditures by corporations of up to $5,000 in any calendar year?

Discussion:

Section 480 of the Election Law provides in pertinent part that:

> "No corporation or joint stock association doing business in this state...shall directly or indirectly pay or use...any money or property for or in aid of any political party, committee or organization...
>
> "b. Notwithstanding the provisions of subdivision a of this section, any corporation or an organization financially supported in whole or in part by such corporation may make expenditures, including contributions, not otherwise prohibited by law, for political purposes, in an amount not to exceed $5,000 in the aggregate in any calendar year."

The Election Law, however, does not define the term corporation.

Pursuant to Article 6 of the Banking Law, 4 McKinney's 229 et seq., savings banks are incorporated. Since §480 of the Election Law does not differentiate between types of corporations, we conclude that its provisions are applicable to savings banks incorporated pursuant to the provisions of the Banking Law.

This opinion assumes that savings banks are not otherwise prohibited by law from making political expenditures.

1. In 1974 Op. #5, the Board concluded that the term corporation as used in §480 applied to not-for-profit corporations.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #2

Date: April 18, 1977

Questions Presented:

1. Do the political expenditure limitations for a corporation contained in §480(b) of the Election Law apply to expenditures made by a corporation in "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation..." pursuant to 2 U.S.C. §441(b)(2)(c), with respect to elections to federal office?

2. Do the political expenditure limitations for a corporation contained in §480(b) of the Election Law apply to political expenditures made by a corporation "doing business in this state" in connection with elections held outside this state?

Discussion:

In response to question one, it is the opinion of the Board that in regard to Federal elections, the Federal Elections Campaign Act Amendments of 1974, Public Law 93-443, 93rd Congress, Second Session supersede and preempt §480 of the New York Election Law. Support for this opinion is found in an opinion of counsel of the Federal Election Commission Notice 1976-12, dated January 21, 1976 and reproduced in Federal Register Vol. 41, No. 18 at page 3990. Since the Board does not exercise jurisdiction over the filing of campaign financial reports of candidates for Federal office, this opinion does not intend in any way to interpret the provisions of Federal law. It should be noted that 2 U.S.C. §441(b)(2)(c) is limited to only corporations which expend funds for federal elections.

In response to question number two, it is the opinion of the Board that political expenditure limitations for a corporation contained in §480(b) of the Election Law do not apply to political expenditures made by a corporation "doing business in this state" in connection with elections held outside this state.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #3

Date: May 27, 1977

Question Presented:

Can police officers, while off duty and in civilian clothes, circulate designating petitions or otherwise volunteer their services to political organizations?

Discussion:

In rendering an opinion on the question presented, it is necessary to consider the provisions of section 426 of the Election Law and section 144 of the Second Class Cities Law, both of which would pertain to police officers in the City of Albany.

Section 426, subdivision 1 of the Election Law specifically provides a policeman who:

> "Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen...is guilty of a misdemeanor."

Section 426, subdivision 3 of the Election Law specifically provides that a policeman who:

> "Contributes any money directly or indirectly to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee is guilty of a misdemeanor."

Likewise section 144 of the Second Class Cities Law provides:

> "No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention except in the performance of duty relating to his position as such officer or member. He shall not solicit any person to vote at any political primary or election, nor challenge, nor in any manner attempt to influence any voter thereat. He shall not be a member of any political committee. Any officer or member violating any provision of this section shall be dismissed from office."

These statutes have been declared by the courts to be clear, unambiguous and constitutional in setting forth what activities police officers are prohibited from doing in regard to political activities. See *Lecci v. Cahn*, 37 A.D. 779, leave to appeal denied 29 N.Y.2d 468, cert. denied 405 U.S. 1073; and (cf) *Perry v. St. Pierre*, 518 F.2d 184 (2d Cir.).

Based upon the above mentioned statute and cases, it is the opinion of the Board that a request to have a voter sign a designating petition constitutes the solicitation of a person to vote at any

political primary or election. Therefore, the circulating of designating petitions by a policeman in the City of Albany, even if he is off duty and in civilian clothes, would violate the provisions of section 144 of the Second Class Cities Law.

The second issue raised involves the volunteering of services by a policeman in political campaigns. Since the Board is presently researching and considering the question of participation of police officers in political campaign activities, we do not intend to issue a formal opinion at this time.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #4

Date: May 27, 1977

Questions Presented:

May a police officer, employed by the City of Binghamton, actively participate in a primary or general election as a candidate for the office of sheriff?

Discussion:

In rendering an opinion on the question presented, it is necessary to consider the provisions of section 426 of the Election Law and section 144 of the Second Class Cities Law, both of which would pertain to police officers in the City of Binghamton.

Section 426 of the Election Law provides in part:

> "§426. Misdemeanors concerning police commissioners or officers or members of any police force. Any person who, being a police commissioner or an officer or member of any police force in this state:
>
> 1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or"

Likewise section 144 of the Second Class Cities Law provides:

> "§144. Political activity prohibited. No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention except in the performance of duty relating to his position as such officer or member. He shall not solicit any person to vote at any political primary or election, nor challenge, nor in any manner attempt to influence any voter thereat. He shall not be a member of any political committee. Any officer or member violating any provision of this section shall be dismissed from office."

The Attorney General of the State of New York, in an opinion dated April 19, 1974, (1974 Op. Atty. Gen. 124) stated that a police officer may be a candidate for or participate in an election for the office of county sheriff providing he complies with the conditions set forth in Election Law section 426 or any ordinance or charter provision prohibiting political activity by such officer. The State Board of Elections concurs in that opinion.

In the case of *Perry v. St. Pierre*, 518 F2d 184, section 88 of the City Charter for Plattsburgh provided:

> "It is unlawful for any police officer to solicit any person to vote at any political caucus, primary or election for any candidates, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary, or any election or to be a member of any political committee; and any person violating the provisions of this section shall forfeit his position under the city government."

The U. S. Court of Appeals for the Second Circuit in upholding the constitutionality of section 88 (which is almost identical to section 144 of the Second Class Cities Law) held that "...his act of running for office perforce 'attempt[ed] to influence any voter at...any election....' A candidacy must by its very purpose, influence voters one way or another...."

In view of the above-mentioned statutes, opinion and case, it is the opinion of the Board that although a policeman may be permitted to be a candidate for the office of sheriff providing he does not violate the provisions of section 426 of the Election Law, section 144 of the Second Class Cities Law, which makes it mandatory that a policeman be dismissed from the police force if he solicits votes or influences votes at a primary or general election, would prevent a policeman in the City of Binghamton from being a candidate for the office of sheriff while he is an active member of the police force.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #5

Date: May 31, 1977

Question Presented:

May a local legislative body submit to a referendum a question seeking solely an advisory opinion of the voters? The specific question which the town board wishes to place on the ballot in the forthcoming November general election is:

"Shall the Town Board of the Town of Stillwater abolish the Town Police Department?"

Discussion:

The Town Police Department of the Town of Stillwater was established in 1975, and pursuant to Article 10 of the Town Law is a department of the town government. The Municipal Home Rule Law provides that a local government may both create and discontinue departments of its government (Municipal Home Rule Law §10, Subdiv. 1, para. (ii), subpara. a (1). Moreover, neither a mandatory nor permissive referendum on a local law discontinuing a department of a local government is authorized by the State Constitution or by State statute. Therefore, the Town Board of the Town of Stillwater has the sole authority to abolish the Town Police Department by local law without submitting such local law to a referendum.

lt has long been the law in New York that unless specifically authorized by the State Constitution or by State statute, no proposition may be submitted to a referendum (*Mills v. Sweeney*, 219 N.Y. 213; *McCabe v. Voorhis*, 243 N.Y. 401). Moreover, in the absence of express State statutory authority to do so, an advisory referendum seeking the opinion of the electorate on a particular issue is not permissible (*Matter of Kupferman v. Katz*, 19 A.D.2d 824, aff'd. 13 N.Y.2d 932).

Since the Town Board has the sole authority to discontinue the Town Police Department, and since neither the State Constitution nor a specific provision of State Law authorizes an advisory referendum on the issue, it is the Board's opinion that the question of whether or not the Town Board should abolish the Town Police Department may not be placed on the official ballot in order to obtain an advisory opinion of the voters.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #6

Date: June 17, 1977

Question Presented:

What is the application of section 480 of the New York Election Law with regard to the charging and reporting of the costs for establishing and administering a separate political fund by a corporation?

Discussion:

From the facts presented to the board it appears that a corporation which is doing business in New York plans to expend corporate funds to establish and administer a separate political fund. The fund would make contributions to Federal candidates in and out of New York State and to state and local candidates in states other than New York State. Also, while it is not the present intention of the fund to make contributions to state and local candidates in New York State the fund may decide to make such contributions in the future.

This set of facts presents the question:

> How do the provisions of section 480 of the Election Law apply to a corporation doing business in New York State which pays for the establishment and administration of a separate political fund which makes contributions in connection with federal elections both in and out of New York State, and which separate fund makes contributions in connection with state and local elections within and without New York State?

This question was answered in 1975 Opinion No. 5 and in 1977 Opinion No. 2 of the New York State Board of Elections.

In 1977 Opinion No. 2 the Board held that the Federal Election Campaign Act Amendments of 1974 supersede and preempt section 480 of the Election Law so that the State Board of Elections does not exercise jurisdiction over the filing activities of candidates for Federal office.

In 1975 Opinion No. 5 and 1977 Opinion No. 2, the opinion of the Board was expressed that if the corporation pays for the establishment and administration of a separate political fund which makes contributions in connection with federal elections both in and out of New York State and in connection with state and local elections outside New York State, the provisions of section 480 of the Election Law would not apply and the costs of the fund's establishment and administration would not be charged against the corporation's section 480 limit of $5,000 per calendar year.

Since the above described expenditures by the corporation will not be charged against the corporation's section 480 limitation, it need not be reported by the separate fund to the Board of

Elections under the provisions of section 473 of the Election Law.

However, if the separate fund makes contributions in connection with federal, state and local elections both within and without New York State, the cost incurred by the corporation for the establishment and administration of the fund must be charged against the corporation's section 480 limit.

As was stated in the 1975 Opinion No. 5 the amount to be charged against the $5,000 corporation limitation of section 480 would be equivalent to the percentage amount of the total expenses of the separate fund as determined by a fraction. In this particular case the numerator of the fraction would be the amount of contributions by the fund for New York state and local elections and the denominator would be the amount of contributions by the fund for federal elections plus contributions by the fund for New York state and local elections plus contributions by the fund for state and local elections outside New York State.

If the fund makes contributions in connection with elections within New York State, its activities would constitute a "political committee" as defined in section 467 of the Election Law. The fund must then comply with all of the reporting provisions of Article 16-A of the Election Law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #7

Date: August 8, 1977

Question Presented:

May the parent of a candidate for nomination to public office (other than a statewide office) contribute to the candidate or the candidate's political committee up to a maximum amount equal to the number of enrolled voters in the candidate's party in the district in which he is a candidate multiplied by $.25, provided that the total amount so contributed by the candidate's child, parent., grandparent, brother and sister, and the spouses of such persons, does not exceed such maximum amount?

Discussion:

The contribution limits contained in §479(a)(2) of the Election Law will vary from candidate to candidate depending on several factors, including whether the contribution is made by a member of the candidate's family or by a contributor outside the candidate's family. For purposes of §479 of the Election Law, a candidate's family consists of his children, parents, grandparents, brothers and sisters, and the spouses of such persons.

Section 479(a) (2) provides in part:

> "In any...election...or nomination for (any public office other than an office to be voted on by the voters of the entire state), no contributor may make a contribution to any candidate or political committee...which is in the aggregate amount greater than...the product of the total number of enrolled voters in the candidate's party in the district in which he is a candidate multiplied by $.05,...but in no event shall any such maximum exceed fifty thousand dollars or be less than one thousand dollars; provided, however, that the maximum amount which may be so contributed or accepted, in the aggregate, from any candidate's child, parent, grandparent, brother and sister, and the spouse of any such person, shall not exceed... an amount equivalent to the number of enrolled voters in the candidate's party in the district in which he is a candidate multiplied by $.25, or twelve hundred fifty dollars, whichever is greater... but in no event shall any such maximum exceed one hundred thousand dollars." (Emphasis supplied.)

It is the Board's opinion that as a general rule, a contributor is limited to a maximum contribution of $.05 per voter enrolled in the candidate's party in the district in which he is a candidate. However, the Legislature has provided that under certain circumstances, this maximum amount is to be modified. For example, in no event may an individual contribute more than $50,000 to a candidate in a non-statewide primary. Likewise, in districts where there are relatively few voters enrolled in the candidate's party, the Legislature has provided that the maximum limit need never be less than $1,000.

The Legislature has also chosen to apply a different limitation on the amount that may be contributed by certain family members specified in §479 of the Election Law. The specified family members, may contribute up to $.25 per enrolled voter, provided that the total amount contributed by all of the specified family members does not exceed $.25 per voter enrolled in the candidate's party in the district in which he is a candidate.

In the Board's opinion, the Legislature intended that the individual limitations on contributions contained in §479(a)(2) of the Election Law should not apply to certain close family members, but rather that any contributions by said family members would be considered in the aggregate and the total family contribution would be subject to a limitation of $.25 per enrolled voter in the candidate's district. Accordingly, the parent of a candidate for nomination to a public office (other than a statewide office) may contribute up to $.25 per voter enrolled in the candidate's party in the district in which he is a candidate provided that the sum of all contributions from the candidate's children, parents, grandparents, brothers and sisters, and the spouses of any such persons, does not exceed said limitation of $.25 per enrolled voter. Of course, the contribution would be subject to any other limitations that may be contained in §479 of the Election Law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #8

Date: August 12, 1977

Questions Presented:

1. Would a direct loan by the Company to a candidate be considered "in the regular course of the Company's business" under Section 479(f)(1)? If not, to the extent such a loan is not repaid by the date of the election (and therefore, deemed a "contribution"), is it subject to the $5,000 limitation of Section 480(b) or the larger limitations of Section 479(a)(2)(ii)? If so, is there any limitation on the amount that may be loaned to any one candidate?

2. If the Company guarantees a loan to a candidate by a bank, is Section 479(f)(2) applicable to the extent the loan is not repaid by the date of the election? If so, is the "contribution" subject to the $5,000 limitation of Section 480(b) or the larger limitations of Section 479(2)(ii)? If not, are there limitations on the amount of the loan to any one candidate that may be guaranteed?

3. Does the extension of credit for services rendered constitute a loan? If so, would such an extension of credit be considered to be in the regular course of the Company's business, thereby making Section 479(f)(1) inapplicable? If not, do either Section 480(b) or Section 479(a)(2)(ii) limit the amount of credit which may be extended?

4. What is the maximum lawful contribution to a single candidate in the current mayoral race in New York City under Section 479(a)(2)(ii)?

Discussion:

With regard to the first question presented it would appear from the facts set forth in a letter to the board that the company is incorporated under the laws of the State of New York, and was organized for the purpose of extending loans or guaranteeing loans from banks for the purpose of constituency building campaigns for the public and private sector and for political campaigns. It engages primarily in enhancing the public image of the company or candidate who engages its services. Since a public relations firm services a selective clientele and does not traditionally loan money in the regular course of its business, any loan by the company which is not repaid by the date of the election would be deemed a contribution in accordance with the provisions of section 479(f)(1) of the Election Law. If the amount not repaid to the corporation on the date of the election exceeds $5,000, the corporation would be in violation of section 480(b) of the Election Law which limits corporate contributions to $5,000.

In answer to the second question if the company guarantees a loan, and it is not repaid by the date of the election thereby making the company liable for its repayment, it would be deemed a contribution by the company and if the amount exceeds $5,000, the company would be in

violation of section 480(b) of the Election Law.

In response to the third question, if the company performs service for the candidate or his committee and bills the candidate or his committee for the services performed, the extension of credit for the services performed would not be considered a loan. The amount of the credit extended is not limited. If the candidate or his committee has not paid for the services by the date of the election, the amount owed to the company would not be considered a contribution by the company. The candidate or treasurer of a political committee if the debt is owned by such committee must continue to file financial statements with the appropriate board of elections until such time as the debt has been legally terminated. It should be noted, however, that if a company extends credit with the intent to eventually write it off as a bad debt, in order to evade the contribution limitations of section 480(b), the company would face prosecution for a violation of section 485 of the Election Law.

Finally with respect to question number 4, the maximum lawful contribution to a single candidate in the current mayoral race in New York City can be obtained by contacting the New York City Board of Elections to ascertain the exact registration and enrollment figures for the purposes of contributions under section 479 of the Election Law.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #9

Date: August 31, 1977

Questions Presented:

1. Is there any monetary ceiling or limitation imposed by New York State law on the amount of money that may be loaned to a candidate or a political committee by a banking corporation in New York State in the regular course of its business?

2. Is there any monetary ceiling or limitation on the amount of money that may be loaned in the regular course of business by a banking corporation in New York State to an individual whose stated purpose is to contribute the proceeds of the bank loan to a candidate or political committee?

Discussion:

With regard to the first question, it should be noted that in Opinion No. 6 of 1974, the Board determined that the provisions of section 480(b) of the Election Law, which limit the amount of money that a corporation may expend or contribute for political purposes, do not apply to a loan made by a banking corporation in the regular course of its business. Also, section 479(f)(1) of the Election Law specifically exempts loans made by persons, firms, associations or corporations in the regular course of their business from being considered as contributions if the loans are not repaid by the date of the election. It is the Board's opinion that section 479 of the Election Law was not intended to limit the amount of money that a banking corporation may loan in the regular course of its business and that the above mentioned exemptions not only apply to the making of the loan but also apply to the amount of money which may be loaned. Thus there is no monetary ceiling on the amount of money that may be loaned to a candidate or a political committee by a banking corporation doing business in the State of New York in the regular course of its business.

With regard to the second question, the Board is of the opinion that section 479(h) refers to loans made directly to political committees or candidates and does not refer to loans made by lending institutions in the regular course of their business to persons who intend to use the loan for personal political contributions. Therefore, there is no limitation on the amount of money that a banking corporation in New York State may loan to an individual who specifically intends to use the money loaned for political purposes.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #10

Date: October 18, 1977

Question Presented:

What is the effect that Election Law section 479(f) has on a borrower's obligation to repay a loan not repaid by the date of the election.

Discussion:

Section 479(f) of the Election Law states as follows:

> "f. 1. A loan made to a candidate or political committee, other than a constituted committee, by any person, firm, association or corporation other than in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the primary, general or special election, as the case may be, a contribution by such person, firm, association or corporation.
>
> A loan made to a candidate or political committee, other than a constituted committee, by any person, firm, association or corporation in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the primary, general, or special election, as the case may be, a contribution by the obligor on the loan and any other person endorsing, cosigning, guaranteeing, collateralizing or otherwise providing security for the loan."

It is the opinion of the Board that since section 479 of the Election Law establishes contributions and receipts limitations to contributions to candidates, the provisions of section 479(f) establish contribution limitations of loans which are not repaid by the date of a primary, general or special election. Such unpaid loans are deemed to be a contribution in order to prevent contributors who have reached their contribution limitations from exceeding their contribution limitations by giving money to candidates or their committees as a loan knowing that the loan will never be repaid. Therefore, a loan by a person, firm, association or corporation, other than in the regular course of the lender's business, which is not repaid by the date of the primary, general or special election, is considered to be a contribution only for the purpose of computing the maximum amount of the money which may be contributed by the lender to the candidate or political committee under the other appropriate section of section 479 of the Election Law. The converting of the loans into a contribution for limitation purposes does not affect the underlying obligations of the borrower to repay the loan.

STATE BOARD OF ELECTIONS

New York State
Board of Elections
1977 Opinion #11

Date: December 23, 1977

Question Presented:

Can a subsidiary corporation make a political contribution of $5,000 to a political campaign independently of its parent corporation; or must a contribution by a subsidiary corporation be combined with the contribution of its parent corporation for the purposes of computing the contribution limitations of section 480(b) of the Election Law?

Discussion:

The Election Law was recodified by Chapter 233 of the Laws of 1976. The effective date of the recodification was December 1, 1977. Section 480, which sets forth the limitations on corporate contributions has been incorporated verbatim into the recodification as section 14-116.

The facts as presented to the board are that a parent corporation (a New York corporation) owns 100% of the stock of four subsidiary corporations (two domestic and two foreign) and that each corporation plans to contribute $5,000 in 1977 to political candidates in New York State, for a total contribution of $25,000.

The Board is further requested to an opinion on whether or not the limitation for contributions would be different for a foreign corporation, not doing business in New York State, that was 100% owned by a New York corporation.

Section 14-116 of the Election Law states:

> "§14-116. Political contributions by certain organizations. a. No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stock-holder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violations, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor.
>
> "b. Notwithstanding the provisions of subdivision a of this section, any corporation or an organization financially supported, in whole or in part, by such corporation may make

expenditures, including contributions, not otherwise prohibited by law, for political purposes, in an amount not to exceed five thousand dollars in the aggregate in any calendar year."

Section 14-116(a) prohibits any contributions by corporations which are doing business in New York State unless they are organized for political purposes only. However, in order to discourage the possibilities of hidden corporate contributions, the Legislature enacted the predecessor of §14-116(b) which permitted a corporation to make limited contributions and be listed for such contributions. Subdivision (b) of §14-116 permits any corporation or an organization which is financially supported in whole or in part by such corporation to contribute up to $5,000 for political purposes in a calendar year. Section 14-116(b) does not distinguish between parent corporations and subsidiary corporations, nor does section 14-116(b) mandate that expenditures or contributions by subsidiary corporations be combined with the contributions of the parent corporation so that the parent and its subsidiary are treated as one entity for the purposes of computing the contribution limitations of §14-116(b).

It is well settled in New York law that a subsidiary corporation is a distinct legal entity and the fact that one corporation owns all or the majority of the stock of another corporation does not destroy the identity of the subsidiary as a distinct legal entity.

The majority of the Board is of the opinion that as long as the subsidiary remains a distinct legal entity, the subsidiary may contribute up to $5,000 per calendar year independently of what is contributed by the parent corporation. However, if the parent corporation transfers funds to the subsidiary for the purpose of furthering the subsidiary's political activities, or if the subsidiary corporation transfers funds to the parent corporation for the purpose of furthering the parent's political activities, the contribution of the subsidiary will be deemed to be a contribution by the parent corporation and vice versa and will be subject to a combined contribution limitation of $5,000.

Although section 14-116(a) of the Election Law speaks of contributions by corporations that are doing business in New York, section 14-116(b) of the Election Law refers to contributions by any corporation. From the wording of section 14-116(b) as contrasted with the wording of section 14-116(a), it is clear that the legislative intent was to limit the amount that any corporation, whether it is domestic or foreign, could contribute to state and local candidates in New York State. The majority of the Board is of the opinion that, subject to the above consideration, any corporation, whether domestic or foreign, not organized for political purposes, may contribute up to $5,000 in any calendar year for state and local political purposes in New York State.

Commissioner Remo J. Acito dissents on the grounds that even though a subsidiary corporation is a distinct and separate corporation, it is contained within the meaning of the portion of section 14-116 which limits contributions by "an organization financially supported in whole or in part by such corporation," and that any exchange of funds between corporations, whether it is from the parent to the subsidiary or from the subsidiary to the parent, would indicate that one of the corporations is financially supported in whole or in part by the other corporation. Any contributions for political purposes by either corporation should be deemed to be a contribution

by both corporations and should be subject to a combined contribution limitation of $5,000.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #1

Date: January 4, 1978

Question Presented:

Whether the fact that a proposed political action committee will be composed entirely of senior and middle management officers of the Security Trust Company make the proposed political action committee a part of the Company and thereby limit contributions by the political action committee to $5,000 in any calendar year?

Discussion:

The Board is of the opinion that although the Bank contributes to the political action committee by paying for the establishment and administration of the committee, the committee itself will not be considered to be a part of the Bank and the committee will not be limited in its contributions as long as the funds of the committee remain separate and distinct from the funds of the Bank and are not commingled with the Bank funds. The committee must also have the discretion to allocate contributed funds among candidates and political committees. The amount of the Bank's expense in establishing and administering the committee shall be charged against the bank's contribution limitations, as set forth in the Board's 1975 Opinion No. 5.

The Board is also of the opinion that if participation on the committee by senior and middle management officers of the Bank is understood to be a function of the office or position they hold with the Bank, that percentage of the salaries of the senior and middle management officers of the Bank that is attributable to their activities with the committee shall be allocated by the Bank as a contribution to the committee and is subject to the Election Law which prohibits corporate contributions in excess of $5,000 per calendar year.

1. "Assume that although the Bank itself will have no direct control over the political action committee, the committee will be composed entirely of Bank officers."

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #2

Date: January 13, 1978

Question Presented:

Is it permissible for a committee to maintain more than one bank account at separate banking institutions?

Discussion:

Section 14-118 of the Election Law states in part:

> "...No officer, member or agent of any political committee shall receive any receipt, transfer or contribution, or make any expenditure or incur any liability until the committee shall have chosen a treasurer and depository and filed their names in accordance with this subdivision. There shall be filed in the office in which the committee is required to file its statements under section fourteen-one hundred ten of this article, within five days after the choice of a treasurer and depository, a statement giving the name and address of the treasurer chosen, the name and address of any person authorized to sign checks by such treasurer, the name and address of the depository chosen and the candidate or candidates in whose election or defeat the committee is to aid or take part;..."

Although the language of the statute refers to "depository" in the singular, the Board is of the opinion that the legislative intent in establishing the above requirements was to insure that there is complete disclosure of all political bank accounts of a candidate or political committee. Therefore, the Board is of the opinion that the candidate or political committee may have more than one depository as long as the candidate or political committee reports on its "Designation of Treasurer and Depository" all of the depositories in which political funds are held.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #3

Question Presented:

May contributions to a candidate's political committee for this year's campaign be used to retire liabilities of a political committee which solely supported the same candidate in a previous campaign?

Discussion:

The Board is of the opinion that a treasurer of a political committee may use funds contributed to the committee to pay liabilities of another political committee which solely supported the same candidate in a previous campaign. However, funds transferred to pay prior liabilities will be considered contributions to such prior year's campaign and will be subject to the applicable contribution limits contained in Article 14 of the Election Law.

The statement of campaign receipts and expenditures of the political committee to which the funds were transferred must show not only the amount and name of the committee from which the transfer was received but also must allocate the amount received to the specific contributors whose contributions were included in the transferred funds. Likewise the statement of campaign receipts and expenditures of the political committee from which the funds were transferred must show not only the amount and name of the committee to which the transfer was made but also must allocate the amount transferred to the specific contributors whose contributions were included in the transferred funds

STATE BOARD OF ELECTIONS.

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #4

Questions Presented:

1. Does the Election Law permit a political committee to maintain its financial records on a computer and;

2. If a print-out of such records, signed and sworn to, containing the information required to be contained in statements of campaign receipts and expenditures satisfies said requirements?

Discussion:

Section 14-118 of the Election Law states in part:

> "a. Every political committee shall have a treasurer and a depository, and shall cause the treasurer to keep detailed, bound accounts of all receipts, transfers, loans, liabilities, contributions, and expenditures, made by the committee ...."

The Board is of the opinion that the term "bound accounts" requires the entry of all financial transactions in a single set of records maintained at one location, and that such records reflect the interrelationship of such transactions. Accordingly, a computer programmed to comply with the above requirements could be termed a bound account and would satisfy the statutory mandate provided that the entries in the computer file could be visually displayed upon demand.

Section 14-102 of the Election Law states in part:

> "....b. the state board of elections....shall provide forms suitable for such statements."

The Board does provide such forms and it is required that they be used by candidates and political committees in making reports of campaign receipts and expenditures. However, a candidate or committee could, in lieu of completing schedules A 1 through C 1 of the form, attach computer print-outs or other forms of listings containing the data required to be entered on the approved forms.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #5

Question Presented:

Are elections or political contributions by a Police Benevolent organization permitted by the election law?

Discussion:

In rendering an opinion or directive on the question presented, it is necessary to consider the provisions of Section 17-110(3) of the Election Law which reads as follows:

> "§17-110. Misdemeanors concerning police commissioners or officers or members of any police force. Any person who, being a police commissioner or any officer or member of any police force in this state:
>
> * * *
>
> "3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for any political fund, or joins or becomes a member of any political club, association, society or committee is guilty of a misdemeanor."

This statute has been declared by the courts to be clear and constitutional in setting forth what activities police officers are prohibited from doing in regard to political activities. See *Lecci v. Cahn*, 33 A.D.2d 916; *Lecci v. Cahn*, 37 A.D.2d 779,leave to appeal denied 29 N.Y.2d 468, cert. denied 405 U.S. 1073.

If policemen cannot contribute to political candidates or political committees, it logically follows that they cannot contribute to police oriented organizations which would use dues and contributions from active duty police officers for political purposes. lt also follows that a group of two or more policemen cannot make a joint contribution which would be otherwise prohibited if made by individual policemen.
Under the provisions of Section 17-110, if a Police Benevolent organization engaged in such activities that it would be classified as a political club, committee, association or society, an active duty policeman would be precluded from becoming or remaining a member of that organization.

Therefore, the Board is of the opinion that Section 17-110 of the Election Law would prohibit a Police Benevolent organization comprised in whole or in part of active duty policemen from making political contributions or expenditures.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #6

Question Presented:

Would the activities of the Civic Involvement Program (CIP) of a foreign corporation doing business in New York State constitute the activities of a "political committee" as defined by the New York State Election Law?

Discussion:

A letter to the board describes the activities of the CIP as a voluntary nonpartisan program. One of the aspects of the CIP is the solicitation of voluntary confidential contributions from executive personnel, administrative personnel and stockholders. These funds would be distributed to candidates or party committees either selected by CIP or designated by the contributors themselves.

Another function of the CIP is a program of political information and education directed at executives, stockholders and others. The CIP would also engage in a program to motivate employees to participate voluntarily in the political process.

The letter further states that employees of the corporation have expressed an interest in making designated contributions through CIP to New York political party committees or committees of candidates who are seeking election to New York State or local offices.

To accommodate the employees, CIP has initiated a program whereby the employee would mail a check to the CIP depository which is a non-New York bank. The check would be made out to the Civic Involvement Program and indicate on a standard CIP participation authorization form the candidate or committee to whom the employee wished to have the contribution sent. The bank would deposit the employee's check, draw a check on the account of CIP in the exact amount of the employee's contribution and forward the CIP check to the designated candidate. A voucher would be attached to the check which would indicate the name of the designating contributor along with other identifying information (that the CIP is associated with the foreign corporation). A transmittal letter accompanying the CIP check would also advise the recipient of the actual contributor's identity.

Based upon the above set of facts the Board shall issue a formal opinion on the following two questions:

1. Whether the check and voucher which CIP will use to forward designated personal contributions by employees, stockholders, etc. to the committees of candidates for New York organizations complies with the requirements of New York Election Law §14-120 (McKinney 1977) (as amended) and;

2. Whether in light of 1975 Formal Opinion #16, the activities of CIP's banking agent in

receiving and forwarding checks designated for candidates in New York electoral office or their committees or New York political party organizations are acts sufficient to constitute CIP a "political committee" as that term is defined by New York Election Law §14-100(a) (McKinney 1977) (as amended).

In response to question number 1, the Board is of the opinion that the procedure to be used by CIP as set forth in the letter, would not violate the provisions of §14-120 of the Election Law which mandates that campaign contributions be under the true name of the contributor. As long as the candidate receives the voucher or transmittal letter which identifies the true contributor, there is full compliance with §14-120 of the Election Law.

It should be noted, however, that §14-118(b) of the Election Law provides as follows:

"No candidate, political committee or agent thereof may receive from any one person an aggregate amount greater than $100 except in the form of a check, draft or other instrument payable to the candidate, political committee or treasurer and signed or endorsed by the donor ..."

Therefore, if an employee wishes to make a contribution to a New York State or local candidate of $100 or more, he must make a direct contribution to the candidate or committee. If the donor wishes to have his check forwarded by CIP, he could send his direct contribution to CIP, which in turn could forward the check signed or endorsed by the donor to the candidate or committee.

If a contribution is less than $100, the employee may send his contribution to the candidate or committee of his choice via the CIP Program outlined in the letter.

In response to the second question, the Board, in accordance with 1975 Formal Opinion #13 and 1975 Formal Opinion #16, is of the opinion that as long as a committee does not solicit or expend funds for or on behalf of any specific party(s) or candidate(s), the committee would not be a political committee as that term is defined in §14-100 of the Election Law. If a committee merely accepts funds from a contributor that are forwarded in the contributor's name to a particular New York candidate or New York political committee as specified by such contributor, it would not itself constitute a political committee. If, however, the committee has the discretion to allocate contributed funds between New York candidates or New York political committees, it would itself be deemed to be a political committee which would be subject to the filing and reporting requirements of Article 14 of the New York Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #7

Question Presented:

May the members of a Deputy Sheriff's Association make a contribution to the sheriff who is a candidate for reelection?

Discussion:

While Section 17-110 prohibits an active duty policeman from making contributions to candidates and also prevents a police benevolent association from making contributions to candidates from funds derived from the dues of active duty policemen (1978 State Board of Elections Op. #5), it does not prevent an association of deputy sheriffs from making contributions to candidates because sheriffs, undersheriffs and deputy sheriffs of counties outside New York City are not officers or members of a police force in the State which are subject to the restrictions on political activities imposed by Election Law Section 17-110 (1971 Op. of the Attorney General, Informal, July 27, 1971).

Therefore, the Board is of the opinion that a county deputy sheriff's association may make a contribution to a sheriff who is a candidate for reelection. Any such contribution would be subject to the contribution limitation set forth in Article 14 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #8

Question Presented:

The CIP program which was the subject of the Board's 1978 Op. #6, has written to the Board asking for an opinion on a proposed set of facts different from those facts which were the basis of 1978 Opinion #6.

A synopsis of the facts set forth in the new proposal are as follows:

Under the proposed modification, all of the contributions to the CIP would still go to the non-New York banking agent but some or all of the contributions to CIP received from New York State residents, (other than those contributions which specifically designate a candidate or political committee to be the recipient of the contribution) will be forwarded directly to a New York bank for deposit in a CIP account. The contributions will be forwarded by the CIP's non-New York designated banking agent to the New York depository in the form they are received. All contributions to CIP in the form of a check, draft or other instrument which are forwarded to the New York depository will bear the name of the original contributor. If the contributions from New York residents exceed the amount that CIP wishes to put in the New York depository, only a portion will be forwarded to the New York depository. If the contributions from New York residents are insufficient to provide for CIP's planned expenditures in New York State, contributions from non-New York residents will be forward to the New York depository. If CIP does not use all of the funds in the New York depository for New York State and local elections, it plans to use them for federal or non-New York candidates. Contributions to New York candidates from CIP would come only from the funds in the possession of the New York depository.

Discussion:

It is the opinion of the Board that the above set of facts would give the CIP discretion on how to allocate un-designated contributions to New York candidates and New York political committees as well as to candidates and committees in other states. Since the CIP would be soliciting funds in New York, would be expending funds to promote the election or defeat of New York candidates and New York political committees, and would have discretion as to how the money will be allocated to New York candidates, it would be a political committee under the provisions of section 14-100 of the Election Law. The board has held in numerous opinions that if a fund solicits or expends money, it is a political committee which is subject to the reporting requirements of the Election Law. See 1974 Op. #3; 1975 Op. #2; 1975 Op. #5; 1975 Op. #10; 1975 Op. #13: 1975 Op. #16; 1976 Op. #2; 1977 Op. #6 and 1978 Op. #6.

The Board's 1975 Op. #16, which discussed a political action committee established to solicit and distribute funds for political purposes, is directly on point with the present issue. In that opinion, the Board stated:

"In 1975 Formal Opinion #13, the Board stated that so long as a committee does not 'solicit or expend funds for or on behalf of any specific party(s) or candidate(s), the [committee] would not be a political committee as that term is defined in §467(a).' In accordance with that opinion, if a committee merely accepts funds from a contributor that are forwarded in the contributor's name to a particular candidate or political committee as specified by such contributor, it would not itself constitute a political committee. If, however, the committee has the discretion to allocate contributed funds between candidates or political committees, it would itself constitute a political committee.

"Where a contributor designates a specific party for his funds but gives the committee discretion to allocate such funds among particular candidates or political committees of that party, it is the Board's opinion that the committee is a political committee. This conclusion results from the fact that the committee has the ultimate discretion to aid or support specific candidate election campaigns, and therefore, could affect the outcome of the selected races.

"Finally, if a committee is a political committee, it must file those statements required by §§481 and 473 of the Election Law. Funds transferred from a political committee to a candidate or another political committee must be reported by the recipient as a contribution and by the donor as a transfer."

The New York Election Law makes it mandatory that any political action committee which contributes to New York candidates or political committees must report all contributions and all expenditures.

Section 14-118 of the Election Law states:

"§14-118. Treasurer and depository of political committee; filing of name and address.

"1. Every political committee shall have a treasurer and a depository and shall cause the treasurer to keep detailed bound accounts of all receipts, transfers, loans, liabilities, contributions and expenditures, made by the committee or any of its officers, members or agents acting under its authority or in its behalf..." (Emphasis supplied)

Section 14-102 of the Election Law states in part:

"§14-102. Statements of campaign receipts, contributions, transfers and expenditures to and by political committees.

"1. The treasurer of every political committee...shall file statements...setting forth all the receipts, contributions to and the expenditures by and liabilities of the committee.... Such statements shall include the dollar amount of any receipt, contribution or transfer...the dollar amount of every expenditure..." (Emphasis supplied)

New York law does not permit a political action committee to list only those contributions which will be used in New York or to list only expenditures made in New York. The statutes do not

differentiate between New York political action committees and out-of-state political action committees. As long as the political action committee is active in New York elections, it is subject to the reporting provisions of Article 14 of the Election Law.

The CIP operation which is headquartered outside of New York State is the political committee. It is supporting New York candidates from funds in its branch depository located in New York State. The only reason the CIP has established this branch depository is because Section 14-118 of the Election Law requires political committees to have a depository which is a banking organization authorized to do business in New York State. The New York depository is strictly a branch depository which has no authority to receive direct contributions from contributors. All funds put into the New York depository must first go through the non-New York depository and be forwarded by the non-New York depository to the New York depository if in the discretion of the non-New York-based CIP, those contributions shall be used to support New York candidates.

Therefore, unless the CIP establishes a separate CIP committee in New York, it will have to report all contributions from whatever source as well as all expenditures. Its financial report cannot be limited to just contributions forwarded to the New York branch of its CIP operation nor can it report as expenditures only those expenditures for New York candidates.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #9

Question Presented:

Does the United States Supreme Court decision in *First National Bank of Boston v. Bellotti*, 435 U.S. 716, 46 U.S.L W. 4371 (April 26, 1978) vitiate the $5,000 limit on corporate contributions for political purposes as contained in subdivision (b) of section 14-116 of the Election Law?

Discussion:

The Board is of the opinion that the decision makes unconstitutional any law prohibiting or limiting the ability of corporations to contribute or expend moneys in support or opposition to non-partisan ballot issues, but it does not affect Section 14-116 of the Election Law which restricts corporations to an annual expenditure of $5,000 in support of candidates for election.

The Board is also of the opinion that the decision in *First National Bank of Boston v. Bellotti* (supra) does not limit the ability of New York State to require disclosure of receipts and contributions in connection with any election, whether the election involves a question submitted to vote at a public election or is an election involving a candidate for public office.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #10

Question Presented:

May enrollment lists printed by a board of elections pursuant to §5-604 contain the telephone number of each enrolled voter?

Discussion:

Section 5-604 of the Election Law provides, in pertinent part, that:

> "1. The board of elections shall also cause to be published for each election district a complete list of the registered voters of each election district. Such list shall, in addition to the information required for registration lists, include the party enrollment of each voter."

Section 5-602 of the Election Law in setting forth the information required for registration lists provides, in pertinent part, that:

> "1.....the board of elections shall cause to be published a complete list of the names and residence addresses of the registered voters for each election district over which the board has jurisdiction..."

It's a principle of statutory construction expressed by the maxim expressio unius est exclusio alterius that where a law expressly describes a particular thing, it must be assumed that anything not included in the description was intended to be omitted (See McKinney's Statutes, S240). Since the Legislature chose to enumerate the information to be included in enrollment lists, that is, the name and residence address of each enrolled voter and his party of enrollment, it must be assumed that the Legislature intended not to permit any additional information to be included. Therefore, in our opinion, it would not be permissible for a board of elections in printing enrollment lists pursuant to §5-604 to include the telephone number of each enrolled voter.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #11

Question Presented:

What is the permissibility of using credit cards to make political contributions?

Discussion:

The procedure outlined in the request established that a political commercial would appear on radio or television and would give a toll-free telephone number which viewers can call to make their political contribution. The nationwide toll-free answering service which receives the pledges and contributions would take the amount of the contribution and the number of the donor's credit card. The said answering service would then forward this information to the political candidate's bank, where the money donated by way of the credit card would be deposited in the candidate's campaign account.

Section 14-118 of the Election Law provides in part:

> "§14-118. Treasurer and depository of political committees; filing of name and address. 1. Every political committee shall have a treasurer and a depository and shall cause the treasurer to keep detailed bound accounts of all receipts, transfers, loans, liabilities, contributions and expenditures, made by the committee or any of the officers, members, or agents acting under its authority or on its behalf ...
>
> "2. No candidate, political committee, or agent thereof may receive from any one person an aggregate amount greater than one hundred dollars except in the form of a check, draft or other instrument payable to the candidate, political committee or treasurer and signed or endorsed by the donor. All such checks, drafts, or other instruments shall be deposited in the designated depository. ...
>
> "3. Every candidate who receives or expends any money or other valuable thing or incurs any liability to pay money or its equivalent shall keep and retain detailed, bound accounts as provided in subdivision (a) of this section."

Section 14-122 of the Election Law provides in part:

> "§14-122. Accounting to treasurer or candidate; vouchers. 1. Whoever, acting as an officer, member or agent of a political committee, or as an agent of a candidate for election to public office, or for nomination for public office at a primary election or convention, or for election to party position at a primary election, receives any receipt, contribution or transfer, or makes any expenditure or incurs any liability, shall, within three days after demand and in any event within fourteen days after any such receipt, transfer, contribution, expenditure, or liability, give to the treasurer of such committee, or to such candidate if an agent authorized by him a detailed account of the same, with all

vouchers required by this article, which shall be a part of the accounts and files of such treasurer or such candidate."

The Board is of the opinion that for those contributions by individuals and donors which are less than one hundred dollars, a credit card system as set forth in the request may be used provided the toll-free answering service, which is deemed to be an agent of the candidate or committee, keeps accurate records of all receipts, contributions, transfers or expenditures made on behalf of the candidate or committee and forwards those records to the candidate or treasurer of the committee in accordance with the provisions of §14-122 of the Election Law. The toll-free answering service could also fulfill its record keeping obligation by forwarding all receipts, contributions, transfers or expenditures directly to the candidate or treasurer of the committee.

Since all contributions from one person which are in the aggregate amount of one hundred dollars or more must be in the form of a check, draft or other instrument payable to the candidate, political committee or treasurer and signed or endorsed by the donor, such a contributor would not be permitted to use a credit card to make a political contribution under the procedure outlined in the request for an opinion. However, if a credit card slip is payable directly to the candidate or committee, is signed by the contributor and directly to a candidate or political committees, who or which has established a relationship with credit card companies, that credit card slip would be deemed to be an instrument payable to the candidate, political committee or treasurer and signed by the donor.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #12

Question Presented:

May a candidate or his authorized committee accept a loan exceeding $5,000 from a corporation if the loan, which is not made in the regular course of the lender's business, is repaid in full prior to the primary election?

Discussion:

Section 14-116 of the Election Law provides that:

> "1. No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stock-holder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violations, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor.
>
> "2. Notwithstanding the provisions of subdivision A of this section, any corporation or an organization financially supported in whole or in part, by such corporation may make expenditures, including contributions, not otherwise prohibited by law, for political purposes, in an amount not to exceed five thousand dollars in the aggregate in any calendar year."

Section 14-114 of the Election Law provides in pertinent part that:

> "6a. A loan made to a candidate or political committee, other than a constituted committee, by any person, firm, association or corporation other than in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the primary, general or special election, as the case may be, a contribution by such person, firm, association or corporation.

In the Board's opinion, §14-116 of the Election Law does not prohibit a corporation from loaning to a candidate or his authorized committee an amount exceeding $5,000; however, to the extent that the loan is not repaid prior to the date of the primary, general or special election to which it relates, then pursuant to §14-114(6a) of the Election Law, the balance outstanding will be considered a contribution by the lender and as such subject to the maximum contribution limits

contained in §§14-114 and 14-116 of the Election Law. Consequently, if on such election date the loan balance together with any political contributions or expenditures made by the corporation in that calendar year exceeds $5,000 there would be a violation of §14-116 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #13

Question Presented:

May a contribution made to a candidate who is on the general election ballot solely by virtue of an independent nominating petition (having not been a candidate in a primary election) be considered as a contribution to his campaign for nomination for public office or must it be considered a contribution to his candidacy for election to public office?

Discussion:

Section 14-114(1) of the Election Law provides in part that:

> "1. 'The following limitations apply to all contributions to candidates for election to any public office or for nomination for any such office, or for election to any party positions, and to all contributions to political committees working directly or indirectly with any candidate to aid or participate in such candidate's nomination or election, other than any contributions to any party committee or constituted committees:
>
> "a. In any election for any party position to be voted on by the voters enrolled in a party in the entire state, and in any election for a public office to be voted on by the voters of the entire state, or for nomination to any such office, no contributor may make a contribution to any candidate or political committee, and no candidate or political committee may accept any contribution from any contributor, which is in the aggregate amount greater than: (i) in the case of any election for a party position or for nomination to public office, the product of the total number of enrolled voters in the candidate's party in the state multiplied by $.005, and (ii) in the case of any election to a public office, the product of the total number of registered voters in the state multiplied by $.005; ..."

Paragraph b of subdivision 1 of Section 14-114 of the Election Law contains similar language with respect to candidates for non-statewide office or party position.

In the board's opinion, the Legislature in enacting §14-114 of the Election Law intended to permit a candidate who is engaged in a contested primary election to accept a separate maximum contribution from a contributor. However, a separate contribution limit would not apply to those candidates whose names are placed on the general election ballot by virtue of filing a designating petition for an office for which no other designating petitions of that party are filed or by filing an independent nominating petition. To permit a separate contribution limit for a candidate seeking an independent line on the general election ballot would give such candidate an advantage over a party candidate not engaged in a contested primary election. In the Board's opinion this was not the intent of the Legislature in enacting §14-114 of the Election Law.

Therefore, a separate contribution limit for nomination for public office only applies if the candidate is involved in an actual contest for the nomination. It should be noted that a state

committee meeting called pursuant to §6-104 of the Election Law is held for the purpose of designating candidates for state-wide office and is not itself a contest for nomination.

All contributions to a candidate for public office whose name is not on the ballot in a bona fide contested primary election or whose name is placed on the general election ballot solely by reason of his having filed an independent nominating petition must be considered as contributions to his candidacy for election to public office. Such a candidate or his authorized committee may not accept a contribution which would exceed the amount permitted for a candidate for election to public office pursuant to Section 14-114 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #14

Question Presented:

Are delegates to the Democratic National Mid Term Conference to be held in 1978 required to file financial reports with regard to their election at their party's primary?

Discussion:

Section 14-102 of the Election Law states in pertinent part:

> "§14-102. Statements of campaign receipts, contributions, transfers and expenditures to and by political committees. 1. The treasurer of every political committee which,.. in connection with any election, receives or expends any money or other valuable thing or incurs any liability to pay money or its equivalent shall file statements ...."

Section 14-104 of the Election Laws states in pertinent part that:

> "§14-104. Statements of campaign receipts, contributions, transfers and expenditures by and to candidates. Any candidate for election ... to a party position at a primary election, shall file statements ..."

Section 14-124(2) of the Election Law states:

> "§14-124. Exceptions.
>
> "2.The filing requirements and the expenditure, contribution and receipt limits of this article shall not apply to any candidate or committee who or which engages exclusively in activities on account of which, pursuant to the laws of the United States, there is required to be filed a statement or report of the campaign receipts, expenditures and liabilities of such candidate or committee with an office or officer of the government of the United States, provided a copy of each such statement or report is filed in the office of the state board of elections."

Communications with the Federal Election Commission, which has responsibility for monitoring the financial filings of candidates for federal offices and national party positions have revealed that the Federal Election Commission will not require delegates to the Democratic National Mid Term Conference to file financial disclosure statements because the delegates to this particular Mid Term Conference will not be nominating candidates for federal office.

The Board is of the opinion that although delegates to the National Mid Term Conference will not be required to file financial disclosure reports with the Federal Election Commission, they are required to file financial disclosure reports with the State Board of Elections if the position of delegate to the said conference is challenged at the primary election. If the position for delegate

is uncontested, the candidate for the position of delegate is exempted from the filing requirements by the provision of Section 14-124(7) of the Election Law which states that a candidate and his committee are not required to file financial disclosure reports with regard to any uncontested primary election.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #15

Question Presented:

What is the application of that part of § 6-138(3) of the Election Law which prohibits the selection of the same or similar name and emblem as that appearing on a "previously filed independent nominating petition?"

Discussion:

Section 6-138(3) of the Election Law provides in pertinent part that:

> "3.The name selected for the independent body making the nomination shall be in English characters and shall not include the name or part of the name or an abbreviation of the name or part of the name, nor shall the emblem or name be of such a configuration as to create the possibility of confusion with the emblem or name of a then existing party, or a previously filed independent nominating petition. ... The name and emblem shown upon such petition or selected by an officer or board shall also conform to the requirements of this chapter with respect to names or emblems permitted to be selected by a party." (Emphasis supplied).

Section 2-124 of the Election Law provides in pertinent part that:

> "2...The name and emblem chosen shall not be similar to or likely to create confusion with the name or emblem of any other existing party or independent body."

An independent body, in selecting a name or emblem, must comply with both of these sections of the Election Law.

In the Board's opinion Section 6-138(3) of the Election Law prohibits an independent body from selecting a name or emblem which is the same as, or an abbreviation of, or which creates the possibility of confusion with the name or emblem appearing on an independent nominating petition which had been previously filed for a candidate for the same office in the same year. If two or more independent nominating petitions nominating candidates for the same office are filed and each has selected the same or a similar, otherwise acceptable, name and emblem then only the first petition filed should be permitted to use the selected name and emblem and the other petition filers should be permitted to select another name or emblem.

Section 2-124 of the Election Law creates an exception to this rule for existing independent bodies which have in the past used a specific name or emblem. Such independent bodies are accorded a preference in the use of that name or emblem. Therefore if an existing independent body chooses to permit the use of its name or emblem by a candidate then no other candidate for the same office may use that name or emblem irrespective of the order in which the petitions are filed.

In instances where there is a later filing for a different office and there is no existing independent body with a right to the use of the name or emblem, then the filing officer must determine whether or not the use of such name or emblem would result in confusion to the voters. If the name or emblem would result in confusion to the voters, the filing officer must reject the use of such name or emblem by the later filer.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1978 OPINION #16

Question Presented:

Will the following activities, taken alone or in combination with each other, bring a labor union within the definition of a political committee which would be subject to the filing and reporting requirements of Article 14 of the Election Law?

1. A suggestion at a union membership meeting that the union members vote for or against a particular candidate;

2. An endorsement of a particular candidate at a union meeting;

3. An endorsement of a given candidate to the public, either through a press conference or other use of the media;

4. Organizing and/or participating in a non-partisan registration and/or get-out-the-vote drive, whether directed to members and their families or to the general public;

5. Partisan communications (i.e., telephone calls, letters, mailings, etc.) requesting that the recipient vote for or against a particular candidate or proposition, whether directed to the union's members and their families or to the general public;

6. Suggesting to a union's members and their families that they volunteer their services to assist a candidate, i.e., to man a candidate's phones, distribute a candidate's literature, etc.;

7. Purchasing a ticket to a fund raising dinner held on behalf of a given candidate;

8. A direct contribution to a candidate's campaign; and

9. Payment for an advertisement, either in a union publication or in a general publication, in which the union supports a given candidate.

Discussion:

The Board in 1974 Opinion #2 and 1975 Opinion #10 stated:

> "It is our opinion that a union that makes a contribution to a candidate or a 'political committee does not, by the fact of that contribution alone, become a political committee.' If, however, a union solicits or accepts funds (other than regular dues no portion of which are specifically collected for political purposes) from its members and uses such funds for political purposes or if a union expends funds on behalf of any candidate or 'political committee,' it would be deemed to be a 'political committee.'"

It is the opinion of the Board that the activities set forth in numbers 1, 2, 4, 6, 7 and 8 above are not activities which would bring a union within the definition of a political committee. (See 1974 Opinion #4 and 1975 Opinion #13.)

The activities set forth in number 3, are permissible as long as the union does not solicit or expend funds in giving its endorsement.

With respect to the activities set forth in number 5, the Board is of the opinion that if such activities cause an expenditure of funds they would bring a union within the definition of a political committee unless the activities are reported by the candidate or political committee as an "in-kind" contribution from the union.

With respect to the question presented in number 9, if a union places an endorsement in a publication of its own union which it distributes to its membership on a regular basis, it would not be considered to be a contribution. However, if a union (1) pays for an advertisement, either in another union publication or in a general publication; (2) circulates a special edition of its own publication to endorse a candidate or (3) pays for separate literature which is enclosed with its regularly distributed union publication, it will be considered to be a contribution if the candidate or the candidate's committee reports the payment as a "contribution in-kind" from the union.

If a candidate or candidate's committee does not report union expenditures as "contributions in-kind", the union will be deemed to be a political committee which has expended funds on behalf of or against a candidate and it will have to comply with the filing requirements of Article 14 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #1

Question Presented:

Should a county board of elections count an affidavit ballot, if the two election commissioners disagree about the validity of the ballot?

Discussion:

Under the provisions of Article 8 of the Election Law, when a person seeks to vote at his polling place, but no registration poll record can be found, the person has the option to request, swear to and subscribe an affidavit stating that he is duly registered and qualified to vote in that election district. In essence, he has the burden of proving he is entitled to vote. He may meet that burden by executing an affidavit ballot.

The affidavit ballot is one that the voter must "(S)wear to and subscribe . . . and which contains an acknowledgment that the applicant understands that any false statement made therein is perjury punishable according to law." Election Law §8-302(f)(2).

An affidavit is legally admissible in a court of law as proof of the facts contained within it. C.P.L.R. §3212(b) The test of admissibility of an affidavit is whether perjury can be assigned upon it. People v. Becker, 20 N.Y. 354 (1859).; 2 N.Y. Jur. 182. Furthermore, without evidence to disprove it, an affidavit must be accepted as true. Application of Campo Corp., 49 Misc. 2d 840 (1966).

Accordingly, the voter has met his burden of proving his eligibility to vote by completing an affidavit ballot. The county board of elections must then count the ballot or by majority decision of the Board determine that the person is not eligible to vote. Election Law §3-212(2). The burden of proof is now upon the county board of elections to prove that the person is not eligible to vote.

All actions of a board of elections require a majority vote of the commissioners. When the election commissioners disagree and cannot make a determination as to the invalidity of an affidavit ballot, the ballot must be counted.

As a parallel, we may look to two other situations within which boards of elections must frequently rule. In the first, the validity of designating petitions, it has been held that when there is a tie vote of the commissioners the petition must be accepted because of a statutory presumption of its validity. Election Law §6-154; *Acito v. McCarthy*, 88 Misc. 2d 55; Abrahams, p. 153.

In the second, the Election Law provides that inspectors of elections shall decide all questions by majority vote (§3-402). Specifically, in the area of challenges to absentee and other ballots, challenges shall be overruled, and the ballots shall be counted unless the Board of Inspectors by

majority vote sustains the challenge. An even vote of the inspectors, therefore, would result in the casting of the ballot. Election Law §8-506(2). There is a presumption of validity stemming from the elector's oath appearing on the envelope enclosing the ballot. 1928 Op.Atty.Gen. 218.

If the disagreement between the commissioners over the affidavit ballot stems from an alleged defect on the ballot itself rather than from the eligibility of the elector, the Board is of the opinion that the same reasoning set forth above must apply and the ballot must be counted.

Therefore, it is the opinion of the Board that an affidavit ballot must be counted where the election commissioners disagree as to its validity.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #2

Question Presented:

Does a county board of elections have the authority to fill positions and establish titles such as "office manager"?

Discussion:

Section 3-300 of the Election Law, as enacted by Chapter 233, Laws of 1976, states that every board of elections has the right to "appoint and at its pleasure remove ... employees, fix their number, prescribe their duties, fix their titles and rank and establish their salaries within the amounts appropriated by the local legislative body...."

Section 205 of the County Law states:

> "Subject to the constitution and the civil service law but notwithstanding the provisions of any of the general law or of any special law to the contrary, the compensation of all employees paid from county funds shall be fixed by the board of supervisors. The board of supervisors may adopt schedules of compensation and grades with minimum and maximum salaries..."

The Board is of the opinion that these two sections, when read together, provide that the basic annual compensation of all county employees, including board of elections staff, is to be established by the county legislative body. Once positions are created, however, the board of elections has total authority to appoint, remove and assign titles and duties of board employees during the fiscal year. This includes the discretion to fill or leave vacant an established position.

To place such appointing authority outside the board of elections would jeopardize the Constitutional and statutory requirement that there be equal representation among the two major political parties in the appointment of employees of the board (Article II, Section 8 of the State Constitution; Section 3-300 of the Election Law). The purpose of this section is to provide the board of elections with the power to control equal representation of employees who belong to the two major political parties, cf. *Blondheim v. Cohen*, 248 A.D. 75, affd. 272 N.Y. 520.

The equal representation provision of the statute is designed to insure that all policy decisions of the board of elections are of a bi-partisan nature. If the Commissioners of Elections delegate any policy making authority to the employees of the board, such delegation of authority must be done on a bi-partisan basis. However, in delegating administrative responsibilities which do not have policy making prerogatives, it is not necessary to create a comparable title in order to have equal administrative responsibilities between board employees who hold the same administrative level position.

Therefore, the board is of the opinion that a county board of elections may designate an

employee who has administrative duties as an office manager without creating a comparable title or duties for an employee of the other political party who holds the same level position.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #3

Question Presented:

May surplus funds from an election campaign committee be used to pay for gas and oil for a mobile van used by an elected official to serve the constituents of the official's political unit?

Discussion:

In the past the Board has advised candidates and their political committees that surplus funds may be transferred to a constituted or party committee or a political club, prorated and returned to the donors, or held for use in a subsequent election campaign. See 1975 Opinion No. 12. Upon further review, the Board concludes that there is nothing in the Election Law which limits the use of surplus funds.

The Board is of the opinion that there is nothing in the Election Law which would prohibit an elected official from using surplus campaign funds for any lawful purpose including the defraying of ordinary and necessary expenses incurred in connection with the duties as holder of an elected office, such as, paying for the gas, oil, and maintenance of a mobile van which is used to serve the official's constituents and/or to promote the official's re-election.

The official or the official's campaign committee should insure that all reporting requirements under Article 14 of the Election Law are fulfilled, and that all disbursements for gas, oil and maintenance of the mobile van are reported on the financial disclosure statements required to be filed by the official or the official's committee. If the only funds expended are those remaining from a previous campaign and they are used for non-campaign purposes, such expenditures are to be reported as part of the financial disclosure statement filed in relation to the previous campaign. However, if new contributions are received or expenditures made to promote a future campaign, a new registration statement must be filed and such receipts and expenditures would be reported on the financial disclosure statements which relate to the new campaign.

The Board expresses no opinion on the tax ramifications of the above activities as it does not have jurisdiction over such matters.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #4

Question Presented:

May a county board of elections charge a fee for issuing voter registration identification cards?

Discussion:

Section 5-214 of the Election Law provides that boards of elections may provide identification cards for use in any city or town in a county in which the board feels that the issuance of such cards would facilitate voting by the electorate.

There is nothing in section 5-214 of the Election Law which would prohibit a board of elections from charging a fee for the issuance of a voter registration card. However, the board would point out that the information which is set forth on the registration identification card is essentially the same as the information provided on the certificate of enrollment which must be issued by a board of elections, without charge, pursuant to the provisions of section 5-606 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #5

Question Presented:

May a candidate for public office use a name which has been adopted in good faith and which by continuous and general use has achieved recognition in the community so that it identifies the candidate to the electorate even if this name differs from the name by which the candidate has been registered with the local Election Board?

Discussion:

Section 6-122 of the Election Law states that:

> "§6-122. Designation or nomination; eligibility, restrictions. A person shall not be designated or nominated for a public office or party position who (1) is not a citizen of the state of New York; (2) is ineligible to be elected to such office or position; or... meet the constitutional or statutory qualifications thereof."

The name that the candidate uses on his petition for designation is that name that will appear on the ballot. If a candidate wishes to have his or her name appear on the ballot in the manner in which he or she is recognized in the community, the candidate's petition must state the candidate's name as it will appear on the ballot.

Since there is no requirement under the Election Law that a person must be registered before the person can be a candidate for public office, a candidate may be placed on the ballot under a name which the candidate has adopted in good faith and by which he has achieved recognition in the community. In *Re Steel*, 186 Misc. 98, aff'd 270 App. Div. 806. However, the candidate may only use a name which clearly identifies the candidate as the person who is seeking election to a particular office. The candidate may not use a name which would tend to confuse the electorate in any manner. Historically recognized abbreviations or nicknames for a candidate's given name are acceptable for use on the ballot, such as "Bill" for William, "Ned" for Edward, or "Bob" for Robert, etc.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #6

Question Presented:

May a campaign committee legitimately pay the cost of a parking ticket which a candidate's driver received while the candidate was at a speaking engagement?

Discussion:

The question presented is whether a fine is a valid campaign expenditure where such fine is the result of a traffic infraction.

New York State Penal Law Section 10.00(2) defines a "Traffic infraction" as follows;

> "any offense defined as "traffic infraction" by section one hundred fifty-five of the vehicle and traffic law."

Vehicle and Traffic Law provides in part as follows:

> §155. Traffic Infraction
>
> "The violation of any provision of this chapter or of any law, ordinance, order, rule or regulation regulating traffic which is not declared by this chapter or other law of this state to be a misdemeanor or a felony. A traffic infraction is not a crime and the punishment imposed therefor shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility as a witness or otherwise of any person convicted thereof."

A parking violation would therefore constitute a traffic infraction.

It is the opinion of this Board that while the act at issue is not a penal or criminal act it is none the less a violation of law and cannot reasonably be considered to enhance or further the nomination or election of any person. Therefore, a campaign committee may not pay a fine for a parking ticket levied against the candidate's driver.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #7

Question Presented:

May a person otherwise qualified sign independent nominating petitions for six city council offices where such six city councilmen candidates run at large?

Discussion:

Independent nominating petitions are governed by Section 6-138 of the Election Law. That section provides that a signature on an independent petition may not be counted if the signer voted at a primary election where a person was nominated for the same office, or his name appears on another petition nominating a person for the same office.

Election Law Section 6-138(2) provides as follows:

> "2. Except as otherwise provided herein, the form of, and the rules for a nominating petition shall conform to the rules and requirements for designating petitions contained in this article."

As required by the aforementioned section an examination of Election Law Section 6-134(5) governing the rules for designating petitions provides:

> "5. If a voter shall sign any petition or petitions designating a greater number of candidates for public office or party position than the number of persons to be elected thereto his signatures, if they bear the same date, shall not be counted upon any petition, and if they bear different dates shall be counted in the order of their priority of date, for only so many designees as there are persons to be elected."

The question presented, therefore, is simply how many persons are to be elected to the separate offices of city councilman, and in this case that number is six.

It is the opinion of the Board therefore that since there are six councilmen at large to be elected a person may sign any combination of designating and independent nominating petitions for up to six persons. However, the signatures may not be counted if a signer voted at a primary election where a person was nominated for any of the same offices.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #8

Questions Presented:

1. Can a County Legislature increase the term of office of the Election Commissioners to four years in the middle of the term or must it be done at the time of original appointment?

2. Can a County Legislature ignore the Certificates of Recommendation of the respective political parties and appoint for a four year term instead of the recommended two years?

Discussion:

The term of office of an election commissioner is governed by §3-202 of the Election Law. That section states as follows:

> §3-202. Election commissioners; term of office.
> 1. The term of office of an election commissioner shall be two years beginning January first of each odd numbered year except that in the city of New York and the county of Schenectady the term shall be four years beginning on January first of each alternate odd numbered year. The county legislative body of any other county may determine that the commissioners of elections thereafter appointed shall serve for a term of four years. Such determination may be rescinded by a subsequent action of the county legislative body which shall take effect at the expiration of the terms of the commissioners then in office.
> 2. The local legislative body may, at any time, determine that the terms of office for commissioners shall be staggered and may make subsequent appointments so as to provide for staggered terms of office thereafter.

The statute specifically refers to the power of a county legislature to extend the terms of commissioners thereafter appointed. Based upon the clear language in the statute the Board is of the opinion that a county legislature cannot extend the term of the office of election commissioner from two years to four years until the term of those commissioners who currently hold the office has expired.

The second part of the first question raises the issue of the ability of a county legislature to extend to four years the term of commissioners who were appointed for two years by making the four year appointment retroactive to the date of the original two year appointment. In order to do that, a county legislature would have to revoke the present two year appointment of the commissioners. It is a general rule that once an appointment has been made, it is irrevocable and not subject to reconsideration. *Re Fitzgerald* 88 AD 434 (4th Dept. 1903); *Casler v. Tanzer* 134 Misc. 48. The only time that an appointment would be revocable would be if the person appointed can be removed by the appointing body. If the officer appointed is not removable at the will of the appointing body, the appointment is not revocable and cannot be annulled. *Marbury v. Madison* 1 Cranch 137.

A county legislature does not have the power to revoke the appointment of an election commissioner. The only person who can remove an election commissioner from office is the Governor of the State. Section 3-200(7) of the Election Law states that:

> "An election commissioner may be removed from office by the governor for cause in the same manner as a sheriff, ..."

The Board is of the opinion that the above cited statute and prior case law would preclude a county legislature from making an appointment of an election commissioner which is retroactive in effect.

With respect to the second question, the County Legislature is the body which determines whether the term of office of an election commissioner is for a two-year term or a four-year term. The certificate of recommendation by a party only sets forth the name of the person that the party recommends for appointment as election commissioner. The certificate of recommendation has no effect on the term of office.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #9

Date: October 2, 1979

Question Presented:

When will a public employee union constitute a political committee so as to subject it to the financial reporting requirements of the Election Law?

Discussion:

This office has in prior opinions (1975 Op. #2, 1975 Op. #10, and 1975 Op. #13) determined that a union may be a political committee if it engages in certain activities.

In the 1975 Op. #10 the Board held that:

> "A union that makes a contribution to a candidate or a political committee does not, by the fact of that contribution alone, become a political committee. If however, a union solicits or accepts funds [other than regular dues no portion of which are specifically collected for political purposes] from its members and uses such funds for political purposes or if a union expends funds on behalf of any candidate or political committee, it would be deemed to be a political committee."

The 1975 Op. #13 went so far as to formulate a test to determine whether or not an organization is a political committee. The criteria established by the Board in that opinion is:

> "Does the organization solicit or expend funds for or on behalf of any specific party(s) or candidate(s)."

Therefore, if the public employee union either solicits or expends money on behalf of a candidate or party, it would be deemed to be a political committee which is subject to the reporting requirement of Article 14 of the Election Law.

The letter presents a further question relating to the recent decision in *N.Y.C.L.U. v. Acito* 459 F. Supp 75 and whether or not that decision has an effect on the unions financial reporting of political activity.

The court in *Acito* (supra) restricted its determination of constitutionality of Election Law §14-100(a) to a ballot question submitted to vote.

> "The court thus holds that as applied to questions submitted to vote at a public election, the specific issue before the court, §14-100(a) is unconstitutional on the grounds of substantial over breadth since on its face it applies to certain groups in violation of their First Amendment rights."

Therefore, the effect would be that a union which only engages in political activities concerning a ballot question could not be required to file financial statements.

Lastly, the question was asked whether the $5,000.00 expenditure limit mandated under Election Law Section 14-116 is applicable to the union. That section is applicable only to corporations or joint stock associations doing business in this state. If a union was incorporated so as to fall within the description of the statute it would be subject to this limit.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #10

Date: November 20, 1979

Question Presented:

What is the method of determining the "fair market value" of a contribution by an employer when the employer provides an employee's services to a candidate and the employer compensates the employee for his time spent while working for the candidate but does not charge the candidate for the time and services rendered?

Discussion:
Factors which were set forth in the request included the following:

1. The employee receives an annual salary which could be converted to a per diem or hourly rate based upon the normal work year.

2. The employee may receive a bonus at various times during a year based upon the employee's performance.

3. The firm will pay additional amounts for legally mandated and other "fringe benefits" for the employee.

4. The employee's time spent on client matters would normally be billed at a specified billing rate.

5. The employee may spend time in the employer's office making use on behalf of the candidate of any equipment or support services, the cost of which is covered by the billing rate for clients.

The Board is of the opinion that the "fair market value" of the contribution of an employee's services would be the hourly or piecework rate prevailing at the time that the services were rendered that an employer would normally charge a client for such services. If the services performed by the employee are not services normally rendered by the employer, then the value of the employee's services should be based upon the employee's salary.

Since bonus, fringe benefits and the use of equipment and support services are presumably covered by the billing rate for clients, it would not be necessary to compute these items separately to determine the amount of the in-kind contribution. If the use of equipment is not included in the billing rate, then the amount of this in-kind contribution would be the normal rental rate for such equipment.

Finally, if other expenditures such as use of telephones, postage costs, and photocopying are not covered by the billing rate for clients but would be part of the total bill submitted to a client, the

amount of these in-kind contributions would be the actual cost to the employer.

The total amount of all contributions by the employer, including in-kind contributions, would be subject to the limitations set forth in §14-114 of the Election Law and if the employer is a corporation, the additional limitations set forth in §14-116 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #11

Date: December 5, 1979

Question Presented:

Is a paid leave of absence by a corporation to one of its employees in order for the employee to run for political office an "in-kind contribution" by the corporation to the employee-candidate?

Discussion:

The Board is of the opinion that if the corporation, in the normal conduct of its business, has or adopts a non-partisan policy of granting an employee a paid leave of absence to become a candidate for public office, or if the employee has a contractual agreement with the corporation to receive such a paid leave of absence, it would not constitute a contribution by the corporation to the employee-candidate. If the corporation does not have such a policy or contract for granting paid leaves of absence and grants such a leave of absence based on political considerations, the corporation will be deemed to have made an in-kind contribution to the employee-candidate.

The total amount of all contributions including in-kind contributions would be subject to the limitations set forth in Article 14 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1980 OPINION #1

Date: May 22, 1980

Question Presented:

A trade association has been asked by a political action committee to include in its regular mailing an envelope and solicitation notice from the P.A.C. The trade association wishes to know if this will be considered a political contribution by the trade association to the P.A.C.?

Any extra costs associated with the mailing will be billed directly to the P.A.C. by a private mailing company.

Discussion:

A contribution is defined in Election Law §14-100(9) as follows:

> "(1) any gift, subscription, outstanding loan (to the extent provided for in section 14-114 of this chapter), advance, or deposit of money or any thing of value, made in connection with the nomination for election, or election, of any candidate,"

Contributions other than money are defined in NYCRR Title 9, subtitle V, Part 6200.6:

> (a) The term 'contribution other than of money' means:
> (1) A gift, subscription, loan or advance of anything of value (other than money) made to or for any candidate or political committee; and
> (2) The payment by any person other than a candidate or political committee of compensation for the personal services of another person which are rendered to any such candidate or committee without charge; and
> (3) Provided, however, that the term 'contribution other than of money' shall not be construed to include personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee.
> (b) In determining the monetary value to be placed on a 'contribution other than of money' a reasonable estimate of fair market value shall be used. Each such contribution shall be declared as an expenditure at the same fair market value and reported on the expenditure schedule, identified as to its nature and listed as an 'expenditure-in-kind'.

In the situation presented none of these conditions have been fulfilled. The mailing service is by a private commercial mailing agency which will perform any extra service necessary such as stuffing or postage as agent of the P.A.C., not as an agent of the trade association. It will bill the P.A.C. directly for all additional costs.

The trade association will have no responsibility for such activities and will perform no service

in the furtherance of such activity.

The Board is of the opinion that in this situation, the inclusion of political literature in a regularly scheduled membership publication does not constitute a contribution within the meaning of the statute as long as there is no expense or cost assessed to the trade association.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1980 OPINION #2

Date: July 21, 1980

Question Presented:

May a person who voted in the presidential primary held on March 25, 1980 or who signed a valid petition naming candidates for such primary may sign an independent nominating petition for presidential electors?

Discussion:

It is clear that the Legislature intended, by the adoption of Section 6-138 of the Election Law, to restrict a voter's participation in the nominating process to a single choice, thus preventing the proliferation of candidates on the ballot.

The constitutionality of statutes such as section 6-138 has been upheld by the Supreme Court of the United States. In such cases as *Storer v. Brown* 415 U.S. 724 and *American Party of Texas v. White* 415 U.S. 767, the Supreme Court held that a State :is warranted in limiting a voter to participating in but one of the two alternative procedures for electing a candidate, the partisan which is the party primary, or the non-partisan which would be the selection of a candidate by an independent nominating petition. However, a voter may not have it both ways. A voter may not vote in the primary and then sign an independent petition nominating the same or a different person for the same office.

The Board is of the opinion that enrolled voters of the Republican Party who either signed a valid designating petition or voted for delegates to the Republican National Convention at the March 25, 1980 Primary Election have participated in the selection of a candidate for the office of President of the United States. Such voters have exercised a choice by selecting delegates they feel will best represent their preference at the national convention and are, therefore, precluded by the provisions of Section 6-138 of the Election Law from signing an independent petition nominating a candidate for the office of President.

With respect to the Democratic nominating process, Chapter 731, Laws of 1979, established the procedures to be followed in the presidential selection process. Under such law the March 25, 1980 primary was the first stage of a two-stage procedure for the electing of delegates to the Democratic National Convention. The first stage determined the percentage of delegates committed to candidates whose names appeared on the ballot on March 25, 1980, as a result of filing valid petitions for the office of President of the United States. The selection of the actual delegates and alternate delegates occurred at caucuses held throughout the state on April 27, 1980. The totality of this process effected the selection of a candidate for the office of president.

Consequently, Section 6-138 of the Election Law would preclude those persons signing designating petitions or voting at the March 25 Primary from signing independent petitions.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1980 OPINION #3

Date: September 4, 1980

Question Presented:

The National Unity Campaign for John Anderson requested that the name "Unity Coalition", which has been selected by supporters of John Anderson as the name of the independent body which they seek to have placed on the ballot in New York State in November 1980 to indicate Anderson's candidacy for President of the United States, "be utilized only by the Anderson campaign". The letter states that Mr. Anderson has no intention of endorsing any candidate for any public office and he feels that it would be inappropriate to permit other candidates in New York to appear on the Unity Coalition line since there would be no assurance that any of these candidates share Mr. Anderson's views on the issues. Is such a limitation on the use of the name of an independent body permissible?

Discussion:

The New York statutes which govern the use of names by an independent body are Sections 6-138(3) and 2-124 of the Election Law.

Section 6-138(3) of the Election Law provides in pertinent part:

> "3. The name selected for the independent body making the nomination shall be in English characters and shall not include the name or part of the name or an abbreviation of the name or part of the name, nor shall the emblem or name be such a configuration as to create the possibility of confusion with the emblem or name of a then existing party, or a previously filed independent nominating petition . . . The name and emblem shown upon such petition or selected by an officer or board shall also conform to the requirements of this chapter with respect to names or emblems permitted to be selected by a party."

Section 2-124 of the Election Law provides in pertinent part that:

> "2. ...The name and emblem chosen shall not be similar to or likely to create confusion with the name or emblem of any other existing party or independent body."

There is no authority provided in such section to permit the exclusion requested by the Anderson campaign. The name "Unity Coalition" has no historical preference since it will be used for the first time in the 1980 election.

However, with regard to candidates who seek a position under the designation of a particular independent body, the courts of New York State have held that where there have been nominations by an independent body for some offices to be filled at a general election and where

there are no nominations for other offices to be filled at the same general election, the name and emblem of the independent body may be adopted, without consent of the independent body, by the nominees for offices for which independent body has no candidates. *Matter of Peel v. Cohen* 265 NY 312 (1934); *Matter of Rossett v. Heffernan* 187 Misc 598 *aff'd* 271 AppDiv 784; *aff'd* 296 NY 695 (1946); *Matter of Baranello v. Smith and McNab* 35 AD2d 728, *aff'd* 27 NY2d 807. The rationale of these cases is that since the Legislature has not given the independent bodies statutory authority to limit the use of their names and emblems, any candidate who is seeking a position on their line may have the position unless it would result in conflicting petitions being filed for the same office.

Based upon the New York statutes, as they have been interpreted by the courts of New York State, the Board is of the opinion that a candidate who files a petition under the Unity Coalition designation shall be permitted to have a position on that independent line. There is no legal authority under the New York statutes which would permit Mr. Anderson to limit the use of the name and emblem of the Unity Coalition for candidates who seek an office for which that independent body has no candidate. If two petitions are filed for the same office using the Unity Coalition designation, the Board shall grant the use of the name to the first filed.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1981 OPINION #1

Date: May 20, 1981

Question Presented:

May a central committee or statewide group pay the expenses of a church or other community organization conducting a voter registration drive. If so, may the church or community organization pay a staff or volunteers handling the actual registrations. The expenses will be based on what it costs to register each new voter?

Discussion:

First, such activity does not promote the success or defeat of any person, party or question and would not of itself bring in the church or community organization which is conducting the registration drive within the definition of "political committee", assuming that the effort is non-partisan. [Election Law §14-100(1)] Therefore, any agency or group conducting such a registration drive would not have to report expenditures for a staff or volunteers under the Election Law. They should, however, examine their own constitution, rules and by-laws and also any state law, such as the Religious Corporations Law, which regulates the group to make sure that such activity is within their powers. Likewise the central committee or statewide group should examine its own rules to be sure this type of expenditure is allowed.

The expenditures by the central committee or statewide group or church or other community organization for such registration drives are not subject to limitation. [Election Law §14-114(5)]

The Board expresses no opinion on the tax ramifications of the above activities as it does not have jurisdiction over such matters.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1981 OPINION #2

Date: June 17, 1981

Question Presented:

In a year when election districts are altered, do candidates for the party position of county committeeman run from the districts existing prior to alteration or do they run from the new districts?

Discussion:

Section 4-100(5) of the Election Law states that, "Any creation, consolidation, division or alteration of election districts in any year shall be made on or before July 1, to take effect on the first day of local registration, except that when required by the creation or alteration of a political subdivision, other than an election district, in which candidates are to be voted for at the primary, it shall take effect immediately."

In the *Matter of Wherter*, (1916) 94 Misc. 681, the court held that the term of office of any person elected to a county committee commences at once upon his election.

It is the opinion of this Board that candidates for county committeeman shall run from those districts which are in effect on the day of the primary election. Historically, the primary election has been held prior to the day or days of local registration which would mean that the candidates would run from the old districts unless, due to a reapportionment of political subdivisions other than election districts, the new election district lines became effective prior to the primary date. If the election districts from which committeemen are elected are thereafter altered, said committeemen continue in office for the remainder of their terms representing the new districts, (*Gold v. Meisser*, (1961) 31 Misc2d 675).

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1981 OPINION #3

Date: June 23, 1981

Question Presented:

Would a political committee have to disclose in the financial disclosure reports that it files for a primary election those contributions which have been made toward the general election of a candidate?

Discussion:

The political committee which requested the opinion intends to deposit all contributions into one checking account for accounting control purposes. The committee will immediately transfer out of that account into another separate account, all sums which are, or will be, allocated to the general election. These transferred monies will not be commingled or expended for primary election purposes.

Section 14-102 of the Election Law states in part:

> "§14-102. Statement of campaign receipts, contributions, transfers and expenditures to and by political committees. 1. The treasurer of every political committee which, or any officer member or agent of such committee who, in connection with any election, receives or expends any money . . . shall file statements . . . setting forth all of the receipts, contributions to and expenditures by and liabilities of the committee . . ."

The Board is of the opinion that although these contributions which were given specifically for the general election will be immediately transferred to a separate account for use in connection with the general election, the fact that they are all deposited into one account would necessitate that the contributions be reported on the financial disclosure reports that the committee files for the primary election.

If separate primary and general election accounts were established and contributions deposited directly into the appropriate accounts, the financial disclosure statement filed in connection with the primary election would be required to include only those contributions made in connection with the primary election and deposited in the primary election account. The same would be true for the general election reports. If any funds deposited in the general election account were used for primary election purposes, the activity of both accounts would be required to be reported in connection with the primary election.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1981 OPINION #4

Date: June 23, 1981

Question Presented:

Is the use of a party headquarters by a candidate who is being opposed in a primary election a contribution of money or the equivalent thereof by the party? The candidate will be charged for the use of equipment or services which would be a cost over and above the party's normal expenses for running the headquarters?

Discussion:

Section 2-126 of the Election Law states as follows:

> §2-126. Party funds; restriction on expenditures. No contributions of money, or the equivalent thereof, made, directly or indirectly, to any party, or to any party committee or to any person representing or acting on behalf of a party or party committee, or any moneys in the treasury of any party, or party committee, shall be expended in aid of the designation or nomination of any person to be voted for at a primary election either as a candidate for nomination for public office, or for any party position.

The question as to whether or not the use of party headquarters is an expenditure of money was specifically addressed in the case of *Horn v. Regular Democratic Organization of Long Beach* 59 Misc2d 664 (1969 Sup.Ct. Nassau County). In that case it was held that the allowing of candidates to use space in party headquarters was not an "expenditure of money and such expenditures as are involved in the payment of carrying charges on the building are not in aid of a slate but in payment of party obligations." (at page 666) The court held that the use of party headquarters by a slate of candidates was not a violation of this section of the Election Law.

Based upon the holding in the *Horn* case and upon the fact that the candidates will pay for the use of equipment and services which would constitute a cost over and above the normal operating expenses of the party headquarters, the Board is of the opinion that the use of party headquarters by a candidate would not be a contribution of money or the equivalent thereof directly or indirectly expended in and of the designation or nomination of any person to be voted for at a primary election.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1981 OPINION #5

Date: July 27, 1981

Question Presented:

Is an expenditure made by a political committee a contribution to the candidate on whose behalf the expenditure is made?

Discussion:

The definition of the term "contribution" is contained in Section 14-100(9) of the Election Law. There is no definition of the term "expenditure" in the Election Law and while an outlay of money can take different forms, for the purposes of this opinion, the term "expenditure" shall mean the direct payment for goods or services.

Such an expenditure clearly falls outside of the types of transactions which constitute contributions under paragraphs (1) and (2) of Section 14-100(9). Contributions under these two paragraphs relate to an exchange of money or thing of value between a donor and donee.

Paragraph (3) of said subdivision, which becomes critical to the issue since it speaks of payments, states in part:

> 9. "contribution" means:
>
> * * *
>
> (3) any payment, by any person other than a candidate or a political committee authorized by the candidate, made in connection with the nomination for election or election of any candidate including but not limited to compensation for the personal services of any individual which are rendered in connection with a candidate's election or nomination without charge; provided however, that none of the foregoing shall be deemed a contribution if it is made, taken or performed by a candidate or his spouse or by a person or political committee independent of the candidate or his agents or authorized political committees. For purposes of this article, the term "independent of the candidate or his agents or authorized political committees" shall mean that the candidate or his agents or authorized political committees did not authorize, request, suggest, foster or cooperate in any such activity; . . . .

As set forth in the above-provision, the term contribution does not include the following:

a) payments by a candidate

b) payments by an authorized political committee

c. payments by a person or a political committee independent of the candidate or his

agents or authorized political committees.

Since the statute expressly exempts payments by both authorized and independent (unauthorized) committees from the definition of "contribution", the relationship which the political committee making the expenditure has to the candidate being supported is immaterial to the question raised.

Based on the provisions of Section 14-100(9), it is the opinion of this Board that an expenditure as herein defined made by a political committee is not a contribution to the candidate on whose behalf the expenditure is made and as such is not required to be reported by the candidate. It should be noted that the political committee making the expenditure is subject to the financial reporting requirements of Article 14 of the Election Law and is required to allocate total expenditures among those candidates being supported.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1981 OPINION #6

Date: November 25, 1981

Question Presented:

May a political action committee invest in a money market fund?

Discussion:

The Board is of the opinion that there is nothing in the Election Law which would prohibit any political committee from investing part of its assets in an income producing source such as a money market fund.

The using of funds from the committee's depository for an income source for the committee does not constitute a campaign expenditure, but must be reported by the committee on its financial disclosure report as a disbursement. Such a transaction merely represents a conversion of one form of asset to another. Additionally, the interest received from such investments must be reported as a receipt on the financial disclosure statements of the committee.

The Board expresses no opinion on the tax ramifications of the above activities as it does not have jurisdiction over these matters.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1981 OPINION #7

Date: December 5, 1981

Question Presented:

May a candidate make a donation with campaign funds where the candidate and the candidate's committee . . ."have an interest in the events which are now taking place in Poland, and as a gesture to the Polish-American voters, the candidate and the candidate's committee would like to use half of the net proceeds from a dinner dance to purchase American food products and pay for their shipment to Poland?"

Discussion:

There is nothing in the Election Law which specifically sets forth the purposes for which campaign funds may be used. However, section 17-140(2) of the Election Law makes it a misdemeanor to use money for any purpose other than the purposes set forth in that section. While there are no cases which clearly interpret this section, the legislative history of this section makes it clear that the list of purposes set forth is an exclusive list and the use of funds for any purpose other than those set forth in the list would be a violation of the section. Section 17-140(2) reads as follows:

> §17-140. Furnishing money or entertainment to induce attendance at polls. Any person who directly or indirectly by himself or through any other person in connection with or in respect of any election:
>
> * * *
>
> 2. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration, for any other purpose than the following matters and services at their reasonable, bona fide and customary value is guilty of a class A misdemeanor. The cost of preparation and presentation of radio, television, motion pictures or any other means of mass communication, speeches, advertisements or personal appearances, rent of halls and compensation of speakers, music and fireworks, for public meetings, and expenses of advertising the same, together with the usual and minor expenses incident thereto; the preparation, printing and publication of posters, lithographs, banners, notices and literary material; the compensation of agents to supervise and prepare articles and advertisements in the newspapers, to examine questions of public interest bearing on the election, and report on the same; the pay of newspapers for advertisements, pictures, reading matter and additional circulation, the preparation and circulation of circulars, letters, pamphlets and literature bearing the election; rent of offices and club rooms, compensation of persons rendering accounting services and of such clerks and agents as shall be required to manage the necessary and reasonable business of the election and of attorneys at law for actual legal services rendered in connection with the election; the preparation of lists of voters, payment of

> necessary personal expenses by a candidate; the reasonable traveling expenses of the committeemen, agents, clerks and speakers, postage, express, telegrams and telephones, the expenses of preparing, circulating and filing a petition for nomination; compensation of poll workers or watchers, and food for the same, and election officers, hiring of vehicles for conveying electors to the polls not exceeding three vehicles for each election district in a city and not exceeding six vehicles in any other election district; and the actual necessary railroad traveling expenses for transportation of voters to and from their places of residence for the purpose of voting.

Since the amount of money which would be donated by the committee is speculative, in that it is based on net proceeds, all of the contributions to the committee for the dinner-dance must be deemed to be for political purposes and reported as such on the financial disclosure statement.

Based upon the list set forth in the above-cited section of the Election Law, the Board is of the opinion that the campaign funds of the committee may not be used for the purpose outlined in the request.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #1

Date: January 8, 1982

Question Presented:

1. Are both methods of collecting contributions permissible under New York Law; and

2. How would the $5,000 corporate limit or contribution be applied to the member corporations or the association?[1]

Discussion:

The Board has indicated in prior formal opinions, 1975 Opinion #13 and 1975 Opinion #16, that as long as a committee does not solicit or expend funds for or on behalf of any specific party(s) or candidate(s), the committee would not be a political committee as that term is defined in §14-100 of the Election Law. If a committee merely accepts funds from a contributor that are forwarded in the contributor's name to a particular candidate or political committee as specified by such contributor, it would not itself constitute a political committee. If, however, the committee has the discretion to allocate contributed funds between candidates or political committees, it would itself constitute a political committee.

The first system of contribution (A) (set forth above) is almost identical to that of the 1975 Opinion #13 and although, in that case, separate envelopes were enclosed in the letter, the Board is of the opinion that the separate contributions are sufficient. In the second system of contribution (B) (set forth above) the acceptance of the dues with a box check-marked for a given percentage to be forwarded to the specified P.A.C., the Board is of the opinion that under this method the association has no discretion to allocate contributed funds between candidates or committees, and it is therefore not within the definition of a political committee.

Therefore the Board is of the opinion that both methods are valid. Since neither method results in a contribution from the trade association directly, the money forwarded by the association to the P.A.C. would not be allocated to the $5,000 corporate contribution limit of the association. However, each member corporation would be required to deduct the portion it donates to the P.A.C. from its $5,000 limit and the P.A.C. in its reporting statement would disclose the name of each contributor. In addition, if the trade association expends funds specifically for the raising of money on behalf of the P.A.C., such expenditure would have to be considered as a contribution by the trade association and chargeable against its $5000 limit.

A. The trade association wishes to place in its dues statement a recommended amount to

[1] The questions presented assume the following facts: There presently exists a trade association and a political action committee (P.A.C.), both are separate corporate entities.

be contributed to the P.A.C. by separate check. The check would be forwarded to the P.A.C. immediately, or

B. The dues statement would have a check-off box for those wishing to contribute a given percentage of their dues to the P.A.C. The association would immediately transfer that amount to the P.A.C. account.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #2

Date: February 10, 1982

Question Presented:

May the enrollment figures released in the spring of 1978 be used to determine contribution limits for the 1982 primary elections?

Discussion:

Section 14-114(7) of the Election Law provides in part that:

> ". . .the number of registered or enrolled voters shall be determined as of the date of the general, special or primary election, as the case may be or as of the date of the general election in any of the preceding four years . . ."

Pursuant to section 5-604 of the Election Law, enrollment lists are prepared by boards of elections once each year in the spring. The total number of enrollees in each party are compiled at that time by the boards and a statewide county by county tabulation is made and released by the State Board of Elections. These figures are recognized as the official enrollment figures for the year and are used to determine such things as petition signature requirements and party voting strength.

It is the opinion of this Board that, for the purposes of section 14-114(4), the number of enrolled voters of a party as of the date of a general election is that number which was certified in the spring preceding such general election. Therefore, enrollment figures released in the spring of 1978 would be the enrollment figures as of the date of the general election held in 1978 and could be used to determine contribution limits for the 1982 primary election since 1978 is the fourth year preceding 1982.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #3

Date: February 9, 1982

Questions Presented:

1. May a full member of the Board of Police Commissioners be a candidate for elective office while remaining a commissioner?

2. May he receive funds from a political party or committee to support his candidacy or may he join political clubs or committees? [1].

3. May ex officio commissioners campaign for election to their offices or others and actively participate in political clubs, committees and accept funds?

Discussion:

All the questions presented here are raised because of §17-110 of the Election Law which provides as follows:

> §17-110. Misdemeanors concerning police commissioners or officers or members of any police force. Any person who, being a police commissioner or any officer or member of any police force in this state:
>
> 1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or
>
> 2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer. member of a committee or representative official or otherwise of any political party, organization , association or society; or
>
> 3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee, is guilty of a misdemeanor.

An examination of the aforementioned statute indicates that there is no prohibition therein which would prevent a police commissioner from becoming a candidate for elective office.

This is in accordance with the Board's 1977 Formal Opinion #4, except that §144 of the Second Class Cities Law has no effect here. It is also in accordance with an opinion of the Attorney General; 1974, Op Atty Gen 124.

More recently in *Jones v. Seneca County Board of Elections*, 83 AD2d 982, the Appellate Division determined that §17-110 of the Election Law does not prohibit a police officer's candidacy or his soliciting signatures on a designating petition.

All of the aforementioned opinions and cases were directed towards policemen. However, as the statute indicates, the same rules apply to commissioners.

For this reason the answer to question #2 is obviously provided by subdivision three of the statute and the commissioners cannot personally solicit or receive funds from or belong to a political committee. This would not preclude a political committee from receiving and expending funds on behalf of a commissioner who is running for public office.

In regard to question #3, the Board has reviewed the municipal agreement between the town and the village which formed the police department. There is no mention therein of ex officio police commissioners. Total power and control of the police department is vested in the remaining three commissioners. Although it is not within the jurisdiction of the Board to determine if ex officio members of a police commission are police commissioners, the agreement between the town and the village does not give the ex officio members a vote and powers over the police department. lt is the Board's opinion that the ex officio members are not police commissioners for the purposes of the Election Law. They could, therefore, belong to political groups and conduct such other political activity such as soliciting or contributing funds to political organizations.

[1] A town and village have a consolidated police department managed by a Board of Police Commissioners composed of three appointed commissioners. The mayor of the village and the town supervisor are, in addition, ex officio members of the Board of Commissioners but have no vote or powers over the police department.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #4

Date: February 17, 1982

Question Presented:

The Nassau County Board of Elections has inquired as to "whether or not any action should be taken by a local board regarding cancellation of registration of a person convicted of a felony while the execution of a sentence is stayed pending an appeal?"

Discussion:

The facts of the particular case are that a registered voter was convicted of a crime in a federal district court which would be a felony under New York State Laws. The federal district court imposed sentence and then stayed the execution of the sentence pending an appeal.

Section 5-106(3) of the Election Law States:

> "3. No person who has been convicted in a federal court, of a felony, or a crime or offense which would constitute a felony under the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the president of the United States, or his maximum sentence of imprisonment has expired, or he has been discharged from parole."

However, section 5-106(5) of the Election Law states:

> "5. The provisions of subdivisions two, three and four of this section shall not apply if the person so convicted is not sentenced to either death or imprisonment, or if the execution of a sentence of imprisonment is suspended."

The cancellation of a person's registration is not an absolute which occurs immediately upon conviction but is dependent upon the imposition and execution of a sentence of imprisonment.

The language of Section 5-106(5) of the Election Law specifically states that a person shall not be disenfranchised "if the execution of a sentence of imprisonment is suspended."

Prior to September 1, 1973, the courts of New York could impose a "suspended sentence." On September 1, 1973, the Penal Law was revised and the courts could no longer suspend sentence or suspend the execution of sentence. Since the suspended sentence was eliminated from the Penal Law in 1973, the use of the term "suspended sentence", as a term of art, lost its meaning. In 1976 when the Legislature enacted the language of Section 5-106(5) of the Election Law, the courts could not suspend a sentence of imprisonment. Therefore, the specific use of the word "suspend" must be construed according to its ordinary and usual meaning. Black's Law dictionary defines "suspend" as "to postpone, to stay...". Black's defines a "stay" as "the

temporary suspension of the regular order of proceedings in a cause, by direction or order of the court...".

The stay of the execution of the sentence of imprisonment pending appeal also had the effect of staying or suspending the direct and indirect consequences which would result from the imposition of a sentence of imprisonment.

The Board is of the opinion that until the court imposed stay is either lifted by the district court or is terminated because the appeal is adjudicated, the registration in question should remain valid.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #5

Date: April 5, 1982

Question Presented:

"In light of Sections 3-200(4) and 3-200(6) of the New York State Election Law, can an incumbent Elections Commissioner be a candidate for Village Trustee without resigning as Commissioner?"

Discussion:

Subdivisions 4 and 6 of section 3-200 of the Election Law read as follows:

> §3-200. Boards of Elections, creation, qualification of commissioners, removal
>
> * * *
>
> 4. No person shall be appointed as election commissioner or continue to hold office who is not a registered voter in the county and not an enrolled member of the party recommending his appointment, or who holds any other public office except that of a commissioner of deeds, notary public, village officer, city or town justice, or trustee or officer of a school district outside of a city.
>
> * * *
>
> 6. An election commissioner shall not be a candidate for any elective office which he would not be entitled to hold under the provisions of this article, unless he has ceased by resignation or otherwise, to be commissioner prior to his nomination or designation therefor. Otherwise such nomination or designation shall be null and void. (emphasis supplied)

Based upon the above statute, the Board is of the opinion that since section 3-200 specifically holds that a person may serve as a village trustee and as a commissioner of elections at the same time, and is entitled to hold such office, he or she may be a candidate for such office without resigning as a commissioner of elections.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #6

Date: April 22, 1982

Question Presented:

May a local government may conduct a special election on a referendum by use of the mails rather than having the voters personally appear at the polling place?

Discussion:

Article II, section 2 of the New York State Constitution reads as follows:

> "The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city, and qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability, may vote and for the return and canvass of their votes." (emphasis supplied)

In order for a voter to be able to vote by means of an absentee (mail) ballot, the Legislature would have to enact a general law which would permit the use of absentee (mail) ballots for special elections. Such a law would have to be based upon the constitutional requirement that the voter be unable to physically appear at the polling place because of illness or because the voter will be out of the county on election day. The Legislature has broad authority, absent any constitutional limits, to establish rules regulating the manner of conducting both special and general elections. While the Legislature may not infringe or restrict a citizen's right to vote, it does have the authority to proscribe the manner of voting. *Eber v. Board of Elections* 80 Misc3d 334.

The ability to proscribe the manner of voting in special elections has not been given to local municipalities. While local governments have flexibility in determining the rules for a such election, *La Cagnina v. City of Schenectady* 70 AD2d 761 (3rd Dept 1979), they are bound by the constitutional provisions and statutes regarding the manner of voting in special elections.

Since there is no constitutional right to an absentee ballot *Eber v. Board of Elections* (supra), and there are no general laws which would permit the use of an absentee (mail) ballot other than in those instances provided for in Article 8 of the Election Law, the Board is of the opinion that absent a change in the New York State Constitution, local municipalities may not conduct special elections on referenda by the use of absentee (mail) ballots.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #7

Date: June 3, 1982

Question Presented:

What is the proper form for a ballot which contains offices where two or more candidates are nominated for an office to which two or more persons are to be elected?

Discussion:

Four suggestions have been proposed for the makeup of a ballot.

(1) The first suggestion would have such offices in the customary order of offices on the ballot with the offices and the names of the candidates for those offices bordered in heavy black vertical lines. The title of the office would be in black lettering but the words "(Vote for any TWO) even TWO in same column" would be in a black box with the wording in white immediately below the title of the office.
(2) The second suggestion would have such offices at the end of the ballot with a space between them and the offices for which only one person can be elected to one office. In columns between the single and multiple offices would be wording to the effect that the offices to the right of that space are multiple choice offices and that a person may vote for any two or three regardless of position on the ballot even if they are in the same column.
(3) The third suggestion would have all of the elective offices in their customary order with the offices to which one or more persons are able to be elected bordered in heavy black vertical lines. The title of the office and the words "(Vote for any TWO) even TWO in the same column" would be in black lettering on the white ballot paper.
(4) The fourth suggestion would have such office bordered in heavy black vertical lines with the title of the office and the words "(Vote for any TWO) even TWO in the same column" in a black box with the wording in white.

All of the above suggestions have a closed fist indicator above the column which contains the name of the candidate.

Section 7-108(1) of the Election Law states, "Upon ballots for a general election, the offices shall be listed in the customary order." Based upon this section, the second suggestion described above could not be used as a form for the ballot because there would be no customary order to the ballot for those offices to which more than one person could be elected. For example, in the office of Justice of the Supreme Court, there may be more than one Justice elected in one year and only one Justice elected in another year. Under the second suggestion, the office would be on one side of the ballot one year and on the other side of the ballot the next year. Thus, the office would not have a customary place on the ballot and could lead to voter confusion.

The Board is of the opinion that the form of the ballot as set forth in suggestions one and four described above, should not be used because, although the ballot complies with section 7-104(4) of the Election Law which states in part that ". . . all ballots shall be printed in black ink on clear, white material . . .", it may give a voter the erroneous impression that these are special offices which should receive higher priority than any of the other offices on the ballot.

It is the opinion of the Board that suggestion three described above is in conformity with the language and intent of the Election Law and may be used by a board of elections to identify an office to which more than one person is to be elected. It is suggested that under the instruction "Vote for any TWO" the wording "Even if in same column" be used rather than "Even TWO in same column" so as not to mislead a voter into believing that he or she must vote for two or more in the same column. Since the use of a closed fist indicator is specifically set forth in section 7-104(2) of the Election Law, it should only be used to identify the row or column of a party or independent body.

There is nothing in the Election Law which would prohibit a board of elections from placing instructions inside the voting booth explaining the makeup of the ballot provided such instructions are not partisan and will not be of such length or complexity as to require the voter to spend more time in the voting booth than is permitted by statute.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #8

Date: June 3, 1982

Question Presented:

What are the requirements for the filing of financial disclosure reports by political committees which support candidates for both federal and state office?

Discussion:

The facts as set forth in the request for an opinion of the Board are that a Political Action Committee has been established to administer a separate segregated fund under the Federal Election Campaign Act (2 USC §431 et seq). The Act would permit such a committee to support state and local candidates as well as federal candidates and requires financial disclosure statements to be filed with the Federal Elections Commission and a copy to be filed with "the Secretary of State (or equivalent State office) of the appropriate State, or, if different, the officer of such State who is charged by State law with maintaining State Election reports. . ."

The question that arises is whether or not such a political committee which also supports state or local candidates would have to comply with the provisions of Article 14 of the New York State Election Law and file separate financial disclosure reports on the forms used by New York State or whether the committee may just file a copy of the federal report with the State of New York since the federal report contains financial disclosure of money received or expended on behalf of state or local candidates.

Section 14-124(2) of the New York State Election Law states:

> "2. The filing requirements and the expenditure, contribution and receipt limits of this article shall not apply to any candidate or committee who or which engages exclusively in activities on account of which, pursuant to the laws of the United States, there is required to be filed a statement or report of the campaign receipts, expenditures and liabilities of such candidate or committee with an office or officers of the government of the United States, provided a copy of each such statement or report is filed in the office of the state board of elections."

The use of the words "engages exclusively in activities on account of which, pursuant to the laws of the United States, there is required to be filed a statement or report . . . with an office . . . of the government of the United States . . ." limits the exception to the filing requirements to candidates or committees which only support candidates who are seeking a Federal office. The provisions of 2 USC §§431 et seq. which govern the conduct of candidates and the committees of candidates who are seeking nomination for election or election to Federal office would take precedence over the New York Election Law with regard to the filing of the financial disclosure requirement of candidates who seek Federal office. However, they do not take precedence over

the New York Election Law with regard to the filing of financial disclosure requirements of candidates who seek state or local office in New York State. To hold otherwise would permit a committee which supports a state or local candidate to exceed the receipt limitations of Article 14 of the New York Election Law and claim an exemption under the above-cited exception.

Therefore, it is the opinion of the Board that a political committee supporting state or local candidates falls under the reporting requirements and contribution limits of Article 14 regardless of whether or not said committee supports Federal candidates.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #9

Date: September 17, 1982

Questions Presented:

1. Is the sponsoring, organizing and conducting of nonpartisan debates of nominees of recognized parties by a tax-exempt foundation, which is a corporation, a political activity within the meaning of Section 14-116 of the Election Law?

2. May a corporation engaged in business make the following contributions to such a foundation for use by the foundation in sponsoring, organizing and conducting a debate, without such expenditures being political contributions within the meaning of Section 14-116 of the Election Law: (i) funds; (ii) services in preparing advertising for the foundation's use in publicizing the debate; and (iii) advertising run by the contributor referring to the debate and its contribution to making the debate possible?

Discussion:

In a recent letter to the State Board of Elections, the League of Women Voters of the State of New York (hereafter referred to as the "League") stated that the Foundation for Citizen Education (hereafter referred to as the "Foundation"), an education affiliate of the League, proposes to conduct a debate of New York gubernatorial nominees of the political parties which received more than 50,000 votes at the last election for governor. The debate will be carried around the state by television and radio.

In response to question number one, the Board is of the opinion that the activity proposed by the League is not a political activity within the meaning of section 14-116 of the Election Law. The League has a long history of non-partisan activity in the electoral process and is forbidden by its by-laws from endorsing candidates. The debate proposed by the League and its Foundation does not involve advocating the success or defeat of a particular candidate.

Since neither the League nor the Foundation is promoting the success or defeat of any particular candidate, neither of them would be a political committee as that term is defined in Article 14 of the Election Law.

In response to the second question, the Board is of the opinion that the debate will be educational in nature and not for a political purpose. Since section 14-116(2) of the Election Law only limits corporate contributions which are for a political purpose, corporations may give contributions and the League or the Foundation may receive such contributions, without regard to amount.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1982 OPINION #10

Date: December 20, 1982

Questions Presented:

1. Can a party committee publish and distribute a newsletter and use the proceeds derived from the sale of advertising space for campaign purposes?

2. Is it permissible for the committee to employ an independent advertising contractor who would obtain ads for the newsletter and pay the contractor on a commission based on the ad revenue?[1]

The Election Law does not prohibit a party committee from publishing a newsletter and selling advertising space as a means of raising funds to be used for campaign purposes. It would also be permissible to employ an independent contractor who would be paid on a commission basis to solicit ads and print the newsletter.

Since the revenue derived from the newsletter is a fund raiser for campaign purposes, all revenue earned from the sale of advertising space would be a campaign contribution to the party committee and must be reported as such in accordance with Article 14 of the Election Law. For example, any payment for advertising space from any person which exceeds $100 in the aggregate would have to be made in the form of a check, draft or other instrument payable to the committee or treasurer of the committee and signed or endorsed by the donor. Commissions may not be extracted directly from the proceeds of the sale of ads with only the balance going to the county committee. All payments of the contractor's commission must be paid by the committee and be reported as expenditures on the financial disclosure statements.

The committee will retain an independent contractor who will print the newsletter and who will obtain ads for the newsletter. The committee will pay the contractor a commission based upon the revenue received from the ads.

[1] The questions assume the following facts:
The county committee of a political party proposes to publish and distribute a newsletter in an effort to raise funds for party operations and campaign purposes. The newsletter will contain articles and columns written by the committee.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #1

Date: February 10, 1983

Question Presented:

Who may act on behalf of a county commissioner of elections when the commissioner is unavailable or in-capacitated and no deputy commissioner has been appointed to act on his behalf?

Discussion:

Under the provisions of section 3-212(2) of the Election Law, all actions of a board of elections require a majority vote of the commissioners prescribed by law for such board. An official act of the board, such as determining that a designating or nominating petition is invalid, or determining whether or not a person who is challenged meets the statutory qualifications to register and vote, can only be made by the commissioners or their duly appointed deputies who have the power to act for and in the place of the Commissioners (Public Officers Law §9;1966 Atty Gen [Inf. Opns.] 145). It is the opinion of the Board that an employee of the county board of elections, who is neither a commissioner nor a deputy commissioner may not act in the place of the Commissioner when it is specifically set forth in the Election Law that only the commissioners of the board must perform a particular act, or when the board must set policy concerning the operation and function of the board.

However, in order to guard against the failure of public service and to insure the proper operation and functioning of the board of elections with regard to the normal administrative duties of the board, such as receiving mail registrations, processing financial disclosure statements, etc., the employees of the board may continue to conduct the affairs of the board of elections on a bipartisan basis.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #2

Date: April 26, 1983

Question Presented:

A student organization consisting solely of persons enrolled in or sympathetic to one political party wishes to establish a chapter at a university. Enclosed were both the state and proposed chapter by-laws.

The chapter by-laws lists the goal of the student organization as follows:

> "It is the goal of this undergraduate chapter. . . to provide its members with those programs that will ease their passage through college and into law school; to create a social atmosphere through which members may find release from the daily pressures of academic life; to be an integrated club within the university community; to provide progressive leadership with an aim toward bettering life within the university community; to keep its members constantly aware of the programs and services guaranteed to them and offered by the State Association; to develop contacts with local and alumni attorneys and benefactors and to use such contacts to aid members in their admission to law school and employment pursuits."

The university requested an opinion on the following questions:

1. Is the organization a political committee for the purposes of Election Law Section 14-116?

2. If the organization is a political committee, is the university, as a not-for-profit corporation, prohibited from contributing to it based upon Board's 1974 Opinion #5, since no authorization to contribute to political organizations is contained in the university charter?

Discussion:

The definition of a political committee under Election Law Section 14-100 is ". . .any combination of one or more persons operating to aid or promote the success or defeat of a political party or principle, or of any ballot proposal; or to aid or take part in the election or defeat of a candidate for public office. . . or for the nomination at any primary election . . ."

The Board has held that in order for an organization to be a political committee under the definition in Section 14-100, the aid that it gives must be financial in nature. (Conforming to the Board's 1975 Opinion #13.) It is also important to note that an organization is not a political committee under Section 14-100, if it exists ". . . for the discussion or advancement of political questions or principles without connection with any vote. . ."

The Board is of the opinion that the stated goals of the student organization do not include any activity that would make it a political committee under Section 14-100, and until such time as the organization begins to engage in soliciting or giving financial aid to a candidate or a political committee, it is not a political committee.

Election Law Section 14-116 limits the amount any corporation may give for political purposes to $5,000 in the aggregate in any calendar year. Clearly this is a much broader description of political activity than that which defines a political committee. However, even under this broad description, the stated goals of the student organization do not appear to include any activity for political purposes. But if an organization consisting solely of persons belonging to or sympathetic to one political party begins to actively operate for some political benefit to that party, the university, as a corporation, would be limited to a total of $5,000 in contributions to the organization under Election Law Section 14-116.

The Board expresses no opinion on the ramifications of any other Federal or state laws upon not-for-profit corporations, as it does not have jurisdiction over those matters. This opinion supersedes Board's 1974 Opinion #5, to the extent that the prior opinion allows political contributions by not-for-profit corporations only if such contributions are specifically permitted by the corporate charter.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #3

Date: June 7, 1983

Question Presented:

How are nominations for town office in a town located in a county of less than 750,000 people to be made?

Discussion:

Chapter 352 of the Laws of 1982 (effective June 21, 1982) which amends section 6-108 of the Election Law mandates that nominations in such towns must be made at a primary election or by a caucus as prescribed by the rules of the county committee. It also provides that if the rules of a county committee do not provide for a method of nomination, the nominations are to be made in accordance with the existing practice in the town.

It is the opinion of the Board that if the rules of the county committee provide for a method of nomination for town office which is inconsistent with section 6-108 of the Election Law, any nomination made under the rules would be null and void. In order to adopt a rule which permits nominations to be made at a primary election, such rule must be adopted at least 4 months before the subsequent primary election.

The only time that the existing practice in a town for making nominations, which is other than by a primary or caucus, should be honored is when the rules of the county committee do not make any provisions for nominating candidates for town office.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #4

Date: June 7. 1983

Questions Presented:

1. When must a commissioner of elections resign if he or she wishes to be a candidate for elective office?

2. When must a new commissioner be appointed when a duly appointed deputy is in place and performing the day to day functions?

Discussion:

Section 3-200(6) of the Election Law states:

> " An election commissioner shall not be a candidate for any elective office which he would not be entitled to hold under the provisions of this article, unless he has ceased by resignation or otherwise, to be commissioner prior to his nomination or designation therefor. Otherwise such nomination or designation shall be null and void."

Based upon the wording of that section, the Board is of the opinion that since a nomination or designation does not have any effect until a petition is filed, a commissioner must resign prior to the filing of his or her designating or nominating petition.

In response to the second question, Section 3-204(5) of the Election Law states:

> "If at any time a vacancy occurs in the office of any election commissioner other than by expiration of term of office, such vacancy shall be filled as herein provided for the regular appointment of a commissioner except that a person who fills a vacancy shall hold such office during the remainder of the term of the commissioner in whose place he shall serve."

The power to appoint an election commissioner is vested in the local legislative body, *Ryan v. Albany County Democratic Committee* 97 Misc2d 935 aff'd. 68 AD2d 1014, modified 47 NY2d 963. The procedure normally followed in appointing an election commissioner is that the appointment is made by the county legislature after it has received a certificate of recommendation from the chairman or secretary of the appropriate party committee. After the certificate of recommendation is filed with the legislature, the legislature has 30 days in which to make the appointment. If it does not make the appointment within that time, the commissioner of elections shall be appointed by the members of the legislative body who are members of the party which filed the certificate of recommendation. While subdivision 1 of section 3-204 provides a specific time in which a county committee must file a certificate of recommendation for appointing an election commissioner when it is dealing with an expiration of term,

subdivision 5 of section 3-204 does not establish a time frame within which the county committee must make its recommendation to the legislative body in order to fill a vacancy in the office of election commissioner.

The fact that a board of elections has a deputy commissioner to perform the day to day functions of the board has no bearing on the time frame in which a commissioner must be appointed by the legislature. Until such time as the new commissioner is appointed by the local legislative body, the deputy commissioner shall perform the duties and act in place of the commissioner (cf. 1983 Formal Opinion #1.)

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #5

Date: July 7, 1983

Question Presented:

In light of the enactment of Chapter 215 of the Laws of 1983 which permits police officers to join political associations and make contributions to political committees, the State Board of Elections has been requested to review the holding of the Board's 1978 Formal Opinion No. 5.

Discussion:

The 1978 Formal Opinion No. 5 held that section 17-110 of the Election Law would prohibit a Police Benevolent organization comprised in whole or in part of active duty policemen from making political contributions or expenditures. The rationale behind that opinion was that if policemen could not contribute to political candidates or political committees, they could not contribute to police oriented organizations which would use dues and contributions from active duty police officers for political purposes. Essentially it held that two or more police officers could not make a joint contribution which would otherwise be prohibited if made by an individual police officer.

Chapter 215 of the Laws of 1983 effective July 2, 1983 removed the prohibition on police officers from contributing any money directly or indirectly to any political fund and it removed the prohibition on police officers from becoming a member of any political club, association, society or committee. The chapter did not remove the prohibition on active duty police officers from soliciting, collecting or receiving any money for any political fund, club, association, society or committee.

Therefore, the Board is of the opinion that while police officers on active duty can either make individual contributions for political purposes or can pool their monies in order to make a collective contribution, they may not solicit or receive money for political purposes from sources outside of their police organization.

To the extent expressed in this opinion, the 1978 Formal Opinion No. 5 is rescinded.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #6

Date: August 15, 1983

Question Presented:

Does a person convicted of a felony and sentenced to either "shock probation" or "intermittent imprisonment" lose his or her right to vote for the duration of the sentence? If he or she does lose the vote, may a certificate of relief from disabilities restore it?

Discussion:

Election Law Section 5-106, subdivision 2, states in part:

> "No person who has been convicted of a felony pursuant to the laws of this state, shall have the right to register for or vote at any election unless he shall have been pardoned or restored to the rights of citizenship by the governor, or his maximum sentence of imprisonment has expired, or he has been discharged from parole. . ."

A convicted felon sentenced simply to probation would not lose his or her right to vote under this section because under the provisions of subdivision 5 of section 5-106, if a person is not sentenced to death or imprisonment, or if the execution of a sentence of imprisonment is suspended, a person does not lose his or her right to register and vote.

"Shock probation" refers to the sentencing of a felon to up to six months imprisonment, and also to probation. The authority for this is contained within section 60.01(2)(d) of the Penal Law:

> "In any case where the court imposes a sentence of imprisonment not in excess of sixty days, for a misdemeanor or not in excess of six months for a felony or in the case of a sentence of intermittent imprisonment not in excess of four months, it may also impose a sentence of probation or conditional discharge provided that the term of probation or conditional discharge together with the term of imprisonment shall not exceed the term of probation or conditional discharge authorized by article sixty-five of this chapter. The sentence of imprisonment shall be a condition of and run concurrently with the sentence of probation or conditional discharge."

"Intermittent imprisonment" is defined in Penal Law section 85(1) as ". . . a revocable sentence of imprisonment to be served on days or during certain periods of days, or both, specified by the court as part of the sentence." A felon may be sentenced to intermittent imprisonment for a period not in excess of four months, and also sentenced to probation. (Penal Law §60.01(2)(d).)

The Board is of the opinion that for the purposes of the Election Law, when a person is sentenced for up to six months of imprisonment, and also to probation or conditional discharge pursuant to Penal Law §60.01(2)(d), he or she has effectively served his or her maximum

sentence of imprisonment when he or she is released from prison, even though he or she has not completed his or her period of probation or conditional discharge. Such a person would therefore be eligible to again register and vote.

However, a person who is sentenced to a term of intermittent imprisonment of up to four months has not completed his or her maximum sentence of imprisonment until the entire sentence is complete, since until that time he or she continues to return to the prison at regular intervals. This person could not again register and vote until his entire sentence is complete.
As to the question of whether a felon not otherwise permitted to vote may obtain a certificate of relief from disabilities, Correction Law Section 701(1) states:

> "A certificate of relief from disabilities may be granted as provided in this article to relieve an eligible offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars, or may relieve the eligible offender of all forfeitures, disabilities and bars. . ."

Correction Law Section 701(2) goes on:

> "Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. . ."

Therefore, the Board is of the opinion that a certificate of relief from disabilities may permit a convicted felon to re-register to vote.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #7

Date: August 29, 1983

Question Presented:

Does section 2-126 of the Election Law prohibit a political party from using its funds either directly or indirectly to support a candidate in a primary election of another political party?

Discussion:

Section 2-126 of the Election Law states:

> "§2-126. Party funds; restrictions on expenditures. No contributions of money, or the equivalent thereof, made, directly or indirectly, to any party, or to any party committee or to any person representing or acting on behalf of a party or party committee or any moneys in the treasury of any party, or party committee, shall be expended in aid of the designation or nomination of any person to be voted for at a primary election either as a candidate for nomination for public office, or for any party position." (emphasis added)

The Board is of the opinion that the section is clear and unambiguous. Contributions to a party, which is defined by section 1-104 of the Election Law as ". . . any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor", and contributions to a party committee which is defined by section 2-100 of the Election Law as ". . . a state committee, county committee and such other committees as the rules of the party may allow", are not permitted to be used to support or to oppose any person at a primary election. *Werner v. Nassau County Republican Committee* 36 Misc2d 535.

The Board is of the opinion that the prohibition against the use of the funds of one political party in the primary election of another party is analogous to the prohibition against "party raiding" which was the subject of the case of *Rosario v. Rockefeller* 458 F2d 649 (1972) aff'd. 410 U.S. 752 (1973). The language of the United States Court of Appeals for the Second Circuit concerning the interference of members of one party in another party's affairs by party raiding is just as applicable to the using of party funds in another party's primary. The court opinion at page 652:

> "The political parties in the United States, though broad based enough so that their members' philosophies often range across the political spectrum, stand as deliberate associations of individuals drawn together to advance certain common aims by nominating and electing candidates who will pursue those aims once in office. The entire political process depends largely upon the satisfactory operation of these institutions and it is the rare candidate who can succeed in a general election without the support of the party. Yet the efficacy of the party system in the democratic process-its usefulness in providing a unity of divergent factions in an alliance for power-would be seriously

> impaired were members of one party entitled to interfere and participate in the opposite party's affairs. In such circumstances, the raided party would be hard pressed to put forth the candidates its members deemed most satisfactory. In the end, the chief loser would be the public."

While individuals who are enrolled members of one party may not vote in another party's primary, they may make individual contributions to candidates who are involved in a primary of another party. However, funds from a party or a party committee which represent the total membership of a party may not be used in the primary of another party.

The provisions of Section 2-126 do not apply to cases where a party committee financially supports a candidate in a general election even though such candidate may be in a primary election contest of another party, provided that such expenditures do not relate to the primary contest.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #8

Date: September 26, 1983

Question Presented:

The State Board of Elections has been requested to supplement its 1983 Opinion #5 which holds that a police officer can make individual or collective contributions for political purposes even though he or she is prohibited from soliciting or receiving money for political purposes outside of his or her police organization and to render a formal opinion on the issue of what political activities a police officer is permitted to participate in as a result of the enactment of Chapter 215 of the Laws of 1983.

Discussion:

Under the Election Law, the political activities of a police officer, who is defined by section 1.20 of the Criminal Procedure Law, are governed by section 17-110 of the Election Law. That section states as follows:

> §17-110. Misdemeanors concerning police commissioners or officers or members of any police force. Any person who, being a police commissioner or any officer or member of any police force in this state:
>
> 1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or
>
> 2. Appoints, promotes, transfers, retires or punishes an officer or member of a police force, or asks for or aids in the promotion, transfer, retirement or punishment of an officer or member of a police force because of the party adherence or affiliation of such officer or member, or for or on the request, direct or indirect, of any political party, organization, association or society, or of any officer, member of a committee or representative official or otherwise of any political party, organization, association or society; or
>
> 3. Solicits, collects or receives any money for, any political fund, club, association, society or committee, is guilty of a misdemeanor.

Prior to the enactment of Chapter 215 of the Laws of 1983, a police officer was prohibited from contributing any money directly or indirectly, soliciting or receiving any money for any political fund, or joining or becoming a member of any political club, association, society or committee.

Chapter 215 of the Laws of 1983 removed the general restriction on a police officer contributing money to a political fund, and it also removed the general prohibition on a police officer from

joining or becoming a member of any political club, association, society or committee. However the soliciting or receiving of money for political purposes is still prohibited. (See 1983 Opinion of State Board of Elections #5)

Even prior to the enactment of Chapter 215 of the Laws of 1983, a police officer could be a candidate for public office as long as he or she did not violate any of the provisions of section 17-110 of the Election Law. The candidacy itself does not violate the provisions of section 17-110. (*Jones v. Seneca County Board of Elections* 83 AD2d 982 (4th Dept. 1981); 1974 Attorney General (Inf. Opns) 79; cf. 1977 Opinion of State Board of Elections #4. Also a police officer had the ability to seek election as a member of a party committee. See *Matter of Gretzinger v. Northrup* 34 AD2d 1095 (4th Dept. 1970).

Chapter 215 did nothing to change such interpretation. Likewise, it is the opinion of the Board that section 17-110 never prohibited a police officer from circulating petitions or participating in a party caucus for the purpose of nominating candidates for public office provided that he or she did nothing in the process to violate subdivisions 1 and 2 of section 17-110 which continue to remain intact. For example, a police officer may not use his or her position as a police officer to coerce a voter to sign a designating petition.

Although the general rule would permit a police officer to participate in political activities, specific general laws, local laws or rules and regulations of a particular police force may prohibit police officers from engaging in any political activity.

Municipalities possess authority under section 806(1) of the General Municipal Law to enact local laws restricting municipal officers and employees from holding offices in political parties *Belle v. Town Board of Town of Onondaga* 61 AD2d 352 (4th Dept. 1978). Such a prohibition does not infringe upon such employees' or officers' constitutional rights under the First and Fourteenth Amendments to the United States Constitution. *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO* (413 U.S. 548); *Broadrick v. Oklahoma* (413 U.S. 601).

With respect to rules and regulations which govern police officers in particular, the New York Court of Appeals in the case of *Matter of Purdy v. Kreisberg* 47 NY2d 354 (1979) stated at page 361:

Almost 90 years ago, Judge Oliver Wendell Holmes articulated the rationale employed to uphold the constitutionality of a police regulation prohibiting officers from 'solicit[ing] money or any aid, on any pretense, for any political purpose whatever' as follows: [T]here is nothing in the Constitution * * * * to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.' (McAuliffe v. Mayor of New Bedford, 155 Mass 216, 220.) As has been consistently recognized, a rule which prohibits a police officer from participating in the political arena, whether it be by soliciting votes or financial aid or by influencing any voter at an election, 'comports with [the] sound administration policy that the removal of police personnel from active politics and from active participation in any movement for the nomination or election of candidates for political or

public office is conducive to the effective maintenance of discipline and the preservation and promotion of the integrity and efficiency of the Police Department and its personnel.' (*Matter of Lecci v. Looney*, 33 AD2d 916, 917, mot for lv to app den 26 NY2d 612; see *Perry v. St. Pierre*, 518 F2d 184; *Boyle v. Kirwin*, 39 AD2d 993; cf. *Belle v. Town Bd. of Town of Onondaga*, 61 AD2d 352, 358-359.) Likewise, the authority of the Federal and State Governments to prohibit their officers and employees from engaging in specified political activities has been consistently sanctioned. (*CSC v. Letter Carriers*, 413 US 548, *Broadrick v. Oklahoma*, 413 US 601, *United Public Workers v. Mitchell*, 330 US 75.)

Therefore, before a police officer engages in any political activity, he or she should research general laws relating to his or her particular political unit, such as section 144 of the Second Class Cities Law which restricts a police officer's political activities (see 1977 Opinion of State Board of Elections #3). The police officer should also research any local laws or rules of his or her particular police force or applicable collective bargaining agreements to see if such political activity is prohibited. While a violation of such law or regulation could lead to dismissal from the police force, it would not be a violation, per se, of section 17-110 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1983 OPINION #9

Date: December 21, 1983

Question Presented:

May a police officer make a tape endorsing a political candidate?

Discussion:

While the Election Law does not define the term endorsement, for the purposes of this opinion, it shall be used in its common terminology as a public pronouncement by a particular person on behalf of a candidate.

The political activities of police officers are governed by section 17-110 of the Election Law. That section reads in part:

> " §17-110. Misdemeanors concerning police commissioners or officers or members of any police force. Any person who, being a police commissioner or any officer or member of any police force in this state:
>
> "1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen; or
>
> * * *
>
> "3. Solicits, collects or receives any money for, any political fund, club, association, society or committee, is guilty of a misdemeanor."

Up to 1983, subdivision 3 of section 17-110 prohibited a police officer from contributing any money directly or indirectly to any political fund and prohibited a police officer from becoming a member of any political club, association, society or committee and the courts of New York State narrowly interpreted section 17-110 of the Election Law and similar provisions of local laws or rules and regulations of particular police departments. See *Purdy v. Kreisberg* 47 NY2d 354 (1979). The New York State Court of Appeals in the *Purdy* case stated at page 361 that ". . . this rule prohibits a policeman from utilizing his status and authority as a law enforcement officer as the means to aid or to hinder a political entity." The statute as it existed prior to 1983 and the *Purdy* case made it an absolute prohibition for a police officer to participate in any political activity.

In 1983, the Legislature enacted and the Governor signed Chapter 215 of the Laws of 1983. That chapter permits police officers to become involved in political activities by making contributions

to candidates and political committees and it permits them to join political organizations. When the Governor signed this legislation into law, he issued a memorandum which said:

> "This bill removes restrictions upon the rights of police officers to engage in political action or political association rights which are constitutionally protected and unjustifiably denied to police officers on the basis of their employment.
>
> Enabling a police officer to participate as a private citizen in the political life of his community cannot reasonably be deemed to interfere with the efficiency and integrity of a police officer. Moreover, continuing prohibitions against a police officer's use of his official power for political purposes sufficiently insure that the actions of the police officers will not be affected by partisan political considerations.
>
> Accordingly, I approve this bill which will enable police officers to act in the same manner as every other citizen realizing rights guaranteed by the Constitution.
>
> The bill is approved."

In view of Chapter 215 of the Laws of 1983 and the message of the Governor, the Board is of the opinion that the political rights of a police officer have been expanded and that a police officer as a private citizen may now endorse a political candidate as long as the endorsement is not given in such a manner as to coerce or intimidate a voter to vote for a particular candidate. The act of endorsing, in and of itself, is not a violation of subdivision 1 of section 17-110 of the Election Law.

The facts surrounding how the endorsement is given and whether or not it was given in such a way as to intimidate or coerce a voter must be determined on a case by case basis.

It is the opinion of the Board that there would be no violation of section 17-110(1) of the Election Law if a police officer acting as a private citizen was to direct his or her endorsement of a candidate to the public as a whole by appearing on television, making a tape for radio, or is pictured or quoted in the press supporting a candidate of his or her choice.

While the Board is of the opinion that such activity is not a criminal violation of section 17-110(1), it should be noted that before a police officer endorses any candidate or engages in any political activity, he or she should research general laws, local laws, regulations of his or her particular police department, and any applicable collective bargaining agreements to see if such political activity is prohibited (1983 Opinion of State Board of Elections, #8).

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1984 OPINION #1

Date: May 3, 1984

Question Presented:

With reference to disclosure and polling of public opinion polls:

1. Under what circumstances, if any, are the provisions of 9 NYCRR §6201.2 applicable to candidates for federal office?

2. If the person is not an announced candidate but releases the results of his or her "testing the waters" poll must the results be filed pursuant to the Fair Campaign Code provision 9 NYCRR §6201.2 or is there an exclusion for "testing the waters" polls since he or she is not yet a candidate?

3. If there is a "testing the waters" poll exclusion what are the parameters of that exclusion? Is the exclusion lost if a person formally becomes a candidate and continues to use the poll to further his or her candidacy? What if he or she formally becomes a candidate, and publicly points to the poll as a basis for his or her decision to run but does not use it for any other purpose?

4. If one person commissions or contracts for the poll but a different person or organization pays for the poll must the name of both parties be filed pursuant to paragraph (a) of §6201.2 of the regulations. Must the name of each person contributing toward the payment of the cost of the poll be filed?

5. If a group of corporations fund a "testing the waters" poll with the intent of using the results to urge a certain person to run for a specific office, is the funding of the poll to be deemed a corporate contribution to that person from each corporation? What if that person runs for a different office perhaps a federal office where corporate contributions are barred? Suppose that person never becomes a candidate for any office? If a different person learns of the poll results and uses them to further his or her candidacy, is it a contribution to that person? Does it make a difference if the original poll subject has no knowledge of the poll until it is concluded? Alternatively, suppose the person consents to having the poll conducted?

6. What is the difference, if any, between the information required to be filed under paragraph (c) of section 6201.2 which asks for "the numerical size of the total poll sample" and paragraph (g) which asks for "the number of persons in the poll sample"?

7. If a person is required to file the poll with the Board must he or she file the results of the entire poll or only the results of the poll questions released to the general public? If only the specific questions made public need be filed, what is the meaning of 9 NYCRR

§6201.2 paragraph (h) which asks that "the results of the poll" be filed? Further, if only the questions made public need be filed does paragraph (d) which asks the "numerical sequence" of the questions mean the sequence of the released and filed questions vis-a-vis each other or the sequence of the released questions vis-a-vis all the questions in the entire poll whether or not released?

8. Is a candidate required to file poll results if the poll was designed strictly for internal campaign use and is shown only to campaign staff members yet is somehow leaked to the media and thus published? Does the answers to that question change if the "leak" can be shown not to have been against the wishes of the campaign committee? (If so who has the burden of proof?) Suppose the results of the poll found their way into print via an act of political espionage? If, in any of the above situations, the results must be filed, what safeguards exist to prevent a political opponent from fabricating results of the poll, leaking them for publication and attributing them to the opponent's campaign, thus requiring the opponent to file the true results?

9. Does the answer to any part of question eight change if the true poll results are shown by a candidate to volunteer staff and advisers as well as the candidate's paid staff and consultants? To the candidate's campaign supporters as well as the candidate's staff? To potential supporters as well as supporters? To political leaders such as party chairmen as well as potential supporters? To opponents as well as to political leaders?

Discussion:

Section 6201.2 of the Rules and Regulations of the State Board of Elections sets forth the filing requirements for public opinion polls. That section states:

§6201.1 Use of Public Opinion Polls

> No candidate, political party or committee shall attempt to promote the success or defeat of a candidate by directly or indirectly disclosing or causing to be disclosed the results of a poll relating to a candidate for such an office or position, unless within 48 hours after such disclosure, they provide the following information concerning the poll to the board or officer with whom statements or copies of statements of campaign receipts and expenditures are required to be filed by the candidate to whom such poll relates?
>
> (a) The name of the person, party or organization that contracted for or who commissioned the poll and/or paid for it.
>
> (b) The name and address of the organization that conducted the poll.
>
> (c) The numerical size of the total poll sample, the geographic area covered by the poll and any special characteristics of the population included in the poll sample.
>
> (d) The exact wording of the questions asked in the poll and the sequence of such questions?

(e) The method of polling whether by personal interview, telephone, mail or other.

(f) The time period during which the poll was conducted.

(g) The number of persons in the poll sample: the number contracted who responded to each specific poll question; the number of persons contracted who did not so respond.

(h) The results of the poll.

In response to the first question, the Board is of the opinion that since the regulation refers to "the course of any campaign . . ." the provisions of the regulation apply to all campaigns conducted in New York State where the intent is to influence the voters of the State. There are no federal laws, rules or regulations known to the Board which would supersede the regulation of the New York State Board of Elections.

With regard to the second question, the Board is of the opinion that a "testing the waters" poll is excluded from the poll filing requirements because the person is not yet seeking the nomination nor is the person a candidate for office. However, the mere fact that a person has not officially announced his or her candidacy does not prevent the person from being considered as a candidate if the person's actions show that he or she is in fact a candidate. Such determination of candidacy must be made on a case by case basis.

In answer to the third question, the Board is of the opinion that the exclusion provided for in a "testing of the waters" poll is lost if the person becomes a candidate and uses the poll to further his or her candidacy. Even if the person only cites the results of the poll as the reason for his or her decision to seek office and does not use the poll after that disclosure, the poll must be filed because once the person has declared his or her candidacy and is, from the point on, in the course of seeking the nomination or election, the disclosure of any poll by the candidate, political party or political committee must be filed in accordance with the rule.

The Board is of the opinion that the fourth question should be answered in the affirmative. The rule is clear that if one person commissions or contracts but a different person or organization pays for a poll, the name of both parties must be filed pursuant to §6201.1(a) of the Rules and Regulations. The name of each person contributing toward the cost of the poll must be filed if each contributes separately toward the payment. However, if several people contribute to a committee which pays for the poll, only the name of the committee must be filed because the contributors to the committee will be reported on the financial disclosure reports filed by the committee pursuant to Article 14 of the Election Law.

In regard to question five, the Board is of the opinion that if a corporation or group of corporations funds a "testing of the waters" poll in order to urge a certain person to run for public office, such funding would not be a contribution to that person. Since a "testing of the waters" poll is conducted before a person takes any steps toward seeking the nomination or election to office, any expenditure by a corporation for such a poll would not be a contribution to a person but the corporate expenditure would be for political purposes and must be included in that $5,000

limitation on corporate expenditures for political purposes in accordance with the provisions of section 14-116(b) of the Election Law. However, if the person becomes a candidate and uses the poll to promote his or her candidacy, it would be considered as a contribution to that candidate or the candidates' committee. As to that part of question five which asks what the effect would be if the person runs for federal office where corporate contributions are barred, the Board does not have authority to interpret federal election laws as they relate to federal candidates. The Federal Election Commission is the proper authority to answer such a question.

In answer to the sixth question, the information required under subdivision (c) of section 6201.2 sets forth the total number of persons polled, the geographic area and any special characteristics of the population. The information required under subdivision (g) once again asks for the same total as in (c) but requires a breakdown on how the people who made up that total responded to the poll questions.

In response to the seventh question, the Board is of the opinion that once the results of a poll have been disclosed, the candidate need only file the results of the poll questions released to the public. The candidate must also file those questions in the poll which are related to the results disclosed, including those questions which are asked preparatory to the question which is the basis of the results disclosed. Subdivision (d) of section 6201.2 requires that the sequence of the questions be set forth so that the preparatory questions to the main question will be shown to indicate how those preparatory questions may have influenced the answer to the main question upon which the results are based.

With regard to the eighth question, the Board is of the opinion that the results of a poll must be filed even if the poll was designed strictly for internal use but is "leaked" to the media and published. The fact that a campaign committee does not have control over its members would not relieve the committee from the requirement that the results of a poll must be filed once the results have been disclosed. If the results of a poll are fabricated by an opponent in an attempt to force the candidate to file the true results of the poll, the candidate or the proper committee may file a statement with the filing officer stating that the results disclosed are not the true results of the poll. The filing officer will conduct a confidential investigation to determine if the results released are the true results which must be disclosed. If the true results are disclosed via an act of political espionage, the poll must be filed but the candidate or the proper committee would have a valid complaint under section 6201.1(a) of the Rules and Regulations of the State Board of Elections which prohibit practices of political espionage.

Finally, in answer to question nine, once the results of the poll are disclosed for the purpose of promoting or opposing a person's candidacy for office, the results must be filed. If the results are shown only to the campaign staff, advisers or consultants, whether volunteers or paid, the results need not be filed. However, once the results are disclosed beyond the immediate campaign staff, advisers and consultants, the results must be filed because any revealing of poll results beyond such campaign committee level would be deemed to be for the purpose of promoting the success or defeat of a candidate.

This opinion is limited to the facts contained in the questions presented for review and is not intended to be a broad interpretation of the regulation. Circumstances concerning the

requirement to file a public opinion poll must be decided on the merits of each individual case.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1984 OPINION #2

Date: May 3, 1984

Question Presented:

May a deputy commissioner of elections be a candidate for an elected office which a commissioner of elections would be prohibited to run for or hold?

Discussion:

Section 3-200 of the Election Law specifically prohibits an elections commissioner from being a candidate for or holding any other public office with a few exceptions set forth in subdivision 4 of that section.

That section is directed solely at commissioners of elections and neither that section nor section 9 of the Public Officers Law which contains general provisions for appointing deputies, nor section 3-300 of the Election Law which specifically provides for the appointment of deputy commissioners of elections have any similar prohibitions against a deputy commissioner of elections from holding any other public office.

While a deputy is possessed of the powers and is authorized to perform the duties of a commissioner during the absence of a commissioner, the statutes do not constitute the deputy as the principal or confer on the deputy the office of commissioner (*People v. Snedeker* 14 NY 52, 59). Although the deputy executes the duties of the commissioner, the deputy does not fill the office and if there is a vacancy, the vacancy continues to exist until it is filled in a proper manner.

Since a deputy commissioner of elections does not automatically become a commissioner of elections if the commissioner is unable to act or there is a vacancy in the office of the commissioner, a statute which imposes prohibitions specifically on the position of commissioner of elections concerning the ability to run for or hold another public office would not be binding on a deputy commissioner.

Therefore, the Board is of the opinion that absent a statute which specifically prohibits a deputy commissioner from running for or holding another public office, a deputy commissioner of elections may seek and hold other public office.

It should be noted, however, that it would be inappropriate for a deputy commissioner to review or make any determination with regard to any petition in which his or her name appeared as a candidate for public office.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1984 OPINION #3

Date: May 29, 1984

Question Presented:

Is 1984 a reapportionment year for the purposes of residency requirement provisions of subdivision three of section 2-102 and subdivision three of section 2-110 of the Election Law?

Discussion:

The relevant statutory provisions state:

> §2-102. State Committee; creation
>
> * * *
>
> 3. To be eligible for election as a member of the state committee at the first election next ensuing after a readjustment or alteration of the units of representation becomes effective, a candidate must only have been a resident of the county in which the unit, or any part thereof, is contained for the twelve months immediately preceding the election.
>
> §2-110. Committees other than state and county; creation
>
> * * *
>
> 3. To be eligible for election as assembly district leader or associate assembly district leader at the first election next ensuing after a readjustment or alteration of the units of representation becomes effective, a candidate must only have been a resident of the county in which the unit, or any part thereof, is contained for the twelve months immediately preceding the election.

This question has arisen because, as a result of the Federal Census of 1980, the State of New York reapportioned the Senate, Assembly and Congressional Districts of the State by means of Chapters 455 and 456 of the Laws of 1982. In 1983 the Legislature enacted, and the Governor signed into law, Chapter 1002 of the Laws of 1983 which redefined the boundary lines of certain Senate and Assembly districts and Chapter 1003 of the Laws of 1983 which redefined the boundary lines of certain congressional districts. By letter dated November 23, 1983, the Attorney General of the United States stated that he would not interpose any objections to Chapters 1002 or 1003 of the Laws of 1983.

Based upon the amendments to Senate, Assembly and Congressional districts by Chapters 1002 and 1003 of the Laws of 1983, the Board is of the opinion there was a readjustment of units of representation as contemplated by sections 2-102(3) and 2-110(3) of the Election Law. (See

Matter of Sterler v. Feuer 45 AD2d 942 aff'd. 34 NY2d 972). Therefore, the Board is of the opinion that for the election of a member of the state committee or the election of an Assembly district leader or associate leader in the year 1984, the candidates for such positions need only be residents of the county in which the unit or any part thereof, is contained for the twelve months immediately preceding the election.

Opinions of the Board are based upon the Board's interpretation of pertinent statutes and court decisions. They are not binding upon local boards of elections which have independent authority and responsibility under statute to make determinations such as the validity of petitions filed with such board.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1984 OPINION #4

Date: June 15, 1984

Question Presented:

Would the funding of non-partisan voter registration flyers by a corporation come under the contribution limits for corporations as set forth in section 14-116 of the Election Law?

Discussion:

The stated intent of the flyer is to explain qualifications for voting and inform the people how, when and where they can register to vote.

Election Law section 14-116 limits the amount any corporation may give for political purposes to $5,000 in the aggregate in any calendar year. Since the purpose of the flyer is informational and educational in nature and does not appear to be for a political purpose, the Board is of the opinion that a corporation may fund the non-partisan voter registration flyer without regard to amount. However, if the organization which is distributing the flyer uses the flyer to actively support or oppose a candidate for public office or party position or for the benefit of a particular political party, the corporation would be limited to a total of $5,000 in contributions to the organization under Election Law section 14-116 (cf 1982 Opinion No. 1; 1982 Opinion No. 10; and 1983 Opinion No. 2).

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1984 OPINION #5

Date: October 31, 1984

Question Presented:

Is a political action committee a "person" as that term is used in section 14-114(8) of the Election Law?

Discussion:

That section states as follows:

> "8. Except as may otherwise be provided for a candidate and his family, no person may contribute, loan or guarantee in excess of one hundred fifty thousand dollars within the state in connection with the nomination or election of persons to state and local public offices and party positions within the state of New York in any one calendar year. For the purposes of this subdivision 'loan' or 'guarantee' shall mean a loan or guarantee which is not repaid or discharged in the calendar year in which it is made."

Article 14 of the Election Law, which governs political contributions and the reporting of campaign receipts and expenditures, is specific in the use of the term "person" as that term relates to a particular class of contributors or to those who have the responsibility for filing financial disclosure statements. Subdivision 1 of section 14-100 specifically defines a political committee as ". . . any committee or combination of one or more persons . . . " By separating the word persons from the word committee, it was the intent of the Legislature to differentiate between a natural person and a committee which can be made up of other than natural persons. Thus a political committee can be made up of one or more natural persons. Subdivision 9 of section 14-100 in defining the term contribution makes separate reference to contributions of a person and contributions by a political committee. Subdivisions 6a and 6b of section 14-114 set forth separate categories of person, association, firm or corporation when referring to when a loan becomes a contribution. Section 14-126 of the Election Law in using the term "person" as it relates to a person who fails to file statements required by Article 14 of the Election Law refers to a natural person who is the treasurer of a political committee who has the responsibility for filing financial disclosure reports. It also refers to a person as one who acts on behalf of a political committee. The agent of a political committee would have to be a natural person and not another committee.

Based upon the use of the term "person" throughout Article 14 of the Election Law, the Board is of the opinion that a political committee is not a person as that term is used in subdivision 8 of section 14-114 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1985 OPINION #1

Date: May 30, 1985

Question Presented:

What are the procedures to be followed if a vacancy occurs in the office of Justice of the Supreme Court after the statement of party position to be filled at a primary (party call) has been filed with the state and appropriate county board of elections?

Discussion:

If a vacancy occurs in the office of Justice of the Supreme Court more than three months before the next general election, that office must be filled for a full term at that next general election (Art. VI, §21, New York State Constitution).

Party nominations for the office of Justice of the Supreme Court are made by delegates at a judicial district convention held after the primary election. Those delegates are elected at the primary election after having filed designating petitions for the position of delegate. The party call, which is filed with the board of elections not later than the fourteenth Tuesday before the primary election, should contain the party position of delegate if it is necessary to fill such a position (Section 2-120(1) of the Election Law). If no vacancy in the office of Justice of the Supreme Court exists at the time the party call is filed, no delegates are to be elected and are not to be included in the party call.

If a vacancy in the office of Justice of the Supreme Court occurs after the party call, but more than seven days before the last day to file petitions, candidates for the position of delegate must file designating petitions. The party call may be amended to include the position of delegate. The primary purpose of the party call is for the information of the board of elections and is not a statutory prerequisite to the filing of designation petitions for party office. Even if the party call is not amended, candidates may file designating petitions for the party position of delegate. (*Brooks v. Griffin*, 173 Misc 496).

If the vacancy in the office of Justice of the Supreme Court occurs less than seven days before the last day to file designating petitions or after the date for filing designating petitions, §6-116 of the Election Law provides that the nomination for candidates for election to fill a vacancy shall be made by a quorum of the members of the county committee or committees last elected in the political subdivision in which such vacancy is to be filled or by a majority of such other committee as the rules of the party may provide. Absent a rule designating another committee to make the nomination, a majority of the county committeemen from those counties which comprise the judicial district in which the vacancy has occurred will make the nomination of the party's candidate for the office of Justice of the Supreme Court.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1985 OPINION #2

Date: December 20, 1985

Questions Presented:

1. May a person make his maximum contribution to a campaign even though he contributed to a previous campaign which has surplus funds now being used for the new campaign?

2. Must a contribution to a primary election fund be applied against the general election when such primary election is uncontested?

Discussion:

The contribution limits set forth in section 14-114 of the Election Law are clearly intended to apply to a single campaign except for those specific provisions which establish calendar-year limits. It is the opinion of the Board that if a person makes a contribution to aid the success or defeat of a given candidate in an election, such contribution should not affect his ability to participate financially in a future campaign. This is true regardless of whether or not the committee to which the initial contribution was made has surplus funds which are used in subsequent elections.

It is the opinion of the Board that those funds which are in excess of the debts of a candidate or a candidate's committee after an election are surplus funds which may be used to defray costs of subsequent campaigns (see 1975 Opinion #2 and 1979 Opinion #3). However any funds that are received after an election and after the time when the funds of such candidate or committee exceed the debts of such candidate or committee must be deemed to be contributions to a future campaign and will be subject to the contribution limits of that future campaign.

With respect to the second question, the Board in its 1978 opinion No. 13 held in part:

> ". . . a separate contribution limit would not apply to those candidates whose names are placed on the general election ballot by virtue of a designating petition for an office for which no other designating petitions of that party are filed or by filing an independent nominating petition. . .
>
> "Therefore a separate contribution limit for nomination for public office only applies if the candidate is involved in an actual contest for the nomination."

The Board, in that opinion further stated in part:

> "All contributions to a candidate for public office whose name is not on the ballot in a bona fide contested primary election . . must be considered as contributions to his candidacy for <u>election</u> to public office. Such a candidate or his authorized committee may

not accept a contribution which would exceed the amount permitted for a candidate for election to public office pursuant to section 14-114 of the Election Law."

If funds are raised for an anticipated primary but are not used because the candidate is nominated at an uncontested primary, the funds must be deemed to be contributions for the general election and will be subject to the contribution limits for the general election.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1986 OPINION #1

Date: July 2, 1986

Question Presented:

Would it be a violation of section 2-126 of the Election Law for a county committee to guarantee a bank loan for a candidate prior to said candidate's being designated or nominated?

Discussion:

Section 2-126 of the Election Law prohibits the use of contributions of money to a party or party committee from being expended in aid of the designation or nomination of any person to be voted for at a primary election.

While the purpose of section 2-126 of the Election Law is to assure that all citizens who are enrolled in a particular party have equal rights at a primary election, thereby precluding the expenditure of party money for any one particular candidate, *Theofel v. Butler*, 134 Misc 259 (1929): *Horn v. Regular Democratic Organization of Long Beach*, 59 Misc2d 664, the Board must confine its opinion to the language of the statute. Therefore the issue to be decided is whether the guaranteeing of a loan by a party committee is such an expenditure as is contemplated by the language of section 2-126 of the Election Law.

It is the opinion of the Board that the act of guaranteeing a loan is not in itself an expenditure of money. However, if the loan becomes due and the party committee must pay, such payment would be an expenditure of money. If the candidate or the candidate's committee which sought the loan is engaged in a primary contest, the party committee will be in violation of section 2-126 of the Election Law upon such payment.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1986 OPINION #2

Date: December 16, 1986

Questions Presented:

1. Under the recent amendments (§14-130) to the Election Law, is a transfer of funds from a candidate's campaign committee to a party committee proper?

2. May such a campaign committee loan funds to a party committee?

3. May such transfers and/or loans be made to a party committee solely for the purpose of funding its administrative account?

4. Will repayment of such a loan by the party committee to the campaign committee require the party committee to thereafter report and file all funds received and expended in its administrative account?

Discussion:

Section 14-130 of the Election Law permits a political committee to expend its funds for any lawful purpose. The section prohibits the personal use of such funds.

There is nothing in the Election Law which would prohibit a candidate's campaign committee from transferring funds from the campaign committee to a party committee in order to fund the administrative account of the party committee, assuming that such funds are used for administrative expenses including the payment of salaries of people who work for the party committee. Such a transfer must be reported on the financial disclosure statement of the candidate's campaign committee. If the transfer is to the party committee's candidate account, it must be reported on the party committee's financial disclosure report and will be subject to contribution limitations (Art 14, Election Law). If the transfer is to the party committee's administrative account, it will only be reported on the candidate's campaign committee financial disclosure form.

A political committee may loan the funds to a party committee. The reporting requirements for such a transaction would be the same as those set forth above except that it would be reported pursuant to the rules governing loans as opposed to contributions.

The repayment of a loan by the party committee's administrative account would have to be reported by the candidate's campaign account until such time as the loan has been repaid in full. If the repayment of the loan is from the party committee's candidate account, it must be reported on the financial disclosure statements filed by the party committee. If the loan is repaid from the party committee's administrative account, it would only have to be reported by the candidate's

campaign committee. It would not have to be reported on the financial disclosure statements filed by the party committee because of the exemption provided by section 14-124(3) of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1987 OPINION #1

Date: May 15, 1987

Questions Presented:

Who is subject to the contribution limitation for contributions made to candidates who are members of the New York City Board of Estimate or who are seeking to become such members?

Specifically:

1. Is an attorney appearing on behalf of an "applicant or bidder" deemed to be subject to the law?

2. If a partnership is deemed subject to the law, may each individual partner contribute up to $3,000 in addition to the partnership as an entity contributing $3,000?

3. In the case of matters before the Board of Standards and Appeals, which may ultimately be subject to Board of Estimate action, the attorney handling the matter is formally listed as the applicant. In such a proceeding, for purposes of section 14-114(9) of the Election Law, who is deemed to be the applicant and therefore subject to the law?

Discussion:

Under the provisions of section 14-114(9) of the Election Law, contributions or loans to such candidates by specifically described contributors, who or which are applicants or bidders before the Board of Estimate, are limited to $3,000 during the period beginning six months before and ending twelve months after consideration by the Board of an application, petition, bid or request by such applicants or bidders.

With regard to the first question, the statute is very specific in setting forth who is limited to making contributions and the statute does not extend to the personal contributions of agents or representatives of the applicant or bidder. The Board is of the opinion that while the attorney is the agent of the applicant or bidder, such agency is not extended so as to limit the attorney from making private contributions to candidates who will become members of the Board of Estimate.

In answer to the second question, section 14-114(9) of the Election Law states in part: "No . . .partnership who or which is an applicant or bidder . . . and no person who is a partner in any partnership or other entity which is such an applicant or bidder may . . . make a contribution in excess of three thousand dollars . . ." (emphasis supplied). The wording of the statute clearly indicates that the intent of the Legislature is to permit the individual partners and the partnership entity to collectively contribute up to $3,000 to a candidate. The partner's proportionate share of the partnership contribution, together with his or her individual contribution, may not exceed $3,000. (cf. 1976 Opinion No. 4)

In response to the third question, section 14-114(9) of the Election Law only relates to applications before the Board of Estimate and not to applications before the Board of Standards and Appeals. The State Board of Elections does not have the authority to determine who is the actual applicant before the Board of Standards and Appeals and it must, for the purpose of enforcing section 14-114(9) of the Election Law, accept the term "applicant" as it is determined by the Board of Standards and Appeals or by the Board of Estimate if an appeal is accepted by such Board.

This opinion is solely for the purpose of interpreting the provisions of section 14-114(9) of the Election Law and is not intended to relate to any other law, rule or regulation.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1987 OPINION #2

Date: July 6, 1987

Question Presented:

What procedures are to be followed by a county board of elections in accepting or rejecting a registration which is received by mail?

Discussion:

An application for mail registration may not be reviewed by only one commissioner. Section 5-210(6)(a) of the Election Law specifically states that such form must be reviewed and examined by two members or employees of the board who are representatives of the two major political parties. That section also states that if the application contains substantially all of the required information indicating the applicant is legally qualified to register to vote, the information on the application shall be placed in the appropriate records of the board. Such placement in the board's records will entitle the applicant to vote at the next election because section 5-210(3) of the Election Law states in part that:

> "3. Completed application forms, when received by any county board of elections or showing a dated cancellation mark of the United States Postal Service not later than the thirtieth day before the next ensuing primary, general or special election, and received no later than the twenty-fifth day before such election, shall entitle the applicant to vote in such election, if he is otherwise qualified."

In determining whether or not the information contained in the application is sufficient and valid, the commissioners of elections must look to the affidavit on the application.

Subdivision 4(j)(viii) of section 5-210 requires that the mail registration form contain:

> "(viii) A place for the applicant to execute the form on a line which is clearly labeled 'signature of applicant' preceded by the following specific form of affirmation.
> 'I affirm that the information provided herein is true and 1 understand that the application will be accepted for all purposes as the equivalent of an affidavit, and if it contains a material false statement, shall subject me to the same penalties for perjury as if I had been duly sworn.'
> which form of affirmation shall be followed by a space for the date and the aforementioned line for the applicant's signature."

Subdivision 5 of section 5-120 states:

> "5. A person who willfully makes a material false statement in any application for registration and enrollment and/or transfer of registration and enrollment or special

> enrollment by mail, or who knowingly makes a false affirmation, or who offers or attempts to offer any application for registration and enrollment or transfer of registration and enrollment that the applicant is not qualified to register or enroll, or transfer his registration and enrollment or to specially enroll, shall be guilty of a class E felony."

Since an affidavit is legally admissible in a court of law as proof of the facts contained in it, C.P.L.R. §3212(b), and the test of admissibility of an affidavit is whether perjury can be assigned to it *People v. Becker*, 20 NY 354 (1859), without evidence to disprove it, an affidavit must be accepted as true. Accordingly, the person who has signed and sent in the mail registration has met the burden of proving his or her eligibility to register to vote.

If the board or any member of the board is not satisfied that the applicant possesses the qualifications to register to vote, the burden is on the board of elections to prove that the person is ineligible to register. Sections 5-210(8) and (9) give the board of elections the ability to inquire into an applicant's eligibility to vote after an application for registration has been filed with the board. Under the provisions of section 5-702(1) of the Election Law, one commissioner of elections may request that the board conduct an investigation of an applicant's qualifications to register and vote. If, after such an inquiry, the board of elections determines that the applicant should be rejected, such rejection must be by a majority vote of such board (see section 3-212(2) of the Election Law). If the commissioners cannot agree on whether the applicant should be rejected, the person must be registered and have his or her registration and enrollment form placed in the board's records. (cf. 1979 Opinion No. 1).

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1987 OPINION #3

Date: September 22, 1987

Question Presented:

Are fees received by the state committee of a political party from a licensing of the use of its name and certain of its mailing lists to a corporation for use in the promotion of "affinity" credit cards corporate contributions to a political party?

Discussion:

The pertinent facts are that the state committee would permit the corporation to use the political party's name on a credit card and use the political party's mailing lists to promote the use of that credit card by people who are enrolled as a member of that party. The corporation would be obligated to locate a state-chartered bank which issues credit cards. The corporation would select the bank but the state committee would retain the right to veto such selection. Once the bank and the corporation entered into a contract, the bank would issue credit cards bearing the name of the state committee, the bank and the type of card (Master, Visa, etc.). The corporation would agree to use the mailing lists of the state committee to promote the use of the cards among party members. The bank alone would determine whether or not to issue the cards to particular persons (based, presumably, upon customary credit standards). The bank would remit to the corporation a percentage of the bank's customary fee for use of the credit card (the customary fee being a percentage of the card users sales volume charged to that card). The corporation, in turn, would remit to the state committee a negotiated portion of the fee that the corporation received.

The Board is of the opinion that the facts as set forth in the request for an opinion constitutes an arm’s length transaction which is not a contribution under the provisions of Article 14 of the of Election Law. The Board has held in the past that there is nothing in the Election Law which would prohibit any political committee from investing part of its assets in an income producing source. (1981 Opinion No. 6).

Under the facts presented, the issuing bank would be negotiating a fee with the intermediary corporation. Since such remitted fee is to the corporation and not to the state committee, any fee remitted by the bank could not be considered as a contribution to the state committee. However, if the proceeds remitted to the party committee by the intermediary corporation exceed the portion or percentage of the customary fee normally remitted under such negotiated agreement, a contribution by the corporation will result. The range of the customary fee normally remitted would be based upon the normal range of fees that such intermediary corporations remit to those organizations which sponsor affinity credit cards. Those amounts of money which are remitted within the normal range would not be remitted for political purposes and would not be subject to the $5000 contribution limit set by section 14-116(2) of the Election Law. Any remittances over and above such normal range would be subject to such limitation.

The opinion of the Federal Election Commission issued in 1979 FEC/AO 1979-17 is inapposite to the facts presented for this opinion. In the F.E.C. opinion, the question centered on contracts for affinity credit cards issued by national banks for federal candidates. The F.E.C. opined that such contracts are forbidden by 2 U.S.C. §441(b). The facts presented for this opinion do not involve national banks or candidates for federal office; they involve state chartered banks and state candidates. There are no prohibitions under federal or state Election Law statutes for the actions proposed in this request.

It should be noted that all receipts and expenditures by the state committee with regard to this plan must be reported on the financial disclosure statements it files to comply with Article 14 of the Election Law.

The Board expresses no opinion about any tax consequences which may result from this proposed plan because the Board has no jurisdiction or authority with respect to the Federal or New York State tax codes nor does it have any authority to express any opinion concerning federal or state banking regulations which may relate to this request.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1989 OPINION #1

Date: March 31, 1989

Question Presented:

Under what circumstances does section 14-130 of the Election Law permit the use by a current or former candidate or public office holder of his or her campaign funds for expenses incurred in the legal defense of a criminal matter?

Discussion:

Section 14-130 restricts the expenditure of campaign funds to any lawful purpose and prohibits the conversion of such funds "to a personal use which is unrelated to a political campaign or the holding of a public office or party position."

In formulating its opinion, the Board has considered the legislative history of section 14-130 and the intent behind its enactment. Section 14-130 was enacted in 1985 to make clear that former elected officials may not retain campaign funds for personal use after leaving public office. It replaced what had become an archaic laundry list of permissible uses for campaign funds and was intended to limit the use of such funds to the expenses of conducting a campaign or holding public office.

It is the opinion of the Board that expenses incurred in the legal defense of a criminal matter are related to the political campaign or the holding of a public office, within the meaning of section 14-130 of the Election Law, if the criminal matter arises out of the campaign or the holding of public office. A criminal matter arises out of the campaign if the activity or alleged activity which is the subject of that matter is campaign-related. Similarly, a criminal matter arises out of the holding of public office if the activity or alleged activity which is the subject of that matter is within the purview of the public office holder's duties.

The Board is of the opinion that any broader interpretation of this section would circumvent legislative intent. Not every criminal matter in which a candidate or public office holder becomes embroiled bears a sufficient relationship to the candidacy or office holder duties to justify the use of campaign funds. Only by examining the subject of the criminal matter and considering its relationship to the campaign or the holding of public office can the right to expend campaign funds for legal defense be determined and can the legitimate concern that campaign funds be preserved for campaign and public office-related activities be satisfied.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1989 OPINION #2

Date: April 3, 1989

Question Presented:

May a separate segregated fund established by a corporation to support state and local candidates in New York engage in joint fund-raising activities with another separate segregated fund established by the same corporation which fund supports candidates for federal office?

Specifically:

1. Does New York Election Law permit such joint fund-raising activities where two separate segregated funds organized and administered by a single corporation agree to divide all contributions by a pre-determined percentage;

2. Under the above facts, is State PAC required to report to the New York State Board of Elections (a) only that portion of each contribution that it receives and retains under its joint fund-raising activities and any other contributions it receives independent of such joint fund-raising activities; (b) only contributions and expenditures it makes, but none of those made by Fed PAC;

3. Does Fed PAC have to maintain a depository in New York State or file financial disclosure statement with New York State;

4. May the payment of the solicitation and administrative expenses by the corporation be divided between State PAC and Fed PAC in the same proportion as the two committees agree to divide all proceeds from their joint fund-raising activities provided the corporation does not exceed its $5000 aggregate calendar year limitation with respect to State PAC.

Discussion:

Under the facts set forth in the request, a corporation has established and administers a political action committee under the Federal Election Campaign Act of 1971 (hereinafter referred to as Fed PAC). This political committee only supports candidates for federal office and does not make any contributions to state and local candidates in New York State. The corporation now wishes to establish and administer a separate political action committee which would only make contributions to state and local candidates in New York State (hereafter referred to as State PAC).

It is contemplated that Fed PAC and State PAC would engage in joint fund-raising activities by soliciting corporation executive and administrative personnel. The contributions would be either by check or payroll deductions and would be split between Fed PAC and State PAC by a

predetermined percentage, e.g. 90% of each $1 to Fed PAC and 10% to State PAC. All joint solicitations would inform those solicited of this predetermined division, unless otherwise specified by the contributor. All joint fund-raising would be conducted in accordance with federal regulations governing joint fund-raising activity.

Under the proposed plan, State PAC would act as the collecting agent for both committees and a contributor would be able to write one check or designate a single payroll deduction that represents a contribution to both committees. Checks from the individual or the corporation (for the authorized payroll deduction) would originally be deposited in the account of State PAC and temporarily held before the pre-determined percentage of the contribution is forwarded to Fed PAC. State PAC would then draw a check payable to Fed PAC for Fed PAC's pre-determined portion of the contribution.

All solicitation and administrative expenses paid by the corporation would be attributed to Fed PAC and State PAC according to the same pre-determined percentage as the division of the contribution received. If the solicitation and administrative expenses attributable to State PAC by the corporation placed the corporation at the $5000 aggregate calendar year limit for corporate contributions, all additional solicitation and administrative expenditures of State PAC would be paid directly from State PAC's account and not by the corporation.

With regard to question number 1, there is nothing in the New York Election Law which would prohibit a joint fund-raising activity as that contemplated by the two political action committees.

In answer to the second question, since all checks and all contributions would be made payable to State PAC, State PAC would have to report all contributions received by it even if it only retains a portion of those receipts. The New York Election Law makes it mandatory that any political action committee which contributes to New York candidates or political committees must report all contributions and all expenditures.

Section 14-118(1) of the Election Law states in part:

> "1. Every political committee shall have a treasurer and depository, and shall cause the treasurer to keep detailed bound accounts of all receipts, transfers, loans, liabilities, contributions and expenditures, made by the committee or any of its officers, members or agents acting under its authority or in its behalf .." (Emphasis supplied).

Section 14-102(1) of the Election Law states in part:

> "1. The treasurer of every political committee ... shall file statements ... setting forth all the receipts, contributions to and the expenditures by and liabilities of the committee ... Such statements shall include the dollar amount of any receipt, contribution or transfer ... the dollar amount of every expenditure ..." (Emphasis supplied).

Unlike organizations which are not deemed to be political committees because they are merely a pass-through for contributions, State PAC is a political committee which is subject to the reporting requirements of Article 14 of the Election Law.

New York law does not permit a political action committee to list only those contributions which will be used in New York State or to list only expenditures made in New York State (cf. 1978 Op #8).

Therefore the Board is of the opinion that State PAC would have to report the total amount of all contributions received by it, even though there is a pre-determined percentage which must be sent to Fed PAC. However, the transfer section of the financial disclosure statements filed by State PAC will reflect that the pre-determined percentage was transferred to Fed PAC. State PAC would not have to report expenditures made by Fed PAC. It would only have to report the amount of the pre-determined percentage of the contributions that it had transferred to Fed PAC.

With respect to the third question, Fed PAC, even though it engaged in joint fund-raising activities in New York State, would not have to file any financial disclosure statements with New York State as long as it does not support or oppose state or local candidates in New York State. Section 14-124(2)(a) specifically exempts political committees which are required to file financial disclosure statements with the United States government from filing financial disclosure statements with New York State unless the committee does in fact contribute to state or local candidates in New York State. If Fed PAC does not contribute to state or local candidates, it does not have to maintain a depository in New York State.

Finally, in answer to the fourth question, the Board is of the opinion that the payment of the solicitation and administrative expenses by the corporation may be divided between State PAC and Fed PAC in the same proportion as the two committees agree to divide all proceeds from their joint fund-raising activities. Such an apportionment would conform to past Board opinions relating to committees which support state, local and federal candidates for public office. (See 1977 Op. No. 2; 1977 Op. No. 6; 1975 Op No. 5).

The Board expresses no opinion on the effect of fund-raising in accordance with federal regulation as it does not have jurisdiction over such regulations.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1990 OPINION #1

Date: March 12, 1990

Question Presented:

Since affidavit ballots may be used in village elections which are conducted by the county board of elections, the State Board of Elections has been requested to issue a formal opinion on whether affidavit ballots may be used in village elections which are not conducted by the county board of elections?

Discussion:

Article 15 of the Election Law, which governs the conduct of village elections, contains no reference to affidavit ballots. Section 15-100 of said article states, "This article applies to all general and special village elections for officers and all the provisions of this chapter, not inconsistent with this article shall apply to all village elections ... "

Since there are no provisions for affidavit ballots in Article 15, the use of such ballots is governed by the other provisions of the Election Law. The use of affidavit ballots and the procedures for casting said ballots is provided for in section 8-302(3)(f) (ii) of the Election Law. Section 9-209 contains the requirements for validating and canvassing affidavit ballots. It is therefore necessary to determine whether or not these procedures for casting and counting affidavit ballots are consistent with the provisions of Article 15.

Section 8-302 states that a voter may cast an affidavit ballot when "... he seeks to vote but no registration poll record can be found for him in the poll ledger .... ". In such cases the voter completes a paper ballot which he places in an envelope and signs an oath on the outside of the envelope. At the close of the polls, the ballot is returned to the board of elections and canvassed pursuant to section 9-209.

The canvass process is required to be completed within ten days from the date of the election. If it is determined that the voter was qualified to vote in the district at which he appeared, his affidavit ballot is counted. The Board's ruling is based upon a check against the central or computerized permanent registration file.

In village elections, the register of voters is prepared by the inspectors of election prior to each election. While the names of those persons registered with the county are required to be placed on the village register, there are no provisions for a system of permanent registration nor is there a presence of a poll registration record as provided for by section 5-500 of the Election Law. Under Article 15 the inspectors have sole jurisdiction over the eligibility of voters for that given election.

The canvass of votes cast in a village election is conducted by the inspectors immediately upon

the closing of the polls. The results of such canvass are required to be filed prior to 9 A.M. of the following day. These results are final except that a re-canvass by the board of elections may be requested within two days of the election. There is no authority, however, for the county board to review and rule upon anything other than the vote as cast.

It is the Board's opinion that the statutory process for casting and counting affidavit ballots and the time requirements for performing these acts cannot be applied to the village election process. Such provisions would therefore be inconsistent with Article 15 resulting in the inability to use affidavit ballots in village elections.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1991 OPINION #1

Date: March 27, 1991

Question Presented:

How does a board of elections calculate the four-year period used to determine if a person has not voted during a four-year period and that the registration of such person should be canceled pursuant to section 5-406 of the Election Law?

Discussion:

The procedure for canceling a person for failure to vote during a four-year period (purge) is governed by the provisions of section 5-406 of the Election Law. That section states in part:

> §5-406. Cancellation of registration; failure to vote.
>
> 1. Beginning the second week in December in each calendar year and ending not later than the third week in the succeeding January, the board of elections shall determine which of the registrants under its jurisdiction had been registered under permanent personal registration throughout the four preceding calendar years and while so registered did not during such four years either vote in at least one general, special or primary election or mail to the board of elections a ballot otherwise eligible to be cast in such an election, which is received by such board of elections not later than fourteen days after such election but too late to be cast and canvassed.
>
> 2. If any such registrant has not, during such four preceding calendar years, voted in at least one general, special or primary election or mailed to the board of elections a ballot otherwise eligible to be cast in such an election, which was received by such board of elections not later than fourteen days after such election but too late to be cast and canvassed, the board shall cancel his registration and shall notify him of such cancellation. Together with such notice of cancellation, the board shall mail to such registrant an application for personal registration by mail. (Emphasis supplied)

In order to comply with the provisions, the board of elections must go back to December of the year preceding the January of the fourth year preceding the date of the purge. If the person was registered in that December and did not vote in a general, special or primary election during the next four years, the board should begin the process for cancellation for failure to vote. However, if the person was not registered until after January 1 of the preceding fourth calendar year, the person's registration may not be canceled even though the person did not vote at an election

during the next four years.

Before a person's registration can be canceled for failure to vote, the board must determine if the person was registered throughout the four preceding calendar years. A calendar year is deemed to be January to December. If the person was not registered during the entire year, the person cannot be purged. The board of elections must wait until the following year to see if the person's registration should be canceled for failure to vote. For example, if a board of elections begins its purge process in January 1991, the board must go back to December 1986 to see if the person was registered to vote. If the person was registered and failed to vote at any election during the next four years, cancellation procedures should begin. However, if the person was not registered until after January 1, 1987, the person would not have been registered throughout the preceding four calendar years and the board of elections could not cancel the person's registration during the purge process in 1991. The board of elections would have to wait until 1992 to see if that person failed to vote at any election during the preceding four calendar years.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1991 OPINION #2

Date: April 19, 1991

Question Presented:

May inspectors of election keep a separate list of those voters who vote on a day of election?

Discussion:

On election days, many inspectors maintain a list, separate and apart from the poll books, which lists the voters who have already voted that day. Historically, the inspectors have given a copy of such list to representatives of candidates or political parties so that such representatives could call those voters whom the representatives know are favorable to their candidates but who have not yet voted. There are no provisions in the Election Law which would either authorize or prohibit an inspector of elections to keep such a separate list.

Election inspectors are public officials who are responsible for the impartial administration of the Election Law. They should not engage in any activity which would compromise their impartiality or the performance of their duties.

It is the opinion of the Board that such inspectors cannot be required but may keep separate lists provided it does not interfere with the performance of their duties. However, since inspectors of election must remain impartial, such lists may not be kept solely for the benefit of a particular party or candidate. The lists must be made available for inspection by any person who asks for them.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1992 OPINION #1

Date: January 7, 1992

Question Presented:

May a candidate use assets which he or she holds jointly with a relative to fund his or her campaign for public office? Would the expenditure of such jointly held funds be an expenditure of the candidate's personal funds or would it be subject to the campaign contribution limits set forth in §14-114(1)(b) of the Election Law?

Discussion:

The facts, as set forth in the request for a formal opinion, are that the candidate and his mother have various assets in joint name. These assets were previously held jointly by the candidate's mother and father. Upon the father's death in 1989, the assets were transferred to the joint possession of the candidate and his mother. The candidate has not drawn upon these assets for his own personal use. All income taxes on the interest and dividends have been paid by the candidate's mother. During 1991 some of the assets were transferred to the sole possession of the candidate or to the joint ownership of the candidate and his wife.

As a result of the 1990 census, the reapportionment of the state, and the resulting changes in the various political subdivisions of the state, the candidate is now contemplating whether he should run for public office. He wants to use the money in these accounts to fund his campaign. As a joint owner he has a legal right of access to and control over these funds. The question which arises is whether he can use the entire amount in the fund for his campaign or if his access to the fund is limited by the contribution limits of §14-114 of the Election Law.

It is fundamental that, with respect to the funds held in a joint account, each tenant has a right to one half or less for his or her own use. *Warren v. Warren*, 95 A.D.2d 807 (2nd Dept. 1983). Either joint tenant of a bank deposit may withdraw his or her half or the whole by simply obtaining possession of the bankbook. See §675 of the Banking Law; *Matter of Fiefily*, 63 Misc. 2nd 824, *aff'd.* 43 A.D.2nd 981 (2nd Dept. 1970). However, the ability to withdraw such funds is limited by the interest of the joint owner. As the court said in *Parry v. Parry*, 93 A.D.2nd 989 (4th Dept. 1983):

> "The creation of a joint account vests in each tenant a present unconditional property interest in an undivided one half of the money deposited, regardless of who puts the funds on deposit. 'Even when one of [the parties] is the sole donor of the fund, once such a moiety comes into existence it cannot be canceled unilaterally...[W]here a joint tenant withdraws more than his or her moiety...there is an absolute right in the other tenant during the lifetime of both to recover such excess. *Matter of Bricker[Krimer] v. Krimer*, 13 N.Y.2nd 22,27; *Walsh v. Keenan* 293 N.Y. 573.'"

Based upon the law that a joint tenant has an unconditional property interest in one half of the fund, the Board is of the opinion that the candidate may use only one half of the funds without being subject to the contribution limits of §14-114 of the Election Law. Since the other joint tenant has an absolute right to his or her one half of the funds and may recover any excess taken by another joint tenant (the candidate), any agreement or acquiescence by the joint tenant to use his or her portion of the funds to fund the candidate's campaign would constitute a contribution subject to the limits set forth in §14-114.

The Board is of the opinion that the ability of the candidate to use one half of the funds in the joint account is predicated on the assumption that the initial account was not established in contemplation of such candidacy. If it was so contemplated, then all of the funds in the account would be subject to the contribution limits of Article 14 of the Election Law. This would also apply to the funds which were transferred to the sole possession of the candidate or to the joint possession of the candidate and his wife. If such transfers were done without contemplation of a candidacy for public office, the candidate may use all of the funds in the accounts.

This opinion does not consider the tax consequences which may result from any transfer of money.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1992 OPINION #2

Date: April 14, 1992

Question Presented:

What are the contribution limits for the offices of State Senator and Member of Assembly for 1992 since the districts will be realigned as a result of the 1990 Federal Census?

Discussion:

Section 14-114(1)(b) of the Election Law limits the maximum contribution which may be given to the campaign of State Senator or Member of Assembly to the following:

> Primary Election - $.05 times the number of enrolled voters in the district or, in the case of state senator, $4,000, whichever is greater and, in the case of member of assembly, $2,500, whichever is greater.
>
> General Election - $.05 times the number of registered voters in the district or the $4,000 and $2,500 figures set forth above.

Subdivision 7 of said section provides that in determining the number of registered or enrolled voters in the district, the current year's figures or the figures of any of the preceding four years may be used. Assuming a total realignment of districts in 1992, it will be virtually impossible to determine the preceding four year figures in districts which divide cities and towns.

It is the Board's opinion that the maximum contribution which may be given or received in connection with a senate or assembly campaign in 1992 must be based on the 1992 registration and enrollment figures only unless a district is comprised of whole political subdivisions and the old registration and enrollment figures can be determined.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1994 OPINION #1

Date: March 11, 1994

Question Presented:

Whether an exchange of funds between a candidate committee and party committee is subject to contribution limitations as stated in 1986 Opinion #2?

Discussion:

In 1986 Opinion No. 2 this Board stated, in part "There is nothing in the Election Law which would prohibit a candidate's campaign committee from transferring funds from the campaign committee to a party committee in order to fund the administrative account of the party committee, assuming that such funds are used for administrative expenses including the payment of salaries of people who work for the party committee. Such a transfer must be reported on the financial disclosure statement of the candidate's campaign committee. If the transfer is to the party committee's candidate account, it must be reported on the party committee's financial disclosure report and will be subject to contribution limitations. (Art. 14, Election Law)." Subdivision 9 of §14-100 of the Election Law defines the term contribution. Subdivision 10 of §14-100 of the Election Law defines the term transfer. Transfer is defined under subdivision 10 as "any exchange of funds or anything of value between political committees authorized by the same candidate and taking part solely in his campaign, or any exchange of funds between a party or constituted committee and a candidate or any of his authorized political committees." Paragraph (2) of subdivision 9 of §14-100 defines a contribution as "any funds received by a political committee from another political committee to the extent that such funds do not constitute a transfer."

It is clear from the above quoted sections of the Election Law that a transfer is not a contribution. Opinion No. 2 of 1986 correctly identifies the transaction at issue in the opinion as a transfer. The opinion further stated that the transfer was subject to contribution limitations. Since a transfer is not a contribution, the transfer cannot be subject to contribution limitations.

That part of Opinion No. 2 of 1986 which stated that a transfer is subject to contribution limitations is hereby rescinded by this opinion which recognizes that transfers are not contributions and cannot be subject to contribution limitations.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1994 OPINION #2

Date: April 25, 1994

Question Presented:

Does a radio talk show host's daily promotion of his 'campaign for Governor' constitute an in-kind contribution from the radio station to the host-candidate which is reportable on a financial disclosure statement?

Discussion:

The relationship of the radio station and the talk show host is that of employer-employee. The employee hosts a daily talk show during a regularly scheduled time period. The purpose of the show is the presentation of a forum for the discussion of issues and topics which are of interest to the listening audience. For performing these services, the station pays the talk show host a salary.

The employer-employee relationship is one that predates the host's announced candidacy by several years. The access to the airwaves by the host is based solely upon the employer-employee relationship. The radio station is not providing any access to the airwaves over and above the access required for the host-candidate to fulfill his employment obligations. The station is incurring no costs over and above the normal costs for operating its regular programming. Compare decision in *Horn et al v. Regular Democratic Organization of Long Beach*, 59 Misc.2d 664, (1969, Supreme Court Nassau County), discussed in 1981 Opinion of the State Board of Elections #4. The question before the court was the use of space in party headquarters by a slate of candidates endorsed by the party violated the prohibition on party expenditures in aid of a primary. The court said, "To allow the use of space is not an expenditure of money and such expenditures as are involved in the payment of carrying charges on the building are not in aid of the slate but in payment of party obligations." (at page 666).

If, during the normal course of business, the talk show host is authorized to exercise his discretion as to matters that will be the subject of discussion and decides to discuss and promote his candidacy, the Board is of the opinion that it would not be an in-kind contribution by the radio station to the host-candidate. The existence of a radio station policy which governs the exercise of the host's discretion does not alter the result, unless the policy is partisan in nature. See 1979 Opinion of the State Board of Elections #11.

This opinion deals only with the interpretation of state Election Law. It has no application to the interpretation of other New York State laws or the rules and regulations of other agencies, State or Federal, which may have an impact on this situation.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1994 OPINION #3

Date: April 25, 1994

Question Presented:

Whether a person acting independent of the candidate or his agents or authorized political committees who gives money to an independent committee which is also acting independent of the candidate or his agents or authorized political committees is subject to the contribution limits of §14-114 of the Election Law?

Discussion:

Subdivision 9 of §14-100 of the Election Law defines the term contribution for purposes of Article 14 of the Election Law. Paragraph (3) of subdivision 9 of §14-100 provides, in part "none of the foregoing shall be deemed a contribution if it is made, taken or performed by a candidate or his spouse or by a person or political committee independent of the candidate or his agents or authorized political committees. For purposes of this article, the term 'independent of the candidate or his agents or authorized political committees' shall mean that the candidate or his agents or authorized political committees did not authorize, request, suggest, offer or cooperate in any such activity."

This language was adopted as part of Chapter 577 of the Laws of 1976. The intent of the chapter was described by the sponsor's memo accompanying the Assembly version of the bill which stated, "This bill repeals the sections of law with respect to limits on campaign expenditures which have been declared unconstitutional by the Supreme Court in *Buckley v. Valeo*. The contribution limits, except those on candidate's personal contributions, which were also declared unconstitutional, are retained without change, but the language is rewritten to reflect the fact that the expenditure limits, of which the contribution limits were a percentage, have been repealed." The then counsel to the State Board of Elections, stated in a memorandum to the counsel for the Governor regarding Chapter 577 of the Laws of 1976" ...the new contribution limits would be identical to the old limits on receipts, except that there would be no limit on the amount a candidate or his spouse could contribute to his campaign, and no limit on truly independent political expenditures..."

It is apparent from these explanations of the enactment of the language under review that the intent of enacting this language was to allow for the unlimited expenditures or contributions by candidates to his or her own political campaign and the unlimited independent expenditures by persons or political committees.

This reasoning is in keeping with the court's findings in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L.Ed 2d 659 (1976) upon which this change in New York is based. As the court stated in *Buckley*, "We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify [the statute's] ceiling on independent expenditures." *Buckley v.*

Valeo at 45. The court found in *Buckley* that the purpose of imposing limits on financial contributions to political campaigns to reduce the actuality and appearance of corruption resulting from large individual financial contributions is a constitutionally sufficient justification for contribution limits. "Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. . . To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined." *Buckley v. Valeo* at 26.

The court in *Buckley* found a legitimate governmental purpose in limiting contributions to political campaigns by those who may seek to corrupt the system by buying political influence. The court also found the overall contribution limit on total contributions by an individual during a calendar year was constitutional, for the same reasons. See, *Buckley v. Valeo* at 38. This potential abuse does not apply to money placed into the campaign by the candidate or their spouse whether through direct expenditures on the candidate's behalf or contributions of money to the candidate committee to spend on their own campaign.

Since the enactment of the section of law in New York State under review was a direct result of the Supreme Court's ruling in *Buckley*, it is reasonable to conclude that the legislature intended to enact the provisions into New York State Law as articulated in the court's decision in *Buckley*.

In addition, §14-114 subdivision 8 which imposes the $150,000 limit on political contributions specifically provides "Except as may otherwise be provided for a candidate and his family . . ." This provision excludes contributions by the candidate and their spouse but makes no mention of excluding contributions to independent committees.

With this background, a reading of paragraph (3) of subdivision 9 of §14-100 can only be read to mean that while direct expenditures and contributions to his or her own candidate committee by a candidate and his or her spouse is unlimited, and direct expenditures by persons acting independently of the candidate and his or her committee are unlimited, contributions to independent committees are limited by the limits imposed under §14-114 of the Election Law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1994 OPINION #4

Date: August 31, 1994

Question Presented:

May a candidate who has sought statewide office who later starts a new campaign for a different statewide office accept contributions for the new campaign up to the contribution limit of that office without counting contributions given for the first campaign towards that limit?

Discussion:

Section 14-114(1)(a) of the Election Law states, in pertinent part, that for a candidate for statewide office "no contributor may make any contribution to any candidate or political committee, and no candidate or political committee may accept any contributions from any contributor, which is in the aggregate amount greater than: (i) in the case of any nomination to public office, the product of the total number of enrolled voters in the candidate's party in the state multiplied by $.005, but such amount shall be not less than four thousand dollars nor more than twelve thousand dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision, and (ii) in the case of any election to a public office, twenty-five thousand dollars as increased or decreased by the cost of living adjustment described in paragraph c of this subdivision..."

This section of the Election Law places two separate contribution limits upon candidates for statewide office, one for those candidates involved in a primary of between $4,000 and $12,000 and one for those candidates involved in a general election of $25,000. In the case presented, the candidate began as a candidate for one statewide office but at the party convention decided to become a candidate for a different statewide office in the same election year. While the law specifies two separate contribution limits for candidates for public office if the candidate is involved in an actual contest for the nomination and one limit for candidates who do not engage in an actual contest for the nomination, the law makes no such distinction for a candidate who after beginning as a candidate for one office changes to become a candidate for a different office within the same political year.

In this case, the designation initially sought was one made at a state committee meeting called pursuant to §6-104 of the Election Law and the office which the candidate switched to run for was also designated at the meeting called pursuant to §6-104 of the Election Law. This Board has stated that the state committee meeting called pursuant to §6-104 of the Election Law is not in itself a contest for nomination creating a separate contribution limit under the Election Law. See 1978 Opinion #13. Subdivision 7 of §14-100 of the Election Law defines a candidate as "an individual who seeks nomination for election, or election, to any public office or party position to be voted for at a primary, general or special . . . election . . . whether or not the public office or party position has been specifically identified at such time and whether or not such individual is nominated or elected..." Since subdivision 7 of §14-100 does not require a candidate for office to

specify which office they are seeking at the time they become a candidate, and since the limits under §14-114 apply to all candidates, a candidate must abide by the contribution limits applicable to the office actually sought. A candidate is limited to accepting contributions within the election cycle based on the contribution limit which is applicable to the office which they ultimately decide to seek by running as a candidate for party nomination at a primary election or for election to a public office at a general election.

Based upon the above discussion, the Board is of the opinion that a candidate who runs for one office and decides to run for a second office may receive contributions which relate to the second office but the contributions which he or she received for the first office will be deemed to have been contributed to the second office for limitation purposes.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1995 OPINION #1

Date: January 25, 1995

Question Presented:

Whether a New York municipality can place the name of candidates running for President on the general election ballot on November 7, 1995 as part of a presidential primary preference vote?

Discussion:

Under New York State Election Law, electors for president and vice-president of the United States are elected at a primary election, known as the spring primary, next scheduled to be held in March 1996. See §8-100 of the Election Law. No provision exists in the Election Law for the conduct of a presidential primary at the November 7, 1995 general election. The vote under consideration for the 1995 general election would have no binding effect but would be similar to an advisory vote which has been determined not allowable under New York State statute. See *Silberman v. Katz*, 54 Misc.2d, 956 (New York County, 1976). Since there is no express authority under state statute to conduct an election of this nature, there is no ability for a municipality to sponsor this vote at the November 7, 1995 general election.

The question remains whether a municipality can establish a presidential primary preference vote using its home rule powers under Article IX of the State Constitution, together with section 10 of the Municipal Home Rule law. It is a general rule that for a local law to be valid, it must be consistent with the provisions of the State Constitution and any general state laws. A local law must be consistent with any state statute dealing with a matter of state concern. See *Matter of Kelly v. McGee*, 57 N.Y.2d, 522 (1982). Election matters have generally been determined to be matters of state concern and thus, any local law regarding the election process must be consistent with the election law. See *Procaccino v. Board of Elections of the City of New York,* 73 Misc.2d, 462 (New York County 1973). Since this provision would be inconsistent with the Election Law establishment of presidential primary elections, the establishment of this presidential primary preference vote in a municipality would be an invalid exercise of home rule powers.

Based upon all the foregoing, a municipality in New York may not participate in a national presidential primary preference vote at the general election scheduled for November 7, 1995.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1995 OPINION #2

Date: July 31, 1995

Question Presented:

Can a county board of elections send a notice to voters who apply for a change of enrollment, informing them of the receipt of the application and the effective date of the requested change, pursuant to §5-210(9) of the Election Law; or do the provisions of §5-304(3), requiring all requests for changes of enrollment be placed in a sealed box until the Tuesday following the next general election, prohibit such notification?

Discussion:

Change of enrollment is defined as the application of a "registered voter already enrolled in one party to enroll in a different party, or to delete his enrollment in any party, or an application by a registered voter not enrolled in a party to enroll in a party." Election Law §5-304(2). The next subsection, (5-304(3)), requires that all applications for changes of enrollment be placed in a sealed box, which is not to be opened until the Tuesday following the general election. Nowhere in §5-304 is the Board given any authority to make any decisions regarding a change of enrollment or take any action except to place it in a sealed box.

The purpose of the sealed box and delayed effective date for enrollment changes was to prevent individuals from changing parties for the sole purpose of voting in the primary, also called 'party raiding'. Modern technology permits boards to accomplish this purpose without the use of a sealed box. Therefore, changes of enrollment should be sealed within the Board's electronic data base by making that information inaccessible until the Tuesday after the general election.

Section 5-210 of the Election Law deals with the contents and processing of the uniform application for registration and enrollment and change of enrollment. Section 5-210(9) requires boards to send notices which, inter alia, inform the applicant of the board's **acceptance or rejection** (emphasis supplied) of their application for registration and enrollment. The phrase 'registration and enrollment' does not include changes of enrollment, and must refer **only to new** registrations **or transfers** of registration and enrollment (emphasis supplied).

Therefore, this Board concludes that the information contained on a change of enrollment application is not public information until the change is effective, which is the Tuesday following the general election.

The same technology which allows changes of enrollment information to be sealed within the electronic data bases instead of in a locked box, also provides an opportunity for boards to provide a notice to applicants which tells the voter that the Board has received their change of enrollment and that the change is effective on the Tuesday following the general election. A general notice of this type, although not specifically authorized, is not specifically prohibited. If

a board wishes to send such a notice, it should not contain any more information than just the fact that the change of enrollment was received and the effective date thereof.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1996 OPINION #1

Date: January 30, 1996

Question Presented:

Are limited liability companies, created pursuant to the laws of this state, subject to the corporate contribution limits of Article 14 of the Election Law?

Discussion:

Limited liability companies are business organizations, recently created by statute and recognized as separate and distinct from other forms of business organizations. A complete response to the question presented requires an accurate description of limited liability companies.

Limited liability companies have been endowed with some of the characteristics of corporations and some of the characteristics of partnerships; yet they are neither corporations nor partnerships, nor are they trusts. The statutory definition provides clarification.

The limited liability company law defines a limited liability company as:

> ...an unincorporated organization of one or more persons having limited liability for the contractual obligations and other liabilities of the business, other than a partnership or a trust....formed and existing under this chapter and the laws of this state. Limited Liability Company Law §102(m).

The definition of limited liability companies very clearly states that they are "unincorporated organizations", therefore, they are not corporations and are not subject to the contribution limits placed on corporations in Article 14 of the Election Law.

The definition further distinguishes limited liability companies from partnerships and trusts, thereby removing them from the operation of any restrictions, regulations or requirements relating to those kinds of business organizations.

Having determined that limited liability companies are not subject to the corporate contribution limits of Article 14, it is appropriate that we determine what limits do apply to these business organizations. Federal Election Commission Advisory Opinion 1995-11 is instructive for these purposes.

In that instance, the Federal Election Commission was asked to decide whether a limited liability company is subject to the prohibition on corporate contributions to federal election campaigns. The Federal Elections Commission looked to the statutory definition of limited liability company of the state where the company was formed. The statute provides as follows: "an entity that is an unincorporated association, without perpetual duration having two or more members that is

organized and existing under this chapter." Virginia Code Annotated §13-1002. The Federal Elections Commission went on to set out why other parts of their regulations did not apply, and concluded that for purposes of federal campaign contributions, limited liability companies are persons subject to the individual contribution limits.

Also relevant for our purposes, is the definition of person found in the limited liability company law at §102(w):

> ...any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

Given all of the above, it is the opinion of the Board that limited liability companies are persons, and as such, may make contributions in their own right subject to the limits applicable to other individuals as enumerated in Article 14.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1996 OPINION #2

Date: June 26, 1996

Questions Presented:

1. Does §5-210(3) of the Election Law require a board of elections to accept and time stamp all completed registration forms it receives?

2. Are boards of elections required to accept registration forms which have been timely received and time stamped by another board?

Discussion:

Section 5-210 of the Election Law contains the provisions relating to registering to vote and enrolling in a party, including but not limited to the information required on the voter registration application form. Subdivision three of this section establishes deadlines for the receipt of completed registration applications. All applications must be received no later than twenty five days before the next election. If the registration form is mailed to the board of elections, it must be postmarked no later than the twenty fifth day prior to the next election and received at the Board of elections no later than the twentieth day before such election. Completed applications delivered to a board prior to a special election, must be delivered no later than the tenth day prior to that special election.

Section 5-210(3) provides that completed forms received by "any county board of elections"....[within the statutory time frames] "shall entitle the applicant to vote in such election, if he is otherwise qualified. Any county board of elections receiving an application form from a person who does not reside in its jurisdiction but who does reside elsewhere in the State of New York, shall forthwith forward such application form to the proper county board of elections." [emphasis supplied]. The final sentence of the section requires boards to "make an entry" on each form indicating the date it is received by the Board.

The directive is clear: a completed form, timely received by any board of elections from an otherwise qualified person, shall entitle that person to vote in the next ensuing election. Any county board of elections receiving a completed application from someone residing outside that county must make an entry indicating the date it was received, and then forward the application to the proper county board. If the person is otherwise qualified and the form was timely received at the first board, the person shall be entitle to vote at the next ensuing election. Therefore, the answer to both questions is yes.

The questions presented here have been dealt with previously by the State Board of Elections. Formal Opinions, 1987, #2, provides a complete analysis of this section and its application. With the exception of the changes in the applicable statutory time frames, the substance and reasoning

of 1987 Opinion #2 is held to be controlling in the circumstances presented here.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
1999 OPINION #1

Date: October 27, 1999

Question Presented:

Does § 6215.2(c) of the Rules and Regulations of the State Board of Elections apply with respect to statewide petitions filed pursuant to Chapter 137 of the Laws of 1999?

Discussion:

Section 6215.2(c) of the Rules and Regulations of the State Board of Elections requires that:

> "Where a designating petition involves *an office to be filled by the voters of the entire state*, the petition shall be accompanied by a schedule which sets forth the volume and page number of each sheet on which signatures appear of at least 100, or 5 per centum, whichever is less, of properly enrolled voters in each of at least one-half of the Congressional Districts of the State." (emphasis added).

Chapter 137 of the Laws of 1999 sets forth the petition signature requirements for the primary election to select delegates to a political party's national convention.

The relevant portion of Chapter 137 at issue is the requirement that a presidential candidate, in order to secure delegates committed to them, must file a petition with 5,000 signatures from enrolled party members. Chapter 137, §2(a) (adding §6-137 of the Election Law); and §3(3).

The Board is of the opinion that the designating petition filed pursuant to Chapter 137 with respect to the candidates for the Office of President of the United States are not petitions for an office to be filled by the voters of the entire state. Therefore, the provisions of §6215.2(c) of the Rules and Regulations of the State Board do not apply and no Congressional District distribution schedule need be filed with any such petition.

NEW YORK STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2009 OPINION #1

Date: April 7, 2009

Question Presented:

Is the distribution of cards that are designated thereon as "Gift Privilege Card" and say that in appreciation for voting, the voter's child is eligible for a gift (unspecified in nature) redeemable the next day at a particular location conduct prohibited by the Election Law?

Discussion:

Section 17-142 of the Election Law provides, in pertinent part, that

> "Except as allowed by law, any person who directly or indirectly, by himself or through any other person, pays, lends or contributes, or offers to (do so)...any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at any election...or for having come to the polls... is guilty of a felony."

The Board is of the opinion that the promise to or making of a gift as described is conduct that is prohibited by the Election Law.

NEW YORK STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2009 OPINION #2

Date: October 6, 2009

Question Presented:

Are legal fees of candidates relative to a proceeding to validate their petitions, or invalidate the petitions of another candidate, which are paid for by an individual, deemed contributions for limit purposes?

Discussion:

Section 14-100(1) of the New York State Election Law defines "candidate", in relevant part, as follows:

> "candidate" means: an individual who seeks nomination for election, or election, to any public office or party position to be voted for at a primary, general or special.....election...., whether or not the public office or party position has been specifically identified at such time and whether or not such individual is nominated or elected, and, for purposes of this subdivision, an individual shall be deemed to seek nomination for election, or election, to an office or position, if he has (1) taken the action necessary to qualify himself for nomination for election, or election, or
>
> (2) received contributions or made expenditures, given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to any office or position at any time whether in the year in which such contributions or expenditures are made or at any other time;

Section 14-100(9) of the New York State Election Law defines "contribution", in relevant part as:

> "contribution" means:
> (1) any gift, subscription, outstanding loan (to the extent provided for in section 14-114 of this chapter), advance, or deposit of money or any thing of value, made in connection with the nomination for election, or election, of any candidate, or made to promote the success or defeat of a political party or principle, or of any ballot proposal,....
>
> (3) any payment, by any person other than a candidate or a political committee authorized by the candidate, made in connection with the nomination for election or election of any candidate

In the opinion of the Board, legal fees relative to a proceeding by a candidate to validate said candidate's petitions, or to invalidate the petitions of another candidate are clearly related or "in connection" with the nomination for election... of the candidate in question, and that the payment

of the fees by an individual would be deemed a “contribution”, the same as is defined by the Election Law.

It is important to note that the Election Law states specifically those contributions not counted toward contribution limits. It includes "the use of real or personal property and the costs of invitations, food and beverages...on the individual's residential premises for candidate-related activities to the extent such services do not exceed five hundred dollars in value (Election Law §14-100 (9)(3)(B)), and " the travel expenses of any individual who volunteers his services...and such services are unreimbursed and do not exceed five hundred dollars in value.."(E.L. §14-100(9)(3)(C)).

In NY Statutes, Section 240, it is stated that the specific mention of one thing implies the exclusion of other things. It states that "... an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted and excluded. (pages 411-412). Thus, it is the opinion of the Board, that in the question at issue, if legal expenses were meant to be excluded from contribution limitations, the statute would have provided for such.

Federal Election Committee Advisory Opinions - Inapplicability

In making its determination relative to the question presented, the Board considered related Advisory Opinions of the Federal Election Committee. Specifically, AO 1982-35, which dealt with a candidate bringing a constitutional challenge to a provision of a party rule pertaining to ballot access. The question presented to the FEC was whether “funds raised by the candidate for the purpose of defraying the costs of the described litigation are contributions subject to the provisions of the (Federal Election Campaign) Act?”

In the AO, the Commission stated that “funds raised by the candidate for the described legal fund established to defray litigation costs to contest the application of a particular party rule to the selection of candidates to participate in a primary election would not be considered contributions as defined by the ACT... and thus, funds raised for this purpose would not be subject to the Act’s contribution limits...” In arriving at its determination, the FEC looked at the definition of a contribution under the Act, which uses the language “for the purpose of influencing any election for Federal office.” The FEC referred to a prior AO (1980-57), wherein it determined that “funds raised on behalf of a candidate for Federal office to finance a lawsuit initiated by the candidate to remove an identified potential general election opponent from the ballot were contributions subject to the provisions of the Act.” (AO 1982-35) In AO 1980-57, the FEC stated that “(a) candidates attempt to force an election opponent off the ballot so that the electorate does not have an opportunity to vote for that opponent is as much an effort to influence an election as is a campaign advertisement derogating that opponent.”

It should be noted that the analysis at hand is relative to ordinary petition challenges that take place between candidates for office, not a challenge of a party rule as was the case in AO 1982-35.

In AO 1980-4, which is referenced by the FEC in AO 1980-57, the FEC discusses at length its view of what “influencing an election” means. It seems to take a literal view of the money as

"political activity", thereby "influencing" the election. The Commission also delves into the circumstance of the effect of classifying such legal services in that case as in-kind contributions, which would count against the expense cap in place under the Act. It is important to note that no such expense cap exists under New York State Law. The Board is of the opinion that no such distinction is found in New York State Election Law.

Conclusion

It is the opinion of the Board that legal fees relative to a proceeding by a candidate to validate said candidate's petitions, or to invalidate the petitions of another candidate, are clearly related or "in connection" with the nomination for election... of the candidate in question, and that the payment of the fees by an individual would be deemed a "contribution", the same as is defined by the Election Law.

NEW YORK STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2013 OPINION #1

Date: July 29, 2013

Questions Presented

A 501(c)4 organization has requested that the NYS Board of Elections (State Board) review certain activities of the organization and then issue a Formal Opinion addressing:

1. Does the organization's engaging in any one, or any combination of, the delineated activities require it to register as a political committee?

2. Must the organization report the expenditures it has incurred in connection with any of the delineated activities? If so, how should those expenditures be calculated?

It is the Opinion of the State Board, as further detailed below, that the organization would be deemed a political committee, and as such, would be required to register as a political committee and file requisite campaign financial disclosure reports detailing receipts and expenditures relative to its activity as a political committee, pursuant to Article 14 of the New York State Election Law.

Discussion

The organization states that "(we are) a nonpartisan 501(c)(4) good government organization based in New York City that works to promote honest, efficient, and accountable government in New York City and New York State. We seek reforms to the manner in which government performs, elections operate, voters participate, and our political system functions. Although much of our work is focused on public education, issue research, policy advocacy, and direct lobbying, we also evaluate and candidates for city and state office;"

With respect to the evaluation of candidates, the organization states that said candidate evaluation "involves inviting candidates to return a completed questionnaire on a wide variety of issues and to meet with a small committee of (the organization) members for an interview. The board of directors ultimately decides which of the candidates recommended by our local candidates committee to support for election. Our expression of support is simply a declaration of our belief that a particular candidate is qualified, deserves our backing and would make an effective elected official. We do not go further and engage with either the candidate or his or her campaign once our decision is made known. Consequently, we do not participate in campaigns or electioneering with the candidate. On their own, candidates however are free to use our recommendation in their communications to voters;" The organization further states that "(i)t is our practice to use the term "prefer" to indicate the candidates we support in a primary election because it is not the final election where all voters have the final say. We use the term "endorse" for candidates we support in a general election since it is the determinative election. We participate in this process to inform our members and believe our communications are primarily intended for our membership;"

The activities the organization requests review of by the State Board are as specifically delineated as follow:

"i. in the weeks before the election send the members of our organization a listing of the candidates we prefer or endorse and a brief description of our evaluation of their candidacy. This information is contained in a booklet called the Voters Directory that is sent via U.S. Mail and email;

ii. post our preferences/endorsements on our organizational website which is used to post all of our activities, events, and information. The candidate endorsement list is but one small part of our website and is intended for our members (the New York City Campaign Finance Board has promulgated regulations regarding disclosure of independent expenditures that exempt from express advocacy communications paid electoral advertising done over the internet in which a website is not primarily for the election or defeat of a candidate (footnote omitted);

iii. issue a single news release stating the entirety of our preferences and a single news release stating all of our endorsements and the reasons for them; and

iv. have in the distant past invited all supported candidates to attend a single news conference at which we publicly make known candidates we support. On rare occasions, we may have held a separate news conference with a citywide candidate. We have not done so in some time, but have interest in possibly engaging in this practice again."

Based upon the foregoing activities, the organization asks the State Board:

1. Does engaging in any one, or any combination of, these activities require the organization to register as a political committee?

2. Must the organization report the expenditures it has incurred in connection with any of these activities? If so, how should those expenditures be calculated?

Relevant to the questions posed, the New York State Election Law section 14-100(1) defines a "political committee" as "any corporation aiding or promoting<; or to aid or take part in the election or defeat of a candidate for public office or to aid or take part in the election or defeat of a candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of a candidate for any party position voted for at a primary election, or to aid or defeat the nomination by petition of an independent candidate for public office; but nothing in this article shall apply to any committee or organization for the discussion or advancement of political questions or principles without connection with any vote < ; provided, however, that a person or corporation making a contribution or contributions to a candidate or a political committee which has filed pursuant to section 14–118 shall not, by that fact alone, be deemed to be a political committee as herein defined."

The Election Law goes on to require that the any political committee which, in connection with any election, receives or expends any money or other valuable thing or incurs any liability to pay money or its equivalent shall file statements sworn to by the treasurer of such committee. EL 14-102(1).

The first part of the analysis is to determine whether the activities of the organization cause it to fall within the definition of "political committee?" If so, then it would be required to register as a political committee and disclose its receipts and expenditures as such via the filing of campaign

financial disclosure statements.

In applying the definition of political committee, the standard to apply to the activity in question is whether it expressly advocates for the election or defeat of the candidate; “Express Advocacy” has been defined by the State Board as “a standard created by the United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), (which) means a communication that contains express words such as vote, oppose, support, elect, defeat, or reject, which call for the election or defeat of a candidate;” (9 NYCRR 6200.10(b)(2)).

Based upon the description of activities delineated above and provided by it, the organization appears to be expressly advocating the success of a select list of candidates to both its own members and to the public in general. Words such as “Prefer” or “Endorse” are express words within the definition of Express Advocacy stated above. Such Express Advocacy by this organization, and the activities to which it specifically relates, would cause the organization to be deemed a political committee within the definition of the Election Law.

The second part of the analysis is to determine what expenditures to report. Generally speaking, activities by a political committee that are “Express Advocacy” and coordinated, would be deemed “in-kind” contributions subject to the candidate’s contribution limit, and would have to be reported as expenditures by the political committee making them, and reported as “in-kind” contributions received by the candidate; Activities that are “Express Advocacy” and that are “Independent Expenditures”, are not deemed “in-kind” contributions; They would only have to be reported by the political committee making the expenditures. The State Board has issued an analogous Formal Opinion 1978 #16.

The analysis of what constitutes coordination is highly fact-specific and needs to be undertaken on a case by case basis. “Independent Expenditures” have been defined by the State Board to mean “an expenditure made in support or opposition of a candidate: (i) that expressly advocates for the election or defeat of a candidate; and (ii) that the candidate or his/her agents or authorized political committee(s) did not authorize, request, suggest, foster or cooperate with in any way;” (9 NY_RR 6200.10(b)(1)).

In order to make such a determination, the Board has reviewed the process and activities of the organization outlined in its correspondence dated April 3, 2013, with respect to the evaluation of candidates, which stated that said candidate evaluation “involves inviting candidates to return a completed questionnaire on a wide variety of issues and to meet with a small committee of members for an interview. The board of directors ultimately decides which of the candidates recommended by our local candidates committee to support for election. Our expression of support is simply a declaration of our belief that a particular candidate is qualified, deserves our backing and would make an effective elected official. We do not go further and engage with either the candidate or his or her campaign once our decision is made known. Consequently, we do not participate in campaigns or electioneering with the candidate. On their own, candidates however are free to use our recommendation in their communications to voters;” The organization further states that “(i)t is our practice to use the term “prefer” to indicate the candidates we support in a primary election because it is not the final election where all voters have the final say; We use the term “endorse” for candidates we support in a general election since it is the determinative election. We participate in this process to inform our members and believe our communications are primarily intended for our membership;”

While this information is informative, it is not necessarily dispositive on the issue of independence. For instance, in outlining its process for candidate evaluation, the organization states that: "We do not go further and engage with either the candidate or his or her campaign once our decision is made known. Consequently, we do not participate in campaigns or electioneering with the candidate;" (emphasis added). This presumes that such activity on the part of the organization prior to its announcement of "prefer" or "endorse" of a particular candidate is not participation, or that its activities after such announcement are not coordinated with any candidate. It is also unclear what role the candidates or their campaigns have relative to the content, including editing, of the "Voter Directory", or any related news release, or Web Page materials relative to said candidates.

There is no description of the cost for any of these activities which are designed to promote a candidate. The State Board is of the opinion that only those specific expenditures made by this organization in connection with any election relative to its activity as a political committee are required to be reported. Statements reporting expenditures that are a portion of a larger expenditure (e.g. a web page that has political related material as well as non-political related material) shall disclose such reportable expenditures on a pro rata basis.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2014 OPINION #1

Date: April 30, 2014

Question Presented:

May a police officer or chief endorse a political candidate while in uniform?

Discussion:

On its face, Election Law §17-110 makes it a misdemeanor for a police officer to engage in conduct which:

1. Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen;

Consistent with First Amendment Jurisprudence, the statute does not prohibit *all* attempts by a police officer to influence the political arena, only those involving the officer's use of his or her *official power or authority, in any manner, directly or indirectly,* in that regard.

1983 State Board of Elections Opinion #9

This Opinion was issued after the legislative amendment to §17-110 removing the bar against police officers contributing to political campaigns. The specific issue which the Opinion addressed was whether a police officer might *endorse* a political candidate under §17-110(1)'s bar on direct or indirect aid to political candidates. The opinion referenced the pre-1983 jurisprudence which interpreted the statute as creating "an absolute prohibition" against a police officer's participation in *any* political activity citing *Purdy v. Kreisberg*, 47 NY2d 354 (1979). *Purdy* is clear on this issue:

> Almost 90 years ago, Judge Oliver Wendell Holmes articulated the rationale employed to uphold the constitutionality of a police regulation prohibiting officers from "solicit[ing] money or any aid, on any pretense, for any political purpose whatever" as follows: "[T]here is nothing in the Constitution *** to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." *(McAuliffe v Mayor of New Bedford,* 155 Mass 216, 220.) As has been consistently recognized, a rule which prohibits a police officer from participating in the political arena, whether it be by soliciting votes or financial aid or by influencing any voter at an election, "comports with [the] sound

> administration policy that the removal of police personnel from active politics and from active participation in any movement for the nomination or election of candidates for political or public office is conducive to the effective maintenance of discipline and the preservation and promotion of the integrity and efficiency of the Police Department and its personnel." *(Matter of Lecci v Looney,* 33 AD2d 916, 917, mot for lv to app den 26 NY2d 612; see *Perry v St. Pierre,* 518 F2d 184; *Boyle v Kirwin,* 39 AD2d 993; cf. *Belle v Town Bd. of Town of Onondaga,* 61 AD2d 352, 358-359.) Likewise, the authority of the Federal and State Governments to prohibit their officers and employees from engaging in specified political activities has been consistently sanctioned. *(CSC v Letter Carriers,* 413 US 548; *Broadrick v Oklahoma,* 413 US 601; *United Public Workers v Mitchell,* 330 US 75.)

Opinion #9 references the Memorandum of Governor Cuomo upon signing Chapter 215 of 1983 which provided:

> This bill removes restrictions upon the rights of police officers to engage in political action or political association rights which are constitutionally protected and unjustifiably denied to police officers on the basis of their employment.

The crux of the Opinion is contained in the following language:

> The Board is of the opinion that the political rights of a police officer have been expanded and that a police officer as a private citizen may now endorse a political candidate as long as the endorsement is not given in such a manner as to coerce or intimidate a voter to vote for a particular candidate. The act of endorsing, in and of itself, is a not a violation of subdivision 1 of section 17-110 of the Election Law.

Uniform Issue

As no one could question that a police officer in uniform is displaying official authority, it is axiomatic that an endorsement of a political candidate by an officer or chief, *in uniform*, is a violation of Election Law §17-110(1). The use of the uniform as a prop adds the weight of the police office to the endorsement and accomplishes the very evil which Election Law §17-110(1) would avoid.

The effectiveness of such endorsement is not at issue as the statute prohibits the *attempt* to influence the citizenry. To the extent that 1983 Opinion #9 references a need to determine "the facts surrounding the endorsement is given and whether or not it was given in such a way as to intimidate or coerce a voter" on a case by case basis, as relates to appearances in uniform, a clear rule is hereby enunciated by the Board: a police officer may not endorse a political candidate, either verbally or by his or her appearance at a campaign event, while in uniform, or similarly may not deliberately or knowingly appear in any political communication as so defined in Election Law §14-106, while in uniform.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2015 Opinion # 1

Date: June 10, 2015

Question Presented:

Does New York State Board of Elections Opinion # 1 of 2014 apply to: (1) the campaign activities of a Sheriff campaigning for election to the Office of Sheriff, or (2) the campaign activities of a police officer campaigning for his or her own election to other elective offices?

Discussion:

In Opinion # 1 of 2014, the Board opined that, pursuant to Election Law §17-110(1), a police officer may not endorse a political candidate, either verbally or by his or her appearance at a campaign event, while in uniform, or similarly may not deliberately or knowingly appear in any political communication as so defined in Election Law §14-106, while in uniform.

The question presented here is whether a sheriff1 or other police officer campaigning for election can appear in uniform in the political communications of their own campaign for election? The Board is of the opinion that they can.

As the Board recently stated, "Election Law §17-110 makes it a misdemeanor for a police officer to engage in conduct which:

> Uses or threatens or attempts to use his official power or authority, in any manner, directly or indirectly, in aid of or against any political party, organization, association or society, or to control, affect, influence, reward or punish, the political adherence, affiliation, action, expression or opinion of any citizen;" SBOE 2014 Opinion # 1

The Board cited 1983 Opinion # 9 and stated:

"The crux of the Opinion is contained in the following language:

> The Board is of the opinion that the political rights of a police officer have been expanded and that a police officer as a private citizen may now endorse a political candidate as long as the endorsement is not given *in such a manner as to coerce or intimidate a voter to vote for a particular candidate.* The act of endorsing, in and of itself, is a not a violation of subdivision 1 of section 17-110 of the Election

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1 The Board finds that as applied to Election Law §17-110, the position of Sheriff and Deputy Sheriff are synonymous to that of "Police Officer." *See*, *N.Y. Op. Atty. Gen.* 57, 1998.

Law." (Emphasis added).

There is a material difference between a police officer appearing in uniform in the political communications of another candidate or political committee, whereby the authority of the officer's position exemplified by the uniform is applied in aid of a political purpose, as opposed to appearing in uniform in one's own political communications as an expression of experience or credential.

The Board holds the opinion that appearing in uniform in one's own political communications is not a prima facie misuse of official power or authority. A sheriff campaigning for election may appear in uniform in the political communications of his or her own campaign for election, and that fact alone would not constitute a violation of Election Law §17-110. However, the prohibitions found in §17-110 (3) concerning solicitation, collection or receiving of money would still apply to the sheriff and the particular political communication. *See*, NYSBOE Opinions 1983 # 8 and 1983 # 5.

The New York State Constitution provides that sheriffs be elected every three or four years. *See* N.Y. Const. Art. XIII §13(a). Thus the office of sheriff is constitutionally a political office. Although not identical in its breadth and language, the federal Hatch Act seeks to avoid the same evil which Election Law §17-110(1) precludes. In interpreting the Hatch Act and its prohibition of the use of "official power or authority" on the part of a sheriff in running for election, the United States Office of Special Counsel has ruled that the fact that the office of sheriff is an elected office makes the office "primarily a political one". *See* April 19, 2011 Opinion Letter to William R. Tompkins, OSC File Np. HA-10-3151. As the New York State Constitution calls for an elected sheriff, there is little reason to believe that the Legislature, which recognized that mandate in County Law §400 would intend to limit the full and free exchange of information as to qualifications by not allowing a sitting sheriff to run as a candidate in all respects, including wearing a uniform in campaign materials created in support of his/her re-election.

Similarly, other police officers or chiefs *running for office in their own capacity*, are not *per se* precluded from offering depictions of themselves in uniform as an illustration of their experience and credentials. A contrary conclusion would mean those in law enforcement who seek public office would be compelled to hide truthful depictions of their life's work.

Notably the issue here is similar to whether incumbent or former judges can wear judicial robes in their own political communications or campaign materials in which they are seeking election or re-election as judge. In applying their own rules in New York State, the Courts have found that it is permissible for incumbent or former judges to wear judicial robes in their own political communications or campaign materials. *See* New York State Advisory Committee on Judicial Ethics Opinions Nos. 05-101, 04-16, and 03-90.

Interpreting Election Law §17-110(1) to preclude the deliberate or knowing wearing of a police uniform in campaign literature, materials or productions created for other candidates fulfills the salutary purpose of Election Law §17-110(1) while recognizing the state constitutional mandate of an elected sheriff and the rights of free speech and association of candidates. The Board observes Election Law §17-110(1) may not in every instance operate as an absolute bar to

incidental campaign activity by a police officer as part of *his or her own* campaign while in uniform. However, the statute is very clear that a police officer may not use his or her authority as a police officer "to control, affect, influence, reward or punish" in the electoral context. Such determinations must be made on the basis of the specific facts of each case, and police officers should exercise great care--particularly while in uniform, the cloak of authority—to comply with the prohibitions of Election Law §17-110(1).

This opinion clarifies the application of the Board's prior opinion (SBOE #14-01) in the context of police officers in uniform as part of political communications related to their own campaign for public office. This opinion in no way stands for the proposition Election Law §17-110(1) is inapplicable to a police officer candidate's own campaign for elective office.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2015 Opinion # 2

Date: October 13, 2015

Question Presented:

In the context of N.Y. Election Law §14-130 how is "fair market value" determined?

Discussion:

Election Law §14-130 prohibits converting campaign funds to any "personal use which is unrelated to a political campaign or the holding of a public office or party position." In several instances the statute provides specific prohibitions on the use of campaign funds to the extent the "payments exceed fair market value." See Election Law §14-130 (3) (i), (ii), (vi), (4). Compliance with these provisions necessarily requires an analysis to ensure the otherwise permissible expenditure does not exceed fair market value.

The Board has promulgated a regulation for determining fair market value in the context of valuing "contributions other than of money." It provides:

> (a) The term *contribution other than of money* means:
>
> (1) a gift, subscription, loan or advance of anything of value (other than money) made to or for any candidate or political committee: and
> (2) the payment by any person other than a candidate or political committee of compensation for the personal services of another person which are rendered to any such candidate or committee without charge;
> (3) provided, however, that the term *contribution other than of money* shall not be construed to include personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee.
>
> (b) In determining the monetary value to be placed on a *contribution other than of money* a reasonable estimate of fair market value shall be used. Each such contribution shall be declared as an expenditure at the same fair market value and reported on the expenditure schedule, identified as to its nature and listed as an "expenditure in-kind"

(9 NYCRR § 6200.6).2

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1. On campaign financial disclosure statements such items are reported as in-kind contributions on Schedule D, not as an expense on Schedule F. The value is not added to the cash balance, but is offset so as to not show a cash balance higher than it actually is.

In determining the fair market value for an in-kind contribution, factors to consider include the cost for similar items or services and for similar purposes in the area/neighborhood where the items or services are provided.

If a determination of the fair market value of an item or service indicates that the value of the item or service exceeds the amount paid, then the amount in excess of the fair market value would be deemed an in-kind contribution, which would be subject to the applicable contribution limits established by Article 14.

If the candidate/officeholder is the individual making an in-kind contribution for an item or service for less than fair market value, his or her share would not be subject to the contribution limits (*see* EL 14-100 [9]). Any other individual or entity's share of such in-kind contribution would be subject to the applicable contribution limits.

All such in-kind contributions must be reported.

If a determination of the fair market value for an item or service indicates that the value of the item or service is below what is being paid, then such excess would not be permissible because it would constitute personal use.

This same valuation guidance should be followed in the context of Election Law §14-130. Fair market value is "a reasonable estimate of fair market value." In determining such reasonable estimate of fair market value, a factor to consider is the price paid by others in an arms-length transaction for commensurate goods or services. The United States Internal Revenue Service has issued detailed guidance for determining fair market value for purposes of taxation which may prove helpful (*see, e.g.* IRS Publication 661).

Holding:

It is the opinion of the Board that the "reasonable estimate of fair market value" standard articulated in 9 NYCRR §6200.6(b) is applicable to valuations under Election Law §14-130.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2016 OPINION # 1

Date: July 12, 2016

Questions Presented:

In light of recent judicial decisions regarding political contributions and expenditures:

1) Is the $150,000 aggregate contribution limit found in New York State Election Law §14-114(8) enforceable?

2) Is the $5,000 corporate contribution limit found in New York State Election Law §14-116(2) enforceable as to contributions from corporations to Independent Expenditure Committees?

Discussion:

Election Law §14-114(8)

EL §14-114(8) establishes an annual $150,000 aggregate contribution limit. It states "(e)xcept as may otherwise be provided for a candidate and his family, no person may contribute, loan or guarantee in excess of one hundred fifty thousand dollars within the state in connection with the nomination or election of persons to state and local public offices and party positions within the state of New York in any one calendar year."

Based on the holdings of the United States Supreme Court in *McCutcheon v. FEC*, 134 S. Ct 1434 (2014), the Second Circuit Court of Appeals in *New York Progress and Protection PAC v. Walsh*, 733 F.3d 483 (2nd Cir. 2013), and the United States District Court in *New York Progress and Protection PAC v Walsh, et. al.,* 17 F.Supp.3d 319, 323 (SDNY 2014), the $150,000 aggregate contribution limit provided by Election Law 14-114 (8) is unenforceable.[1]

New York Progress and Protection PAC (NYPPP) is a political committee that registered for the purpose of making independent expenditures. It brought suit to enjoin enforcement of EL§§ 14-114(8) and 14-126(2), alleging there was a donor waiting to contribute to NYPPP more than the $150,000, and, but for the limit of EL §14-114(8), and fear of enforcement pursuant to EL §14-126(2), as applied to itself, the cap violated its core First Amendment rights. NYPPP sought declaratory and injunctive relief to enjoin enforcement of the limit found in EL §14-114(8). The United States Court of Appeals for the 2nd Circuit reversed the decision of the District Court (No.

1. The Board previously issued two directives to this effect on May 22, 2014. "(1) Board will no longer enforce the 14-114 (8) $150,000 aggregate limit for contributions from individuals to committees that only make independent expenditures." and "(2) The Board has determined that it will no longer enforce the 14-118 (8) $150,000 aggregate limit for contributions from individuals to candidates and other political committees".

13 Civ. 6769 (PAC) (SDNY 2013) initially denying NYPPP's application for a preliminary injunction, and directed that the District Court "forthwith enter a preliminary injunction enjoining the application and enforcement of N.Y. Elec. Law §§ 14-114(8) and 14-126 against NYPPP and its individual donors for the use of the contributions of those donors only for independent expenditures." *NYPPP* at 489. The District Court subsequently found it was:

> bound … to follow the Supreme Court and Second Circuit's clear guidance. Accordingly, the Court holds that the limitations contained in New York Election Laws §§ 14-114(8) and 14-126, as applied to independent expenditure-only organizations, cannot prevent *quid pro quo* corruption or its appearance, and thus violate the First Amendment. The Court therefore enjoins Defendants from applying and enforcing New York Election Laws §§ 14-114(8) and 14-126 against NYPPP and its individual donors only for independent expenditures. NYPPP's motion for summary judgement is granted

NYPPP v. Walsh, et. al., 17 F.Supp.3d 319, 323 (SDNY 2014).

In *McCutcheon*, the United States Supreme Court declared that the Federal aggregate limit on contributions to candidates and political committees was unconstitutional. The Board determines that the EL §14-114(8) aggregate limit, which is similar in function, would likely be determined unconstitutional if challenged.

Based upon the holdings of the Courts in *NYPPP*, together with the holding of the United States Supreme Court in *McCutcheon v. FEC*, 134 S. Ct 1434 (2014), the Board determined that it could no longer enforce the EL §14-114(8) $150,000 aggregate limit for contributions from individuals to independent expenditure committees, candidates or other political committees.

It is the opinion of the Board that the $150,000 aggregate contribution limit found in EL §14-114(8) is not enforceable.

Election Law §14-116(2)

Election Law §14-116(2) provides "… any corporation … may make expenditures, including contributions…in an amount not to exceed five thousand dollars in the aggregate in any calendar year…"

The Board was party to an action brought in the United States District Court for the Northern District of New York *Hispanic Leadership Fund, Inc.(HLF) and Freedom New York (FNY) vs Walsh*, et al., 42 F.Supp.3d 365 (NDNY 2014) concerning the provisions of EL §14-116(2).

HLF is a tax-exempt 501(c)(4) organization that wished to make independent expenditures in excess of $5,000, as well as contributions in excess of $5,000 to FNY, a registered political committee with the Board wishing to engage in independent expenditure activity. However, HLF claimed that it refrained from doing so due to the limits imposed by EL §14-116(2) and to avoid

related civil and criminal penalties. Additionally, FNY alleged that it wished to solicit and accept corporate contributions in excess of $5,000, and more than $150,000 from individuals in a calendar year to it, but that it was prohibited to solicit or accept such a contribution as it would violate EL §14-114(8). As such, FNY claimed that it refrained from doing so for fear of the related civil and criminal penalties.

In their motion for summary judgment, relying primarily upon the United State Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876, (2010), and the Second Circuit's decision in *NYPPP,* HLF and FNY claimed that, as to individuals or organizations that make contributions to groups that engage only in independent spending on political speech, such restrictions would be unconstitutional. Plaintiffs sought declaratory relief that HLF is entitled to make unlimited contributions to political committees like FNY for the purpose of expressing its views through independent expenditures and, that FNY is entitled to solicit and accept unlimited contributions from any source for the purpose of expressing its views through independent expenditures.

In a July 2, 2014 Order, the trial Court summarily granted HLF and FNY's motion for summary judgment, enjoined the Board from enforcing the relevant provisions of the New York State Election Law, and indicated that an opinion articulating the rationale for its decision would follow. In accordance with the July 2, 2014 Order, the Court, on August 28, 2014, issued its Memorandum and Decision explaining its reasons for granting HLF and FNY's motion. The Court found that EL § 14-116(2), is unconstitutional as applied to HLF, and as such, enjoined the Board from enforcing EL § 14-116(2) against HLF and FNY. It also found that EL § 14-114(8) is unconstitutional as applied to HLF and FNY, and the Court further enjoined the Board from enforcing EL §§ 14-114(8) and 14-116(2) against HLF and FNY and their individual donors. 2

Based upon the holdings in *Citizens United* and *Hispanic Leadership*, the $5,000 Corporate Limit, as relates to contributions from a corporation to an independent expenditure committee, is not enforceable.

STATE BOARD OF ELECTIONS

2. On May 4, 2016 the Board adopted a resolution finding the $5,000 Corporate Limit, as relates to contributions from a corporation to an independent expenditure committee is not enforceable" The Board further directed that its May 4, 2016 guidance and May 22, 2015 directives be memorialized in a Formal Opinion.

NEW YORK STATE
BOARD OF ELECTIONS
2018 Opinion # 1

Date: March 1, 2018

Question Presented:

Are materials distributed by membership organizations, labor organizations, or corporations, unincorporated business entities, or members of a business, trade or professional association or organization, to their applicable internal audiences, and associated production and distribution expenditures, subject to disclosure pursuant to Article 14 of the New York State Election Law, where such materials are clearly designed to be distributed or viewed by the public beyond such internal audiences?

Discussion:

It is the Opinion of the State Board, as further detailed below, that such materials, and associated production and distribution expenditures, would be subject to Article 14 disclosure.

New York State Election Law §14-107(1)(a) defines, in pertinent part, an Independent Expenditure as "an expenditure made by an independent expenditure committee conveyed to five hundred or more members of a general public audience in the form of

(i) An audio or video communication via broadcast, cable or satellite,

(ii) A written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads, or

(iii) Other published statements which: (i) irrespective of when such communication is made, contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the election or defeat of a clearly identified candidate, (ii) refers to and advocates for or against a clearly identified candidate or ballot proposal on or after January first of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot, or (iii) within sixty days before a general or special election for the office sought by the candidate or thirty days before a primary election, includes or references a clearly identified candidate…."

Election Law §14-100(13) defines general public audience as "an audience composed of members of the public, including a targeted subgroup of members of the public; provided, however, it does not mean an audience solely comprised of members, retirees and staff of a labor organization or members of their households or an audience solely comprised of employees of a corporation, unincorporated business entity or members of a business, trade or professional association or organization." Election Law §14-100(14) further defines labor organization. A

Membership Organization, the same as is referenced in Election Law §14-107(1)(b)(iii), is defined in the related Rules and Regulations. (9 NYCRR §6200.10(b)(6)).

News accounts from October 2017 described expenditures made in relation to the Constitutional Convention Ballot Proposition that was placed on the ballot before voters statewide on the November 7, 2017. These accounts purport to describe several campaign initiatives undertaken by organizations, and reference specific items purchased including lawn signs and fact sheets. An assertion was made that each item would have to be seen by 500 or more members of the public at a time in order to trigger disclosure under Article 14. This assertion is incorrect.

The general public audience analysis applies to the "expenditure," not each item purchased. An "independent expenditure" as relevant here is "an ***expenditure***…conveyed to five hundred or more members of a general public audience ***in the form of***…a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads …" The statute refers to "expenditure" in the singular but the items the expenditure takes the "form of" are referred to in the plural. Accordingly, if an organization buys 1,000 brochures the question is not whether one of the brochures will reach 500 or more persons comprising a general public audience. The inquiry demanded is whether the expenditure made for the 1,000 brochures will reasonably result in reaching 500 members of a general public audience through the distribution of the brochures.[1]

Campaign expenditures for campaign materials that are otherwise required to be disclosed do not become exempt when an organization uses its membership as a conduit for distributing such materials to the broader public. In such a case, the exception found in the definition of "general public audience" in Election Law §14-100(13) would not apply. For instance, lawn signs by their very nature, are designed to be placed for a period of time, for the purpose of being viewed by as many members of the public as is possible. Items that are clearly designed to be distributed and viewed by a general public audience, absent facts clearly demonstrating otherwise, must be assumed to be viewed by 500 or more persons. In such instances, disclosure under Article 14 must be made.

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1 If indeed the 1,000 brochures are circulated individually to members within a membership organization as the intended audience, they would definitionally not be an independent expenditure. *See* Election Law § 14-100 (13).

NEW YORK STATE
BOARD OF ELECTIONS
OPINION 2018 # 2

Date: March 1, 2018

Question Presented:

Is a federal candidate committee that is required to register with and file campaign finance disclosures with the United States Federal Election Commission ("FEC") required to register such committee and file campaign finance disclosure reports with the New York State Board of Election when such committee makes aggregate contributions to New York political committees in excess of $1,000 pursuant to EL section 14-124 (2-a)?

Discussion:

Federal Preemption

Federal law establishes a detailed regime of campaign finance disclosure for federal candidates and committees. *See* 52 USC 3010 *et seq*. Federal law establishes requirements for the registration of political committees (52 USC § 30103), identifies what information they must report and when they must report (52 USC 30104). Among other things, federally registered candidates must report contributions to state political committee on their FEC disclosure reports and itemize such contribution over $200. 11 CFR 104.3 (b) (1) (i), (v).

Facing a patchwork of state and local filing requirements, Congress expressly articulated "field preemption" of federal law over state law in this area, opting for a "comprehensive, uniform Federal scheme that is the sole source of regulation of campaign financing…for election to federal office." FEC AO 1988-21. As amended in 1974, 52 USC § 30143 provides "[t]he provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office."

The FEC regulations are more explicit in establishing the extensive reach of federal preemption in this area:

> (b) Federal law supersedes State law concerning the -
>
> > (1) Organization and registration of political committees supporting Federal candidates;
> >
> > (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and
> >
> > (3) Limitation on contributions and expenditures regarding Federal candidates and political committees.
>
> (c) The Act does not supersede State laws which provide for the -
>
> > (1) Manner of qualifying as a candidate or political party organization;
> >
> > (2) Dates and places of elections;

(3) Voter registration;

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;

(5) Candidate's personal financial disclosure; or

(6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in 11 CFR 300.35. (b) 11 CFR 108.7 (b), (c).

Congressional intent to avoid federal candidates making duplicative state and federal filings is clear:

> The Commission notes that, with respect to disclosure requirements, including the reporting of receipts and expenditures and, by implication, the registration of political committees, Congress was particularly emphatic. The House committee report, cited above, in discussing the revised (in 1974) preemption provision, referred to the parallel part of the 1971 Act that, although mandating the filing of Federal reports (and "statements") with the States, merely required the Federal supervisory officers to cooperate with and encourage State officials to develop procedures to eliminate the necessity of multiple filings by permitting the filing of such copies to satisfy State requirements. The House report, looking ahead to the 1974 repeal of the 1971 provision, states that under the 1974 legislation, the Federal reporting requirements would be "the only reporting requirements" with respect to Federal elections (and copies of the Federal reports would be filed with the States)1. H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974); see also 2 U.S.C. §439.

Caselaw and numerous FEC Advisory opinions have applied federal preemption in this area broadly. In *Teper v. Miller*, 82 F.3d 989, 994 (11 Cir. 1996), the court held FECA's preemption provision intended 'to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated'" [quoting H.R. Rep. No. 1239, at 10 (1974)]). In *Bunning v. Kentucky*, 42 F.3d 1008 (6th Cir. 1994), the court held state law in that case was preempted by federal law as to a federal candidate committee. In *Weber v. Heaney*, 995 F.2d 872, 875–76 (8th Cir. 1993), the court affirmed preemption of state public financing scheme for congressional candidates.

The FEC has opined that federal law preempted the former provisions of New York Election Law § 2-126 (limitation on use of party funds in primary elections) such that with respect to contributions in federal contests, the New York State Democratic Committee was bound by only federal law. FEC AO 2000-23. State prohibitions on payroll deductions to make contributions to federal committees were found to be preempted. FEC AO 2014-04. The FEC also concluded that the poll disclosure provisions of 9 NYCRR § 6201.2 are preempted by federal law and inapplicable to federal candidates. FEC AO 1995-41.

The FEC distinguishes state regulatory authority over state and local committees' *receipt of* federal funds, noting "State regulation of funds received by a campaign for State office from a campaign

for Federal office may not be avoided by relying on the Federal preemption provisions…" FEC AO 1978-37. Accordingly, State law determines permissible contributions a state committee may receive from a federal committee. FEC AO 1986-05. State law can establish the lawful amount "of such transfers or donations, or their reporting by any state *transferee entity*." [emphasis added] FEC AO 1993-10; see also FEC AO 1999-12; FEC AO 1986 -29 (state law regarding publication of a slate card preempted but federal committee could be required to provide certain information to non-Federal candidates that they needed for their state reporting). FEC AO 1999-12.

The FEC has also recognized "the State's interest with respect to the reporting obligations of a non-Federal political committee and the receipts and disbursements for non-Federal election purposes." FEC AO 1999-12. But even in such instances, the FEC has concluded "the Act would preempt the State from requiring the non-Federal account [of a committee] to report all other receipts and disbursements of the Federal account in a consolidated report because such a requirement would impose reporting and itemization requirements on the Federal account that would exceed those of the Act." Id; *see also* FEC AO 1986-27.

Election Law § 14-124 (2)

Election Law § 14-124 (2), the language of which predates the current codification of the election law in 1976, provides:

> The filing requirements and the expenditure, contribution and receipt limits of this article shall not apply to any candidate or committee who or which engages exclusively in activities on account of which, pursuant to the laws of the United States, there is required to be filed a statement or report of the campaign receipts, expenditures and liabilities of such candidate or committee with an office or officers of the government of the United States; provided a copy of each such statement or report is filed with the office of the state board of elections.

The requirement under Election Law § 14-124 (2) that federal committees file their FEC reports with the state board of elections is preempted by federal law. *See* 52 USC § 30143. However, a similar federal provision requires "[a] copy of each report and statement required to be filed by any person under this Act shall be filed by such person with the Secretary of State (or equivalent state officer[2]) of the appropriate State…" 52 USC § 30113. With the advent of on-line access to FEC reports via the FEC's website, Congress amended 52 USC § 30113 in 1995 to allow the FEC to exercise discretion to waive duplicative state filing of FEC reports if the state provides a system that permits "electronic access to and duplication of, reports and statements that are filed with the [FEC]." 52 USC § 30113 (c). The FEC pursuant to this "waiver" authority granted a state filing waiver to all fifty states and directed that all federal committees "no longer have to file duplicate copies of their FEC campaign finance disclosure reports" with state offices. See https://classic.fec.gov/pages/statefiling.shtml.

New York's filing requirement in Election Law § 14-124 (2) is expressly preempted by federal law, and the similar federal law requirement that FEC filings be sent to the state board is satisfied by the FEC waiver applied to New York and all other states owing to the filings' availability at FEC.gov.

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1 In New York, the "equivalent officer" is the State Board of Elections.

Election Law § 14-124 (2-a)

Election Law 14-124 (2-a) provides:

> The provisions of sections 14-102, 14-112 and subdivision one of section 14-118 of this article shall not apply to a political committee supporting or opposing candidates for state or local office which, pursuant to the laws of the United States, is required to file a statement or report of the campaign receipts, expenditures and liabilities of such committee with an office or officer of the government of the United States, provided that such committee makes no expenditures to aid or take part in the election or defeat of a candidate for state or local office other than in the form of contributions which do not exceed in the aggregate one thousand dollars in any calendar year, and provided further, that a copy of the federal report which lists such contributions is filed with the appropriate board of elections at the same time that it is filed with the federal filing office or officer.

Election Law 14-124 (2-a) was added to the election law by chapter 454 of the Laws of 1984. The section exempts a committee that files with the FEC from filing under New York Election Law if such committee does not engage in state campaign expenditures "other than in the form of contributions" aggregating to no more than $1,000 in a calendar year, provided further the committee files a copy of its FEC report with New York contemporaneous with its filing with the FEC. If a committee filing with the FEC makes contributions more than $1,000 and does not file its FEC report with New York, this section requires the committee filing with the FEC to also file itemized state disclosure reports (Election Law § 14-102), an authorization statement (Election Law § 14-112) and other state registration documents (Election Law § 14-118).

Legislative History

The legislation enacting Chapter 454 of the Laws of 1984 originated with the New York State Board of Elections. By letter dated June 15, 1984, the State Board encouraged the governor to sign the bill enacting chapter 454 of Laws of 1984, noting its purpose was to "exempt a national political action committee (P.A.C.) from filing financial disclosure statements if it only makes a contribution to a state or local candidate for office." The state board noted "[t]his bill would permit this type of national P.A.C. to make a contribution up to $1,000 to state or local candidates without being required to file separate New York State financial disclosure statements as long as they file a copy of the federal financial disclosure report with the appropriate board of elections." Bill Jacket, p 11, Chapter 454 Laws of 1984. The Assembly bill memorandum described the legislation nearly identically. Bill Jacket, p. 6, Chapter 454 Laws of 1984. The Senate bill memorandum refers more generically to "federal political committees." Id. at 7. The Majority Leader Research Staff Report in the Assembly described, in totality, the bill adopting Election Law § 14-124 (2-a) as "exempt[ing] any National PAC (Political Action Committee) which does not spend any money directly in support of a state or local candidate and only contributes up to $1,000 in support of such candidates in the aggregate, from filing separate state financial forms so long as such federal committee files a copy of its report with the app. local board." Id. at 8 [emphasis as in original].

Whether the drafters of Chapter 454 thought the language of the legislation by its express terms only applied to PACs or whether it was understood that federal preemption would preclude the legislation from applying to candidate committees, is unclear. But this understanding—that PACs, not federal

candidate committees were subject to state regulation is reflected in the prior and subsequent opinions of the board.[3]

The State Board's Opinion 1982 # 2 determined that a PAC which supports state candidates from a segregated federal account must register and file with the state. In multiple opinions the Board opined that a PAC cannot evade state registration and reporting requirements by choosing to organize in a manner that creates a federal nexus. The Board's Opinions 1978 #8; 1989 # 2, both applicable to PACs, accord. Since its inception the Board has commensurately recognized its lack of jurisdiction over federal candidates. "The Board does not exercise jurisdiction over the filing activities of candidates for Federal office and by this opinion does not intend in any way to interpret the provisions of Federal Law." Opinion 1975 # 5.

Practical Application

Under New York law when a political committee is required to register and make disclosures, the committee must report all its financial activity. *See* 1989 Opinion #2 (noting "New York Law makes it mandatory that any…political committees must report all contributions and all expenditures.") [emphasis as in original]. There is no mechanism in the statute or the current regulations of the board for partial reporting by a committee.[4] Federal preemption, providing that federal law is the sole source of reporting obligations for federal committees, cannot abide federal candidates being required to file comprehensive reports with the FEC and to also separately file duplicative itemized reports on a different time schedule with New York. Notably there appear to be no FEC opinions concluding that a Federal candidate's principal campaign committee based on a contribution made to state or local committees—or on any other basis—may be subject to state filing requirements.

FEC opinions that have explored federal candidate committee contributions or shared expenditures in state elections have uniformly applied the broad preemption of 52 USC § 30143. For example, a candidate's federal committee contributing funds from the federal committee to his own state committee (because he was planning to run for a state office) was not subject to state requirements, but federal preemption would not extend to the recipient state committee which was subject to state limits and state reporting. FEC AO 1986-5. More succinctly, the contribution from the federal committee to a state committee did not subject the federal committee to state law. In FEC AO 1986-29 a federal candidate desired to create a "slate card" that would include state and federal candidates. The federal committee would, under some of the scenarios posited, collect money from state candidates to send the card or the federal candidate committee would pay the bill on behalf of the state candidates participating, essentially contributing to them.

The FEC opined in AO 1986-29:

> The Commission notes that the Act preempts any state law with respect to election to Federal office. See 2 U.S.C. 453; 11 CFR 108.7. This provision will preempt the application of state law to you, your committee, and the U.S. Senate candidate (as mentioned in your request) with respect to the proposed slate card activities, including any disclaimer

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2 The Policy/Procedure Manual dated June 1996 included a section on "Registration Requirements Federal PACS" referencing the criteria of Election Law § 14-124 (2-a).

3 At least one federal committee attempted such partial reporting, underscoring the inherent problems.

> requirement with respect to you and the Senate candidate. This provision, however, will not preempt the application of state law with regard to your committee's providing certain information to listed state and local candidates that they may need for state reporting purposes. See Advisory Opinions 1986-27 and 1986-11.

With respect to contributions from federal committees, the FEC has opined that a federal committee contributing to a state committee's federal account was outside the reach of state law. *See* FEC AO 1993-14 (noting "[c]onsistent with Federal preemption as to registration and reporting, the Commission also concludes that a Federal political committee's contribution to the State Committee's Federal Account would not, by itself, permit application of Rhode Island requirements").

Though broad, federal preemption does not reach some scenarios where an entity other than a candidate committee raises federal funds and state funds in the same solicitation. *See* FEC AO 1999-12. Nor can an entity with both a federal and non-federal account under its control, for example, evade state reporting by routing contributions into the federal account and transferring 80% of the proceeds to the state account. *See* FEC AO 1986-27. Yet, where federal reporting and registration apply to a committee engaging in state and federal activities that are inextricably intermeshed with both state and federal requirements facially applicable, federal law preempts:

> The Act and regulations state that the provisions of the Act and the rules prescribed under the Act "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453; 11 CFR 108.7(a). Commission regulations provide that Federal law supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b).8 By their very nature, the allocable expenses of a State party committee, as distinguished from funds raised for and spent solely for the support of a non-Federal candidate, are intertwined with, and can affect, Federal election activity. With respect to your request, the Commission concludes that the Act and Commission regulations preempt any requirement imposed by [Alaska] that would limit the amount of Federal account funds that ADP [Alaska Democratic Party] uses to pay for administrative and generic voter drive expenses.

FEC AO 2000-24

Election Law § 14-124 (2-a) was not intended to, and cannot, require a candidate committee filing with the FEC to register and/or file (either fully or partially) with New York on the basis of contributions made to New York political committees. New York likely could ban or limit non-federal New York committees from receiving contributions from federal candidate committees, but New York Law cannot subject a federal candidate's campaign committee to New York's filing regime.

Transparency Considerations

It is notable that federal candidates filing with the FEC make campaign financial disclosures that are substantially comparable to those required under state law for state committees, and in some ways have tighter fundraising restrictions. The FEC disclosure filings, fully searchable, are available to the

public at FEC.gov. A link to that site is currently provided on the state board's website. Moreover, when a federal candidate's committee makes a contribution to a state candidate's committee, the state committee must disclose the contribution in accordance with state law. The state committee's financial disclosure reports are publicly available, and fully searchable, on the state board's website. Accordingly, there is full public online disclosure both on the part of the federal candidate committee making a contribution to a state committee and by such state committee receiving such contribution.

It is the opinion of the board that federal candidate committees filing with the FEC that make contributions to state or local committees in any amount, are not, on that basis alone, subject any registration and/or filing requirements under New York State Election law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
2019 Opinion # 1

Date: February 27, 2019

Question Presented:

Is a candidate jointly liable with the treasurer of the candidate's authorized political committee for a failure to file required campaign financial disclosure reports pursuant to Election Law §14-126 of the New York State Election Law?

Discussion:

Election Law §14-126(1) provides that a person who fails to file "a statement to be filed by this article shall be subject to a civil penalty…" It is the opinion of the State Board that once a candidate transfers the candidate's filing obligation, pursuant to Election Law §14-104(1), to their authorized political committee, the treasurer of the authorized committee is legally responsible to file campaign financial disclosure reports. Under such a circumstance, the candidate of an authorized committee has no legal liability under Election Law §14-126(1) for the treasurer's failure to make required filings.

Election Law §§14-102 and 14-104 set out the filing obligations for campaign financial disclosure reports of political committees and candidates, respectively. In order to determine whether a person is obligated to file such a statement, and thus subject to penalties for a failure to so file, these provisions of the Election Law must be reviewed.

Election Law §14-102

Election Law §14-102(1) unambiguously places the obligation to file campaign financial disclosure reports on the treasurer of a political committee:

> The treasurer of every political committee which, or any officer, member or agent of any such committee who, in connection with any election, receives or expends any money or other valuable thing or incurs any liability to pay money or its equivalent shall file statements sworn, or subscribed and bearing a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, at the times prescribed by this article setting forth all the receipts, contributions to and the expenditures by and liabilities of the committee, and of its officers, members and agents in its behalf.

Election Law §14-104

Election Law §14-104 places the requirement of filing campaign financial disclosure reports on candidates. However, since 1977 the candidate is relieved of filing obligations by authorizing a political committee and its fiduciary treasurer to make all such filings. *See* L.1977, c. 323, §1. The transfer of the candidate's filing obligation requires the candidate to file "a sworn statement at the first filing period, on a form prescribed by the state board of elections that such candidate has made no such expenditures and does not intend to make any such expenditures, *except through a political committee authorized by such candidate pursuant to this article*." Id. Once a candidate files this statement the candidate is promising to not file on their own behalf and not engage in any campaign finance activity except through the

authorized committee.* "A committee authorized by such candidate *may fulfill all of the filing requirements of this act* on behalf of such candidate." Id.

Other Provisions Regarding Relationship of Treasurer to Candidate

Election Law §14-108(5) requires that notice be made to treasurers who have not filed a required campaign financial disclosure statement. In 1994 the legislature added that "[i]f *the person required to file such statement* is a treasurer who has stated that the committee has been authorized by one or more candidates, a copy of such notice shall be sent to each such candidate by first class mail." This provision makes a clear distinction between "the person required to file" (treasurer) and the person who also "receives a copy of such notice" (candidate). *See* L.1994, c. 146.

The Governor's Bill Jacket contains several documents describing the purpose of the additional notice requirement. In a letter to then Governor Mario Cuomo, dated April 28, 1994, from Michael Nozzolio, Chair of the Senate Elections Committee, Sen. Nozzolio observed: "The purpose of this legislation is to require that candidates be notified when their treasurers fail to file financial reports…" The letter goes on to further state: "In many cases candidates are removed from the actions of the treasurers of their political committees, yet it is the candidate who receives unfavorable publicity when there is a failure to file by their treasurers. Notification to the candidate should result in more prompt filings." This is amplified by the Senate's "Memorandum in Support of Legislation", as well as the State Board of Elections Memorandum to Governor's Counsel, dated May 26, 1994, both contained in the Bill Jacket.

Election Law §14-127, adopted the following year, provides further evidence that an authorized treasurer's obligation to make filings stands apart from any obligation of the candidate. The statute provides "[i]f any person fails to file a statement of campaign receipts and expenditures for a candidate authorized political committee, and thereafter said person is a party to recovery of a civil penalty in a special proceeding or civil action brought by the state board of elections or other board of elections under section 14–126 of this article, said board of elections ***shall also provide the authorizing candidate with actual notice of the civil penalty, and the special proceeding or civil action by certified mail, return receipt requested, or by personal service."*** (emphasis added) (Added L.1995, c. 404, §1, eff. Aug. 2, 1995.) This "notice" provision would be meaningless if the candidate was also a party to a proceeding to recover penalties for failure-to-file.

In the "Memorandum of Support" for the underlying legislation, as contained in the Governor's Bill Jacket, the Summary and Justification sections are particularly instructive:

> Summary: This bill would add a new section 14-127, to the election law requiring that a board of elections to provide the authorizing candidate associated with a political committee be informed of any civil action brought under section 14-126 of the election law."
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> Justification: Currently, officials of a candidate's campaign, but not necessarily the candidate, are informed of civil actions brought against the campaign committee as a result of violations of the election law. It is therefore, possible, that the authorizing candidate might not know that the civil

* We note that the State Board only issues an authenticating number (PIN) to the authorized treasurer. Any filing received without the authenticating PIN is rejected. The treasurer alone is empowered to ensure a filing is made. The State Board will not issue a separate PIN to a candidate with an authorized committee to separately effectuate filings of the committee.

actions are proceeding. Since the candidate would ultimately suffer the most from civil penalties, it is important that safeguards exist to ensure that the candidate is kept informed.

These observations are further amplified in the Memorandum from the State Board of Elections dated June 29,1995, also contained in the Governor's Bill Jacket:

PURPOSE: Requires a board of elections when bringing an action to recover a civil penalty from a political committee for the failure to file a financial disclosure statement required to be filed under Article 14 of the Election Law, to send a notice of the proceeding to the candidates for which the committee serves as an authorized committee."

COMMENTS: In 1994, the Election Law was amended to require boards of elections to send to the candidates of a political committee authorized to act on that candidate's behalf, a copy of the letter sent to the treasurer of the committee stating that the filing must be made within five days. Section 14-108(5) N.Y. Election Law. This bill requires a second notice to the candidates of action by the board of elections against the treasurer of the authorized committee of the candidate.

Most recently, in 2016, the legislature amended Election Law § 14-104 to provide a mechanism to remove the treasurer of an authorized committee. *See* L. 2016 c. 286, pt. C §1. Notably, a candidate is not empowered to simply remove the treasurer. Rather, the candidate may only appoint a "treasurer removal committee." *See* Election Law §14-104; 9 NYCRR §6200.7(c),(d). The three or more members of such removal committee, not the candidate, are empowered to remove and replace the treasurer. This statutory process recognizes a fundamental separation between the candidate and treasurer.

It is clear the legislature did not intend for a candidate to be liable for a treasurer's failure-to-file campaign financial disclosure reports. In 1977, the legislature removed the obligation of a candidate to file campaign financial disclosure reports upon filing of the requisite form indicating that an authorized committee would be doing so. *See* Election Law §14-104. Moreover, if such a liability of the candidate was intended, the notice provisions of Election Law §14-108 (5), as amended, and §14-127 would be unnecessary because the candidate would have otherwise received the late notice pursuant to statute and would have been a party to the civil proceeding for failing to file. And if the treasurer was a mere extension of the candidate, the legislature would have authorized the candidate to remove the treasurer directly, instead of requiring a committee process both for the removal and replacement of a treasurer.

Based on the foregoing, when a candidate files, pursuant to Election Law §14-104(1), the form indicating that the candidate will be fulfilling the filing obligations of the candidate through an authorized committee, the liability for failure to file the applicable campaign financial disclosure statements rests with the treasurer and not the candidate.

Finally, we must note this opinion does not assert a candidate is incapable of unlawful actions with respect to his or her campaign finance filings made by a treasurer. We opine only that the authorized treasurer's failure to file a required disclosure report does not impute to the candidate with respect to civil penalties provided for pursuant to Election Law §14-126(1).

STATE BOARD OF ELECTIONS