



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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June 17, 1994

Francine Berra, Treasurer  
Election Fund of Senator Richard J. Codey  
331 Main Street - Suite B  
West Orange, New Jersey 07052

Advisory Opinion No. 05-1994

Dear Ms. Berra:

The Commission considered your request for an advisory opinion at its meeting of June 14, 1994, and has directed me to issue the following response. You have asked whether the Election Fund of Senator Richard J. Codey may accept contributions for the payment of debt remaining outstanding from a prior election candidacy and accept contributions for a forthcoming election campaign without violating the contribution limits contained in the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44a-1 et seq., as amended by P.L. 1993, c.65 (hereafter, "the Act"). For the reasons stated below, the Commission hereby advises you that a candidate may accept contributions to meet outstanding liabilities remaining from a prior election campaign as well contributions for a forthcoming election, subject to the restrictions set forth in this opinion.

**FACTS**

Senator Richard J. Codey was a successful candidate for the State Senate from the 27th Legislative District in the 1991 and 1993 general elections. The Election Fund of Senator Codey is the designated candidate account for Senator Codey's State Senate candidacy in the 1997 Democratic primary election. It filed a first quarter 1994 report (Form R-1), filed April 13, 1994, which showed a closing cash balance of \$7,886.65. The report also reflected the existence of three outstanding obligations, all of them loans dating back to 1993, in the total amount of \$45,000, owed to Richard and Mary Jo Codey, and to the Olympic Agency, a business in which you have stated Senator Codey has a financial interest.

You write that the \$45,000 of outstanding obligations was incurred in the "1993 election cycle." Presumably, "election cycle" is a reference to the 1993 primary and general elections. The Commission notes that each

election is treated under the Act as a separate event for contribution limit purposes, and contributions received by a candidate must be counted towards the contribution limits in a specific election. For example, assuming an individual gave \$1,000 to Senator Codey in the 1993 primary election, but nothing in the 1993 general election, such a contributor could give for the 1993 "election cycle" a total of no more than an additional \$2,000, that is \$500 to be counted towards the contributor's 1993 primary election contribution limit, and \$1,500 for the contributor's 1993 general election limit. In order to observe the contribution limits in the Act, a contribution made by a contributor to a candidate for a past election must be aggregated with any other contributions that contributor made to that candidate in that past election, and the aggregate cannot exceed the contributor's limit for that election (referred to hereafter as "contribution aggregation"). It is this "contribution aggregation" requirement that the Commission assumes you are referring to when you write that contributions already received during 1993 would be applied to the \$1,500 limit for that election.

The following chart has been prepared by the Commission to list all the reports filed in the 1991 and 1993 primary and general elections by "Friends of Codey" and the quarterly report filed for the 1997 primary election by "The Election Fund of Senator Codey." The chart begins with the 1991 primary election because it is during that election that outstanding obligations to Senator Codey and his wife began appearing. The 1991 general election reports show the financial status of Senator Codey's campaign account as of the date on which the 1993 amendments became effective (April 7, 1993). The financial status of the campaign account on that date is important because of the "grandfather" clause in the 1993 amendments which permits a candidate whose account has net liabilities (that is, liabilities exceeding campaign assets) to raise money without observing the contribution limits, up to a total amount that covers the net liabilities as of the effective date of the amendments, see P.L. 1993, c. 65, sect. 25.

For each election, the chart indicates the type of report, the date it was filed, the closing cash balance shown in the report, the reported outstanding obligations, and the net cash available, or in the event obligations exceed cash, the net liabilities (that is, the difference between the closing cash balance and the outstanding obligations).

1991 Primary Election (Friends of Codey)

| Report          | Date Filed | Closing Cash Balance | Outstanding Obligations | Net Cash Available |
|-----------------|------------|----------------------|-------------------------|--------------------|
| 29-day pre      | 5/14/91    | \$33,539.00          | - 0 -                   | \$33,539.00        |
| 11-day pre      | 5/24/91    | 12,245.24            | - 0 -                   | 12,245.24          |
| 20-day post     | 6/24/91    | 602.00               | [650.00]                | [48.00]            |
| 1st 60-day post | 8/21/91    | 476.00               | [11,500.00]             | [11,024.00]        |

1991 General Election (Friends of Codey)

| Report                       | Date Filed | Closing Cash Balance | Outstanding Obligations | Net Cash Available |
|------------------------------|------------|----------------------|-------------------------|--------------------|
| 29-day pre                   | 10/07/91   | \$22,752.00          | \$(11,500.00)           | \$ 11,252.00       |
| 11-day pre                   | 10/25/91   | 7,873.00             | [11,500.00]             | [3,627.00]         |
| 20-day post                  | 11/25/91   | 8,824.00             | [11,500.00]             | [2,676.00]         |
| 1st 60-day post              | 01/24/92   | 2,135.00             | [11,500.00]             | [9,365.00]         |
| 2nd 60-day post              | 03/27/92   | 4,524.00             | [19,800.00]             | [15,276.00]        |
| 3rd 60-day post *            | 06/08/92   | 2,241.00             | [19,800.00]             | [17,559.00]        |
| 4th 60-day post              | 08/07/92   | 1,710.00             | - 0 -                   |                    |
| 5th 60-day post              | 09/25/92   | 36,718.34            | [19,800.00]             | 16,918.34          |
| 6th 60-day post              | 11/24/92   | 71,581.54            | [19,800.00]             | 51,781.54          |
| 7th 60-day post              | 01/21/93   | 91,493.41            | [19,800.00]             | 71,693.41          |
| 8th 60-day post              | 03/24/93   | 96,902.55            | [19,800.00]             | 77,102.55          |
| 8th 60-day post<br>(Amended) | 04/16/93   | 97,902.55            | [19,800.00]             | 78,102.55          |

\* Schedule E of the fourth 60-day postelection report did not disclose any outstanding obligations. However, the Commission has assumed for purposes of this advisory opinion that this was an inadvertent omission by the campaign because the campaign reports filed immediately prior to and after this report disclosed the same outstanding obligations. Further, none of the reports show payment to remove these outstanding obligations.

1993 Primary Election (Friends of Codey)

| Report                    | Date Filed | Closing Cash Balance | Outstanding Obligations | Net Cash Available |
|---------------------------|------------|----------------------|-------------------------|--------------------|
| 29-day pre *              | 05/10/93   | \$152,085.27         | - 0 -                   | \$                 |
| 29-day pre<br>(Amended) * | 06/28/93   | 149,455.27           | - 0 -                   |                    |
| 11-day pre                | 05/28/93   | 42,403.71            | [49,800.00]             | [7,396.29]         |
| 11-day pre<br>(Amended)   | 06/28/93   | 34,669.71            | [49,800.00]             | [15,130.29]        |
| 20-day post               | 06/28/93   | 6,189.01             | [66,877.23]             | [60,688.22]        |

\* These reports do not disclose any outstanding obligations on Schedule E. However, Schedule C - Loans Received, disclosed receipt of three loans totaling \$49,800 with no indication of repayment. The Commission has assumed for purposes of this advisory opinion that outstanding obligations totaling \$49,800 existed during this report period and were inadvertently omitted from the report.

1993 General Election (Friends of Codey)

| <u>Report</u> | <u>Date Filed</u> | <u>Closing Cash Balance</u> | <u>Outstanding Obligations</u> | <u>Net Cash Available</u> |
|---------------|-------------------|-----------------------------|--------------------------------|---------------------------|
| 29-day pre    | 10/04/93          | \$46,234.01                 | [\$72,102.29]                  | [\$25,868.28]             |
| 11-day pre    | 10/22/93          | 30,262.17                   | [64,800.00]                    | [34,537.83]               |
| 20-day post   | 11/22/93          | 26,451.71                   | [54,800.00]                    | [28,348.29]               |

1997 Primary Election (The Election Fund of Senator Codey)

| <u>Report</u>             | <u>Date Filed</u> | <u>Closing Cash Balance</u> | <u>Outstanding Obligations</u> | <u>Net Cash Available</u> |
|---------------------------|-------------------|-----------------------------|--------------------------------|---------------------------|
| 1994 1st quarterly report | 04/13/94          | \$7,886.65                  | [\$45,000.00]                  | [\$37,113.35]             |

From the charts, the following observations can be made:

1. As of April 7, 1993 (the effective date of amendments), the campaign cash balance (\$97,902.55) exceeded outstanding obligations (\$19,800), and the campaign was not in a net liability position;
2. As of the 20-day postelection report for the 1993 primary election, the cash balance was \$6,189.01, significantly less than the outstanding obligations of \$66,877.23 or a resulting net liability of \$60,688.22. However, the outstanding obligations were not all incurred as a result of the 1993 primary election. It appears \$19,800 of the reported outstanding obligations was transferred from outstanding obligations incurred in the 1991 general election. Without the 1991 general election outstanding obligation, the 1993 primary election outstanding obligations total would be \$47,077.23, less cash balance of \$6,189.01, for a total net liability of \$40,888.22; and,
3. As of the 20-day postelection report for the 1993 general election, the closing cash balance was \$26,451.71, exceeded by outstanding obligations of \$54,800. However, of this amount \$9,800 was incurred in the 1991 general election, and \$40,000 was incurred in the primary election, leaving only \$5,000 of outstanding obligations incurred in the 1993 general election. The closing cash balance (\$26,451.71) for the general election would have been sufficient to pay the \$5,000 in outstanding obligations remaining from the general election. However, instead of using the cash balance to pay the \$5,000 of outstanding obligations, it was transferred to Senator Codey's 1997 primary election account.

### 1993 AMENDMENTS

The 1993 amendments to the Act established various limits on the amount that a candidate may accept as a campaign contribution. For example, a candidate cannot accept a contribution of money or other thing of value which in the aggregate exceeds \$1,500 "per election" from an individual, or which in the aggregate exceeds \$5,000 "per election" from a political committee or continuing political committee, see N.J.S.A. 19:44A-11.3. Nothing in the text of the "per election" contribution limit statute specifically addresses whether a candidate is restricted to accepting contributions for only one election at a time, or whether a candidate may accept contributions for a past election with net liabilities and also for an upcoming election.

The statutory section setting forth the candidate committee reporting obligations (amended N.J.S.A. 19:44A-16) does address the possibility that a candidate committee may continue to function after the date of the filing of the 20-day postelection report. Specifically, if the treasurer of such a committee is unable to certify "... that business regarding the late election has been wound-up...", or if in fact the candidate committee has not yet dissolved, the treasurer must continue to file reports after the election as prescribed by the Act, see N.J.S.A. 19:44A-16(b). The fact that the Act prescribes the continuance of a candidate committee after the date of the filing of its 20-day postelection report suggests that the Legislature contemplated that contributions for a past election could continue to be received even after that election date had passed, however the statute contains no explicit statement to that effect.

The statutory section requiring candidates to establish a candidate committee, a joint candidates committee, or both, provides that "(u)nless already established..." each candidate must no later than the tenth day after receiving a contribution or incurring an expenditure "... in connection with an election..." establish either a candidate committee, joint candidates committee or both, see amended N.J.S.A. 19:44A-9(a). This section also does not provide specific guidance on whether such committees can be established and functioning for more than one election at a time.

As previously noted in this letter, the 1993 amendments contain what has been referred to as a "grandfather" clause permitting a candidate to accept contributions outside of the contribution limits provided that prior to the effective date of the amendments (April 7, 1993) the candidate had filed a report with ELEC indicating that the outstanding liabilities of the campaign were in excess of all assets of that campaign fund available to pay the liabilities. In those circumstances, a candidate is permitted to accept contributions not subject to limits provided that the aggregate total of those unlimited contributions is not greater than the amount of the net liabilities, see P.L. 1993, c.65, section 25. While this "grandfather" clause permits net liabilities existing prior to the effective date of the Act to be satisfied from funds raised without regard to the contribution limits, it does not

specifically address the legal issue of what should occur in the event that a net liability arises as the result of an election conducted after the effective date of the amendments.

#### DISCUSSION

The Commission believes that a candidate who incurs net liabilities from an election conducted after the effective date of the 1993 amendments (April 7, 1993) should be permitted to continue raising contributions in conformity with the contribution limits for that past election until sufficient contributions have been raised to meet those net liabilities. Further, such contributions must be deposited in the campaign account maintained for that past election, and must be reported in the context of that past election.

In reaching this conclusion, the Commission has considered the following factors:

1. The viability of the contribution limits for the past election are maintained. This is because a contribution received for a past election must be aggregated with any other contribution or contributions made by the same contributor in that past election, and therefore in no case can a contribution received for a past election result in exceeding the applicable contribution limit.
2. In the absence of such a result, the only means that a candidate has to meet past net liabilities from a prior election is to accept contributions that will be counted towards the contribution limits in the candidate's upcoming election. For example, assume a candidate ends a primary election with net liabilities of approximately \$1,500. Once the 20-day postelection report is filed for that primary election, the successful primary election candidate becomes a candidate for the general election and the candidate's next report will be the 29-day preelection report or for the general election. In that case, the \$1,500 debt from the 1993 primary election becomes an obligation of the 1993 general election. In the absence of a policy permitting a candidate to receive contributions for a past election, the obligation could only be paid from the proceeds of contributions that are counted toward the contribution limit of each contributor in the 1993 general election. The Commission perceives no discernable public policy that would be promoted by compelling the candidate with a prior debt to use contributions for a subsequent election candidacy to meet that debt and therefore concludes the 1993 amendments should not be construed toward such an end.
3. The Federal Election Commission (FEC) has also concluded that the Federal Election Campaign Act permits a candidate to receive contributions for a past election. In regulations promulgated by the FEC, a candidate may accept contributions after the date

of the election if the contributor designates in writing the contribution is intended for that past election, and if the total amount of such contributions does not exceed the adjusted amount of the net liability outstanding on the date the contribution is received, see 11 CFR 110.1(b)(3)iii. Also, a contribution for a past election must be aggregated with any other contribution or contributions made by the same contributor for that past election; see FEC Advisory Opinion No. 10-1989.

Therefore, the Commission will construe the 1993 amendments to permit a candidate to conduct fundraising for a past election occurring after the effective date of those amendments provided that the 20-day postelection report filed by the candidate committee reports outstanding liabilities in excess of the cash balance in the candidate committee account and any other assets of the committee. Under such circumstances, the candidate committee may continue to receive contributions subject to the following requirements:

1. The contributor must designate in writing the specific election to which the contribution is to be applied;
2. A contribution designated for a past election must be aggregated with any other contribution made by that contributor for that election and the aggregate contribution cannot exceed the applicable contribution limit for that election; and
3. The total amount of contributions received for a past election cannot exceed the amount of the net liabilities of the past election.

Applying these requirements to this request on behalf of Senator Codey, it appears that the correct net liability figure for the 1993 primary election campaign would be \$40,888.22 (see paragraph 2 on page 4 of this letter). That figure reflects only liabilities pertinent to the 1993 primary election, and excludes debts incurred in other elections.

However, in regard to the 1993 general election, the 20-day postelection report showed a closing cash balance of \$26,451, and the outstanding liabilities arising out of that election were only \$5,000 (see paragraph 3, page 4). The cash balance was not used to retire the outstanding obligations, but instead was transferred for use in the 1997 primary election campaign. Under these circumstances, the total amount of contributions received for the 1993 general election exceeded the liabilities attributable to that election, and the election did not finish with net liabilities. Therefore, Friends of Codey cannot receive further contributions for the 1993 general election.

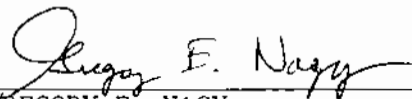
Finally, in regard to the 1991 general election, as of the effective date of the 1993 amendments, there was no "net liability" because the cash assets exceeded the liabilities (see paragraph 1, page 4). Therefore, the 1991 general election account would not be eligible for application of the statutory "grandfather" clause to pay the remaining outstanding obligations of \$9,800. However, the Commission advised you in a letter dated April 15, 1994 that a "grandfather" account could be established to pay off the 1991 general

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election debt because staff at that time was not aware of the "net liability" posture of the 1991 general election account. In view of that advice and the treasurer's reliance on it, the Commission will permit funds to be raised pursuant to the "grandfather" clause (e.g., without applying contribution limits) up to an amount not to exceed the \$9,800 in outstanding obligations.

ELECTION LAW ENFORCEMENT COMMISSION

BY:

  
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GREGORY E. NAGY  
Legal Director

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