

410-RICR-20-00-8

TITLE 410 - BOARD OF ELECTIONS

CHAPTER 20 - ELECTIONS

SUBCHAPTER 00 - N/A

PART 8 - Investigations

8.1

- A. The Rhode Island Board of Elections hereby establishes within rules and regulations relating to investigations, pursuant to and in accordance with R.I. Gen. Laws § [17-7-1](#) *et seq.*, as amended
- B. Said rules and regulations are proposed pursuant to the Administrative Procedures Act (R.I. Gen. Laws Chapter [42-35](#) *et seq.*) and are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.

8.2 Investigation Procedure

8.2.1 Scope and Purpose

- A. The Rhode Island Board of Elections (Board), pursuant to its authority and responsibility to investigate possible violations of election laws, sets forth the Investigation Procedure under which it shall conduct investigations into possible violations of election laws (including the campaign finance law) of the State of Rhode Island.
- B. Nothing contained in this Investigation Procedure shall constitute a limitation on the Board's authority, pursuant to R.I. Gen. Laws § [17-7-1](#), *et seq.*, to conduct expedited inquiries, investigations and hearings on exigent matters, relating to possible violations of laws or regulations which could impede or affect the fair administration and/or outcome of an election.

8.2.2 Initial Investigation

- A. The Board, through its Executive Director and staff ("staff"), may initiate an informal, initial investigation concerning any matters relating to the election laws of the State of Rhode Island. The investigation may include staff review of documents and informal inquiries by Board staff of candidates, political action committees, political parties or other persons who are subject to and governed by

the election laws of the State of Rhode Island. Such an initial investigation may also include inquiries to and communications with other persons or legal entities that may have relevant information.

- B. In the event that the Board staff determines that a more formal inquiry is appropriate, the Board, either by vote of the Commissioners or at the discretion of the Executive Director or staff, may conduct further inquiries as set forth in the following section.

8.2.3 Formal Investigation

- A. The Board, by decision, which may be made in executive session, may conduct a formal investigation into possible violations of election laws or regulations. In such a situation, the subject of the investigation shall be notified and shall have the right to be represented by legal counsel. The notice to the subject of the investigation will briefly identify or summarize the basis for the decision to conduct said investigation. A formal investigation may include, but is not limited to, the following:
 - 1. An audit of a candidate's books and records;
 - 2. Interviews of candidates, agents and representatives of candidates, political action committees, and political party committees;
 - 3. Investigations into reported contributions by contacting reported contributors;
 - 4. Verification of disbursement information by contacting vendors;
 - 5. Submission of written questions to the subject of the investigation or other persons who may have relevant knowledge or information;
 - 6. Requests for the production of documents; and
 - 7. Conducting depositions under oath.
- B. The Board staff, as well as any designated agent, including legal counsel, may conduct private interviews with any individual who may have information relevant to any matter under investigation. Any person who is so interviewed shall have the right to have his or her legal counsel present. Interviews may be conducted under oath or affirmation and may be recorded by hand, electronically or by stenographic means.

8.2.4 Subpoenas and Subpoena *Duces Tecum*

- A. The Board has the statutory authority to issue subpoenas, signed by the Board's Executive Director acting as its Secretary, requiring any person to attend and to

provide testimony by deposition and/or to produce books, records, correspondence and any other documents or evidence, including any documents or evidence in electronic form, that may be relevant to the matter under investigation.

- B. A witness required by subpoena to testify or to produce documents and/or other evidence shall comply with the subpoena, unless otherwise authorized by the Board's representative. A timely written request for a change of date or time will ordinarily be allowed provided that it is not made for purposes of delay and will not interfere with the investigation.
- C. A failure to attend and give testimony or to produce documents as commanded by a subpoena or subpoena duces tecum may result in contempt proceedings before the Board, pursuant to R.I. Gen. Laws § [17-7-8](#).

8.2.5 Service of Subpoenas

- A. Service of a subpoena upon a person named therein shall be made by delivering a copy to that person in the following manner:
 - 1. Whenever service is to be made upon a person who is represented by an attorney who has filed an entry of appearance with the Board, the service shall be made upon the attorney by delivering the subpoena to the attorney or leaving a copy of the subpoena at the office of the attorney with the person in charge of the office or if neither is available, with a person of suitable age at the office of the attorney. Service may also be made by fax or email provided that the Board must receive confirmation by fax or email of receipt of the subpoena from the attorney for the subpoena to be in effect. Delivery of subpoenas to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge of the office or if neither is available, with a person of suitable age at the office or by leaving a copy at his or her dwelling place or usual place of abode with some person of suitable age and discretion residing therein or by mailing a copy by registered or certified mail to his or her last known address or by any other method whereby actual notice is given. Service may also be made by fax or email provided that the Board must receive confirmation by fax or email of receipt of the subpoena from the person, for the subpoena to be in effect.
 - 2. When the person to be served is not a natural person, delivery of subpoenas may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service or to any officer, director, or agent in charge of any office of such person or by mailing a copy by registered or certified mail to such representative at his or her last known address or by any other method whereby actual notice is given. Service may also be made by fax or email provided, however, that the Board must receive confirmation by fax or

email of receipt of the subpoena from the person, for the subpoena to be in effect.

8.2.6 Depositions Pursuant to Subpoena

- A. A witness required by subpoena to testify or produce documents or other evidence, shall be provided with the following:
 - 1. a copy of the subpoena;
 - 2. at least 48 hours notice of the time and place of the deposition, unless such notice will unduly interfere with the investigation; and
 - 3. a copy of this Investigation Procedure.
- B. Witnesses required by subpoena to testify or to produce documents or other evidence shall provide testimony and/or documents and other evidence under oath. The Board's staff, legal counsel or any designated special counsel, will conduct such depositions in private. A deposition may be taken before any person having the power to administer oaths.
- C. Any person to whom a subpoena or subpoena duces tecum is directed may be accompanied at his or her deposition by his or her own counsel. Counsel for the witness shall not be permitted to examine or cross-examine the witness, but the witness shall have the right to consult with his or her counsel during the deposition.
- D. At the deposition of a witness called to testify by subpoena, the witness, after being sworn, shall be permitted to make a brief opening statement; and at the close of his or her testimony, the witness may make a brief closing statement. The Board's representative may ask the witness additional questions after the witness's closing statement.
- E. A witness or his or her counsel may object to a question on the ground of self-incrimination. A witness may refuse to answer a question on the ground of this privilege. If a witness claims the privilege, he or she shall not be required to answer the question at that time.

8.2.7 Deposition Materials

- A. All books, papers and records produced pursuant to a subpoena issued under this section shall be retained by the Board during the pendency of the investigation.
- B. Tapes, transcripts and other records and evidence obtained as the result of a subpoena shall be kept confidential during the pendency of the investigation except as otherwise necessary to further the investigation.

8.2.8 Motions to Quash or Modify a Subpoena

Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five (5) days after the date of receipt of such subpoena, file a motion with the Board to quash or modify such subpoena, that shall contain the reason(s) therein with the Board's Executive Director and a copy shall be served upon the Board's representative in the matter. The Executive Director or any other designee of the Chairman of the Board of Elections shall after hearing, determine if the subpoena should be quashed or modified.

8.2.9 Confidentiality of Investigation

- A. Investigations may remain confidential to protect the privacy of the subject of the investigation and to prevent witnesses from coordinating testimony; or the destruction or tampering with evidence; or otherwise interfering with an investigation.
- B. The investigation and documents, including any interview notes and deposition transcripts and exhibits, gathered or created during the investigation, shall be held confidential during the investigation, except as otherwise necessary to further the investigation.
- C. If the Board finds no reason to believe that a violation has been committed, all records and papers pertaining to the investigation shall be kept confidential unless further legal proceedings are instituted.
- D. Nothing herein shall be construed to prevent the introduction of evidence in federal or state court that could properly be introduced pursuant to the applicable Rules of Evidence or Rules of Procedure.

8.2.10 Board Review at Conclusion of Investigation

- A. Upon the conclusion of an investigation, should the Board and/or its Executive Director and staff determine that no referral or other further action is warranted, they shall close the investigation and so notify the subject of said investigation. Unless otherwise stated, the notification shall be without prejudice to reopening the investigation if the Board receives additional information.
- B. When the Executive Director, staff or counsel assigned to the matter concludes that there is reason to believe that a violation of law or regulation may have occurred, they shall submit a written report to the Board Commissioners. The report shall contain a summary of the facts and legal conclusions, as well as, any recommendations. The subject of the investigation shall be served with a copy of the report and shall be given an opportunity to respond to it in writing

- C. After receipt of the response or when the response time period has expired, the Board shall conduct such review and hearing, as it deems appropriate under all the circumstances involved in the particular matter which may include:
1. Finding that no violation has occurred or that the Board has no reason to believe that a violation has occurred;
 2. Finding that the subject of the investigation has agreed that one or more violations have occurred of specific sections of the General Laws and/or applicable regulations and issuing a remedial order accordingly;
 3. Returning the matter to the Board Executive Director, staff or counsel for additional investigation;
 4. Finding that there is reason to believe that a violation or violations of specific sections of the General Laws and/or applicable regulations may have occurred and ordering that an adjudicatory proceeding be held in order to determine whether or not such violations have in fact occurred;
 5. Finding that there is reason to believe that a violation or violations of specific sections of the General Laws and/or applicable regulations may have occurred, and referring the matter to the Attorney General for possible enforcement action.
- D. In the event that the subject of the investigation relates to campaign contributions and expenditure reporting requirements, R.I. Gen. Laws § [17-25-1](#) *et seq.*, whenever the Board finds that it has reason to believe that a candidate, political party committee or political action committee, or the campaign treasurer or deputy campaign treasurer of a candidate or committee, has accepted a contribution or made an expenditure in violation of R.I. Gen. Laws Chapter [17-25](#), or willfully and knowingly has made a false statement in any of the reports required under this chapter or fail to file any report, or has otherwise violated said chapter, the Board may, in addition to all other actions authorized by law, request the Attorney General to bring an action in the name of the State of Rhode Island in the Superior Court against the person and/or committee to enjoin them from continuing the violation, or doing any acts in furtherance of the violation, and may request any other relief that the court deems appropriate.
- E. In addition, the court may order the forfeiture of any or all contributions accepted in violation of and/or not reported as required by law. All such contributions so forfeited shall become the property of the State. The Superior Court is also authorized to impose a civil penalty not exceeding three times the amount of:
1. contributions made or accepted in violation of this chapter;
 2. expenditures made in violation of the law; and/or
 3. contributions or expenditures not reported as required by law.

- F. Any funds collected pursuant to R.I. Gen. Laws § [17-25-16](#) shall be deposited in a fund established for the public financing of the electoral system in accordance with the Rhode Island General Laws.
- G. The Board will not make a finding that the subject of an investigation has committed a violation of law or regulation without providing the subject with notice and the opportunity for a hearing. The nature of the hearing will be determined by the Board in each case based upon the nature of the case, the public and private interests involved, and the exigency of the circumstances.
- H. This procedure shall not act to limit the Board's authority in any manner, including, but not limited to, conducting hearings, issuing temporary orders, ratifying consent decrees or any other duty or authority prescribed by law or practice to the Board of Elections.

8.2.11 Implementation

- A. The Board of Elections may promulgate procedures and forms necessary to implement the within rules and regulations required under the Rhode Island General Laws.
- B. This Part is adopted this day of May 2008 pursuant to the Administrative Procedures Act (R.I. Gen. Laws [42-35-1](#), *et seq.*).
- C. By Order of the Rhode Island Board of Elections. Adopted at a meeting of the State Board of Elections held on this day of May 2008.