



Elections- Related Investigation Priorities Policy

Adopted by the State Board
of Elections on _____

Authority

§ 163-22. Powers and duties of State Board.

...

(d) “The State Board shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.” (Emphasis added).

Introduction

The State Board of Elections (State Board) has an obligation to the public, elected officials, candidates, stakeholders, and the media to instill confidence by its actions, including through the discriminate use of power entrusted to the agency. As the agency tasked with oversight over elections and campaign finance in North Carolina, the State Board is uniquely placed to use its authority in a deliberate manner to promote confidence that the agency’s investigations make elections more secure. The State Board recognizes that when assessing possible violations of election law, discretion must be used to differentiate misunderstanding and mistake from deliberate or serious violations of election law.

The State Board has the power and duty to investigate the administration of elections laws, frauds, and irregularities in elections “when necessary or advisable.” G.S. § 163-22(d) (previously G.S. § 163A-741(d)). This language provides the agency with discretion to determine which investigations merit the use of its attention and resources. With its current staff, the agency is well-positioned in its role as the state agency tasked with investigating alleged elections violations. In this role, the State Board must maximize its impact through considerate selection of cases and proceed with investigations that promote its goal of increasing compliance with the law and ensuring public confidence in elections. This document establishes a consistent, uniform policy for State Board staff in performing their investigative duties.

Disclaimer

This memorandum is intended to serve only as internal guidance to the State Board. It does not create a right or benefit enforceable by a party to litigation with the State Board or its staff. Nor does it require the State Board to investigate a case that is frivolous or otherwise meritless.

The State Board may modify the contents of this policy without notice. Nothing in this policy restricts the authority of the State Board as a body to investigate, direct staff to investigate, or refer cases on its own authority.

Investigations Priorities

Recognizing that the agency has limited resources, and in an effort to maximize those resources, the agency has identified priorities for investigation. This guidance sets forth specific factors to distinguish cases meriting criminal investigation from those more appropriately pursued by administrative authorities or through educational programs.

Priority Areas

1. Malfeasance by elections officials.
2. Significant harm or threat of significant harm to the conduct or administration of elections, including:
 - 2.1. Vote buying;
 - 2.2. Voter suppression or intimidation; and
 - 2.3. Organized absentee ballot fraud.
3. Culpable conduct. Culpability may be shown by factors including:
 - 3.1. Knowing or intentional violations;
 - 3.2. Deliberate misconduct;
 - 3.3. A history of repeated violations. While a single violation might have no effect on an election, multiple violations, especially when initiated through a concerted effort, may indicate more serious issues. Such violations may, but do not require, change or have the potential to change the outcome of an election.
 - 3.4. Concealment of misconduct, including falsification of records; and
 - 3.5. Likelihood subject understood or reasonably should have understood illegality of conduct.
4. Concerted efforts by multiple individuals or entities.
5. Other priority enforcement areas identified by the General Counsel in consultation with the Executive Director.

Case Process

Investigations are guided by the following State Board staff: General Counsel, Chief Investigator, and any other staff identified by the General Counsel. These staff will

meet regularly to evaluate and discuss pending investigations. The Executive Director shall be consulted as needed.

Initial Review

Upon receipt of information, including a complaint, election documents from a county board of elections, or statements and observations of election officials, that could constitute a violation, investigators will review the reported facts to determine whether the case meets a priority for investigation. An initial review may be conducted in order to determine whether culpable conduct or a concerted effort by multiple individuals or entities may have occurred. This review may include gathering supporting records or other documents when necessary.

It is understood that not every report that is received will clearly indicate on its face whether it fits into one of these categories. However, at the conclusion of an initial review, the investigator should be able to articulate a basis for the decision to pursue an investigation based on a priority outlined above. This basis may be based on circumstantial information, particularly information received from county boards of elections. This basis need not be a certainty, but it should be articulable, such that if the investigation substantiates the conduct initially complained of, the case is reasonably likely to fit within a priority area.

Upon review of information and completion of an initial review, if any, the Chief Investigator, and any other person designated by the General Counsel, shall recommend to the General Counsel whether a priority has been identified. The General Counsel shall determine whether a priority area has been identified and shall consult the Executive Director as needed.

Investigation

If a priority has been identified, an investigation will be opened, and a case number will be assigned. Opening of an investigation of a current candidate, elected official, or elections official shall be approved in writing by the General Counsel or his or her designee.

Staff obtain evidence by informal means when possible. However, the Chair of the State Board has the power to issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. Subpoenas may also be issued at the request of two or more members of the State Board.¹

Referral

Referrals to prosecutorial authorities shall be approved in writing by the General Counsel or his or her designee. The Executive Director will receive regular updates

¹ N.C.G.S. § 163-23.

about referrals. Additional investigative activities conducted after referral shall be approved by the General Counsel.

Staff will follow the approved policy set forth herein regarding agency investigatory priorities. Any deviation will be approved on a case-by-case basis by the General Counsel after consultation with the Executive Director.