



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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September 11, 2007

Alison Littell McHose
P.O. Box 23
Franklin, New Jersey 07416

Advisory Opinion No. 03-2007

Dear Candidate McHose:

The Commission considered your request for an advisory opinion at its meeting today and directed me to issue this response. You are a 2007 general election Clean Elections candidate for General Assembly in the 24th Legislative District and have asked questions concerning payment of outstanding obligations remaining from your 2007 primary election candidacy. The Commission notes that you were certified as a 2007 general election Clean Elections candidate on or about August 17, 2007, pursuant to the requirements of the 2007 Fair and Clean Elections Pilot Project Act, P.L.2007, c.60 (hereafter, the Clean Elections Act).

Question Presented

You have asked two questions concerning payment of outstanding obligations remaining from your 2007 primary election candidacy. May you: 1) pay 2007 primary election campaign expenses with funds remaining in your 2007 primary election account; and 2) raise additional contributions for deposit into your 2007 primary election account to pay your outstanding 2007 primary election expenses.

Commission Response

The Commission advises you that as a certified Clean Elections candidate you may use funds currently remaining in your 2007 primary election account to pay 2007 primary election outstanding obligations, but you may not raise additional primary election contributions until the day after the 2007 general election, that is November 7, 2007, to satisfy outstanding 2007 primary election campaign obligations.

Submitted Facts

The Commission notes that you filed an amended 20-day postelection report for the 2007 primary election on August 16, 2007, which reported on the Statement of Campaign Depository and Campaign Treasurer that there was a closing balance in your primary election depository account in the amount of \$14,873.72. You further reported on Schedule E, Outstanding Obligations, that you had unpaid 2007 primary election obligations totaling \$44,904.33.

Commission regulations applicable to 2007 general election candidates who are not Clean Elections candidates provide that a candidate may continue to raise contributions for a past election only where the candidate reports on his or her 20-day postelection report that the total amount of outstanding liabilities is in excess of the total assets of the committee, including the cash balance in all depository accounts for that office in that election; see N.J.A.C. 19:25-8.7A, Retirement of net liabilities. Based upon N.J.A.C. 19:25-8.7A, your amended 20-day postelection report indicates that you are in a net liability position for her 2007 primary election candidacy. The rule establishes strict procedures under which a candidate may continue to raise contributions to satisfy the amount of the outstanding obligations in a past election. Pursuant to N.J.A.C. 19:25-8.7A(a)2, any new contributions received to satisfy the net liabilities are subject to the contribution limit in the past election where the debt was incurred. However, because of the unique requirements of the Clean Elections Law and your status as a certified Clean Elections candidate, the Commission must determine whether or not you are permitted to use funds remaining in your primary election account to pay debt and whether or not you should be permitted to raise additional funds for the primary election pursuant to N.J.A.C. 19:25-8.7A.

The Clean Elections Law

The Commission believes that it is necessary to consider the purpose of the Clean Elections Pilot Project as the context in which to answer your questions. The goal of the first Clean Elections Pilot Project in 2005 is reiterated in the 2007 law and aims “to improve the unfavorable opinion that many residents of this State have toward the political process and to strengthen the integrity of that process and improve access to it by many individuals and groups who have traditionally not been part of it.” The goal “to halt the erosion in public confidence in the political process” is achieved “by instituting a voluntary, publicly funded campaign finance system for legislative office designed to remove access to monied contributors as a major determinant of a citizen’s influence within the political process.” See P.L. 2007, c.60, §2c and f. (Emphasis added.) A legislative candidate in a Pilot Project district who raises many small contributions from registered voters in that district is eligible to receive public money with which to pay campaign expenses. Sources of funding available to non-Clean Elections candidates, such as contributions from corporations, continuing political committees, and political party committees, are prohibited for a Clean Elections candidate. By restricting not only the sources of contributions, but also the size of each contribution, as discussed below, the Clean Elections Pilot Project aims to ensure that if a candidate is elected, he or she will be responsive to individuals, not to “monied contributors.”

A Clean Elections candidate who raises 400 contributions of \$10 each, known as qualifying contributions, becomes a certified Clean Elections candidate and receives public funds, up to a maximum amount, to finance his or her 2007 general election campaign. As a Clean Elections candidate in the 24th District, you are eligible to receive a maximum of \$100,000 in Clean Elections

grant funds once you have collected the 800 maximum number of qualifying contributions. In addition, a Clean Elections candidate may raise “seed money” contributions from individuals registered to vote in New Jersey of not more than \$500 each, up to a maximum of \$10,000, that must be spent to raise qualifying contributions. As a Clean Elections candidate, you are prohibited from using any funds other than Clean Elections grant funds, qualifying contributions, and seed money contributions in the 2007 general election.

The Clean Elections Act requires as a condition of certification that the candidate “suspend for the time the candidate is a candidate intending to become certified all access that candidate has to the funds” in a candidate committee or joint candidates committee “which have been raised prior to becoming a candidate intending to become certified.” See P.L.2007, c.60, §7(a)3; also see N.J.A.C. 19:25-23.6(a)3. To implement that provision of the Clean Elections Act, N.J.A.C. 19:25-23.7(a)2 and (a)3 require that a candidate certify in the Declaration of Intent to be a Certified Candidate (Form CE-1) that he or she agrees to “suspend all access to the funds in any existing candidate committee or joint candidates committee,” and also agrees “not to use existing candidate committee or joint candidates committee funds in any way that would assist in his or her general election candidacy as a certified candidate.”

On July 3, 2007, you filed a Declaration of Intent to be a Certified Candidate, pursuant to P.L.2007, c.60, §7 and N.J.A.C. 19:25-23.7, in which you certified that you would observe these requirements. Based upon the information reported on your 20-day postelection report and the August 16, 2007 amendment, the Commission notes that you received no further 2007 primary election contributions after June 21, 2007, a date prior to filing your Declaration of Intent to be a Certified Candidate.

Discussion

The text of Section 7 of the Clean Elections Act states that a candidate shall suspend access to campaign funds from a prior election during the time that a candidate is “intending to become certified.” Strictly applying the language of Section 7 to the facts in this inquiry, you are no longer a candidate “intending to become certified,” and have in fact become a certified Clean Elections candidate. The Commission therefore advises you that you may use funds raised and deposited into your 2007 primary election account prior to filing the Declaration of Intent to pay outstanding 2007 primary election obligations. Because the contributions remaining in your 2007 primary election account were legally raised prior to your participation in the 2007 Clean Elections Pilot Project and would not “in any way . . . assist in . . . [your] general election candidacy,” the Commission finds that they should be treated as outside the Clean Elections prohibitions for the exclusive purpose of paying your net liabilities from the 2007 primary election.

However, the Commission advises you that you may not raise additional 2007 primary election contributions to pay outstanding primary election obligations until November 7, 2007, the day after the 2007 general election. The public policy and purpose of the Clean Elections Act dictate this result. As expressed in Section 2 of the Clean Elections Law, the Legislature sought to improve public confidence in the political process with a publicly-financed campaign finance program “to remove access to monied contributors as a major determinant of a citizen’s influence within the political process.” See P.L. 2007, c.60, §2c. If a candidate were permitted to raise additional 2007 primary election contributions during the pendency of a 2007 general election Clean Elections candidacy, the protection afforded by the severe limitations on seed money and qualifying

contribution limits would be lost and the spectre of influence from “monied contributors” would be reintroduced into the election.

The Commission is aware that Section 8 of the Clean Elections Act may seem to permit postelection fundraising by a Clean Elections candidate. It provides that:

After filing a declaration of intent, and prior to certification as a certified candidate, a candidate intending to become certified shall collect seed money contributions and qualifying contributions, starting on April 23, 2007 and continuing for the remainder of the qualifying period [through September 30, 2007]. All moneys that a candidate collects during that time as a participant in the pilot project created by this act shall be separate from, and in no way infringe on, the collection of money in which the candidate may be engaged as a candidate for nomination for election in the legislative district the candidate seeks to represent. P.L.2007, c.60, §8. See N.J.A.C. 19:25-23.6(c).

The Commission understands that the text of Section 8, above, was intended to reassure a 2007 primary election candidate that, should he or she file a Declaration of Intent to be a Certified Candidate starting on April 23, 2007, but prior to the primary election, as permitted by the 2007 Pilot Project, participation in the Clean Elections program would not interfere with his or her fundraising during the primary election. This text was necessary because the rules of the 2007 Clean Elections Pilot Project differ significantly from the 2005 rules and permit a 2007 candidate to start the 2007 qualifying process before the date of the primary election. The Legislature may have been concerned that a candidate would avoid the 2007 Pilot Project if he or she were prohibited from raising contributions during a competitive primary election. You explained in your inquiry that you were involved in such a contested primary election.

You have not yet received the maximum Clean Elections grant amount for your district and are therefore permitted to collect seed money and qualifying contributions, pursuant to N.J.A.C. 19:25-23.7(a)5 and (a)6, until the end of the qualifying period on September 30, 2007; see P.L.2007, c.60, §3 and N.J.A.C. 19:25-23.1. The Commission does not read Section 8 to permit you to collect primary election contributions also during the general election reporting period which began on June 23, 2007 (after the close of the primary election 20-day postelection report period). To do so would undermine the statutory purpose of the Clean Elections Law to reduce the impact of campaign contributions during the general election from “monied contributors.”

The Commission believes that this same concern was addressed in a 1977 case, Common Cause v. New Jersey Election Law Enforcement Commission, 74 N.J. 231 (1977), which was decided in the context of the first New Jersey publicly-financed gubernatorial election. While the underlying law has changed since 1977, and unlimited contributions to candidates are no longer permissible because all candidates are now subject to per-election contribution limits, the discussion in Common Cause of the impact of large contributions is still vital.

The 1977 gubernatorial general election was publicly-financed and imposed a \$600 contribution limit on participating candidates, but the 1977 primary election was not publicly-financed. The court overturned a Commission rule that prohibited a publicly-financed general election gubernatorial candidate from accepting a contribution in excess of \$600 after the date of the primary election to

pay off primary election debt, but did not similarly prohibit such contributions in excess of \$600 to a non-publicly financed candidate. Even though there are now per-election contribution limits on all candidates, and unrestricted contributions to candidates are impermissible, the Commission believes that the court's reasoning in striking the 1977 ELEC rule is instructive in the context of Clean Elections which seeks to remove "monied contributors" from the election.

A publicly-financed gubernatorial campaign argued as an intervenor in Common Cause that it should be permitted to accept unlimited contributions during the general election to retire primary election debt. The court rejected that position because:

Intervenor's interpretation of the statute would leave the legislation ineffective in guarding against the very evil which it was designed to combat: the improper influence which a contributor gains when he is able to give a candidate a large contribution near the end of the campaign. Id. at 239.

The court further stated that "one of the primary purposes of the [gubernatorial public financing] act was to eliminate the improper influence which might result if a contributor were allowed to offer large sums of money to a candidate during the general election (citation omitted)." Id. at 240.

The Commission finds that the same rationale applies in the Clean Elections process. To permit a Clean Elections candidate to accept new contributions now in excess of the amounts permitted by the Clean Elections Law to pay primary election debt, even though limited by the primary election contribution limit, would severely weaken the effect of the Clean Elections seed money and qualifying contribution limits. The Commission therefore advises you that after the 2007 general election, that is on or after November 7, 2007, you may resume raising contributions to retire 2007 primary election net liabilities subject to the requirements of N.J.A.C. 19:25-8.7A. The Commission anticipates that any future Clean Elections legislation will clarify the issue of payment of net liabilities remaining from a prior election.

The Commission wishes to thank you for your inquiry.

Very truly yours,

Election Law Enforcement Commission

By: _____
Nedda G. Massar, Esq.

ELEC RECEIVED

AUG 24 2007

Assemblywoman Alison Littell McHose

August 23, 2007

Mrs. Nedda Massar, Esq.
Legal Director
New Jersey Election Law Enforcement Commission
28 West State Street
Trenton, NJ 08608

DUPLICATE

Dear Mrs. Nedda:

I am writing to the New Jersey Election Law Enforcement Commission as a candidate for re-election in Legislative District 24, for advice and direction on how to proceed with regards to my 2007 primary campaign committee, Friends of Assemblywoman Alison Littell McHose.

Legislative District 24 was selected to participate as a "Fair and Clean Elections" district for 2007. Because of my contested primary election, I was unable to begin participating until after the June 5th Republican primary. On June 25th, I received my formal briefing from the Assembly staff and on July 3rd, I filed my intention to run as a "Fair and Clean Elections" candidate. On August 17th, I qualified as a "Fair and Clean Elections" candidate.

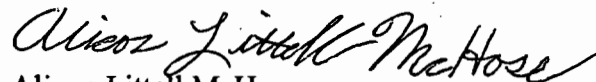
My general election opponents filed to participate as "Fair and Clean Elections" candidates many weeks before the June 5th primary and have likewise qualified.

I am seeking a determination as to whether or not I can do the following as a "Fair and Clean Elections" candidate:

- (1) Pay campaign expenses left over from the 2007 primary with funds from my 2007 primary account.
- (2) If expenses from the 2007 primary are in excess of the funds currently in my primary account, can I raise money to deposit in my primary account to pay those outstanding expenses.

Thank you for your help in clarifying these questions. Please call me if I can help you in any way. I can be reached at 973.222.5412.

Sincerely,



Alison Littell McHose
Assemblywoman

Paid for by Friends of Assemblywoman Alison Littell McHose
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