



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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April 19, 2001

BY FAX & FIRST CLASS MAIL

Paul P. Josephson, Esq.
Treasurer/General Counsel
McGreevey for Governor 2001, Inc.
90 Woodbridge Center Drive, 3rd Floor
Woodbridge, New Jersey 07095

Advisory Opinion No. 02–2001

Dear Mr. Josephson:

Your request for an Advisory Opinion has been considered by the Commission, and the Commission has directed me to issue this response. You have asked several questions on behalf of McGreevey for Governor 2001, Inc. (hereafter, MFG2001) concerning whether or not MFG2001 may make expenditures for 2001 general election fundraising activities prior to the 2001 primary election.

Submitted Facts

On October 16, 2000 and January 16, 2001, James E. McGreevey filed quarterly reports (Forms R-1) with the Commission as a 2001 gubernatorial primary election candidate. He qualified to receive 2001 primary election matching funds and has received the \$2.3 million maximum in primary election public funds. You have stated that with its 2001 primary election fundraising activity “substantially completed,” MFG2001 would like to begin preparations for 2001 general election fundraising efforts, and therefore requests an advisory opinion concerning permissible general election fundraising activity. Further, MFG2001 has received “unsolicited inquiries” from persons who wish to make contributions to its 2001 general election account. The Commission presumes that by use of the term “unsolicited inquiries” you mean inquiries that were not solicited by MFG2001 to request general election contributions.

You describe two scenarios which would result in expenditures made by MFG2001 before the day after the 2001 primary election for general election fundraising activity: 1.) expenditures related to unsolicited 2001 general election contributions; and 2.) expenditures related to contributions received as a result of an event or solicitation by MFG2001 for general election contributions. You have asked whether or not MFG2001 may make such expenditures for 2001 general election fundraising activities

prior to the primary election and have further asked how such expenditures, if permissible, are required to be reported. Further, you have specifically stated that none of the contemplated activities discussed in the Advisory Opinion Request has been undertaken by MFG2001.

In the first scenario, you note that N.J.A.C. 19:25-16.15 contemplates receipt of **general** election contributions during the **primary** election cycle by a publicly-financed **primary** election candidate, and you observe that receipt of such 2001 **general** election contributions will trigger necessary administrative costs. Such costs include compliance review by MFG2001 staff “with attendant salary and overhead costs that would technically be incurred during the primary cycle.” You propose that MFG2001 will deposit “gratuitously made” general election contributions, that is unsolicited contributions, in a general election account and will report the contributions “on a separate general account schedule at the same time as primary filings are due.” While not specifically stated, the Commission understands that MFG2001 proposes to pay costs associated with receipt of such unsolicited contributions using 2001 primary election funds, and you have indicated that the 2001 general election campaign will reimburse these amounts to the 2001 primary election account “shortly after the primary.”

In the second scenario, you propose that any contributions received by MFG2001 as a result of a “specific event or solicitation for general election funds,” will be deposited into a separate general election account and that associated expenses will be reported “on a separate general account schedule . . . filed with MFG2001’s primary filings.” The Commission understands this statement to mean that MFG2001 proposes to make expenditures before the day after the 2001 **primary** election from 2001 **general** election funds for **general** election fundraising events or solicitations. You suggest in the alternative, if the Commission does not approve “active solicitation of general election funds during the primary cycle,” that is conducting fundraising events and solicitations, that the Commission permit MFG2001 to “engage in limited planning activities” for 2001 general election fundraising events to be held after the primary election in June, 2001. You describe these “limited” activities to include using staff time for event planning, entering contracts, and placing deposits “for event facilities, food, entertainment and the like.” You explain in your request that to conduct a June fundraising event for the 2001 general election, MFG2001 must begin to plan, enter contracts, and mail invitations during April and May.

You have requested that the Commission find that any expenditures made by MFG2001 during the primary election related to general election fundraising efforts not be counted against the 2001 primary election expenditure limit.

Questions Presented

The Commission understands that your inquiry raises the following three questions:

1. May MFG2001 pay for administrative and compliance costs associated with receipt of unsolicited 2001 **general** election contributions received prior to the day after the 2001 **primary** election with 2001 **primary** election funds, and how should these expenditures be reported?
2. May MFG2001 make expenditures prior to the day after the 2001 **primary** election from **primary** or **general** election funds to solicit 2001 **general** election contributions?
3. May MFG2001 engage in “limited planning activities” for 2001 **general** election fundraising activity, including spending staff time on event planning, entering into contracts, and making

expenditures from 2001 **primary** or **general** election funds for deposits for facilities, food, and entertainment, prior to the day after the 2001 **primary** election?

Commission Response

The Commission finds that, with the limited exceptions discussed below, a 2001 gubernatorial primary election candidate is prohibited from making any expenditures for the 2001 gubernatorial general election until the day after the 2001 primary election.

Controlling Authorities

Responses to your questions are governed by N.J.S.A. 19:44A-32c, which specifically provides that no moneys deposited into a publicly-financed gubernatorial candidate's primary election bank account may be expended for general election expenses, and that no funds deposited into a publicly-financed gubernatorial candidate's general election bank account may be expended for primary election expenses or transferred or expended until the day following the primary election.

Commission regulation N.J.A.C. 19:25-16.15, Contributions; primary and general elections, permits a publicly-financed primary election gubernatorial candidate to establish a general election bank account before the primary election for deposit of general election contributions before the primary election, but specifically prohibits expenditures from those funds until the day after the primary election.

In litigation during the 1993 general election, one publicly-financed campaign challenged expenditures made with 1993 general election funds prior to the date of the 1993 primary election by the opposing publicly-financed campaign; see People for Whitman Committee v. Florio '93, Inc., 93 N.J.A.R. 2d (ELE) 19 (1993). The Administrative Law Judge found that the expenditures that were the subject of the complaint fell into two categories: expenditures for "ordinary office expenses" for which no penalty for violation of N.J.A.C. 19:25-16.15 was imposed, and four expenditures made for fundraising expenses in violation of the rule for which a penalty was warranted. As to the "ordinary office expenses," the judge found that these expenditures could have been made with primary election funds and later reimbursed with funds raised for the general election, and suggested that future Commission regulations specifically address this issue.

In 1996, the Commission adopted subsections (e) and (f) of N.J.A.C. 19:25-16.15, to permit a publicly-financed gubernatorial general election candidate to use general election funds to reimburse his or her primary election campaign after the primary election for ordinary office expenses which are in part attributable to the general election. In proposing the changes to the rule, the Commission specifically stated that such reimbursements should be strictly limited to "routine office expenditures and should not include expenditures for consulting or other services related to the general election." See 28 N.J.R. 2526 (May 20, 1996). The Commission also stated that "the prohibition on general election spending before the primary election was intended not only to preserve funds for return to contributors, but also to permit general election candidates to start their campaigns on a level playing field." In a publicly-financed campaign, N.J.A.C. 19:25-15.8(a) and 16.15(c) require that contributions made in anticipation of a general election candidacy shall be returned to the contributors in the event such primary candidate fails to be nominated. The Commission also observed that to permit spending on "general election services prior to the primary election might permit an unopposed primary election candidate, who is less likely to need primary election funds to meet campaign demands, to negotiate more favorable contracts prior to the date of the primary election."

The Commission finds that the statutory and regulatory provisions discussed above express a clear mandate to restrict the use of primary election funds to primary election expenses and to prohibit spending of general election funds before the day after the primary election. If a candidate is unsuccessful in the primary election, general election contributions are to be refunded to contributors, and the ability to do so would be compromised if funds were spent in advance of the primary election. Further, the ability to spend funds prior to the primary election might provide a significant advantage to an unopposed candidate over one who is engaged in a primary election contest.

Question #1

You are advised that, pursuant to N.J.A.C. 19:25-16.15(e) and (f), the administrative and compliance costs associated with receipt of unsolicited 2001 **general** election contributions prior to the **primary** election are ordinary office expenses that must be paid with 2001 **primary** election funds and must later be reimbursed with **general** election funds. N.J.A.C. 19:25-16.15(f) lists salaries and equipment rental among the strictly limited expenditures that are reimbursable with **general** election funds, and the Commission perceives that these are the “attendant salary and overhead costs” contemplated in your request. If Candidate McGreevey is successful in the primary election, the amounts spent during the **primary** election processing the **general** election contributions must be reimbursed to the **primary** election account with Candidate McGreevey’s **general** election funds.

Commission regulations require that a campaign undertake certain activity when a contribution is received, including review of the sufficiency of the contribution information received and refund within 48-hours of a contribution that exceeds the \$2,600 gubernatorial contribution limit (see N.J.A.C. 19:25-7.1 and 11.8). It is therefore reasonable to expect that some primary election staff time and equipment use must be devoted to receipt of unsolicited general election contributions, and that these expenses come within the routine office expenses that may be allocated to and later reimbursed with general election funds pursuant to N.J.A.C. 19:25-16.15(e) and (f).

The Commission notes that N.J.A.C. 19:25-16.27(a)1 and N.J.A.C. 19:25-15.26(a)1 specifically exclude from the primary and general election expenditure limits the reasonable and necessary costs of complying with public financing reporting and certification requirements. Therefore you are advised that compliance costs associated with receipt of unsolicited 2001 **general** election contributions prior to the **primary** election are not subject to the \$3.8 million primary election or \$8.4 million general election expenditure limits.

As to reporting requirements, the Commission notes that on January 8, 2001, McGreevey for Governor 2001, Inc. filed with the Commission a Single Candidate Committee-Certificate of Organization and Designation of Campaign Treasurer and Depository (Form D-1) to indicate that a 2001 **general** election matching fund account was opened pursuant to N.J.S.A. 19:44A-32b and N.J.A.C. 19:25-16.15(b). Unsolicited general election contributions received by MFG2001 must be deposited into that account. Any contributions received through March 31, 2001, are required to be reported by the McGreevey general election candidate committee on the 2001 first quarter report (Form G-1) for the 2001 general election, due for filing on April 16, 2001. Contributions received between April 1, 2001 and June 30, 2001, are required to be reported on the 2001 second quarter report (Form G-1) for the 2001 general election, due for filing on July 16, 2001. Any expenditures related to receipt of unsolicited general election contributions during the primary election must be reported on the McGreevey for Governor 2001, Inc. primary election reports (Form G-1). After the date of the primary election, the

McGreevey 2001 general election campaign must report the making of any expenditures to the primary election campaign to reimburse compliance costs. If reimbursements are made prior to June 30, 2001, they must be reported by the McGreevey general election candidate committee on the second quarter report (Form G-1) for the 2001 general election, due for filing on July 16, 2001. If reimbursements are made on a later date, they must be reported on the appropriate election cycle or quarterly report. The McGreevey 2001 primary election candidate committee must report receipt of any reimbursements on the appropriate postelection quarterly reports.

Question #2

You are advised that MFG2001 may not until the day after the 2001 **primary** election, undertake activities to solicit 2001 **general** election contributions. With the exception of expenditures for “ordinary office expenditures” discussed above, the statute and regulations prohibit the McGreevey 2001 **primary** election candidate committee from spending its funds on **general** election expenses. Further, the McGreevey 2001 **general** election candidate committee is prohibited from spending any funds prior to the day after the primary election. There is no exception in either the statute or regulations to permit expenditures of **primary** or **general** election funds for **general** election fundraising activities before the day after the **primary** election.

Inherent in conducting an event or specific solicitation for general election contributions is the necessity that funds be expended to communicate to contributors political information about the candidate. Such spending would give an early advantage to a general election candidate. In adopting N.J.A.C. 19:25-16.15(e) and (f), the Commission expressed its belief that the prohibition on **general** election spending before the **primary** election was intended to permit **general** election candidates to start their campaigns on a level the playing field. If an unopposed **primary** election candidate is permitted to use his or her **general** election funds to undertake early fundraising activity, the level playing field would be compromised.

Question #3

You are advised that, with the possible exception of staff time spent on event planning, MFG2001 may not engage in the “limited planning activities” described in the advisory opinion request until the day after the primary election. As discussed in the response to Question #2, these activities involve expenditures that are prohibited until the day after the primary election. Expenditures are defined at N.J.S.A. 19:44A-3d as “transfers of money. . . and all pledges or other commitments or assumptions of liability” to transfer funds. Further, pursuant to N.J.A.C. 19:25-1.7, an expenditure is deemed to have been made on the date when a commitment is made or liability is assumed to transfer candidate committee funds. Therefore, entering into contracts and placing deposits for general election fundraising facilities, food, entertainment, and other items, as you have suggested, require expenditures and commitments as defined in the statute and regulations, and expenditures and commitments for such general election activity are prohibited until the day after the primary election.

With regard to the use of staff time to plan events for the general election, you are advised that N.J.A.C. 19:25-16.15(f) contemplates that campaign staff members may engage in general election planning discussions prior to the day after the primary election, and provides a mechanism for allocating those salaries to the general election. The rule includes salaries among the ordinary office expenditures that must be allocated to the general election and requires the general election candidate committee to reimburse the primary election account for the portion of staff time spent on general election discussions.

You noted in your request that “compliance expenditures and the majority of fundraising expenses are not subject to the expenditure cap.” Please be advised that N.J.A.C. 19:25-15.26(a)3 and 16.27(a)3 exempt from the primary and general election expenditure limits only the reasonable value of fundraising food and beverages that are provided to a person who attends an event and makes a contribution in excess of the value of the food and beverages. Other fundraising costs, such as rental and entertainment costs, are not exempt from the primary or general election expenditure limits.

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

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR
Deputy Legal Director

RECEIVED
VIA FAX

APR 03 2001



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity

McGreevey For Governor 2001, Inc.

Mailing Address
90 Woodbridge Center Drive, 3rd Floor

Day Telephone No.
732-404-0477

Woodbridge, NJ 07095

Evening Telephone No.

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes No

a. If yes, indicate in what capacity it is filing:

- | | | | |
|----------------------------------|-------------------------------------|---|--------------------------|
| Candidate committee | <input checked="" type="checkbox"/> | Recall committee | <input type="checkbox"/> |
| Joint candidates committee | <input type="checkbox"/> | Recall defense committee | <input type="checkbox"/> |
| Political committee | <input type="checkbox"/> | Lobbyist | <input type="checkbox"/> |
| Continuing political committee | <input type="checkbox"/> | Legislative agent | <input type="checkbox"/> |
| Political party committee | <input type="checkbox"/> | Personal financial disclosure statement | <input type="checkbox"/> |
| Legislative leadership committee | <input type="checkbox"/> | Other (please describe): _____ | <input type="checkbox"/> |

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

1. How to treat administrative expenses associated with collecting general election contributions during the primary period pursuant to N.J.A.C. 19:25.

2. Whether a gubernatorial candidate committee may execute contracts and make necessary expenditures for general election fundraising in advance of the general election period. N.J.A.C. 19:25

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

MFG 2001 has begun to receive inquiries from individuals desiring to contribute to its general election account. MFG 2001 is authorized to open a general election account and accept those contributions pursuant to N.J.A.C. 19:25 - but will incur administrative costs in doing so that could be prohibited under a strict reading of N.J.A.C. 19:25. This directly affects MFG 2001's reporting requirements under the Act.

Similarly, MFG 2001 wishes to plan general election fundraising events that will be held post-primary in June 2001. However, doing so requires the execution of contracts and incurring of liabilities prior to the primary election. Because incurring such liabilities is an "expenditure" the question is raised whether MFG 2001 may make these related expenditures for the limited purpose of planning general election fundraising activities during the general election period.

The contemplated activities have not been undertaken by MFG 2001 and the requested opinion will affect MFG 2001's reporting and other obligations under the Act.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

See attached letter request.

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name:

Paul P. Josephson

Mailing Address:

MFG 2001, Inc.

Day Telephone No.

732-404-0477

Evening Telephone No.

732-404-0477

90 Woodbridge Center Drive, 3rd Floor

Woodbridge, New Jersey 07095

Fax Number:

732-404-0478

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee or entity

Other (please describe): _____

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

4/2/99

Dated:



Signature



April 2, 2001

Via Fax and Regular U.S. Mail

Chairman Ralph Martin and Commissioners
N.J. Election Law Enforcement Commission
28 W. State Street
P.O. Box 186
Trenton, NJ 08625-0185

Re: Advisory Opinion Request

Dear Chairman Martin and Commissioners:

This is a request on behalf of McGreevey for Governor 2001, Inc. ("MFG2001") for an advisory opinion concerning general election fundraising for the 2001 gubernatorial race.

MFG2001 is participating in the public matching funds program and has substantially completed its capped fundraising for the June 2001 primary election. MFG2001 would now like to commence preparations for its general election fundraising efforts, and already has received unsolicited inquiries from primary contributors offering to contribute to MFG2001's general election fund.

Because the Commission's regulations impact MFG2001's ability to do so before the primary is held, we are seeking the Commission's guidance in advance to insure that MFG2001's planned activities are consistent with the Commission's understanding of these provisions. N.J.A.C. 19:25-16.15, "Contributions; primary and general elections," sets forth the following rules applicable to MFG2001's fundraising activities:

- (a) No moneys deposited in a MFG2001 primary election bank account may be expended for general election expenses (except as specified in (e) below).
- (b) MFG2001 may establish general election bank accounts and deposit contributions for the general election in such accounts before primary day. However, money in a general election account may not be expended until the day after the primary election.
- (c) [Not relevant for instant purposes.]

Chairman Ralph Martin and Commissioners

April 2, 2001

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- (d) Primary and general election accounts must be maintained and reported separately; funds in these respective accounts may not be commingled.
- (e) An expenditure made from a primary account "which is determined after the date of the primary election to be allocable in part to that candidate's general election candidacy" must be reimbursed with general election funds, but "[i]n no case shall funds from a candidate's primary election public funds account be used for any purpose attributable to the general election." [emphasis added].
- (f) Reimbursement from general election funds of expenditures made during the primary and later determined to be partly allocable to the general election "shall be limited strictly to reimbursements for ordinary office expenditures" such as "office, furniture and equipment rental and insurance and salaries," and must be made after the date of the primary.

The principal issue raised by these regulations, which expressly contemplate the receipt of at least some general election contributions during the primary election cycle, is that various expenses are associated with any general election contributions made to MFG2001 during the primary election cycle. All general contributions are subject to internal compliance review and reporting processes, with attendant salary and overhead costs that would technically be incurred during the primary cycle. Any contributions generated by way of an event or specific solicitation likewise would have an additional, associated event or solicitation expense properly allocable thereto. Of course, compliance expenditures and the majority of fundraising expenses are not subject to the expenditure cap, and thus there is less concern that these caps will be violated in letter or spirit by "out of cycle" expenditures and reimbursements.

Accordingly, MFG2001 proposes the following protocols to insure compliance with the letter and spirit of these rules and policies:

1. As to any general election contribution that is gratuitously made (i.e., without a specific event or specific solicitation by MFG2001 for general election contributions) during the primary cycle: Such contributions shall be deposited in a MFG2001 general election account and reported on a separate general account schedule at the same times primary filings are due. Associated compliance expenses will be estimated and reimbursed to the primary account from the general election account shortly after the primary.
2. As to general election contributions received during the primary cycle that are the result of a specific event or solicitation for general election funds: Same as the foregoing, except that associated expenses would be reported on a separate general account schedule and filed with MFG2001's primary filings.

Chairman Ralph Martin and Commissioners
April 2, 2001
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In the event the Commission is not willing to authorize the active solicitation of general election funds for receipt during the primary cycle, MFG2001 requests approval to engage in limited planning activities during the primary cycle for general election fundraising events to be held after the primary in June 2001.

Specifically, in order to hold a general election fundraiser shortly after the primary in June, it will be necessary to expend staff time on event planning and to enter contracts and place deposits for event facilities, food, entertainment and the like. To hold such an event in June, planning must commence in April and contracts must be entered soon thereafter, probably in May. Invitations would need to be mailed in May. Because the purpose and sanctity of the respective primary and general expenditure caps would not be violated by this proposed activity so long as the expenses are appropriately allocated, we ask that the Commission interpret its rules accordingly and provide us with guidance on the treatment and reporting of such activities.

In addition, we request that expenditures made during the primary cycle for general election fundraising not be counted against MFG2001's primary expenditure cap, but rather solely against its general election expenditure cap.

To date and until further notice, MFG2001 is not soliciting (and has voluntarily declined) any general election contributions.

We look forward to the Commission's favorable reply. As always, I am available to discuss any of the particulars of this proposal with the Commission or staff to answer any questions you may have.

Respectfully submitted,



PAUL P. JOSEPHSON
Treasurer/General Counsel
McGreevey for Governor 2001

cc: Frederick Hermann, Ph.D.
Gregory Nagy, Esq.
Nedda Massar, Esq.