

EXECUTIVE ORDERS

Executive Order No. 147: Conferring Additional Investigatory Powers Upon the Special Counsel in the Matter of Alan G. Hevesi.

WHEREAS, the people of the State of New York are entitled to a government committed to the highest standards of integrity, honesty, efficiency and accountability;

WHEREAS, misconduct involving corruption, fraud, criminal activity, conflicts of interest or abuse by State officers and employees undermines public confidence in government and prevents the honest, effective and efficient operation of government;

WHEREAS, section 74 of New York's Public Officers Law sets forth generally the code of ethics for all New York State officers and employees, including, but not limited to, those elected to statewide office;

WHEREAS, subsection (3) (d) of section 74 of New York's Public Officers Law prohibits any New York State officer or employee from, *inter alia*, using or attempting to use his official position to secure unwarranted privileges or exemptions for himself or others;

WHEREAS, subsection (3) (h) of section 74 of New York's Public Officers Law provides that an officer or employee of a New York State agency shall endeavor to pursue a course of conduct that will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of the public trust;

WHEREAS, the New York State Ethics Commission (the "Commission") is authorized by subdivisions 12 and 16 of section 94 of New York's Executive Law to commence inquiries into possible violations of, *inter alia*, section 74 of New York's Public Officers Law and determine whether there is reasonable cause to believe that a violation of section 74 has occurred;

WHEREAS, the Commission previously conducted an investigation of Alan G. Hevesi, the Comptroller of the State of New York (the "Comptroller"), pursuant to section 94(12)(a) of New York's Executive Law, to determine whether the Comptroller used a New York State employee under his supervision to provide transportation and other aid to his wife, at substantial cost to the State of New York, in violation of section 74 of the Public Officers Law;

WHEREAS, the Commission, in a "Notice of Reasonable Cause" dated October 23, 2006, concluded that there was reasonable cause to believe that the Comptroller had knowingly and intentionally violated sections 74(3) (d) and (h) of the Public Officers Law by "us[ing] his position as New York State Comptroller to secure unwarranted privileges for himself and his wife, and in doing so, pursued a course of conduct that raises suspicion among the public that he likely engaged in acts that violated the public trust";

WHEREAS, on October 27, 2006, in response to the Commission's issuance of the Notice of Reasonable Cause, I appointed David N. Kelley to serve as special counsel in the Matter of Alan G. Hevesi ("Special Counsel");

WHEREAS, by letter dated November 1, 2006, I requested that the Special Counsel, *inter alia*, independently review the Commission's

Notice of Reasonable Cause and the underlying record from which it was drawn and advise me on the strength of the legal case for the removal of the Comptroller from office pursuant to section 32 of the Public Officers Law;

WHEREAS, on November 3, 2006, the Special Counsel provided an initial letter report (the "Special Counsel Report") stating that, *inter alia*, there exists a valid legal basis for the removal of the Comptroller from public office pursuant to section 32 of the Public Officers Law and that there also exist aggravating factors that make the Comptroller's conduct sufficiently egregious as to warrant removal; and

WHEREAS, the Special Counsel Report further states that, in order to provide an independent assessment of the ultimate strength of the legal case for the removal of the Comptroller, it would be necessary and appropriate for the Special Counsel to take additional proofs from, *inter alia*, those witnesses previously questioned by the Commission in its investigation of the Comptroller and any other individuals who reasonably could provide additional information relating to the Comptroller's conduct and strength of the legal case for the removal of the Comptroller from office.

NOW, THEREFORE, I, GEORGE E. PATAKI, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order and direct as follows:

1. The Special Counsel shall take any additional proofs that he deems necessary or appropriate to assess fully the strength of the legal case for the removal of Comptroller Hevesi from office pursuant to section 32 of the Public Officers Law and shall report to me with his recommendations upon the completion of his investigation.

2. In the event that I recommend to the New York State Senate that it commence a proceeding to remove the Comptroller from office, I hereby appoint the Special Counsel, pursuant to section 32 of the Public Officers Law, to conduct the trial of any such charges lodged against the Comptroller before the New York State Senate.

3. Pursuant to section 6 of New York's Executive Law, section 32 of New York's Public Officers Law and other applicable laws, and for the purpose of carrying out the responsibilities set forth in subdivisions one and two of this Order, the Special Counsel shall have the power to: (a) subpoena and enforce the attendance of witnesses; (b) administer oaths or affirmations and examine witnesses under oath; and (c) require the production or any books or records deemed relevant or material to any investigation, examination or review. In addition, I hereby give and grant to the Special Counsel all the powers and authorities which may be given or granted to persons appointed by me for such purpose under authority of section 6 of the Executive Law and section 32 of the Public Officers Law. The Special Counsel is authorized to perform any other lawful functions necessary to fulfill the duties and responsibilities of this Order.

4. The Special Counsel may employ such counsels, deputies, officers, and staff and other persons as he may require to carry out his

responsibilities under this Order. The Special Counsel and counsels, deputies, officers, and staff shall be reimbursed for all actual and necessary expenses incurred in the performance of their official duties.

5. In addition to the authority otherwise provided by this Executive Order, the Special Counsel, in carrying out the provisions of this Order, shall (i) have full and unrestricted access to all records, reports, audits, reviews, documents, papers, recommendations or other material prepared, maintained, held by or available to all New York State governmental entities relevant to the areas of investigation to which the Special Counsel has responsibilities under this Order; and (ii) is authorized to request information, assistance and cooperation from any federal, state or local governmental department, board, bureau, commission or other agency or unit thereof as may be necessary for carrying out the duties and responsibilities enjoined upon the Special Counsel by this Order.

6. All State departments, divisions, boards, bureaus, agencies, councils, authorities and public benefit corporations are hereby authorized and directed to provide every assistance, facility and cooperation which may be necessary or desirable for the accomplishment of the duties assigned to the Special Counsel.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany, this twentieth day of November in the year two thousand six.

BY THE GOVERNOR
/S/ George E. Pataki
/s/ John C. Cahill
Secretary to the Governor