



*State of New Jersey*

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JAMES P. WYSE  
Counsel

May 19, 2003

Lynn Schundler, Treasurer  
SchundlerOrg, Inc.  
299 Varick Street  
Jersey City, New Jersey 07302

**Advisory Opinion No. 05-2003**

Dear Treasurer Schundler:

Your request for an advisory opinion on behalf of SchundlerOrg, Inc. was considered by the Commission at its meeting of May 19, 2003, and the Commission directed me to issue the following response pursuant to N.J.S.A. 19:44A-6f. You have asked whether or not, under the provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act), Bret Schundler may participate in the establishment of a continuing political committee (hereafter, CPC).

**Commission Opinion**

For the reasons discussed below, the Commission concludes that Bret Schundler is a "candidate," as that term is defined at N.J.S.A. 19:44A-3c, and that as a "candidate," pursuant to N.J.S.A. 19:44A-9h, he may not "establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of, any . . . continuing political committee."

**Procedural History**

On April 10, 2003, the Commission received a Continuing Political Committee-Registration Statement and Designation of Organizational Depository (Form D-4) from SchundlerOrg, Inc., pursuant to the Commission's authority to determine whether or not an applicant may be certified as a CPC; see N.J.S.A. 19:44A-8b. Bret Schundler signed and certified the Form D-4 and was listed on the Form D-4 as chairperson and treasurer of SchundlerOrg, Inc., and as a person authorized to sign checks and to accept service of legal process for SchundlerOrg, Inc. The Form D-4 further indicated that the objective of SchundlerOrg, Inc. was "to support like-minded candidates who seek public office and committees and other organizations that support such candidates." Based upon the fact that Bret Schundler maintains candidate committees and is currently filing 2001 Gubernatorial Election Financial Summary Reports (Forms G1) with the Commission for his 2001 primary and general election gubernatorial

candidacies, Commission staff advised SchundlerOrg, Inc. by memorandum dated April 11, 2003, that it could not process the Form D-4 to certify SchundlerOrg, Inc. as a CPC.

On April 23, 2003, the Commission received a second Form D-4 from SchundlerOrg, Inc., signed and certified by you, which listed you as chairperson and treasurer, and as a person authorized to sign checks and to accept service of legal process for SchundlerOrg, Inc. Bret Schundler was no longer listed as the chairperson or treasurer or as a person authorized to sign checks or to accept service of legal process for SchundlerOrg, Inc. The objective of SchundlerOrg, Inc. was identical to the objective identified on the April 10, 2003 Form D-4. Based solely upon the information contained in the second Form D-4, Commission staff advised you, by memorandum dated April 23, 2003, that SchundlerOrg, Inc. is certified as a CPC, subject to the requirements of the Act. Your request for an advisory opinion was received on April 24, 2003, after the determination that SchundlerOrg, Inc. is a CPC.

This response to your request for an advisory opinion is therefore based upon the status of SchundlerOrg, Inc. as a CPC subject to the requirements of the Act, and the Commission believes that the CPC has standing to inquire whether or not Bret Schundler may establish or participate in the CPC.

### **Discussion**

The response to your inquiry requires that the Commission determine whether or not Bret Schundler is a "candidate," as that term is defined in the Act and whether or not the statutory prohibition on candidate establishment and participation in a CPC applies to Bret Schundler.

### **"Candidate" Status**

Commission records indicate that Bret Schundler certified as correct and filed Forms G-1 on April 15, 2003, for his 2001 primary and general election gubernatorial candidacies. He reported during the first quarter of calendar year 2003 receipt of contributions totaling \$1,760.00 and \$21,760.87 to his 2001 primary and general election candidate committees, respectively, and that expenditures totaling \$26,601.68 were made from his 2001 general election gubernatorial matching fund account. Bret Schundler is therefore currently maintaining candidate committees for his 2001 gubernatorial primary and general election candidacies and is continuing to receive contributions and make expenditures.

The Commission finds that the information reported by Bret Schundler in his most recent certified gubernatorial candidate committee reports establishes that he is a "candidate" as that term is defined in the Act. The definition includes an individual who has not been elected to an office and who receives contributions and makes expenditures; see N.J.S.A. 19:44A-3c. You have suggested that Bret Schundler should not be considered a "candidate" because he continues to raise contributions "for the sole purpose of retiring debt" of his candidate committees. The Commission finds that neither the statutory definition of "candidate" nor any other provision of the Act contains an exclusion from the definition of "candidate" for an individual who is receiving contributions to pay outstanding campaign obligations.

### **Section 9h Prohibition**

The provisions of the Act serve together to protect the integrity of New Jersey's candidate contribution limits. In 1974, when establishing the first limits on contributions to New Jersey candidates, the Legislature declared that it is the public policy of the State that gubernatorial candidates should conduct their campaigns free from the improper influence of unrestricted contributions; see N.J.S.A. 19:44A-27. Almost 20 years later, amendments to the Act in 1993 established contribution limits for all candidates to further that same public policy. At the same time in 1993, the Legislature enacted N.J.S.A. 19:44A-

9h(1) (hereafter, Section 9h), which provides 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." (emphasis added)

The Commission addressed the issue of candidate participation in a continuing political committee in Advisory Opinion 07-1994 and explained that "[i]n order to make . . . contribution limits viable, the [1993] amendments limited a candidate to the establishment of the candidate committees . . . and specifically prohibited a candidate from establishing a continuing political committee. . . ." No provision of the Act relieves Bret Schundler of the statutory obligation to observe the Act's gubernatorial contribution limit. Therefore, as long as he maintains a candidate committee that may receive contributions, the Commission finds that the prohibitions in Section 9h extend to Bret Schundler, who may not participate in the establishment of, maintain, or participate directly or indirectly in the management or control of SchundlerOrg Inc. To find otherwise would undermine the New Jersey statutory framework that protects contribution limits.

You have suggested in your request that Bret Schundler is precluded from any involvement in SchundlerOrg Inc. The Commission wishes to take this opportunity to advise you that it does not read Section 9h to completely exclude Bret Schundler from the activities of SchundlerOrg Inc. In Advisory Opinion 06-1998, the Commission advised a candidate that he could participate in certain activities of a political committee. The Commission concluded that a determination of whether or not a candidate might engage in a particular political committee activity was extremely fact sensitive and advised that the "candidate must therefore confine himself or herself to only those activities where he or she does not participate directly or indirectly in the political committee's management or decision-making." A copy of that advisory opinion is enclosed for your information.

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

Very truly yours,

ELECTION LAW ENFORCEMENT  
COMMISSION

By: \_\_\_\_\_  
NEDDA G. MASSAR  
Legal Director

Enclosure

APR 24 2003

A.O. 05-2003



### 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

*Schundler Org, Inc.*

Mailing Address

*299 Varick Street*

\*Day Telephone No.

*201-332-6615*

\*Evening Telephone No.

*Jersey City, NJ 07302*

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

Recall committee

Joint candidates committee

Recall defense committee

Political committee

Lobbyist

Continuing political committee

Legislative agent

Political party committee

Personal financial disclosure statement

Legislative leadership committee

Other (please describe): \_\_\_\_\_

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).

*see attached*

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:

see attached

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

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

Full Name: Lynn Schindler

Mailing Address: 299 Varick Street

\*Day Telephone No. 201-239-1200

Jersey City, NJ 07302

\*Evening Telephone No.

Fax Number: 201-432-1054

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.

April 18, 2003

Dated:

*Lynn Schindler*

Signature

### **3. Statement of cognizable Question of Law**

Whether a private citizen, who is required by Commission Regulations to maintain a candidate committee for the sole purpose of receiving contributions to retire net liabilities of a 2001 election, can participate in the establishment of a CPC.

Laws and Regulations relevant to this query include: N.J.S.A. 19:44A-3c, 9h, 11.2, 11.3 and N.J.A.C. 19:25-8.7, 8.7A.

### **4. Statement of Facts**

Bret Schundler received the Republican Party Nomination for the Office of Governor in the 2001 Republican Primary, and he ran as his party's nominee in the general election for the Office of Governor in November of that same year. He failed in that election bid, and the first quarterly post election reports for both the primary and general elections disclosed outstanding net liabilities. As such those first quarterly post election reports could not be certified as final, and both committees continue to receive contributions for the sole purpose of retiring those liabilities.

Bret Schundler does not hold public office and has not since June 30, 2001 when his term as Mayor of the City of Jersey City expired.

Bret Schundler is not now a candidate for public office and has no such future plans at this time.

In early 2003 SchundlerOrg, Inc. was incorporated as a 527 political organization which contemplates engaging in election-related activity. Bret Schundler was among the First Board of Trustees and was selected to be the corporation's chairman. In anticipation of expending more than \$3700 in election-related activity in the 2003 calendar year, SchundlerOrg applied to the Commission to be certified as a Continuing Political Committee.

On April 11, 2003, the Commission denied SchundlerOrg's application citing N.J.S.A. 19:44A-9h and NJ ELEC Advisory Opinion No. 01-2000.

On April 16, 2003, the Board of Trustees, by unanimous written consent, replaced Bret Schundler with Lynn Schundler, and thereafter submitted an amended D-4 for approval.

Because SchundlerOrg's application has not been approved, with Bret Schundler as its chairman, it submits that it has sufficient interest in the outcome of this advisory opinion to have standing before the Commission.

### **5. Statement of Reasoning**

Bret Schundler is a private citizen. He holds no elected office; he is not seeking elected office in the foreseeable future, and he has no funds in excess of liabilities in any

candidate's account. There is no legislative or regulatory purpose which would be advanced by prohibiting his involvement in a CPC.

The Reporting Act was amended in 1993, in part, to limit the amount of money that a candidate could accept from a contributor. N.J.S.A. 19:44A-11.3. To ensure the effectiveness of that limitation, the Legislature prohibited candidates from maintaining PACs. N.J.S.A. 19:44A-9h. Were this prohibition not enacted, a candidate could simply raise and spend money on his or her campaign through a PAC to circumvent the contribution limits.

Bret Schundler is not running for any office. He presently holds no public office. He maintains a candidate committee for the sole purpose of retiring debt. In fact, by regulation, that candidate's committee can only raise and spend money to retire that debt. N.J.A.C. 19:25-8.7 and 8.7A. It cannot make contributions to candidates, political parties, issue organizations or make expenditures for any other permissible use of campaign funds.

To prohibit Bret Schundler's participation in a PAC would place him at a disadvantage relative not just to other private citizens, but also to candidates running for office and elected officials as well. He would be uniquely prohibited from engaging in otherwise legitimate campaign activities. He cannot raise money for election-related activities through his candidate's committee (such activity is restricted by N.J.A.C. 19:8.7A), and by the Commission's denial of SchundlerOrg's certification as a CPC, he cannot raise money for election-related activity as a private citizen. Such a strict reading of the definition of a candidate is an unconstitutional restriction of an individual's right to engage in political speech (in this case to participate in the electoral process in an organized and meaningful way beyond simply making personal contributions), as it is far broader than necessary to advance the permissible purpose of regulating the amount of campaign contributions.

The Compliance and Information Section cited Advisory Opinion 01-2000 in support of its determination. But that Opinion involved a sitting elected official. Although the elected official in that case represented that he did not contemplate running for office in the future, the Commission reasoned that "innumerable circumstances may arise under which an elected office holder...may be compelled or wish to recommence." The prospect of a recall election is one such circumstance. The commission also noted that the CPC, which would not be subject to contribution and spending limits, could undertake the legitimate office holding expenses of the elected official ordinarily paid for by the candidate's committee, which *is* subject to those restrictions. The Commission cited Buckley v. Valeo's upholding limits on campaign contributions to current office holders and those seeking office in its rationale. The Commission, in concluding that the office holder was in fact a candidate, stated, "the salutary public purposes articulated in those opinions would not be achieved if the Reporting Act is construed...to limit contributions to candidates (who are potential office holders) but not to current officeholders."



None of those legitimate concerns of the Commission are present in this case as Bret Schundler is not an officeholder.

And although Bret Schundler is filing quarterly reports (again, as he is required to do until his campaign debts are settled), it would be an overly literal interpretation of the definition of a candidate to conclude that allowing a person who is winding down campaign debt to participate in a PAC would somehow threaten the integrity of the electoral process.

Although the Commission did prohibit a candidate who withdrew his nomination from establishing a CPC in Advisory Opinion 09-1995, it did so because the candidate intended to use funds remaining in his candidate's account to establish the CPC. To allow such a transaction would be to circumvent the regulations limiting the use of campaign funds. Any person could claim to want to run for office, raise money, then withdraw his candidacy, start a CPC and use the money however he wished. This would undermine important public policy advanced by the restrictions.

Again, this is not the case here. Bret Schundler's candidate's committee's liabilities exceed its assets. Indeed his committee is prohibited from making expenditures for any purpose other than repaying debts. NJAC 19:25-8.7A.

The private citizen in AO 09-1995 was sitting on cash he raised as a candidate. Restricting him from spending that money in contravention of the law served a legitimate purpose. But if that individual expended his campaign funds in a lawful manner, nothing would have prevented him from thereafter establishing a CPC. For the same reason, Bret Schundler should not be prohibited from establishing a CPC. No legitimate purpose would be advanced.

SchundlerOrg is mindful that the literal definition of candidate includes an individual who failed of election who receives contributions and makes expenditures. But clearly the intent here was to require that individual to conform to the laws and regulations regarding reporting, record keeping, fundraising and permissible use of funds, and not to restrict that individual's right to engage in legitimate political speech. A contrary reading would be unconstitutionally overbroad. No legitimate purpose would be advanced.

Bret Schundler desires to raise and spend money in support of ideas, candidates and public questions. To engage in these activities is the essence of freedom of expression. No form of speech is entitled to greater constitutional protection. SchundlerOrg desires to have Bret Schundler as its chairman. No purpose previously cited by the Commission would be thwarted by Bret Schundler's participation in a CPC: Mr Schundler is not an officeholder, he has no residual funds in a campaign account, and he is not running for office. Therefore, SchundlerOrg respectfully requests that its original application for certification as a CPC with Bret Schundler as its chairman be approved.