



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH
Chair

PETER J. TOBER
Vice Chair

ALBERT BURSTEIN
Commissioner

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
Legal Counsel

PUBLIC SESSION MINUTES

September 11, 2007

Chair English, Vice Chair Tober, Commissioner Burstein, and Counsel Wyse participated by telephone. Executive Director Herrmann, Deputy Director Brindle, and Legal Director Nedda Massar were present.

1. Open Public Meetings Statement

Chair English called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., adequate notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

The meeting convened at 4:10 p.m. in Trenton.

2. Advisory Opinion Request No. 03-2007

The Commission received an advisory opinion request from Alison Littell McHose who is a certified 2007 general election Clean Elections candidate for General Assembly in the 24th Legislative District.

Candidate McHose asked two questions concerning payment of outstanding obligations remaining from her 2007 primary election candidacy. The questions were: 1) whether or not 2007 primary election campaign expenses can be paid with funds remaining in her 2007 primary election account; and 2) whether or not additional contributions may be raised for deposit into her 2007 primary election account to pay her outstanding 2007 primary election expenses.

Staff recommended that the Commission advise Candidate McHose that as a certified Clean Elections candidate she may use funds currently remaining in her 2007 primary election account to pay 2007 primary election outstanding obligations, but that additional

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primary election contributions may not be raised at this time to satisfy outstanding 2007 primary election campaign obligations.

In explaining the staff recommendation, Legal Director Massar said that 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.” She commented that strictly applying the language of Section 7 to the facts in this inquiry, Candidate McHose is no longer a candidate “intending to become certified,” and has in fact become a certified Clean Elections candidate. She said that staff therefore recommended that the Commission advise Candidate McHose that she may use funds raised and deposited into her 2007 primary election account prior to filing the Clean Elections Declaration of Intent to pay outstanding 2007 primary election obligations. She indicated that because the contributions remaining in her 2007 primary election account were legally raised prior to her participation in the 2007 Clean Elections Pilot Project and would not be used to assist in her general election candidacy, as required by the Clean Elections regulations, staff recommended that the contributions should be treated as outside the Clean Elections prohibitions for the exclusive purpose of paying net liabilities from the 2007 primary election.

She added, however, that it may be reasonable for the Commission to advise Candidate McHose that she may not raise additional 2007 primary election contributions to pay outstanding primary election obligations until after she has filed the 20-day postelection report for her 2007 general election Clean Elections candidacy. Staff believes that it is necessary to consider the purpose of the Clean Elections Pilot Project. It was “designed to remove access to monied contributors as a major determinant of a citizen’s influence within the political process.” Raising money from contributors using the primary election contribution limits during the general election would greatly erode this purpose.

Commissioner Burstein asked if it were possible to allow a Clean Elections candidate to raise money for the specific purpose of retiring debt stemming from a previous campaign. He asked whether or not there might be any way of doing this that would be consistent with the Clean Elections program guidelines. He said that as a past candidate he sympathized with a candidate that desired to retire debt. Commissioner Burstein said that the program created a situation that conflicted with reality and that a candidate’s ability to raise money after the election drops.

Legal Director Massar said she did not think it was desirable to impose the general election Clean Elections contribution limits on non-Clean Elections primary election fundraising. She said that it was preferable to have the primary election contribution limits remain as the standard for that election.

Commissioner Burstein stated that at one time or other, Assemblywoman McHose would raise money in amounts and from sources other than allowed under the Clean Elections Program.

Vice Chair Tober agreed that since presumably Clean Elections would be extended to the primary in the future we are facing unique circumstances.

Chair English said that she is sympathetic to the idea that the candidate should be allowed to raise money once the election is over. She suggested that instead of requiring Ms. McHose to wait until 20 days after the election, the Commission should permit her to begin raising money to retire primary debt as soon as the general election is over.

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission directed staff to issue an opinion to permit Candidate McHose to use remaining primary elections funds to pay primary election net liabilities and to permit her to resume raising 2007 primary election contributions on or after November 7, 2007, pursuant to N.J.A.C. 19:25-8.7A.

3. Advisory Opinion Request No. 04-2007

The Commission received a request for an advisory opinion from Scott Rekant, Esq., on behalf of Hartz Mountain Industries, Inc. (Hartz), a business entity that received \$50,000 or more in calendar year 2006 from contracts with New Jersey government entities. The inquiry concerns application of recently-enacted pay-to-play annual disclosure requirements to Hartz and a continuing political committee, Developers Political Action Committee (DPAC). Moreover, an employee of Hartz is a member and director of DPAC.

In his request, Mr. Rekant asked whether or not Hartz is required to report on its business entity annual disclosure statement each contribution in excess of \$300.00 made in 2006 by DPAC to New Jersey candidates and committees.

Staff recommended that Mr. Rekant be advised that participation by an employee of Hartz as a member and director of DPAC, under the specific circumstances described in the inquiry, is not sufficient to constitute direct or indirect control of DPAC by Hartz. Staff therefore recommended that reportable contributions made by DPAC are not deemed to be contributions by Hartz and are not required to be reported by Hartz on its business entity annual disclosure statement.

Staff further recommended that the Commission not reach any conclusion in this opinion concerning direct or indirect control of DPAC should a Hartz employee serve as Chair or Treasurer of DPAC. Staff also recommended that because, as explained in the inquiry, Allen Magrini, a Hartz vice president and officer, currently serves as President of NJ-NAIOP, the Commission should explicitly state in the response that it has assumed that Mr. Magrini, in his role as NJ-NAIOP President, has no role in directing the decisions of the DPAC Executive Director, who also serves as NJ-NAIOP Executive Director.

Chair English asked Mr. Scott Rekant, Esq., representing Hartz Mountain Industries, Inc., to confirm the fact that the Executive Director of the Developers PAC makes all the decisions regarding contributions to candidates and that Hartz Mountain Industries, Inc. in no way controls the decision making of the PAC.

Mr. Rekant confirmed that both statements were correct.

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Commissioner Burstein expressed skepticism that members of the DPAC Executive Board had no say in making contribution decisions, but would support the recommendation of staff based on the facts submitted. He asked that Article XII, Section 2 of the DPAC Bylaws be recited in the Minutes as the predicate for the Commission's decision, as follows:

Contributions by DPAC shall be made without consultation with DPAC members. Should a member request that DPAC make a contribution to a certain candidate or political committee, DPAC shall not be bound by those preferences but shall make all contributions to candidates or political candidates at the sole discretion of the Executive Director, acting in consultation with the Chair and Treasurer.

Chair English thanked Hartz Mountain for the request indicating that this helps the Commission to flush out aspects of a very complicated law.

On a motion by Vice Chair Tober, seconded by Commissioner Burstein and passed by a vote of 3-0, the Commission directed staff to issue a response based upon its recommendation.

4. Commission Member

Chair English stated that she had contacted the Governor's Office to ask that a fourth member be appointed to fill the vacancy on the Commission.

5. Adjournment

On a motion by Commissioner Burstein, seconded by Vice Chair Tober and passed by a vote of 3-0, the Commission voted to adjourn at 4:45 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz