



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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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/>

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July 21, 2020

Michael Jenkins
4 Berkshire Court
Holmdel, NJ 07733

Advisory Opinion No. 01-2020

Dear Mr. Jenkins:

You submitted a request for an Advisory Opinion which was received by the New Jersey Election Law Enforcement Commission (ELEC or Commission) on June 26, 2020. On June 30, 2020, you stated to ELEC staff that you are “not currently using PayPal to collect campaign funds.” Your request has been reviewed and considered at a Commission meeting held on July 21, 2020. I am issuing this response pursuant to N.J.S.A. 19:44A-6(f).

Your request for an Advisory Opinion asked whether you, as a candidate for municipal office, can receive campaign contributions through PayPal. Referencing Advisory Opinion 04-2001 (AO 04-2001), you specifically state: “[T]he question: Is PayPal a method that complies with NJ ELEC regulations to collect campaign funds for local candidates today.”

Commission Response

You are advised that your candidate committee may utilize PayPal as a payment facilitator to accept contributions provided that you satisfy all the requirements set forth in this Advisory Opinion. Further, all contributions received through PayPal must comply with the contribution limits and the recordkeeping and reporting requirements set forth in the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (Campaign Act) and Commission regulations, N.J.A.C. 19:25.

Submitted Facts

You state that as a candidate for municipal office in Holmdel Township in the 2020 general election, you are new to politics and have not yet filed with ELEC. You indicate that you contacted ELEC to inquire about using PayPal to receive contributions and were advised that contributions “must go directly to the candidates (sic) deposit account and couldn’t spend any time in an agent’s receiving account before it is transferred to the candidate’s account.” You further indicate that ELEC directed you to AO 04-2001.

You state that you reviewed AO 04-2001 and that it directs that “funds need to be transferred ... from the agent’s account to the candidate’s account in less than 10 days” and that it does not direct that contributions cannot remain in an agent’s account for any period of time. You represent that you contacted PayPal and were advised that PayPal can transfer contributions received on your behalf to your campaign depository at any interval from once a day to once a month. Further, you indicate that you conducted additional research that revealed that in all instances where a payment facilitator/vendor collects funds, those funds spend at least some time in that vendor’s account. Additionally, you maintain that PayPal provides statements that detail the tracking of all funds “flowing through” the PayPal account and “throughout the process.” If using PayPal as a payment facilitator is permitted, you state that you intend to set up a business account with PayPal and have a “Contribute” button on your campaign website that indicates contributions can be made through PayPal.

Discussion

PayPal

ELEC staff contacted PayPal to obtain additional information pertaining to PayPal accounts, political contribution procedures and fees assessed for PayPal’s services. PayPal is a payment facilitator that sets up accounts for individuals and businesses. PayPal receives payments by way of credit cards or a PayPal account, processes those payments through its merchant account, holds those funds in the individual/business PayPal account, and ultimately transfers funds from a PayPal account to an assigned bank account. PayPal account holders can also purchase items and make payments through their PayPal account. When utilizing PayPal to receive internet campaign contributions, the candidate sets up a business account with PayPal, which is a separate account (not connected to other PayPal accounts) that is linked directly to a bank account.

A candidate can receive internet campaign contributions processed by PayPal by having a “donate” button on their website, or by providing a link on social media or in an email. When making a campaign contribution through PayPal the following must be provided before PayPal processes the contribution/payment: name the of the contributor, contributor’s email address, and credit card or PayPal account information. The candidate can set up additional fields so that an individual contributor can provide his/her: address, occupation, employer and employer’s address. However, PayPal will process the contribution/payment without the additional information.

Once the contribution is made, PayPal deducts its fee from the amount of the contribution (2.4% of the contribution, plus 30 cents), and this reduced amount is held in the candidate’s PayPal account. Immediately thereafter an email notification is sent to the candidate advising that a contribution was received and providing the name of the contributor, the date of receipt, the amount of the contribution and the contributor’s email address. Likewise, the contribution is reflected on the candidate’s PayPal

statement, which also lists the following: name of the contributor, total amount of the contribution, fee charged by PayPal, contributor's email address, and all the other information provided in the additional fields. The candidate has 24-hour access to his/her PayPal account statement. Funds in a candidate's PayPal account are transferred to his/her bank account/campaign depository within two to four business days. The funds can be transferred to the campaign depository more frequently for an extra fee.

Campaign Act

The Campaign Act was enacted in 1973 in response to a report issued in 1970 by the Election Law Revision Commission (Revision Commission). The Revision Commission recognized the role of money in politics and "took pains to emphasize in its initial report the importance of disclosure of the identity of persons spending money to affect political campaigns." New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Comm., 82 N.J. 57, 70 (1980). Enacted to carry out the recommendations of the Revisions Commission, the Campaign Act "was discussed at public hearings" where the "need for disclosure of the source and amount of monetary contributions was stressed repeatedly." Id. at 71 (citing Public Hearings on S. Bill 1124 at 4-8, 18, 61-62).

The Campaign Act states that all funds received as contributions must be deposited into the candidate's campaign depository. N.J.S.A. 19:44A-12. Funds received by a candidate committee shall be deposited by the campaign treasurer within 10 days of receipt. Id.; N.J.A.C. 19:25-6.1(a). Requiring all funds to be deposited facilitates disclosure and enhances the ability to trace funds in an audit or investigation.

The Commission recognizes that there have been extensive advancements in technology since 1973 and that a significant amount of contributions received by various candidates are made by way of the internet and credit cards. Internet and credit card contributions were not contemplated by the Legislature in 1973. In 1999, the Commission promulgated N.J.A.C. 19:25-10.16 (Contributions by electronic transfer of funds) to address technological advancements and the abundance of credit card contributions. N.J.A.C. 19:25-10:16 states:

(a) A candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee may receive a contribution made by means of an electronic transfer of funds, including a credit card, provided that:

1. The date of receipt of a contribution made by an electronic transfer of funds, including a credit card, is the date on which the account owner or credit card owner authorizes that the contribution be charged to the owner's account or credit card;
2. The amount of the contribution is the total amount that the account owner or credit card owner authorizes to be charged to the account;
3. The account used to make the contribution made by an electronic transfer of funds or a credit card must be owned by the individual contributor or other entity making the contribution; and
4. The campaign or organizational treasurer shall make and maintain records required pursuant to N.J.A.C. 19:25-7.1 for each contribution received by means of an electronic transfer of funds or credit card.

(b) Any fees or costs imposed upon a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee by a financial institution as a result of receipt of a contribution by means of an electronic transfer of funds or credit card must be reported by the candidate or committee as an expenditure to the financial institution.

(c) Contributions received by means of an electronic transfer of funds or credit card shall be deposited directly into a campaign or organizational depository.

The Commission recognizes that the services of various payment facilitators, including PayPal, are currently being used by numerous candidate committees, and that these types of payment facilitators were not contemplated in 1999 when the Commission promulgated N.J.A.C. 19:25-10.16. The Commission believes that full disclosure of contributions and expenditures, and compliance with contributions limits are the essence of the Campaign Act. Accordingly, a candidate committee can utilize PayPal to facilitate contributions made by a credit card or a contributor's PayPal account as long as the candidate committee adheres to the requirements set forth in this Advisory Opinion, the Campaign Act and Commission regulations.

The requirements for utilizing PayPal are as follows:


- The candidate committee must set up a PayPal account that is used only by the candidate committee and that PayPal account must be directly linked to the candidate committee's campaign depository. Further, contributions received by PayPal must be deposited into the campaign depository within 10 days of receipt. N.J.S.A. 19:44A-12; N.J.A.C. 19:25-6.1(a).
- The entire amount of the contribution (which is the amount the contributor authorized) must be reported. N.J.A.C. 19:25-10.16(a)(2). The reported amount of the contribution cannot be reduced by any fees paid to PayPal for processing the receipt of the contribution. See N.J.A.C. 19:25-10.16(b). All contributions must be reported pursuant to N.J.S.A. 19:44A-16 and N.J.A.C. 19:25-8.6, 10.2, 10.2A, 10.3, 10.13 and 10.16.
- Any fees charged by PayPal must be reported as expenditures pursuant to N.J.S.A. 19:44A-16 and N.J.A.C. 19:25-12.
- A candidate committee is required to make and maintain a record of each contribution received, which includes, but is not limited to, the candidate committee's PayPal account statements. N.J.S.A. 19:44A-12; N.J.A.C. 19:25-7.1, 7.2, 7.3 and 10.16(a)(4).

Conclusion

Based upon the facts represented in your Request for an Advisory Opinion and your subsequent communications to ELEC staff, the Commission concludes that your candidate committee can utilize PayPal as a payment facilitator to accept contributions provided that you satisfy all the requirements set forth in this Advisory Opinion. All contributions received through PayPal must comply with the contribution limits, and the recordkeeping and reporting requirements set forth in the Campaign Act and

Commission regulations. As contribution limits are based upon the amount of the contribution, the amount authorized by the contributor must be reported. Please be advised that contribution limits are calculated based upon the contributor, not the manner of the contribution. Contributions from the same contributor must be aggregated for reporting purposes and compliance with contribution limits. You are further advised that each candidate and campaign treasurer is responsible for complying with the reporting and record keeping requirements of the Campaign Act, including timely reporting of occupation and employer information for contributions received from individual contributors. PayPal's facilitation and processing of the contributions does not affect your legal responsibility to report all required information pursuant to the Campaign Act and Commission regulations.

Very truly yours,
Election Law Enforcement Commission

By: 
Demery J. Roberts, Esq.



Advisory Opinion Request For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P.O. Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Website: www.elec.state.nj.us

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JUN 26 2020

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:

Michael Jenkins - Candidate for Holmdel Township Committee

Mailing Address:

4 Berkshire Ct

Holmdel NJ 07733

*Day Telephone Number:

718 612 4461

*Evening Telephone Number:

718 612 4461

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

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:

I've not filed yet with the commission - New to politics and running for the first time this year for Holmdel

Township Committee

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

Not applicable.

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).

Recognizing that 19 years ago when the 2001 Advisory Opinion #4 "Reciept of Contributions over the Internet" was released, Paypal did not comply with NJ ELEC Regulations at that time - the question: Is Paypal a method that complies with NJ ELEC regulations to collect campaign funds for local candidates today?

*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.

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:

Was told that Paypal could not be used to collect online campaign funds.

Called NJ ELEC to confirm.

This was confirmed.

Asked why?

Was told that the money being contributed must go directly to the candidates deposit account and couldn't spend any time in an agent's receiving account before it is transferred to the candidate's account.

Advisory Opinion #4 from 2001 was the document that I was directed to review when I asked for the documentation.

When I reviewed the 2001 Advisory Opinion #4, this 19 year old document doesn't say the contributed funds can't spend any time in an agent's receiving account, it instead states the funds need to be transferred to from the agent's account to the candidate's account in less than 10 days.

Point #1: When I called the Paypal line for political and merchant questions (866 365 6610 Option 2) I learned that with Paypal I would have the option to transfer funds from the Paypal receiving account to my candidate's account at any daily interval between one (1) day and (1) month - To me, it would seem that at some point over the past 19 years using Paypal to accept campaign contributions over the internet would comply with this stipulation and would thereby become complaint with NJ ELEC Regulations.

Point #2: Furthermore, I did some separate research and it seems that in every instance the money collected by any agent is never transferred directly into a candidate's account; instead in every instance, the contributed money spends at least some time in the agent's receiving account (the time varies from vendor to vendor and is sometimes selectable).

Point #3: Also potentially noteworthy, there are downloadable log files within Paypal that provides exacting detail regarding the tracking of every penny flowing through it throughout the process.

Point #4: Something else to consider as well, Joe Biden's Presidential campaign uses Paypal to collect contributions - so if Paypal's good enough for that race it would potentially follow that it should be good enough for an NJ local race as well.

Resources:

website: <https://www.paypal.com/political> (this website provides detail on how it works)

phone: The Paypal political and merchant resource hotline (866 365 6610 Option 2) - you'll be connected with someone with answers within a couple of minutes.

Paypal email resource: Justin at Paypal is happy to field any questions or concerns directly at jujthomas@paypal.com

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:

The sought result follows: "Paypal is now compliant with NJ ELEC Regulations to collect campaign funds over the internet - Candidate's should feel free to use Paypal to collect funds via Paypal should they so choose."

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

Full Name: Self	
Mailing Address: Listed Above in Section 1	*Day Telephone Number: Listed Above in Section 1
	*Evening Telephone Number: Listed Above in Section 1
	Fax Number: Not applicable

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.

I AM NOT CROSSING THIS OUT BUT TIME IS OF THE ESSENCE -> HOPING FOR QUICK RESPONSE

(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.

_____ 24JUN2020 _____
Dated: Signature:

