

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 sheriff<sup>1</sup> 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*

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<sup>1</sup> 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.

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

Police