



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

William H. Eldridge  
Chairman

Owen V. McNary, III  
Vice Chairman

David Linett  
Commissioner

Michael Chertoff  
Commissioner

NATIONAL STATE BANK BLDG., 12th FLOOR  
28 W. STATE STREET, CN 185  
TRENTON, NEW JERSEY 08625-0185  
(609) 292-8700

Frederick M. Herrmann, Ph.D.  
Executive Director

Jeffrey M. Brindle  
Deputy Director

Gregory E. Nagy  
Legal Director

James P. Wyse  
Counsel

June 21, 1995

Hunt A. Parry, Esq.  
Hundley, Parry and Hopkins, P.C.  
35 Pilgrim Pathway  
P.O. Box 488  
Ocean Grove, New Jersey 07756

Advisory Opinion 09-1995

Dear Mr. Parry:

The Commission has considered your request for an advisory opinion and directed me to issue this response. On behalf of Jim VanEtten, who is withdrawing his candidacy for Monmouth County Sheriff in the 1995 primary election, you have asked the Commission if pursuant to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) Mr. VanEtten may transfer the funds remaining in his candidate committee to a continuing political committee (hereafter, CPC) he anticipates establishing for that purpose. For the reasons stated below, the Commission hereby advises that the contemplated transfer of funds would violate the Act and therefore cannot be undertaken.

Submitted Facts

You write that Mr. VanEtten has received campaign contributions in excess of the amount he anticipates spending in connection with his 1995 primary election candidacy. You have further advised that the candidate did not receive the endorsement of the Monmouth County Republican Committee for the primary election, and therefore he did not file nominating petitions and his name did not appear on the ballot. The Commission notes that on May 8, 1995, a 29-day preelection report (Form R-1) was filed by "The Committee for Jim VanEtten for Sheriff," a candidate committee established for the 1995 primary election by Mr. VanEtten. A subsequent 11-day preelection report was filed on May 26, 1995, showing a closing balance of \$5,643.95. You have indicated that Mr. VanEtten did not establish or participate in a joint candidates committee, and therefore the candidate committee was the candidate's sole financing vehicle.

In your letter, you state that the candidate intends to transfer the remaining funds in his candidate committee (which you have orally advised staff is currently under \$5,000) to a CPC to be established by the candidate's supporters. Upon the completion of the transfer and the dissolution of the

candidate committee, Mr. VanEtten will assume leadership responsibilities in the CPC. You note that the CPC Registration Statement (Form D-4) requires in Question 6 the disclosure of the persons or entities having direct or indirect control over the CPC.

#### Questions Presented

As the Commission perceives them, the questions presented by these facts are whether or not the contemplated transfer is permissible in view of the statutory prohibition in N.J.S.A. 19:44A-9h (hereafter, references to the Act are by Section number, e.g. Section 9h) against a candidate establishing or controlling a CPC, and whether such a transfer would conform with the restrictions in Section 11.2 on the permissible uses of candidate committee funds.

#### Discussion

Section 9h states, in pertinent part, that "...no candidate shall establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of, any political committee or any continuing political committee." Enacted as part of the 1993 amendments to the Reporting Act, the statute provided a one-year period (which expired in April, 1994) for candidates who controlled CPCs to dissolve them and transfer their CPC funds to their candidate committees. There is no provision for the reverse procedure, that is transferring candidate committee funds into a CPC.

In order for Candidate VanEtten to make the contemplated transfer of his candidate committee funds, there must be an existing CPC to receive them. Since Section 9h prohibits a candidate from establishing, or authorizing others to establish, a CPC, Mr. VanEtten cannot participate in an arrangement to establish a CPC of which he will ultimately assume the leadership. The Commission concludes therefore that the plain language of Section 9h prohibits the contemplated establishment of a CPC and transfer of funds.

The Commission has considered the possibility that this result may be viewed as an overly literal application of Section 9h. Arguably, since the candidate committee will cease to exist the moment the CPC is established and receives the candidate committee funds, Mr. VanEtten will no longer be in the position of having a candidate committee and no longer under the Section 9h restriction. Such an approach, however, ignores important policy considerations also implemented in the 1993 amendments which prohibit personal use of candidate committee funds.

Section 11.2 restricts the uses to which candidate committee funds can be applied, and precludes "personal use" of such funds by a candidate or treasurer. No similar statutory restriction exists on CPC funds. Therefore, if the Commission were to conclude a candidate could transfer his candidate committee funds to a CPC for the purpose of concluding his candidate status, there would no longer be any restriction against "personal use" of those funds.

In Advisory Opinion No. 04-1994 (copy enclosed) the Commission was asked by a candidate who had resigned his office during the one-year period provided in Section 9h for dissolving candidate-controlled CPCs, to permit the

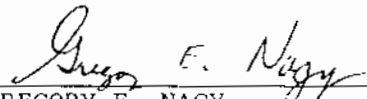
transfer of his candidate committee funds as well as CPC funds into a new consolidated CPC. The Commission concluded that contrary to the candidate's requested disposition, the CPC funds had to be deposited into his candidate committee with the result that all funds under the candidate's control would remain subject to the candidate committee restrictions until such time as they were expended in accordance with those restrictions.

The Commission wishes to point out that this opinion is not intended to compel a candidate to expend immediately the remaining balance of the funds in the candidate committee account upon the withdrawal of a candidacy or the completion of an election. However, until such time as the remaining balance has been expended in accordance with Section 11.2 and the candidate committee is dissolved, the committee must continue to file reports for the past election, and the candidate continues to be subject to the restrictions in Section 9h prohibiting direct or indirect control over a CPC. For a further explanation of the continuing reporting and contribution limit provisions applicable under such circumstances, a copy of Advisory Opinion 07-1995 is enclosed for your guidance. Alternatively, if at some point the candidate wishes to transfer the unspent balance to a candidate committee to be established for a future election candidacy by that candidate, the candidate should further consult with the Commission staff to determine what restrictions may be applicable.

Thank you for submitting your inquiry to the Commission.

Very truly yours.

ELECTION LAW ENFORCEMENT COMMISSION

By:  \_\_\_\_\_  
GREGORY E. NAGY  
Legal Director

enclosures: Advisory Opinions Nos. 04-1994 and 07-1995

A00995.mmo