



2005

THE ECA REPORTER

Election Commissioners' Association of the State of New York

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A Year to Remember - Professionally and Personally

By Elizabeth W. Cree, President ECA



This past year has been a challenge in our Association's history as well as on a very personal level for me. As most of you know, I was diagnosed with breast cancer just a few months after taking on this position. I considered resigning to allow someone to dedicate the time and effort it would take to lead this great Association. But, each and every one of you offered me your support and suggestions. And, I must say, I am so glad I didn't give up the gavel. As a team, we still accomplished great tasks, and I would like to take this opportunity to publicly thank everyone for allowing me to represent you as president of the Election Commissioners' Association. It has truly been an honor and a pleasure to work with professionals who take their responsibilities very seriously day in and day out. I am grateful to belong to an organization that has such a loyalty to their positions and carries them out to their fullest capacity.

Now that I have had a chance to work with everyone at this particular level, I will miss the position. My biggest goal as president was to include everyone in our organization whether they were able to

commit to a committee or just contribute as a "sister advisory" or sounding board. My very first task was to start communication by email, so that information could be shared statewide. The second was to have our Association's web page revamped and updated to include vital information such as best practices, important dates, and work-related issues. (HAVA is a priority too, but we are still waiting for legislation at the time of this writing.) Of course, I could not do this alone. Everyone in the Association was a huge help. Tom Paolangeli and Mike Northrup were very instrumental in the web page updates and changes. Helen Kiggins from Onondaga County, as Program Chair, provided us with a very informative conference in the winter and already has started on the summer agenda. Lew Sanders took on the Voting Machine Committee and is working to provide us, with the help of his members, some solid information for us to decide upon which election system will work best for each of our individual counties. Our Executive Chair, Ralph Mohr and Legislative Chair Bill Scriber have never stopped working to assist with HAVA-related issues. Other chairs and committees such as the Bylaws Committee, Mary Beth Casey and Bob Brehm on the Database

Committee continue to be very active. And, at this time, I would like to publicly express my appreciation with a BIG THANK YOU from me personally to all of YOU in the Association.

After being in this position, I really believe that the president's term of office should be two years. I know that past presidents have felt this way, and I think that the Association should talk about this and possible by-law changes for future appointments. As you know, our Association is a very active group. We have great talent, and we utilize it on a daily basis. (We may have an idea or a special committee appointed by a sitting president, and it doesn't receive the time so that within a year we can fully receive the benefits from our labors.) Also, committee appointments made by the president last only one year. A perfect example of this would be the Voting Machine Committee. It was a newly-formed committee that was started by the past president and appointed but was never called to order. Now the

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CONFERENCE DATES

ECA Summer Conference

June 21-24, 2005

Geneva, NY

ECA Winter Conference

January 17-20, 2006

Cooperstown, NY



Election Reform...in time?

ECA Legislative Committee Chairman's Report

William W. Scriber

A Year to Remember,

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committee is meeting on a regular basis but must complete a large amount of work in a short amount of time. We do have a great succession plan, and our officers that are moving up will do a great job. But as they become president, I am sure they may feel that a little more time was needed to complete the task. My only request is to keep the communication open and ongoing through our emails because I believe it a very resourceful tool for keeping in touch. Also, we have taken the web site to new heights, and I would like to see that continue.

As far as the HAVA "baton," I happily pass that to Tom Burke. (Larry Adamczyk and I have narrowly escaped the task of implementing HAVA as leader of the Association!) With all due respect, and all kidding aside, I want everyone to know that I will continue to work with the officers in the next few years with whatever they would like assistance in. I wish the best of luck to my colleague and friend, Tom Burke in the coming year and lots of prayer during implementation.

I believe my reward, through this past year, has been all the great friendships I have made throughout the state. I also want to thank the commissioners in Westchester and Ontario Counties for their extra assistance and help during the conferences. They have really gone the extra mile for us. Thank you again for a great year!



The Legislative Committee in conjunction with the Executive Committee traveled to Albany on March 1st to lobby the Assembly, Senate and Governor's Office. The primary goal was to focus on the need for centralized elections management and county board ownership of voting equipment.

The delegation had meetings with the chairmen of the two legislative election law committees, Senator Flanagan and Assemblyman Keith Wright. We also met with the Governor's Office and the Attorney General's Office to outline our 2005 legislative package. As in the past, the Association's delegation was well received and there was a fruitful exchange of information. It was an opportunity to meet headfirst the associations of counties' objections to voting equipment ownership.

The Governor's Office meeting was attended by myself and Executive Chair Ralph Mohr, and we were pleased that the Governor's Office clearly supported centralized elections management and had made that clear to both houses' leadership. Also the meeting with the Attorney General's Office was helpful in providing background on our legislative proposals to them and opening a line of communication with their office.

The central theme we all stressed was that an agreement must be reached on centralized election management prior to the largest single replacement of new voting technology in the state's history. Failure to do so would place enactment of the Help America Vote Act (HAVA) in danger and would also cause the loss of the federal funds.

Given the short time remaining to replace over 20,279 voting machines, equip 7,533 poll sites, and train 77,713 election inspectors, county boards do not have the resources to deal with multiple municipalities (932 towns, 52 cities and 554 villages) in each of our counties to guide them through the purchase, vendor agreements for programming, setup, testing (quarterly), delivery, verification of systems operation once delivered, and maintenance and security for each town and city. This would place a complete system overload on county boards that have suffered in recent years with reductions in budgets and staff. To place a further mandate on them and additionally force local municipalities to carry the burden of costs for the new storage, security and maintenance would not make common sense. These costs would be more manageable at the county level than at the town and city level where there would be duplication of costs and the impact would be higher on local budget resources.

The need for centralization is as clear as the logic of the election process being administered by one single entity and not subjecting the process to fragmented and overlapping responsibilities with towns and cities adding costs in a time of limited funds.

At the writing of this article the Assembly and Senate have a tentative agreement on centralized elections management, but there is not a bill yet. Some would say, even if a bill were passed today, we have no time to enact HAVA without major problems. All the delays have caused boards to lose precious time planning and preparing. Much time has been wasted by the arguments of the New York associations of counties' reluctance to place the voting public first. When election reform comes... will we have time?

From the Editor:

"Thank you" for the articles received that made this issue possible. Shame on those that I didn't receive!

Legislative Committee Update

By Norman Green,
Chautauqua County, Third Vice-President

As an election professional, I never tire answering the number one most repeated and the number one most asked question of our occupation. You know the question. All of us in the profession are faced with it all of the time: "By the way," Joe or Jane Citizen questions with a quizzical look, "I know you work hard in November, but what do you do the rest of the year?"

What do I do? I have to resist the first thought of wanting to roll my eyes in amazement. In my first years as an election commissioner, I might even have gotten a little angry. Thinking to myself, I wonder why citizens don't realize how hard we in the election business all work.

The question is really an opportunity. My head buzzes with many thoughts. Gosh, where do I start?

"I'll bet those November days after the election you just are glad to kick back, eh?" my citizen friend asks. Of course I let my citizen friend know that the results of the election are unofficial at this point. We have to go out and recanvass the voting machines, and we have just twenty five days to transmit our official results to the State Board of Elections. It's a painstaking job to track down each and every vote for each and every office. We have to research more than 1,000 provisional affidavit ballots. We hand count thousands of absentee ballots, even in off-year elections. Last year more than 70,000 voters traveled to the polls in Chautauqua County. Our results are not just precise. Our final results are 100% accurate. Like looking for that missing penny in your checkbook, our results must add up, and it's a long tedious

process. This is not to mention that we have to receive and inventory suitcases filled with voter data used by election inspectors, work with election machine custodians, answer a gazillion questions from candidates and the media, and keep up with all of our day-to-day work.

"Gosh, what about December? You government folks get all of the holidays off, don't you?" my citizen friend asks. I do have to admit that this does sometimes seem to be a downtime in our election office. Many days there is hardly anyone available to even answer the phone. But this is due to Board of Elections staff taking off for "comp time earned." At the Chautauqua County Board of Elections, staff collects comp time for more than 35 hours worked. No matter what the work load, we have a budget to live by, and the budget is for each staff member to work only 35 hours per week. Instead, staff builds up and earns comp time. Thus, December is the time that the staff takes off using up their "comp time earned" from working extra hours in August through November.

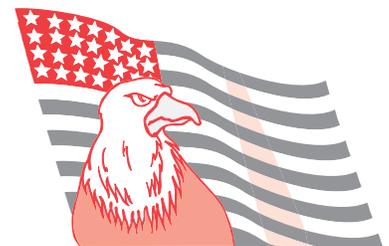
"Well what about the cold days of January?" my citizen friend asks. Well we're finally able to take the time to wrap up the previous year's election and it's time for us to do our annual report and recap the statistics from the previous year. And in our county with March village elections, we are busy helping independent candidates with petitions and major party candidates with caucuses to qualify for village ballots. And if it's a presidential year, all heck is breaking loose preparing for presi-

dential primaries, in addition to our work preparing for the March village elections.

"February?" my citizen friend questions. I politely inform him that I could easily detail a month-to-month description of our many duties involved with local elections in our twenty five legislative districts, twenty seven towns, two cities, fifteen villages, and nineteen school districts. We have to register, reregister, move, inactivate and purge voting records involving nearly 100,000 voters each year. We have to make contact by mail with each of these voters at least once a year. We have to track and correspond with nearly 1,500 permanent and military absentee voters. We have to provide labels and lists to school districts and villages.

And now that you've got me started, let me tell you about qualifying petitions, caucuses, primaries, ballots, lists and so much more needed for the election of more than 400 local officials in Chautauqua County. Let me tell you about the recruiting and training of more than 1,000 elections inspectors. Let me tell you about working with town and city clerks regarding the setting, maintenance and inventory of 150 voting machines. Let me tell you... My voice trails off.

Yep, my favorite question!



The Employment of Legal Counsel

by **Ralph M. Mohr, Chairman of the Executive Committee**

It is not surprising that questions concerning legal representation should arise among election commissioners. Ever since the Court of Appeals ruled in *Cahn v. Town of Huntington* that municipal boards and officers possess an implied authority to employ counsel in the good faith prosecution or defense of an action taken in the public interest, commissioners and boards have found themselves in disputes concerning representation by the county attorney and the hiring or payment of outside legal counsel.

At the heart of the issue is the language of the state's County Law which vests with the county attorney the duty to prosecute and defend all civil actions and proceedings brought by or against any officer whose compensation is paid from county funds for any official act. When the action of the board is unanimous and the issues do not involve any conflicting governmental entity, representation by a competent municipal attorney is usually unproblematic. In such cases, even those involving candidate challenges, the county attorney often remains on the sidelines allowing the candidates to duel it out. At times the

county attorney may even support the unanimous position of the board.

However, if the commissioners split on a decision, or when the court action conflicts with a competing interest of the legislative or executive body, the issues of legal representation can become more complicated.

Split decisions of the board are the most common and, first and foremost, require the result of the ruling to be determined. For example, a split decision by the commissioners on a challenge to the validity of a petition will render the petition valid. Conversely, a split decision on a challenge to the content of a ballot will render such ballot void.

In these circumstances, despite the potential protests of the "losing" commissioner, there is nothing which prohibits the municipal attorney from defending the action of the board. Indeed, the municipal attorney is, more likely than not, ethically bound to defend the validity of the board's result. Unless a situation arises similar to *Lenihan v. Blackwell* where the county attorney defended the incorrect result, the "losing" commissioner's only recourse may be to rely upon the skill of his candidate's attorney or

bear the cost of his own representation.

If there is agreement among commissioners, but the sole issue of conflict involves a competing interest of the legislative or executive branch, such as may be found in a level of funding dispute, state statute directs the county attorney to choose the side of the legislative or executive branch. In such instances, boards and commissioners will usually find themselves without municipal representation and fighting against a public attorney willfully defending the other municipal official's intruding action. Under such issues of conflict, as *Wilson v. Allegany County* attests, and *Mohr v. Giambra* hopes to soon replicate, a board of elections must be accorded independent legal representation paid for at public expense.

Even when legal action is taken unilaterally by a single commissioner, *Graziano v. County of Albany* and *Hill v. County of Sullivan*, both recently decided, demonstrate that reasonable attorney's fees will be awarded provided the action is brought in good faith and is a matter within the public interest and connected with the commissioner's official duties.

The American Voter Poll

By **Thomas S. Burke, Greene County, First Vice-President**

I'm going to go a step or two out on a limb and guess that this current newsletter will have ample space devoted to HAVA. For a little respite from that topic, consider the following:

- Twenty percent of the public have no political views. Only around ten percent have what can be called, even generously, a political belief system. Thus "about twice as many people have no political views as have a coherent political belief system."
- Seventy percent of Americans cannot name their senators or congressmen.
- Forty-nine percent believe the president has the power to suspend the Constitution.
- Only about thirty percent name an issue when they explain why they voted the way they did, and only one-fifth hold consistent opinions on issues over time. The mere rephrasing of poll questions reveals that many people don't understand the issues that they have just offered an opinion on.
- "2.8 million people voted against Al Gore in 2000 because their states were too wet or too dry," as a consequence of that year's weather patterns.

The above mentioned statistics appeared in the 1/5/05 issue of *New York Law Journal*, and was presented by Otto G. Obermaier. Mr. Obermaier credits an article in *The New Yorker* by Louis Menard entitled "The Unpolitical Animal."

YOU MUST... YOU WILL...

By Carolee Sunderland, Westchester County, Editor



All come with a deadline in the election business. As I travel around this USA, I usually try to stop in other states' "Boards of Elections" or the equivalent to see how they do their election business. I always come away with some information

that is useful, some better than and some not as good as New York State's process. One thing I have taken from each of these visits is YOU MUST. . . YOU WILL. . . . All come with a price tag and, I will add, a very large tag!

Changes are needed and WILL be made, but remember we MUST have the money along with the time to meet the DEADLINES.

The many people that need us during an election are the same individuals that forget about BOEs in what used to be our off months, which no longer exist. After the laws have been signed, sealed and passed

on to the election officials we MUST. . . and WILL. . . implement them. However, we need the money and professionals to help us get the job done by DEADLINE time.

If all goes as it should, then many will take the credit for a successful transition. If any part of the implementation should have a problem, the election officials in each county will be at fault. Consequently, everyone involved in the election process MUST. . . and, if they do not want to see New York State on the front page, WILL. . . work together!



Saratoga County Kids Rule

By Rachael Holbrook and Mary Jenkins

On April 28, 2005, Saratoga County sponsored "Bring Your Child to Work Day." Any employee with a child between the ages of 8 and 17 could bring their child to work on this day, so they could see what their parent does during the workday.



Saratoga County departments have an option to create a display or program to help the children understand how the department operates.

Our election board created a "Mock Election" to help the kids understand the voting experience. The ballot consisted of two proposals, nine categories, and five party

lines. The children arrived, signed the poll book, and received a sample ballot. After a brief instruction of the voting machine, they cast their vote.

There were 40 kids who participated, and the winners were Dale Earnhardt, Jr for favorite NASCAR driver, Dance Dance Revolution for favorite video game, Blue for favorite color, and the New York Yankees for favorite baseball team. We also had three write-in votes. Each child will be sent a copy of the results and a certificate for their participation by mail.

Overall, the election was a great success. We are looking forward to another exciting election next year.

ELECTION COMMISSIONERS' ASSOCIATION
OF THE STATE OF NEW YORK

2004 - 2005



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ECA Albany Lobby Day - March 1, 2005

By Kevin Bureson, Cattaraugus County

ALBANY – It appears the efforts of more than 20 elections commissioners to lobby the State Legislature were successful on March 1.



Commissioners meeting with Assemblyman Keith Wright during a luncheon sponsored by NYC BOE

Members of the NYSECA gathered on February 28 for a joint meeting of the Executive and Legislative Committees to plan their efforts for the following day's lobby efforts. Discussions were lengthy and included talk of creating a committee to review the costs of the different types of machines – especially the long-term costs of using direct recording electronic (DRE) voting machines versus optical scan ballots.

It was agreed that the Democrats would make the majority of those lobbying the Assembly and, with the Attorney General's staff and the Republican commissioners, would assist in lobbying the NYS Senate and the Governor's Office.

The interest and knowledge of the problems facing election commissioners seemed evident when meeting with Assemblyman Keith Wright and Senator John Flanagan, the two chairmen heading election

law committees in their respective branches of the government.

Flanagan questioned Bill Fruci about Saratoga County's use of the electronic machines in one area of their county. Flanagan also heard from rural commissioners their concerns about not centralizing the elections processes with the counties and how voting machines are typically stored in highway barns and closets in town clerk's offices.

Robert Brehm, of Schenectady County, discussed the concerns over implementing a statewide registration database and the benefits of using an open system that would cost less and allow more than one system to be used in local county elections offices across the state.



Kevin Bureson, Assemblyman Wright, Commissioner Sue Fries

Another concern raised to the officials in Albany was the need to clarify the law that allows boards of elections to charge back their costs to the towns and cities. Ralph Mohr, of Erie County, laid out the legal concerns for Flanagan and his legal counsel, John Conklin.

It appears the concerns of the election commissioners were heard and those issues were being dealt with in the conference committees that began meeting in March.

As you already know, the ECA legislative committee approved three issues during its winter conference, including two dealing with HAVA implementation in New York State centralization and direct and protected funding for individual counties.

That was the main focus of our lobbying efforts.

In other business, the joint committees approved purchase of name badges and the use of the Otesaga Resort Hotel in Cooperstown for the January 2006 convention.



Senator Flanagan and Commissioner Sue Fries

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