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June 27, 1997

Mark John Peterson, Treasurer
Sabrin for Governor
868 Juniper Way
Mahwah, New Jersey 07430

Advisory Opinion No. 05-1997

Dear Mr. Peterson:

Kindly be advised that the Commission has considered your request for an advisory opinion on behalf of Sabrin for Governor, a candidate committee established by Murray Sabrin, Libertarian Party candidate for Governor in the 1997 general election. You have asked whether or not the committee may accept contributions made by credit card, and whether or not contributions made by credit card would be accepted for matching funds.

Submitted Facts

On April 25, 1997, a Certificate of Organization and Designation of Campaign Treasurer and Depository (Form D-1) was filed with the Commission establishing a single candidate committee for Murray Sabrin, the Libertarian Party candidate for Governor in the 1997 general election. On the Form D-1, you are designated as treasurer of the single candidate committee.

Questions Presented

- A. Can the candidate committee accept contributions made by credit card?
- B. If so, can a contribution made by credit card count toward the \$210,000 threshold for becoming a 1997 gubernatorial general election candidate qualified to receive matching funds?

Commission Responses

- A. The Commission hereby advises you that the Sabrin for Governor candidate committee may receive contributions made by a credit card transaction, provided the recordkeeping and reporting provisions of

the Campaign Reporting Act (hereafter, the Act) are observed as discussed below. Acceptance of a credit card transaction as a contribution necessitates interpretation and compliance with provisions in the Act pertinent to the date the contribution is deemed to be received, the amount of the contribution, and identification of the contributor. The Commission hereby advises you that it has no jurisdiction to express an opinion on whether or not such a contribution transaction made by credit card might be construed to violate criminal statutes prohibiting contributions to candidates from banking corporations.

B. The Commission further advises you that a contribution received by means of a credit card transaction may be considered for match with gubernatorial matching funds, and therefore may count toward the \$210,000 qualification threshold for receipt of public funds in the 1997 general election, provided that the contribution meets the recordkeeping and reporting requirements which apply to receipt of a currency contribution pursuant to N.J.A.C. 19:25-10.6 and 15.14 and the additional requirements set forth below.

Discussion

A. In Advisory Opinion No. 11-1990, the Commission advised a continuing political committee that nothing in the Campaign Reporting Act explicitly addressed the making or acceptance of a contribution by use of a credit card. However, the statutory definition of "contributions" (see N.J.S.A. 19:44A-3d) provides that a pledge or commitment to make any transfer of money or other thing of value comes within the scope of the definition. Further, the definition states that for reporting purposes, such a pledge or commitment "...shall be deemed to have been made upon the date when such commitment is made or liability assumed." The Commission concluded that a contribution made by a credit card transaction can fairly be described as a pledge or commitment to make a transfer of funds by the card holder, and therefore is permitted.

The Commission finds that if the following recordkeeping and reporting requirements are observed by your candidate committee, a contribution received by means of a credit card is permissible:

1. The date that a contribution by credit card is received by the candidate committee is the date on which the credit card holder authorizes the committee to charge his or her credit card account. The date that the card holder authorizes the charge against his or her account may not be the date on which the financial institution which issued the credit card actually transfers funds to the committee's account, but for reporting purposes it is the date of the making of the pledge or commitment by the holder that constitutes the date of the contribution to the committee.

2. The amount of the contribution for all purposes of the Act is the amount that the credit card holder authorizes the committee to charge his or her account. While no specific information has been submitted concerning fees or other costs that may result from the credit card transaction, and the method of paying those fees or costs to the financial institution issuing the credit card, those fees or costs do not affect the amount of the contribution established for the purposes of the Act.

3. Any fees or costs imposed by the financial institution on the candidate committee as a result of a credit card transaction must be reported by the committee as an expenditure to that institution.

4. The candidate committee must make and retain the same records of the credit card transaction as required by the Act for any other contribution; see N.J.A.C. 19:25-7.1. These include keeping a written record of the name and address of the contributor, the amount and date the contribution was received, and (if the contributor is an individual) the occupation of the individual and the name and mailing address of the individual's employer.

5. The credit card account used to make the contribution must be owned by the individual contributor, corporation, or other entity which is making the contribution.

The Commission notes that a corporation carrying on the business of a bank (or other banking related activities) is prohibited from paying or contributing money or anything of value in order to aid or promote the election of a candidate; see N.J.S.A. 19:34-45. Since this statute is not part of the Reporting Act, the Commission has no jurisdiction to express any opinion on whether or not the activity proposed in this request might be subject to that statute. You are hereby advised that if you wish to seek an advisory opinion from the Attorney General concerning the possible applicability of that portion of the statute to the contribution activity you contemplate, you may submit such a request to the Commission with a more specific statement of facts concerning the nature of the institution that might be providing credit card service to the committee, and a statement of the provisions made for payment of contributions made by credit card. The Commission will consider forwarding your request to the Attorney General.

B. The Commission further concludes that if the documentation requirements applicable to a currency contribution are met for credit card contributions received by your candidate committee, and if additional information relevant to the credit card being used to make the contribution is provided, the credit card contribution may be submitted for match with gubernatorial public matching funds.

N.J.A.C. 19:25-15.14(d) requires that each contribution for match be accompanied by a written statement containing the full name and full mailing address of the contributor, the name of the candidate, the amount and date of receipt of the contribution, and the signature of the contributor. The written statement requirement will be satisfied for a contribution made by credit card if your gubernatorial candidate committee obtains from the contributor a document which contains the required contributor information and the signature of the contributor. A copy of the written statement must be filed as part of the documentation for each credit card contribution submitted for match. Further, the list of contributors included in your application for public matching funds must also include occupation and employer information for each contributor who is an individual and whose aggregate contributions to the candidate exceed \$300; see N.J.A.C. 19:25-7.1 and 15.17(1).

In addition to the contributor information described above, the Commission finds that additional information must be obtained by your gubernatorial campaign to verify that the credit card account used to make the contribution is owned by the individual contributor, corporation, or other entity which is making the contribution to your candidate committee. The written statement for each credit card contribution therefore must also include the contributor's name as it appears on the credit card, the name of the owner of the credit card account, and the billing address for the credit card. A contribution will be accepted for match only if the information on the written statement verifies that the contributor identified by the gubernatorial candidate is the owner of the credit card account.

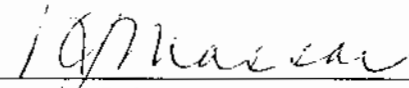
Commission regulations require that an application for public matching funds be accompanied by copies of receipted bank deposit slips to document that contributions submitted for match have been deposited into the candidate's matching fund account; see N.J.A.C. 19:25-15.17(b) and (f). A gubernatorial candidate who receives contributions by means of a credit card must provide, as part of the matching fund submission, a dated receipt from the bank processing the credit card transaction, which dated receipt is analogous to a deposit slip. The contributor names and amounts of the separate contributions which are part of the total transactions for the day must be noted on the receipt. This information may be supplied by annotating the receipt provided by the bank to include the name of the contributor and the amount of each contribution which was processed.

To be eligible for match, the contributions received by credit card must be deposited directly into the matching fund account established pursuant to N.J.A.C. 19:25-15.17. All fees deducted by the bank for processing the credit card transactions must be paid out of non-public funds and must be itemized and reported as expenditures on campaign reports filed by the gubernatorial candidate.

Thank you for submitting this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
NEDDA G. MASSAR
Deputy Legal Director