



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
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Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

FREDERICK M. HERRMANN, Ph.D.
Executive Director

JEFFREY M. BRINDLE
Deputy Director

NEDDA G. MASSAR
Legal Director

EVELYN FORD
Compliance Director

JAMES P. WYSE
Counsel

October 19, 2005

Amy Handlin
20 Rimwood Drive
Lincroft, New Jersey 07738

Samuel D. Thompson
5 Lincroft Avenue
Old Bridge, New Jersey 08857

Advisory Opinion No. 04-2005

Dear Candidates Handlin and Thompson:

The Commission has considered your request for an advisory opinion and directed me to issue this response. You are 2005 general election candidates for State Assembly in the Thirteenth Legislative District. Each of you filed a Declaration of Intent (Form CE-1) to become certified as a Clean Elections candidate in the 2005 general election pursuant to the New Jersey Fair and Clean Elections Pilot Project; see P.L.2004, c.121. As you indicated in your request for an advisory opinion, each of you was unable to meet the criteria for certification as Clean Elections candidate in the 2005 Pilot Project.

The Pilot Project required that you collect, during the qualifying period (which ended at 4:00 P.M. on September 21, 2005), 1,500 contributions from voters registered to vote in the Thirteenth Legislative District. Pursuant to P.L.2004, c.121, §3 and N.J.A.C. 19:25-23.1, the 1,500 contributions were required to consist of at least 1,000 contributions of \$5.00 and at least 500 contributions of \$30.00 “in the form of a check or money order payable to the [Clean Elections] fund [established by the Department of Treasury].” You have explained that because you did not collect the required number of qualifying contributions and therefore did not file a Clean Elections submission, you currently have the qualifying contributions in your possession.

Question Presented

You have asked whether or not you may return each qualifying contribution to its contributor who may opt either to keep the contribution or to turn over the contribution to the Commission for deposit into the Clean Elections Fund established pursuant to P.L.2004, c.121, §5.

Commission Response

For the reasons discussed below, the Commission advises that you may return each qualifying contribution to its contributor who may elect to either keep the contribution or forward it to the Commission for deposit into the Clean Elections Fund.

Discussion

The Clean Elections Act and implementing Commission regulations are silent with regard to a candidate who was not able to meet the criteria for certification by the Commission as a Clean Elections candidate, and there is therefore no specific direction concerning disposition of qualifying contributions by candidates who have not been certified as Clean Elections candidates. The Commission notes that the Clean Elections Act requires that each qualifying contribution check or money order be made payable to the Clean Elections Fund; see P.L.2004, c.121, §3 and N.J.A.C. 19:25-23.1. It may therefore be argued that this requirement is evidence of a Legislative intent that all qualifying contributions, regardless of whether or not a candidate is ultimately certified as a Clean Elections candidate, be deposited into the Fund. Qualifying contributions are one among several financial sources that are intended to provide funding for the public fund grant amounts awarded to certified Clean Elections candidates; see P.L.2004, c.121, §5 (hereafter, Section 5).

You have suggested that each Clean Elections qualifying contribution is intended by the contributor to show support for a specific candidate, and it is therefore appropriate to return a qualifying contribution to the contributor. You have noted the specific text in the Clean Elections Act which states that qualifying contributions are solicited by and made to a particular candidate, and such contributions are intended “to show that . . . [a candidate] has sufficient support.” See P.L.2004, c.121, §8. Further, you have noted that the definition of a qualifying contribution states that it is a “contribution of money made to a participating candidate by any individual.” (Emphasis added) See P.L.2004, c.121, §5 and N.J.A.C. 19:25-23.1.

You have further contrasted the Clean Elections program, where each candidate collects qualifying contributions from individual contributors, with the gubernatorial public financing program, where members of the public make contributions through an income tax check-off to the Gubernatorial Elections Fund, established pursuant to N.J.S.A. 54A:9-25.1, but not to any particular candidate. As you indicated, contributions to the Gubernatorial Elections Fund may be distinguished from Clean Elections contributions because the gubernatorial contributions are not intended to support any specific gubernatorial candidate.

Conclusion

In the absence of any specific statutory provision dealing with candidates who have not been certified as Clean Elections candidates, and in light of the inconsistent statutory texts, as discussed above, the Commission concludes that you may return qualifying contributions to contributors who may decide whether or not to keep the contributions or provide them to the Commission for return to the State. The Commission advises you that a qualifying contribution may not in any case be endorsed for or deposited into a campaign account. The Commission requests that on or before November 18, 2005, you file a report of all qualifying contributions received and any seed money contributions received and expenditures made.

Please do not hesitate to contact me if I may be of any assistance. Thank you for submitting your request and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR, ESQ.

Fax #: 609-777-1448

Any questions please call

908-902-3953

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ADVISORY OPINION REQUEST

See attached.

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

Amy Handlin

Mailing Address

20 Kimwood Dr.

*Day Telephone No.

Lincroft, NJ 07738

*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 [] 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).

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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.

Blank lines for providing a statement of the result and reasoning.

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

Full Name:

Mailing Address:

*Day Telephone No.

*Evening Telephone No.

Fax Number:

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee or entity

Other (please describe):

Vertical column of checkboxes with the top one checked.

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.

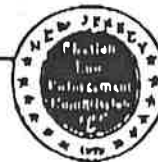
9/22/05 Dated:

Amy Han Signature

*Leave this field blank if your telephone number is unlisted Pursuant to N.J.S.A. 17:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form

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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. 17:44A-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

Samuel D. Thompson + Amy Handlin

Mailing Address

5 Lincroft Ave.

Old Bridge, N.J. 08957

Day Telephone No.

(732) 583-5558

Evening Telephone No.

(732) 679-4391

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
Joint candidates committee
Political committee
Continuing political committee
Political party committee
Legislative leadership committee

- Recall committee
Recall defense committee
Lobbyist
Legislative agent
Personal financial disclosure statement
Other (please describe):

See attached

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).

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:

Mailing Address:

*Day Telephone No.

*Evening Telephone No.

Fax Number:

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.

9/22/05

Samuel D. Shoups

Dated:

Signature

Thompson & Handlin *for Assembly*

5 Lincroft Ave.
Old Bridge, NJ 08857
908-902-3983

September 21, 2005

Mrs. Jerry Fitzgerald English
Chair, New Jersey Election Law Enforcement Commission
P.O. Box 185
Trenton, NJ 08625-0185

Dear Chair English:

As you know, we have been participating in the New Jersey Fair and Clean Elections Pilot Project, which requires participating candidates to collect a large number of small contributions in order to qualify for public financing. Specifically, each candidate must collect 1,000 contributions of five dollars and 500 contributions of \$30. The statute sets a deadline for collecting the contributions, which was extended by Executive Order No. 51 and expires this week.

We are proud that Legislative District 13 was one of the two chosen for this unique exercise in electoral reform. The goal of the pilot project – to end the influence of special interest money on legislative campaigns by capping donations and limiting expenditures – is a noble one. We spent weeks going door-to-door in the district to seek a sufficient number of small donations to qualify for public funding. Scores of enthusiastic volunteers, who are as committed to good government as we are, joined us in this quest.

We were deeply touched by the generous response of our constituents. More than a thousand people took the time to write out a \$5 or \$30 check and provide personal information required for ELEC's disclosure form. Unfortunately, we were unable to collect enough checks before the extended deadline elapsed. Our opponents gave up on the program weeks before the deadline. So obviously neither the Republican or Democrat slate of Assembly candidates in District 13 is eligible to receive public funds or continue our participation in this pilot project.

As you are well aware, the raising of public contributions in support of the Fair and Clean Elections program operates quite unlike the gubernatorial public financing program, which receives direct contributions through a check-off on the state income tax return. Under the gubernatorial program, contributions are given by individuals who are interested in supporting the program, and the contributions are not in any way tied to support for any particular gubernatorial candidate.

By contrast, the Fair and Clean Elections law specifies that a participating candidate must obtain a certain number of contributions "to show that he or she has sufficient support," clearly meaning that such contributions are given by the contributor to support a specific candidate. In fact,

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both the statute and the related regulations promulgated by ELEC define such a "qualifying contribution" as a "contribution of money made to a participating candidate" [emphasis added].

This is an important point, as New Jersey campaign finance laws have long recognized that contributors to a certain candidate may have their contributions returned. The New Jersey Campaign Contributions and Expenditures Reporting Act specifically provides that money received by a candidate may be returned to contributors on a pro rata basis.

Although ELEC's Fair and Clean Elections regulations require a "candidate seeking to receive the initial grant of funds as a certified candidate" to submit qualifying contributions by a certain date, those regulations do not address the disposition of contributions by a candidate who *does not* seek to receive a grant. The law that established the pilot project (P.L.2004, c.121) does not specifically state what must be done with contributions given to candidates who are no longer seeking public funds under the program.

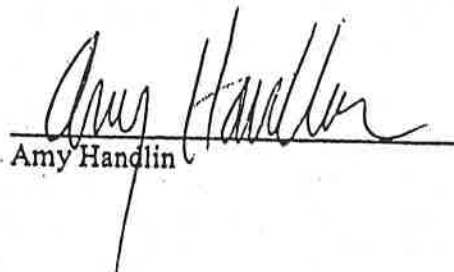
We believe that our supporters who gave money in good faith to help us reach our goal of being certified under the Fair and Clean Elections program are entitled to reconsider whether they wish to donate to the Clean Elections fund, given that their contributions will not be used in any way to assist us since we were unable to collect the 3,000 contributions necessary to qualify for public funding. Many stated unequivocally that they wanted their money returned if we did not qualify.

The hundreds of citizens who agree with our plans to address property taxes, government ethics, the state budget and other issues, and kindly took the time to write out checks *to show their support for us* (as stated in the Fair and Clean Elections law), would certainly find it unfair for those checks to be used for any purpose other than supporting our efforts. Since any other course of action would violate the trust and intent of our supporters, we intend to keep faith with them by returning their checks to them and giving them the option of sending the checks directly to the Clean Elections fund or voiding them.

However, since ELEC is the agency charged with overseeing the pilot project, we thought it prudent to make an inquiry before we proceed. If ELEC believes there is any reason why we would be prohibited from allowing our supporters this option by returning their contributions as is generally allowed under state law, please provide an advisory opinion on the matter by Friday, September 23, 2005, as the following Monday is the final day allowed for submission of contributions to the state. Thank you for your kind consideration of this request.

Sincerely yours,


Sam Thompson


Amy Handlin

c: Frederick M. Herrmann, Ph.D., Executive Director