



**Board of  
Elections**

# **ECA WINTER CONFERENCE**

**Panel Discussion**

**January 22, 2015**

# Legislative Update

## The Public Trust Act

# Public Trust Act - Panelists

- ❖ **Ralph Mohr** – Erie County Board of Elections
- ❖ **Steven H. Richman** – General Counsel, Board of Elections, City of New York
- ❖ **Roger J. Schiera** – Saratoga County Board of Elections
- ❖ **Risa S. Sugarman** – Chief Enforcement Council, Division of Election Law Enforcement, NYS Board of Elections

# Public Trust Act

On March 31, 2014, Governor Andrew Cuomo signed into law the Public Trust Act, which created within the state board of elections a new independent enforcement division known as the Division of Election Law Enforcement. Appointed by the Governor as chief enforcement counsel to head the Division, and confirmed by both the Assembly and Senate, Risa S. Sugarman took office on September 1, 2014.

# Public Trust Act

Election Law § 3-102(3) confers upon the chief enforcement counsel the power and duty to conduct all investigations necessary to enforce provisions of the Election Law.

Election Law § 3-104(1)(a) provides that the chief enforcement counsel shall have sole authority within the state board of elections to investigate on her own initiative or upon complaint alleged violations of such statutes and all complaints alleging violations shall be forwarded to the division of election law enforcement.

# The County Boards

## Election Law § 3-104(2)(a)

Whenever a local board of elections shall determine, on its own initiative or upon complaint, or otherwise, that there is substantial reason to believe a violation of this chapter or any code or regulation promulgated thereunder has been committed by a candidate or political committee or other person or entity that files statements required by article fourteen of this chapter solely with such local board,

# The County Boards

## Election Law § 3-104(2)(a)

it shall expeditiously make an investigation which shall also include investigation of reports and statements made or failed to be made by the complainant and any political committee supporting his candidacy if the complainant is a candidate or, if the complaint was made by an officer or member of a political committee, of reports and statements made or failed to be made by such political committee and any candidates supported by it.

# The County Boards

## Election Law § 3-104(2)(a)

The local board shall report the results of its investigation to the division of election law enforcement chief enforcement counsel within ninety days of the start of such investigation.

The chief enforcement counsel may direct the local board of elections at any time to suspend its investigation so that the division of election law enforcement can investigate the matter.



# The County Boards

## Election Law § 3-104(2)(a)

- Local board determines substantial reason to believe violation;
- Committed by candidate, political committee or other person/entity required to file locally by Article 14;
- Expeditiously investigate;
- Report results of its investigation to the chief enforcement counsel within 90 days of the start of the investigation.

# The County Boards

## Election Law § 3-104(2)(a)

- The chief enforcement counsel may direct the local board of elections at any time to suspend its investigation so that the division of election law enforcement can investigate the matter.

# Enforcement Counsel Investigations

## Election Law § 3-104(3) – The complaints

- Upon receipt of a complaint and supporting information alleging any violation of this chapter, or upon his or her own initiative, the chief enforcement counsel shall determine if an investigation should be undertaken.
- If necessary, the chief enforcement counsel shall obtain additional information from the complainant or from other sources to assist such counsel in making this determination.

# Enforcement Counsel Investigations

## Election Law § 3-104(3) – The analysis

- Such analysis shall include the following:
  - first, whether the allegations, if true, would constitute a violation of this chapter and,
  - second, whether the allegations are supported by credible evidence.

# Enforcement Counsel Investigations

## Election Law § 3-104(3) – Subpoenas and more

- The chief enforcement counsel may at any time ask that the board authorize him or her to exercise the powers which the board is otherwise authorized to exercise
  - the power to subpoena witnesses and documents; and
  - the authority to confer immunity in consultation with the appropriate District Attorney.

# Enforcement Counsel Investigations

## Election Law § 3-104(3) – Subpoenas and more

- The board shall vote on whether to grant or refuse to grant such authority no later than twenty days after the chief enforcement counsel makes such request.
- For purposes of considering and voting on such request, the chief enforcement counsel shall be entitled to participate in all matters related thereto and shall vote on the board's granting or refusal to grant such request only when there is a tie.

# Enforcement Counsel Investigations

## Election Law § 3-104(3) – Subpoenas and more

- Should the board not vote on such request within twenty days of its submission, or grant the chief enforcement counsel's request, the chief enforcement counsel shall be so empowered to act pursuant to his or her request.

# Enforcement Counsel Investigations

## Election Law § 3-104(4) - Dismissals

- If the chief enforcement counsel determines that the allegations, if true, would not constitute a violation of this chapter or that the allegations are not supported by credible, he or she shall issue a letter to the complainant dismissing the complaint and notice to the board.



# Enforcement Counsel Investigations

## Election Law § 3-104(5)(a) – Civil Matters

- If, an individual has failed to cure statements filed with the State Board when notified by the Compliance Unit, or the chief enforcement counsel determines that substantial reason exists to believe that a person, acting as or on behalf of a candidate or political committee under circumstances evincing an intent to violate such law that does not otherwise warrant criminal prosecution, or has unlawfully violated any provision of this chapter,

# Enforcement Counsel Investigations

## Election Law § 3-104(5)(a) – Civil Matters

- The board shall assign a hearing officer, and the chief enforcement counsel shall provide a written report to the hearing officer detailing the violation and the nature of the offenses and penalties and the suggested manner of proceedings.

# Enforcement Counsel Investigations

## Election Law § 3-104(5)(a) – Civil Matters

- The hearing officer may find the individual(s) guilty of such violation on notice to and with an opportunity for the individual or entity accused of any violations to be heard.
- The chief enforcement counsel may commence a special proceeding or enter into an agreement to settle the matter.

# Enforcement Counsel Investigations

## Election Law § 3-104(5)(a) – Civil Matters

- If the hearing officer finds that on balance, the equities favor a dismissal of the complaint, the hearing officer shall dismiss the charges.
- In deciding the equities, the hearing officer shall consider the 3 factors: (1) the seriousness of the violation of article; (2) whether the subject of the complaint has made a good faith effort to correct the violation; and (3) whether the subject of the complaint has a history of similar violations.

# Enforcement Counsel Investigations

## Election Law § 3-104(5)(b) – Criminal Referrals

- If the chief enforcement counsel determines that reasonable cause exists to believe a violation warranting criminal prosecution has taken place, the chief enforcement counsel shall present such findings to the board.
- Within thirty days of such submission, the board shall vote on whether to accept or reject such findings.

# Enforcement Counsel Investigations

## Election Law § 3-104(5)(b) – Criminal Referrals

- For purposes of voting on acceptance or rejection of findings by the chief enforcement counsel, the chief enforcement counsel shall be entitled to participate in all matters related to the review of his or her report and shall vote on its acceptance or rejection only when there is a tie.

# Enforcement Counsel Investigations

## Election Law § 3-104(5)(b) – Criminal Referrals

- Should the board fail to vote to either accept or reject the findings within thirty days of submission of such findings, or should the board accept the findings by the chief enforcement counsel that there is reasonable cause to believe that a violation warranting criminal prosecution has taken place, the chief enforcement counsel shall, forthwith,

# Enforcement Counsel Investigations

## Election Law § 3-104(5)(b) – Criminal Referrals

- and in any event no later than seven calendar days of such failure to accept or reject the findings by the board, refer such matter to the attorney general or district attorney with jurisdiction over such matter to commence a criminal action as such term is defined in the criminal procedure law.



# Division of Election Law Enforcement

## The Division – Election Law § 3-100(3-a)

The chief enforcement counsel shall have sole authority over personnel decisions within the enforcement division. All hiring decisions made by the chief enforcement counsel shall be made without regard to political affiliation. The chief enforcement counsel shall not hold any other public office, be a party officer during his or her term of office, or otherwise engage in outside employment.

# Division of Election Law Enforcement

Attorneys;

Criminal Investigators designated as Special Investigators under the Election Law and Peace Officers under the Criminal Procedure Law;

Investigative Auditors.

# Division of Election Law Enforcement

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