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April 19, 2006

BY FAX & FIRST CLASS MAIL

Mark D. Sheridan, Esq.
General Counsel
New Jersey Republican State Committee
150 West State Street, Suite 230
Trenton, New Jersey 08608

Advisory Opinion No. 03-2006

Dear Mr. Sheridan:

The Commission considered your request for an advisory opinion at its meeting yesterday and directed me to issue this response. You have asked two questions concerning application of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Campaign Reporting Act), and Commission regulations, N.J.A.C. 19:25-1 et seq., to a particular bank account, the Federal account, established by the New Jersey Republican State Committee (NJRSC).

Questions Presented

You have asked whether or not contributions that are deposited into the NJRSC's Federal account, established pursuant to the provisions of the Federal Election Campaign Act (hereafter, FECA), 2 U.S.C. 431 *et seq.*, and reported to the Federal Election Commission (FEC), are subject to the provisions of the Campaign Reporting Act and Commission regulations. You have also asked whether or not contributions deposited into the NJRSC's Federal account are subject to New Jersey contribution limits established by the Campaign Reporting Act. In each question, you have specifically stated that his inquiry does not concern a "Levin account." "Levin accounts" will be discussed further below.

Commission Response

You are advised that as long as funds in the NJRSC Federal account are used exclusively for federal election purposes and not spent on State elections or candidates, the Commission finds it has no jurisdiction over the NJRSC Federal account. Therefore, the Commission has no jurisdiction over contributions that are deposited into the NJRSC's Federal account, and the State political party contribution limits of the Campaign Reporting Act do not apply to contributions deposited into that account.

Submitted Facts

You have indicated that the NJRSC files reports of contributions and expenditures with the Commission as the State committee of a political party, pursuant to N.J.S.A. 19:44A-8, and has established a depository account, pursuant to N.J.S.A. 19:44A-10, “to fund the NJRSC’s activities in connection with elections for State office.” Review of the Political Party Committee Designation of Organizational Treasurer and Depository (Form D-3) filed by the NJRSC on July 1, 2005, pursuant to N.J.S.A. 19:44A-10 and N.J.A.C. 19:25-4.6, and the most recent NJRSC quarterly report filed, indicates that the NJRSC currently maintains two State political party committee depository accounts, “NJ Republican State Committee” and “NJRSC-Hispanic Leadership Council.”

You have explained that, in addition to its status as the State political party committee of the Republican Party in New Jersey, pursuant to N.J.S.A. 19:5-4, the NJRSC is also registered with the FEC as a “political committee,” specifically as a “State Committee.” As such, the NJRSC maintains a “Federal account.” You stated that “[m]onies deposited into the [NJRSC’s] Federal account are solicited in accordance with Federal law and all contributions and expenditures are reported to the FEC Monies contained in the NJRSC’s Federal account are used to fund the NJRSC’s activities in connection with Federal campaign activities.” (emphasis added). You have indicated that the NJRSC and its Federal account are subject to the FECA and FEC regulations, specifically 2 U.S.C. §§431(4)(C), 431(15), 433, and 434, and 11 C.F.R. §§100.5, 100.14, 102.1, 110.1(c)(5), and 300.30.

Discussion

You have cited relevant portions of the Campaign Reporting Act and regulations to support your position that the Act and Commission regulations apply only to NJRSC activity in its State accounts in connection with State elections and do not apply to funds that are deposited into the NJRSC Federal account and are used “to fund the NJRSC’s activities in connection with Federal campaign activities.”

The Commission finds that the scope of the Campaign Reporting Act and Commission regulations does not reach activity by the NJRSC that is strictly limited to Federal elections and is funded through the NJRSC Federal account. The Campaign Reporting Act and Commission regulations are intended to regulate NJRSC activity in relation to State, not Federal elections. This reading is supported by the public policy of the Campaign Reporting Act, which is to “limit political contributions and to require the reporting of all contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office or to aid or promote the passage or defeat of a public question in any election” See N.J.S.A. 19:44A-2. The term “candidate” is specifically defined at N.J.S.A. 19:44A-3c to mean “an individual seeking election to a public office of the State or of a county, municipality or school district at an election.” The definition makes no reference to a candidate for Federal office. Further, N.J.S.A. 19:44A-4 limits the reach of the Campaign Reporting Act to any public question put to the voters of New Jersey and to “any election for any public office of the State or any political subdivision thereof” Again, there is no reference to Federal election activity.

The FECA and the FEC regulations implementing the law state their exclusive application to Federal election activity and the resulting preemption of State law by declaring that “[t]he provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supercede and preempt any provision of State law with respect to election to Federal office.” See 43 U.S.C. §453 and 11 C.F.R. §108.7. The rule establishes that federal law specifically supercedes State law concerning the following three activities:

- (1) Organization and registration of political committees supporting Federal candidates;
- (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and
- (3) Limitation on contributions and expenditures regarding Federal candidates and political committees. 11 C.F.R. §108.7(b).

The Commission concludes that the FECA and FEC regulations, and not the Campaign Reporting Act and Commission regulations, govern the NJRSC’s Federal account because the funds in the NJRSC’s Federal

account are used by the NJRSC as a federal political committee to support activity in connection with Federal campaigns.

As a result, the Commission confirms your understanding that an individual who, in a calendar year, has contributed \$25,000 in the aggregate to the NJRSC State account or accounts and \$10,000 to the NJRSC Federal account has not exceeded the \$25,000 annual contribution limit applicable to the NJRSC pursuant to the Campaign Reporting Act and Commission regulations; see N.J.S.A. 19:44A-11.4 and N.J.A.C. 19:25-11.2.

“Levin” Accounts

The Commission has considered materials available from the FEC and notes that, pursuant to the FECA, a political party committee, such as the NJRSC, that engages in both federal and State election activity may have several bank accounts. One type of account, known as a “Levin account,” was created as a result of the Bipartisan Campaign Reform Act of 2002, which amended the FECA, Pub. L. 107-155, 116 Stat. 81 (March 27, 2002). The Commission understands that funds in a “Levin” account are subject to different restrictions from those applicable to funds in the NJRSC Federal account. Specifically, “Levin” funds “must be lawful under the laws of the State in which the committee is organized,” are subject to State law with regard to contribution limits, and are limited to \$10,000 per calendar year from any source. See 11 C.F.R. §300.31(b), (c), and (d)(1)-(2). Also see “Federal Election Commission Campaign Guide, Political Party Committees” (April 2004), pp. 1-4 and 41-42.

“Levin” funds are described as nonfederal funds that are “donated to state, district and local party committees, in accordance with state law, from corporations, labor organizations and other persons in amounts not to exceed \$10,000 per calendar year.” Federal Election Commission Record, January 2006, p.14; also see 11 C.F.R. §300.31. Further, “Levin” funds may be spent not only on certain federal election activity, but also for purposes permitted under State law; see 11 C.F.R. §300.32(b)-(d). You have indicated that your inquiry does not concern a NJRSC “Levin” account. However, because “Levin” funds may be used for purposes permitted under New Jersey law, the Commission wishes to take this opportunity to advise you that, unlike funds in the NJRSC Federal account, funds contributed to a “Levin” account would be subject to the requirements of the Campaign Reporting Act and Commission regulations and would count toward the State political party committee annual \$25,000 contribution limit.

Thank you for your inquiry and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR, ESQ.