



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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February 20, 2014

Mark Sheridan, Esq.
Patton Boggs LLP
The Legal Center
One Riverfront Plaza, Suite 600
Newark New Jersey 07102-0301

Advisory Opinion 01-2014

Dear Mr. Sheridan:

The Election Law Enforcement Commission (the “Commission”) considered your request for an Advisory Opinion at its meeting of February 11, 2014, and directed me to issue this response. You have submitted your request on behalf of Chris Christie for Governor, Inc. (hereafter, the campaign, or CCFG), the gubernatorial candidate committee of Governor Chris Christie in the 2013 general election. You seek an advisory opinion which would permit the campaign to raise funds and make expenditures postelection for the purpose of responding to and complying with subpoenas for documents of the campaign as further described below.

Questions Presented

1. Are the proposed expenditures a permissible use of campaign funds under the Reporting Act?
2. Are the proposed expenditures permissible postelection under the gubernatorial public financing law?
3. Are the proposed expenditures subject to the expenditure cap under the public financing law?
4. May the campaign raise funds postelection for the purpose of making the proposed expenditures?
5. May the campaign retain its funds beyond the six-month time limitation for return of all unspent funds set forth by N.J.A.C. 19:25-15.47?

Commission Response

The Commission hereby advises you that the proposed expenditures to comply with the legislative subpoena are permissible campaign expenditures. The proposed expenditures to comply with the grand jury subpoena are permissible under the understanding that the candidate committee is not currently a target of the grand jury investigation. Should the candidate committee receive notification that it is a target, you will return to the Commission and seek another opinion. The expenditures are permissible postelection under the public financing program and not subject to the expenditure limit. Further the campaign may continue to raise funds postelection and may retain its funds beyond the six month time limitation for the purpose of satisfying its obligations to comply with the subpoenas. In its fundraising the campaign will advise the contributors of the restrictions on the intended use.

Background

Candidate Christopher J. Christie for Governor and his designated running mate Kimberly Guadagno for Lieutenant Governor participated in the gubernatorial public financing program in the 2013 general election. Chris Christie for Governor Inc. is their designated candidate committee¹, and Ronald Gravino is their designated campaign treasurer. The candidate committee is a corporation.

The compelling public policy of the gubernatorial public financing program is that “candidates for election to the office of Governor may conduct their campaigns free from improper influence and so that persons of limited financial means may seek election to the State’s highest office.” N.J.S.A. 19:44A-27. Candidates who participate in the gubernatorial public financing program are subject to requirements and restrictions in the Act and Commission regulations that do not apply to other candidates. The program, as administered by the Commission, distributes public matching funds at a ratio of \$2 in public funds, for each \$1 in qualified private contributions, up to a statutory maximum amount, which amount was \$8.2 million in the 2013 general election. Further, a publicly financed gubernatorial candidate is subject to a separate expenditure limit in the election; in the 2013 general election that expenditure limit was \$12.2 million. All gubernatorial candidates are subject to a contribution limit, which contribution limit was \$3,800.00 in the 2013 general election.

Commission records indicate that Candidate Christie applied and qualified for public financing and received the \$8.2 million maximum amount of public funds in the 2013 general election. Commission records indicate that the campaign filed timely on November 25, 2013, the 20-day postelection report. At that time the campaign reported a closing cash-on-hand balance of \$361,720.31 in the “matching funds” depository account and no public funds remaining in the public funds account. The campaign also reported cumulative expenditures of public funds totaling \$8.2 million, cumulative total campaign expenditures of \$13,140,635.07, and cumulative expenditures subject to limit of \$12,071,434.70. The next report due for filing is the 2014 first quarter report due on April 15, 2014.

¹ Pursuant to N.J.A.C. 19:25-15.5, the candidate committee files as one gubernatorial candidate committee established jointly for the candidate for Governor and the candidate for Lieutenant Governor, and the public financing limits and thresholds are applied as if each gubernatorial committee is a single candidate committee.

Submitted Facts

The subpoenas. The campaign has received subpoenas for documents from two sources: 1) the Joint Legislative Select Committee on Investigations (hereafter, the “JSCI”), a committee acting under the jurisdiction of the New Jersey State Legislature; and 2) the United States Attorney for the District of New Jersey. You write that both subpoenas seek documents and other electronic materials within the control of the candidate committee and its employees relevant “to the closure of access lanes in Fort Lee, New Jersey to the George Washington Bridge.” You provided the subpoena from the joint legislative committee and have sought authorization to provide the subpoena from the United States Attorney, but that subpoena was not available for the Commission’s review.

You anticipate that complying with the subpoenas “will be a costly and time-consuming process,” which will require CCFG “to retain a vendor...to image and preserve the data on computers, tablets and smart phones of the candidate committee and its employees” and further “to expend monies on attorneys’ fees and costs to review the preserved data for relevance and privilege.” You write that as of the date of the Advisory Opinion, the campaign has made expenditures in the amount of \$12,187,095, approximately \$12,905 short of the applicable expenditure cap, and the campaign currently has an approximate cash-on-hand balance of \$126,608. In response to questioning from the Commission at the February 11, 2014 meeting, you stated that you could not provide an estimate of costs at this point.

You seek an advisory opinion that the campaign may make expenditures postelection, and raise funds for the purpose of making such expenditures, to comply with the subpoenas “and any ancillary requests for information,” and that such expenditures are not subject to the public financing expenditure limit.

The JSCI subpoena (hereafter, also the legislative subpoena) is a subpoena duces tecum addressed to “Chris Christie for Governor Inc. Attn: Ronald Gravino.” It seeks all documents and materials including electronic records relevant to an investigation by that committee “into all aspects of the finances, operations, and management of the Port Authority of New York and New Jersey, including, but not limited to, the reassignment of access lanes in Fort Lee, New Jersey, to the George Washington Bridge, and any other matter raising concerns about abuse of government power or an attempt to conceal an abuse of government power....”²

The United States Attorney subpoena (hereafter, also the grand jury subpoena) is a subpoena duces tecum issued under the authority of a grand jury, directed to the Custodian of Records of Chris Christie for Governor Inc. You have indicated that the subpoena seeks all records relating to access lanes and consideration of alteration of access lanes and traffic studies, including records of electronic communications.

² The Commission notes that numerous news articles and reports exist in the public domain concerning events in early September 2013, surrounding closure of traffic lanes in or around Fort Lee, NJ, and leading to the George Washington Bridge. The Commission is also aware that some of the reports contain unsubstantiated allegations concerning possible abuse of governmental power in connection with the lane closures. These allegations are clearly beyond the Commission’s jurisdiction.

Discussion

All candidates, whether or not they participate in the public financing program, are subject to the restrictions imposed by the Reporting Act on the permissible uses of campaign funds. Additional restrictions apply to publicly financed candidates. Postelection contribution and expenditure activity by publicly financed candidates is strictly limited by the Act and Commission regulations. Each publicly financed candidate is under a statutory duty to return all unspent funds to the State, and no funds remaining at the conclusion of the campaign may be transferred to a future election or to any other candidate or committee. After the date of the election, publicly financed candidates are not permitted to spend campaign funds for the purposes that are available to other candidates pursuant to N.J.S.A. 19:44A-11.2. Postelection contributions to the gubernatorial candidate committee are subject to the \$3,800.00 contribution limit and must be spent only for liquidation of obligations and paying expenses incurred as of the date of the election remaining from that election; see N.J.S.A. 19:44A-35c and N.J.A.C. 19:25-15.45 and 15.47.

1. Are the proposed expenditures a permissible use of campaign funds under the Reporting Act?

N.J.S.A. 19:44A-11.2 provides that candidate committee funds shall be used for only six purposes. Not all six purposes are applicable to this request. Under the contemplated uses by the campaign, the only applicable permissible use categories are either the payment of campaign expenses, N.J.S.A. 19:44A-11.2 (1), or the payment of the overhead and administrative expenses related to the operation of the candidate committee, N.J.S.A. 19:44A-11.2 (4). “Campaign expenses” are expenditures for items or services used “in connection with an election campaign,” other than those items or services which may reasonably be considered to be for the personal use of the candidate [or] any person associated with the candidate.... N.J.S.A. 19:44A-11.2a(1) and N.J.A.C. 19:25-6.5(b). The Commission must also examine whether or not such proposed use constitutes a “personal use” of the candidate or of any person associated with the candidate. See definition at N.J.A.C. 19:25-6.5(c).

Finally, since the proposed use includes legal fees, the Commission must examine whether or not such use is permissible under N.J.A.C. 19:25-6.10, providing that contributions received by a candidate committee...may be used for reasonable fees and expenses for legal representation, “the need for which arises directly from and is related to the campaign for public office....” The Commission has specifically prohibited use of funds “for defense of a candidate or officeholder, who is the subject of a criminal inquiry or criminal investigation, or defense of a criminal indictment or other criminal proceeding,” N.J.A.C. 19:25-6.10(b), or such fees and expenses “incurred in connection with the candidate or officeholder’s personal or business affairs,” or which would otherwise qualify as “personal use” under N.J.A.C. 19:25-6.5(c), N.J.A.C. 19:25-6.10(c).

Use of campaign funds to respond to the legislative subpoena. The subpoena duces tecum is directed to the campaign to produce documents in its possession or under its control. To the extent such documents or records exist, they are records of the campaign. Therefore the costs of the campaign incurred in connection with producing such records are arguably campaign expenses in connection with an election campaign. N.J.S.A. 19:44A-11.2(1). You have stated that they would meet a definition of administrative or overhead expenses, N.J.S.A. 19:44A-11.2(4), but the Commission notes that such expenses are more usually rent or utility expenditures.

To the extent the expenditures will include the use of funds for legal fees, N.J.A.C. 19:25-6.10(a) permits use for reasonable fees and expenses of legal representation, “the need for which arises directly from and is related to the campaign for public office.” The regulation specifically identifies as a permissible use the defense of an action or proceeding before the Joint Legislative Committee on Ethical Standards “or similar public body.” N.J.A.C. 19:25-6.10(a)4. The Commission believes that the legislative joint committee in this case is similar in jurisdiction and authority to the example provided in the regulation.

Further based upon the facts as you have presented them to the Commission, the campaign is subpoenaed as a witness to provide documents to a legislative investigation, and you represent the campaign, a corporation, in fulfilling the response. You do not represent any individual in his or her personal capacity. Therefore the Commission believes that it does not have a reasonable basis to conclude that the campaign funds will be used for personal use of a candidate or any person associated with a candidate.

The Commission further believes that allowing the campaign to provide information to the legislative investigation serves the public interest of disclosure and does not contravene the public policy of the Reporting Act. In fact such a result may serve a broader public interest and promote the disclosure contemplated by that public policy. The Commission finds therefore that based upon these submitted facts, the costs of complying with production of documents to respond to the legislative subpoena are permissible campaign expenditures.

Use of campaign funds to respond to the grand jury subpoena. The Commission’s determination of the response to this question is a more difficult discussion. The Commission is mindful of the background and purpose of the 1993 Amendments which imposed the permissible use restrictions. As the New Jersey Supreme Court has eloquently written, “In the end, we are responsible for enforcing the will of the New Jersey Legislature, which, in an effort to restore public confidence in this State’s campaign laws, sought to curtail the misuse of contributions made to a candidate or candidate committee.” In re Election Law Enforcement Advisory Opinion No. 01-2008, 201 N.J. 254, 268-269 (2010).

As indicated above, the Commission has also engaged in rulemaking to prohibit the use of campaign funds for legal fees for criminal defense of a candidate or officeholder at all stages of a criminal investigation, including pre-indictment, see N.J.A.C. 19:25-6.10(b). In making its determination, the Commission has considered as significant your representation that the candidate committee, a corporation, is not a target of the grand jury investigation. The corporate candidate committee has been subpoenaed as a witness to produce documents and is responding on its own behalf. You have stated that no campaign funds will be used for legal representation of any individual associated with the campaign. Therefore the Commission concludes that, based upon the facts as presented, the anticipated expenditures will not be used for criminal defense of a candidate or for personal use of a candidate or an individual associated with the candidate. You have agreed that you will return to the Commission for guidance should the campaign itself receive a “target letter” from the grand jury investigation.

The Commission is also mindful of an extraordinary public interest in bringing the facts concerning the events of September, 2013 to light. In that respect, the Commission does not wish to serve as an impediment to that process. Therefore, in view of the foregoing understanding and representations, the Commission finds that the campaign may make expenditures to comply with responding to the grand jury subpoena. The Commission understands that the funds that will be raised for such expenditures will be strictly limited to the contemplated purposes and that contributors will be so advised.

2. Are the proposed expenditures permissible postelection under the gubernatorial public financing law?

The Commission notes first that the campaign has received and spent the maximum amount of public funds, and therefore additional statutory restrictions on the use of public funds, see N.J.S.A. 19:44A-35 and N.J.A.C. 19:25-15.24, are not applicable.

N.J.A.C. 19:25-15.47(b) provides that no candidate who has received public funds shall incur any debt or make any expenditure after the date of the election for any purpose other than the following: 1. to satisfy outstanding obligations incurred on or before the date of the election made for appropriate campaign purposes; or 2. to pay the reasonable and necessary costs of closing the campaign.

The financial obligations which the campaign will undertake to produce the documents and records in response to the subpoenas, are not yet specifically determined. The Commission does not believe that the campaign's incurring of such financial obligations harms or jeopardizes the level playing field envisioned by the public financing law. The contemplated postelection expenditures are permissible as expenditures either to meet obligations of the campaign or as necessary costs of closing the campaign pursuant to the provisions of N.J.A.C. 19:25-15.47(b).

3. May the campaign raise funds postelection for the purpose of making the proposed expenditures?

N.J.A.C. 19:25-15.45 provides that a contributor may make postelection contributions subject to the contribution limit for that election, N.J.A.C. 19:25-15.45(a) and that such contributions "shall be expended in order to liquidate all obligations and to pay expenses incurred during the general election campaign," N.J.A.C. 19:25-15.45(b).

For the same reasons discussed above, the Commission does not believe that postelection fundraising for the stated purposes jeopardizes the public policy of the public financing program. The campaign may continue to raise funds postelection for the purpose of making such expenditures, subject to the \$3,800 contribution limit applicable to the 2013 gubernatorial general election. Further the Commission directs the campaign to advise all solicited contributors of the intended purposes and restricted uses of the contributions.

4. Are the proposed expenditures subject to the public financing expenditure limit?

The Commission has by regulation exempted from the limit not only travel expenses, see also N.J.S.A. 19:44A-7, but also compliance costs relevant to the public finance provisions of the Act, reasonable value of food and beverage in connection with a testimonial affair, and election night expenses. N.J.A.C. 19:25-15.26. The Commission does not find that the proposed expenditures compromise the level playing field envisioned by the expenditure limit in the public financing program, N.J.S.A. 19:44A-27. N.J.S.A. 19:44A-42 provides that the provisions of the public financing law are to be construed liberally and applied "so as to promote the purposes expressed herein." See also N.J.A.C. 19:25-1.4 and 1.6. The Commission therefore advises you that the proposed expenditures are not subject to the expenditure limit.

5. May the campaign retain its funds beyond the six-month time limitation for return of all unspent funds set forth by N.J.A.C. 19:25-15.47?

The campaign has no public funds remaining. The Commission finds no harm to the stated public policy of the public financing program for the campaign to continue to raise funds and make expenditures for the stated purposes, and within the contemplated purposes of N.J.A.C. 19:25-15.47(a). The Commission has previously noted that, while a publicly financed candidate is under a continuing obligation to return to the State any funds remaining at the dissolution of the campaign, “no provision of the Act or Commission regulations mandates the dissolution at any particular time of a publicly financed gubernatorial candidate committee which has net liabilities.” Advisory Opinion 01-2004.

The Commission will not require the return of unspent monies within the six-month period. The campaign will continue to file postelection quarterly reports to disclose its financial activity pursuant to the provisions of the Reporting Act, N.J.S.A. 19:44A-16, until such time as it has concluded its obligations relevant to the subpoenas.

Commission Response

The Commission hereby advises you that based upon the facts submitted, the proposed expenditures to respond to the legislative subpoena are a permissible use of campaign funds. Further, under the representation that the candidate committee is not a target of the grand jury investigation, the proposed expenditures to respond to the grand jury subpoena are also a permissible use of campaign funds.

The proposed expenditures postelection are permissible under the public financing restrictions and are not subject to the expenditure limit. The campaign may continue to raise funds postelection, subject to the \$3,800.00 contribution limit for the 2013 general election, for the purpose of making those expenditures. The campaign will advise contributors in its fundraising of the restricted purposes. The campaign will not be required to return its remaining funds within the six-month time period from the election but must do so pursuant to the provisions of N.J.A.C. 19:25-15.47 after conclusion of its obligations in responding to the subpoenas.

This Advisory Opinion is based upon the very unique circumstances of this inquiry and is limited to the facts presented herein. The Commission does not intend this Advisory Opinion to serve as precedent for another set of facts and circumstances. Thank you for your inquiry and for your continued interest in the work of the Commission.

Very truly yours,
Election Law Enforcement Commission

By: _____
Carol L. Hoekje, Esq.



Advisory Opinion Request
For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
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FEB 03 2014

PLEASE PROVIDE THE INFORMATION REQUESTED BELOW

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 include the following:

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

Full name of Person, Committee, or Entity:

Chris Christie for Governor, Inc.

Mailing Address:

PO Box 990

Edison, NJ 08817

*Day Telephone Number:

732-248-4178

*Evening Telephone Number:

732-248-4178

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

[X] Yes

[] No

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

Candidate committee

[X]

Joint candidates committee

[]

Political committee

[]

Continuing political committee

[]

Political party committee

[]

Legislative leadership committee

[]

Recall committee

[]

Recall defense committee

[]

Personal financial disclosure statement

[]

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., 2005 general election) or calendar years, and identify filing capacity:

c. If reports are or were filed under a different name than that appearing in Question #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).

Please see letter from Mark Sheridan dated January 30, 2014

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

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:

Please see letter from Mark Sheridan dated January 30, 2014

6. Person who is submitting this advisory opinion request on behalf of the committee or entity listed in Question #1:

Full Name:

Mark Sheridan

Mailing Address:

Patton Boggs, LLP

1037 Raymond Blvd.

Newark, NJ 07932

*Day Telephone Number:

973-848-5681

*Evening Telephone Number:

908-410-6230

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).

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.

January 30, 2014
Dated:


Signature:

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

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JAN 31 2014

A.O. 01/2014

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January 30, 2014

Mark Sheridan
973-848-5681
msheridan@pattonboggs.com

Election Law Enforcement Commission
P.O. Box 185
Trenton, New Jersey 08625-0185

Re: Request For Advisory Opinion - Chris Christie For Governor, Inc.

Commissioners:

Please accept this request for an advisory opinion on behalf of Chris Christie For Governor, Inc. (hereinafter "CCFG"), the re-election committee of Governor Chris Christie. CCFG seeks an advisory opinion from the Commission permitting CCFG to raise such money and make such expenditures as are necessary to respond to subpoenas issued to CCFG by the Joint Legislative Select Committee on Investigations (hereinafter the "JSCI"), and the United States Attorney for the District of New Jersey (hereinafter the "US Attorney"). Absent such an opinion, CCFG will find itself without the means necessary to respond to the subpoenas and will arguably face contempt charges from the JSCI and civil or criminal contempt charges from the US Attorney. CCFG respectfully submits that the Commission cannot interpret its regulations in a fashion that is contrary to the public interest and would leave CCFG without the means to respond to requests for information issued to the campaign itself by the legislature or law enforcement.

The issue before the Commission is distinct from those situations in which an officeholder has attempted to utilize funds in his or her candidate committee account to finance the defense of a criminal investigation focused on the activities of the officeholder. Here, the subpoenas were served directly on CCFG, the candidate committee, and seek documents and other electronic materials within the control of the candidate committee and its employees. The funds CCFG seeks to raise, if any, and expend will be used to respond to the document subpoenas issued to CCFG and its employees. The funds raised or expended will be used consistent with Advisory Opinion 01-2008 and will not have an impact on any election.

Specifically, CCFG seeks an advisory opinion that it can continue to raise funds, if necessary, subject to *N.J.A.C.* 19:25-15.45(a), and that it can expend those funds in connection with responding to the subpoenas and any ancillary requests for information. It further asks the Commission to deem such expenditures to be outside the expenditure limit as are all other

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expenditures authorized by *N.J.A.C.* 19:25-15.26 and that CCFG be allowed to retain such funds as are necessary to respond to the subpoenas beyond the time limitations set forth in *N.J.A.C.* 19:25-15.46, -15.47.

The Commission is authorized to issue the requested opinions pursuant to *N.J.S.A.* 19:44A-6 and *N.J.A.C.* 19:25-18.1. The Commission is charged with liberally construing its regulations to “secure a just and speedy determination of all matters before it.” *N.J.A.C.* 19:25-1.3. It is even authorized to “relax the application of this chapter whenever the interest of justice shall so require.” *N.J.A.C.* 19:25-1.4.

In this instance, the interests of justice require that CCFG be authorized to raise and expend such funds as are necessary to respond to the subpoenas issued by the JSCI and the US Attorney. Enabling CCFG to respond to these subpoenas is plainly in the public interest; it would permit the JSCI and the US Attorney to fulfill their responsibilities in a timely fashion. Moreover, if CCFG is unable to comply with the subpoenas, it may face contempt charges through no fault of its own. We respectfully suggest that the Commission should not interpret its regulations in a way that would lead to such a perverse result, especially when approving this request carries with it no risk whatsoever that the integrity of any election would be undermined.

FACTS

CCFG is the candidate committee of Governor Chris Christie. In the 2013 general election, Governor Christie was designated a “qualified candidate” who applied for and received public matching funds pursuant to *N.J.A.C.* 19:25-15.1 *et seq.* Pursuant to the Commission’s regulations, CCFG raised the maximum amount of “contributions eligible for match” and received the maximum amount of public matching funds. In all respects, CCFG complied with the statutes and regulations applicable to publicly financed candidates for Governor and Lieutenant Governor.

CCFG currently has approximately \$126,608 cash on hand. CCFG has made expenditures in the amount of \$12,187,095 which is approximately \$12,905 short of the limitation set forth in *N.J.A.C.* 19:25-15.11(a)(4). In addition, it has made qualified expenditures pursuant to *N.J.A.C.* 19:25-15.26 that are not within the expenditure limit of *N.J.A.C.* 19:25-15.11(a)(4).

On Friday, January 17, 2014, CCFG received document subpoenas from both the JSCI and the US Attorney. While the subpoenas differ slightly, both seek documents related to the closure of access lanes in Fort Lee, New Jersey to the George Washington Bridge.¹ Neither

¹The specifics of the subpoenas are not relevant to the determination of this request for an advisory opinion. Nevertheless, should the Commission require additional information, CCFG will respond to any such request subject to any limitations imposed by the individual subpoenas.

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subpoena suggests that CCFG has engaged in any wrongdoing, but, rather, seeks documents and data from CCFG to assist the JCSI and the US Attorney in their inquiries. The materials sought include email, text messages, instant messages and other electronically stored data or information in the possession of CCFG or its employees. CCFG has affirmed its intention to respond fully and expeditiously to both subpoenas if it is permitted by law to do so.

However, preserving the documents and data requested in the subpoenas will require CCFG to retain a vendor, at a significant cost, to image and preserve the data on computers, tablets and smart phones of the candidate committee and its employees. In addition, CCFG will be compelled to expend monies on attorneys' fees and costs to review the preserved data for relevance and privilege. Our goal is to assure that the JCSI and the US Attorney have access to all of the information they require and that no relevant documents or data are lost. Complying with these requests will be a costly and time-consuming process.

CCFG's responses to the JCSI and the US Attorney were originally due on February 3rd and 5th respectively but we have asked that the return dates be temporarily adjourned while CCFG awaits the Commission's response to this request for an advisory opinion. Out of deference to the CCFG, the JCSI and the US Attorney, we request that the Commission expeditiously consider our request.

LEGAL ANALYSIS

The Commission is authorized to issue the requested opinions. It is charged with broadly construing its regulations and is permitted to relax the application of those regulations when the interests of justice require. *N.J.A.C.* 19:25-1.3, -1.4. In this instance, the interests of justice compel relaxation of the Commission's regulations. Permitting CCFG to respond promptly to the subpoenas is manifestly in the public interest. Conversely, putting CCFG in the position where it cannot comply is surely not. No legitimate public interest is served by forcing CCFG to choose between violating the Campaign Contributions and Expenditures Reporting Act and being held in contempt by the JCSI or the US Attorney. The Commission cannot place CCFG in such a predicament when it has the inherent power to relax its regulations and allow CCFG to comply with the requests for documents.

A. Expenditures Made To Respond To The Subpoenas Are Authorized Under The Commission's Regulations.

CCFG is subject to an overall expenditure limit of \$12.2M for the 2013 general election. *N.J.A.C.* 19:25-15.11. While CCFG has not yet reached the expenditure limit, the amount by which it is currently short of the expenditure limit is less than is necessary to pay for compliance with the subpoenas. Further, even if CCFG had not reached the expenditure limit, the Commission's regulations do not explicitly permit the expenditure of funds for the

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purpose of responding to a subpoena by an investigative committee of the legislature or the US Attorney. Nor do the regulations exempt such spending from the expenditure limit.

Pursuant to *N.J.A.C.* 19:25-6.10, a candidate committee may only expend monies on “reasonable fees and expenses of legal representation, the need for which arises directly from and is related to the campaign for public office or the ordinary and necessary duties of holding public office.” In CCFG’s opinion, the fees and expenses it seeks to incur fall within this definition as they are administrative expense related to the campaign for public office and are authorized by *N.J.S.A.* 19:44A-11.2(a)(4).

As to the subpoena from the JSCI, *N.J.A.C.* 19:25-6.10(a)(4), authorizes the expenditure of funds for “[t]he defense of an action or proceeding before the Joint Legislative Committee on Ethical Standards or similar public body having authority to hear such action or proceeding and to impose sanctions against the officeholder by reason of his or her status as a holder of public office.” Expenditures associated with responding to the JSCI subpoena are within the scope of the expenditures authorized by *N.J.A.C.* 19:25-6.10(a)(4). The JSCI is an investigative body of the legislature with authority akin to the Joint Legislative Committee on Ethical Standards. Accordingly, expenditures made in connection with a proceeding before that body are permissible legal expenses.

Expenditures incurred in responding to the subpoena from the US Attorney, are likewise within the permissible expenditures of *N.J.A.C.* 19:25-6.10 and *N.J.S.A.* 19:44A-11.2. The statute authorizes expenditures for the payment of overhead and administrative expenses associated with the operation of the campaign committee. Although *N.J.A.C.* 19:25-6.10(d) excludes from the list of permissible uses “expenses for defense of a candidate or officeholder who is the subject of a criminal inquiry or criminal investigation,” the contemplated expenditures are not being made for the defense of a candidate or officeholder. The expenditures are being made to respond to a subpoena for documents issued directly to the candidate committee.

This very distinction was recognized by the New Jersey Supreme Court in *In Re Election Law Enforcement Commission Advisory Opinion No. 01-2008* 201 N.J. 254 (2010) wherein the Court focused on the fact that the defense of criminal charges is not an ordinary and necessary expense of holding office. The facts of this matter are different. CCFG is not defending against criminal charges. It has been asked to provide documents in response to a subpoena from the US Attorney. There is nothing to suggest that CCFG or any employee of CCFG has committed any crime or is defending against criminal charges. To the contrary, a document subpoena is the standard means by which law enforcement obtains information. In fact, individuals and entities that are not the subject of criminal investigations are regularly asked to provide documents to law enforcement authorities. CCFG therefore requests that the

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Commission confirm that the contemplated expenses in responding to both the JSCI and the US Attorney subpoenas are permissible under *N.J.S.A.* 19:44A-11.2 and *N.J.A.C.* 19:25-6.10.

B. The Commission Should Treat Subpoena Related Expenditures To Be Outside Of The Expenditure Limit.

The Commission must also opine as to whether the contemplated expenditures are subject to the expenditure limit of *N.J.A.C.* 19:25-15.11 or should be deemed exempt under *N.J.A.C.* 19:25-15.26. CCFG acknowledges that the contemplated expenditures do not fall within the enumerated exceptions of *N.J.A.C.* 19:25-15.11. However, it is important to note that pursuant to *N.J.S.A.* 19:44A-7, the only expenditures that were statutorily authorized to be outside of the expenditure limit were travel expenses of the candidate and those persons traveling with the candidate. Over the years, the Commission has exercised its inherent power in this area to expand the list of items exempt from the expenditure limit to include expenses related to compliance, food and beverage at candidate events and election night celebrations. *N.J.A.C.* 19:25-15.26. CCFG requests that the Commission again exercise its power and relax the regulations in the interest of justice to conclude that expenses associated with responding to subpoenas issued to the candidate committee by a legislative investigative committee or law enforcement are permissible and not subject to the expenditure limit of *N.J.A.C.* 19:25-15.11. Doing so will allow CCFG to ensure compliance with the relevant subpoenas which is in the public interest.

CONCLUSION

CCFG respectfully requests that the Commission issue an advisory opinion permitting CCFG to continue to raise and expend such funds as are necessary to respond to the subpoenas and any ancillary requests from the JSCI and the US Attorney, and further opining that such expenditures are not subject to the limitations of *N.J.A.C.* 19:25-15.11(a)(4). By doing so, the Commission will further the public interest in having the JCSI and the US Attorney complete their investigations expeditiously and with the benefit of a complete record. The Commission has the authority to issue such an opinion and should do so.

Thank you for your attention to this matter.

Respectfully submitted,



Mark Sheridan