

**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

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**