



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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February 29, 1996

Peter G. Sheridan, Esq.  
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172 West State Street  
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Advisory Opinion 01-1996 (Reconsideration)

Dear Mr. Sheridan:

The Commission has considered your request on behalf of the New Jersey Republican State Committee (hereafter, RSC) that its advisory opinion letter dated January 17, 1996, be reconsidered in the light of the amplified fact record provided by the RSC, and the Commission has directed me to issue this response amending that advisory opinion letter. You have submitted a letter dated February 9, 1996, from Evan Fenton, Deloitte & Touche Consulting Group, with supporting attachments, which letter and attachments document the RSC procedures for depositing a check conveying funds to be divided between federal and State election purposes. That letter and attachments are hereby incorporated in the fact record of this request, and are attached.

The Commission amends its January 17, 1996, advisory opinion to permit the RSC to receive and accept a contribution made by check or other written instrument (hereafter referred to collectively as "check") and to allocate or divide the proceeds between an account established for federal election activity pursuant to the Federal Election Campaigns Act, 2 U.S.C. 431 et seq., (hereafter, FECA), and a bank account established pursuant to the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., (hereafter, the Reporting Act), providing the following restrictions are observed:

1. The RSC provide notice in its fundraising solicitations that the proceeds of contributions made by check payable to the RSC may be divided or allocated by the RSC between its FECA account and State account, and the notice must state the formula or methodology that will be used by the RSC in making the allocation. The joint fundraising notice required under the FECA is sufficient for this purpose; see 11 CFR 102.17(c)(2).

2. The RSC obtain prior to deposit and allocation of the proceeds between federal and State accounts an acknowledgment signed by the contributor that the contributor is aware that the RSC may allocate the proceeds of the

contributor's check, and the contributor has no objection. In the event that a signed contributor acknowledgment does not accompany a check to be allocated between federal and State accounts of the RSC, the RSC may deposit and divide the proceeds subject to the condition that within 30 days a signed contributor acknowledgment is received stating that the contributor had given verbal or other authorization prior to the allocated deposit being made (see text of Candace L. Straight letter, attachment No. 1 to Mr. Fenton's letter). In the event no signed contributor acknowledgment is received within 30 days of deposit and allocation, the proceeds allocated to the State account must be returned to the contributor within 48 hours of the expiration of the 30-day period.

3. The RSC make and maintain records as set forth in the letter and attachments of Evan Fenton, Deloitte & Touche Consulting Group, dated February 9, 1996. However, in addition to those records, the deposit slip set forth as item 3A must contain the full name of the contributor, and the check number (item 2).

4. The RSC shall use for the purposes of establishing the date on which the contribution is received by it under the Reporting Act the date on which the check conveying the proceeds for the State account is received by the RSC (see N.J.A.C. 19:25-6.1(b)), not the date on which the check is negotiated and the deposit into the State account occurs.

5. The RSC shall use for the purposes of establishing the amount of the contribution received under the Reporting Act, the amount deposited into the State account, not the amount of the check conveying proceeds to be allocated between FECA and State accounts.

6. The RSC shall consent to an examination by the Commission of records pertinent to any FECA account it establishes as the Commission determines is necessary in order to examine the receipt of any check the proceeds of which have been allocated to FECA and State accounts of the RSC.

7. Nothing contained in this opinion shall be construed as permitting the RSC to receive any contribution or aggregate contributions from a contributor which total an amount in excess of the contribution limits established by the Reporting Act.

This opinion, and the procedures approved by it, are applicable only to allocations made between FECA and State accounts maintained by the RSC.

#### Discussion

In granting reconsideration, the Commission has reviewed the audit material submitted by the RSC and believes it to be satisfactory for the purposes of monitoring compliance with reporting and contribution limit requirements of the Reporting Act, except that the deposit slip (Item 3A) used for the State account must itemize each deposit by giving the full name of the contributor and check number of the check from which the proceeds are derived.

The Commission has been advised by the RSC that fundraising for both federal and State purposes is a wide-spread practice, reflected in part by the fact that federal law contemplates organizations, including political party

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committees, financing both federal and non-federal election fundraising activity (see 11 CFR 102.5), and has established considerable regulatory controls over transfers between such accounts; see 11 CFR 106.5, establishing rules for allocation of expenses between federal and non-federal activities by party committees. The Reporting Act is silent concerning joint State and federal fundraising by an organization, and is silent concerning allocation of expenses between State and federal election accounts. Under these circumstances, and since the audit issues and contributor protection concerns have been addressed by the RSC, the Commission grants the relief requested herein, subject to the restrictions stated above.

Thank you for this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory E. Nagy  
Gregory E. Nagy

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State of New Jersey

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January 17, 1996

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Trenton, New Jersey 08608

**Advisory Opinion No. 01-1996**

Dear Mr. Sheridan:

The Commission has considered your request for an advisory opinion submitted on behalf of the New Jersey Republican State Committee (RSC), and has directed me to issue this response. You have asked the Commission to review the RSC's procedures for depositing checks conveying contributions used for both federal and State election purposes. As the Commission perceives the issues raised by this request, the Commission must consider whether or not pursuant to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Reporting Act) contribution checks which will in whole or in part be used for State election purposes may be deposited in an account not established pursuant to the Reporting Act, and may be accepted in amounts in excess of the contribution limits provided by the Reporting Act.

**Submitted Facts**

You write that the RSC is registered with both the Election Law Enforcement Commission (ELEC) and the Federal Election Commission (FEC) as a political party committee, and has established two separate checking accounts: one for federal and the other for State contributions. Reports for the federal account are filed with the FEC, and reports for the State account with ELEC. According to the RSC's Form R-3 Quarterly Report filed on October 16, 1995, the RSC is maintaining four separate bank accounts. While your letter does not specify to which of these accounts you are referring, the Commission presumes for the purposes of this opinion request that it is all four accounts for which State reports are being filed by the RSC that are collectively being referred to as the account maintained "...for contributions raised in accordance with state law" (hereinafter, State account). Further, the Commission infers that the reference to an account "...exclusively used for contributions raised in conformity with federal law..." is a reference to an account that is not currently registered with or filing reports with ELEC (hereinafter, federal account).

Your letter states that upon receiving a contribution from an individual, the RSC deposits a sum in its federal account up to the allowable contribution limit under federal law, and deposits the remainder in its State account up to the allowable aggregate contribution limit of \$25,000 per individual per calendar year. The precise details of the deposit procedure are not provided in the letter, although you note that in regard to any contribution in excess of federal contribution limits, the federal account deposit is made "by a separate deposit slip" and that the State deposit is similarly made "by separate deposit slip." For the purposes of this opinion, the Commission presumes that the following practice is being described: Upon receipt of a single check or other written financial instrument payable to the RSC in an amount that is in excess of the federal contribution limit (that is, in excess of \$5,000 from an individual in a calendar year), the RSC endorses or otherwise negotiates the check or instrument and prepares two deposit slips, one for the federal account and the other for the State account. The banking institution at which the check or instrument is negotiated then divides the proceeds between the two accounts in accordance with the instructions on the deposit slips. The deposit slip instructions prepared by the RSC for the State account are in conformity with the contribution limit pertinent to an individual contributing to a State political party committee, that is the contribution cannot result in an aggregate contribution from the individual in excess of \$25,000 in a calendar year, see N.J.S.A. 19:44A-11.4.

You state further that solicitations made by the RSC for contributions advise contributors that their contributions may be divided between federal and State accounts to bring them within respective contribution limits. Finally, you have represented that the funds in the federal and State accounts are not commingled.

#### Commission Response

For the reasons stated below, the Commission hereby advises as follows:

1. A check or other written instrument conveying any funds to the RSC for New Jersey election purposes constitutes "funds received as contributions" as that phrase is used in N.J.S.A. 19:44A-12, and therefore the check or written instrument must be deposited and negotiated into an account established pursuant to the Reporting Act.

2. A check or other written instrument received for State election purposes and conveying a contribution to the RSC in excess of the applicable contribution limit for a State political party committee provided at N.J.S.A. 19:44A-11.4 may be accepted and deposited only if the excess contribution amount is returned to the contributor pursuant to the procedure set forth in Commission Regulation N.J.A.C. 19:25-11.8, Return of excessive contributions.

3. The Commission, without expressing any opinion concerning application of the Federal Elections Campaign Act, 2 U.S.C. 431 et seq., observes that funds received by a State political party committee for federal candidates exclusively are not subject to the Reporting Act, and therefore establishment of a separate account to receive such federal contributions is not violative of the Reporting Act.

### Discussion

The Reporting Act requires that the organizational treasurer of a political party committee must make "...a written record of all funds which he receives as contributions..." to the political party committee, see N.J.S.A. 19:44A-12. In pertinent part, that statute, as amended by Chapter 178 of the Laws of 1995, further provides as follows: "All funds so received shall be deposited by the campaign or organizational treasurer...in a campaign depository of the ... political party committee... no later than the tenth calendar day following receipt of such funds; except that ...." The exception pertains to a transfer of contributed funds to another candidate or committee without deposit by the recipient committee. As the Commission reads the statute, the non-deposit transfer exception applies only when the check or written instrument (or currency in the event the amount is no more than \$200.00; see N.J.S.A. 19:44A-11) is transferred to another candidate or committee established under the Reporting Act. Therefore, the exception has no application to transactions of a political party committee between bank accounts it maintains that are subject to State or federal reporting.

The Commission reads the text of Section 12 of the Reporting Act which provides that "(A)ll funds so received shall be deposited ..." to refer to the check or written instrument conveying a contribution intended for State election purpose. Therefore, the check or instrument conveying any funds for use in a State election must be deposited in an account established by the recipient candidate or committee pursuant to the Reporting Act. The flaw in the procedure posited by the RSC is that the entire proceeds of that check or instrument generated by its negotiation are not deposited in an account subject to the Reporting Act.

The absence of the deposit of a check or written instrument in an account established under the Reporting Act possibly compromises the Commission's ability to conduct an audit, if that necessity should arise. For example, division of the proceeds of a negotiated check between an account subject to the Reporting Act and another account not subject to the Reporting Act could conceivably hinder reconciliation of a negotiated check with the balance statement for the account.

Commission regulations require that a contribution subject to the Reporting Act be deposited in an account established by the recipient and subject to the Reporting Act; see N.J.A.C. 19:25-6.1. The Commission concludes that the above regulation must be understood to mean that a check or other written instrument conveying a contribution be negotiated into such an account. The only exception to the deposit rule concerns the transfer provisions that the Commission has previously noted are not applicable for the reasons discussed above (see N.J.A.C. 19:25-6.2).

Receipt of a check or instrument in an amount in excess of an applicable contribution limit constitutes receipt of an excessive contribution, an event governed by N.J.A.C. 19:25-11.8. Subsection (a) of that regulation provides that the treasurer of the filing entity "...shall return that portion of the contribution which exceeds the contribution limit to the contributor within 48 hours of such receipt..." Implicit in that instruction is the assumption that the check or instrument has been negotiated into a bank account established under the Reporting Act. Further, the

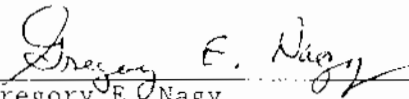
regulation requires that a record be made of the transaction, and that record must include photocopies of the check or written instrument conveying the contribution, and of the refund check issued by the entity to the contributor for the amount in excess of the applicable limit; see paragraphs 6 and 7 of Section 11.8(a). As the Commission understands it, the procedures proposed by the RSC in this request do not conform to the requirements of that regulation in two respects: the amount of the contribution in excess of the applicable limit is not returned to the contributor, and no refund check from the recipient entity is prepared or delivered to the contributor for the excess amount.

In your letter, you have observed that there are different contribution limits for individuals contributing to party committees under federal and State law, and that federal law must supercede State law if there is any contradiction or overlap. While those propositions may be correct, the Commission is unaware of any conflict or overlap created by the result in this opinion. The conclusion that the law of this State compels checks or written instruments conveying contributions subject to the Reporting Act to be negotiated and deposited into a bank account established pursuant to the Reporting Act does not implicate the Federal Election Campaigns Act in any way that is apparent to the Commission. Further, any suggestion that the Commission can express an opinion concerning the propriety of an aggregate State and federal contribution limit of \$30,000 for an individual contributing to a political party committee must be declined because that opinion would necessarily require the Commission to interpret federal law and accordingly be beyond the Commission's jurisdictional authority. However, the Commission is unaware of any requirement or restriction in the Reporting Act which prohibits receipt by the RSC of a separate check or instrument conveying a contribution restricted to federal election activity.

Thank you for this request, and your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By:   
Gregory E. Nagy