



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Respond to:
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Trenton, New Jersey 08625-0185

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May 16, 2017

Rajiv D. Parikh, Esq.
Genova Burns LLC
494 Broad Street
Newark, NJ 07102

Advisory Opinion 02-2017

Dear Mr. Parikh,

Your request for an Advisory Opinion has been reviewed and I am issuing this response pursuant to N.J.S.A. 19:44A-6(f). You submitted your request on behalf of the New Jersey Democratic State Committee (NJDCS), a political party committee. The Advisory Opinion Request was submitted to the New Jersey Election Law Enforcement Commission (Commission or ELEC) on April 24, 2017. You consented to an extension of time until May 17, 2017 for the Commission to respond.

Your request pertains to the formation of a joint fundraising committee (JFC) which would involve the participation of the NJDCS and the candidate committees of the Democratic candidates in the 2017 gubernatorial primary and general elections. Specifically, you have asked (1) whether the candidate committees of the Democratic gubernatorial candidates may participate in a joint fundraising effort with the NJDCS's New Jersey account and the NJDCS's federal account subject to the principles and procedures set forth in Advisory Opinion 01-1996 and (2) whether the proceeds from this joint fundraising effort would be eligible for qualification and match pursuant to the Gubernatorial Public Financing Program (the Program).

Commission Response

You are advised that the joint fundraising effort you propose, which consists of the formation of the JFC and a joint depository, is not permitted pursuant to 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. Additionally, the proceeds from this proposed joint fundraising effort would not be eligible for qualification and match pursuant to the Program. N.J.S.A. 19:44A-3, 19:44A-29; N.J.A.C. 19:25, Subchapter 15. However, the NJDCS may transfer contributions to a gubernatorial candidate in a general election and these

contributions would be eligible for match provided that the procedure in N.J.A.C. 19:25-15.32 through 19:25-15.38 is followed.

Submitted Facts

You state that the NJDSC, a state political party committee registered with the Commission, maintains two bank accounts in accordance with Advisory Opinion 01-1996: one used solely for state and local elections, and a federal bank account that is registered with the Federal Election Commission (FEC). You further state that the NJDSC “wishes to engage in lawful joint-fundraising activities with one or more Democratic gubernatorial candidates in the 2017 primary election and the candidate committee of the eventual Democratic nominee in the 2017 gubernatorial general election.” Specifically, you indicate that these joint fundraising activities would involve raising funds for the NJDSC’s state and federal account, and the candidate committee(s) for the Democratic candidates for governor.

You propose the formation of the JFC and indicate that it will establish a separate depository account, used solely for the receipt and disbursement of joint fundraising proceeds. You further propose that the NJDSC and the gubernatorial candidate committee will report this account as an additional depository on a Form DX filed with the Commission. You submit that all contributors will sign an acknowledgment stating that they either assent to the default formula for allocating their contribution among the three accounts, or will set forth the formula they want used for allocating their contribution. Further, the JFC will register with the FEC and report all contributions and expenses. You also state that “[p]ursuant to federal law, the joint-fundraising expenses will be borne by the” NJDSC and gubernatorial candidate committee “in proportion to their share of overall receipts.” Both committees will report to the Commission only those allocated amounts from each contributor, deposited into the account, and the fundraising expenses allocated to each committee. Further, you state that the JFC, NJDSC and gubernatorial candidate committees “will screen all contributions to ensure that applicable limits and source restrictions are observed.”

Discussion

Joint Fundraising Committee

The Campaign Act and Commission regulations do not provide for the creation of your proposed JFC. See N.J.S.A. 19:44A-1 et seq.; N.J.A.C. 19:25. The Campaign Act recognizes the following committees: candidate committee, joint candidates committee, continuing political committee, legislative leadership committee, political committee, and political party committee. See N.J.S.A. 19:44A-3, 19:44A-8, 19:44A-9, 19:44A-10.1; N.J.A.C. 19:25-1.7, 19:25-4.1. The Campaign Act and Commission regulations provide for only one type of joint committee. N.J.S.A. 19:44A-3, 19:44A-8, 19:44A-9, 19:44A-10.1; N.J.A.C. 19:25-4.2. A joint candidates committee consists of “at least two candidates for the same elective public offices in the same election in a legislative district, county, municipality, or school or fire district.” N.J.A.C. 19:25-1.7. “Two or more candidates seeking the same elective public offices in the same election” can establish a joint candidates committee for the specified purpose of receiving joint contributions and making joint expenditures. N.J.A.C. 19:25-4.2(a) (emphasis added); see also N.J.S.A. 19:44A-9a. The “same elective public offices” include: senator and members of the General Assembly serving in the same legislative district; county executive and freeholders serving in the same county; and, mayor and member(s) of the municipal governing body in the same municipality. N.J.A.C. 19:25-4.2(b). Moreover, “a candidate committee formed jointly by candidates for the offices of Governor and of Lieutenant Governor of the same

party is not a ‘joint candidates committee.’” N.J.A.C. 19:25-1.7; see also N.J.S.A. 19:44A-29.1. The Campaign Act and Commission regulations do not permit a joint committee comprised of a state political party committee and a candidate committee. N.J.A.C. 19:25-4.2.

You indicate that the JFC will file with the FEC, as opposed to ELEC. A joint candidates committee has filing requirements with ELEC, and each report must be certified by the candidates and treasurer. N.J.S.A. 19:44A-9b(1), 19:44A-16. The JFC that you propose would have no filing obligations with ELEC because such a joint fundraising committee is not provided for in the Campaign Act or Commission regulations.

Depository

You state that the joint fundraising proceeds will initially be deposited into a newly created joint depository account. You also indicate that both the NJDSC and gubernatorial candidate committee will file a Form DX with the Commission listing the joint depository as an additional organizational depository and campaign depository, respectively.

Commission regulations define “depository” or “campaign depository” as “any bank account, whether checking, savings, or other, that is established by a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee for the purpose of receiving contributions and making expenditures to aid or promote a candidate in an election, or to support or oppose a public question.” N.J.A.C. 19:25-1.7. Two separate political entities, such as a political party committee and a candidate committee, may not jointly establish and maintain a depository account.

The Campaign Act and Commission regulations do not permit a shared depository where the participating entities only report the contributions and expenditures related to them. Any entity reporting the proposed joint depository as an additional depository would be required to report all the activities of the depository account, not just the portions of contributions and expenditures that will eventually be allocated to that entity. N.J.S.A. 19:44A-8(c), 19:44A-16; N.J.A.C. 19:25-8.1, 19:25-8.2, 19:25-9.1, 19:25-10.2. As soon as the gubernatorial candidate committee reports the shared depository as an additional depository of the candidate, the contribution limit for gubernatorial candidates, \$4,300, would apply. N.J.S.A. 19:44A-11.3; N.J.A.C. 19:25-11.1, 19:25-11.2. Thus, any contributions greater than \$4,300 into the joint depository would be an excessive contribution to the candidate. You state that “[p]ursuant to state law, specifically the Commission’s guidance in Advisory Opinion 01-1996, each Commission-registered committee will disclose on its filings only the amount deposited into each account attributable to each contributor.” As discussed, each Commission-registered committee is required to report all contributions received and expenditures made, not portions of contributions or expenditures related to a shared depository.

Further, AO 01-1996 sets forth procedures that must be followed for a state political party, a single entity, to allocate contributions between the State committee’s federal and state accounts. The contributions are allocated between the two accounts prior to deposit. After they are allocated and then deposited into federal and state accounts, the contributions deposited into each account are reported to the FEC and ELEC respectively. AO 01-1996 does not address a contribution that is deposited into a joint depository, and then allocated between two accounts maintained by the State committee and an account maintained by a candidate committee. Neither the Campaign Act, Commission regulations nor AO 01-1996 permit a single shared depository partitioned between participating entities, or permit a State committee or candidate committee to

only report a portion of a contribution or expenditure deposited into or expended from an organizational or campaign depository.

State committees and publicly financed gubernatorial candidates

For the reasons stated above, the proposed JFC is not permitted by the Campaign Act and Commission regulations. Since the JFC is not permitted, proceeds cannot be eligible for matching funds pursuant to the program. Administered by the Commission, the Program distributes public matching funds at a ratio of \$2 in public funds for each \$1 in qualified contributions, up to a statutory maximum amount. N.J.S.A. 19:44A-33; N.J.A.C. 19:25-15.21. To participate in the Program, each candidate must establish a separately maintained matching fund depository account. N.J.A.C. 19:25-15.7. You state you are seeking “to allow greater cooperation between a state political party committee and its gubernatorial candidates.” Commission regulations already provide a mechanism for joint fundraising involving a state political party committee and a publicly financed gubernatorial candidate committee in the general election. N.J.A.C. 19:25-15.32 through 19:25-15.38.

A State committee is permitted to establish a separate State committee account (State committee matching fund account (SCMFA)) on behalf of any candidate for Governor or Lieutenant Governor, and can allocate and deposit contributions received by the State committee up to the contribution limit for each contributor. N.J.A.C. 19:25-15.32(a)-(b). A contribution allocated to and deposited into the SCMFA must be received by the State committee in the calendar year in which a gubernatorial election is being held to be eligible for public matching funds. N.J.A.C. 19:25-15.32(c)-(d). Any expenditure by the State committee on behalf of a gubernatorial candidate must be made from the SCMFA and is included in the total expenditures a publicly financed candidate is permitted to spend. N.J.A.C. 19:25-15.33. Whenever a contribution to the State committee is deposited into the SCMFA, the State committee must give notice, with specified information, to the contributor within 48 hours of the deposit. N.J.A.C. 19:25-15.35.

The State committee must maintain a statement of contributors containing all required information, including a copy of the check, for all those contributions allocated, in whole or in part, to the SCMFA. N.J.A.C. 19:25-15.36(a) and (c); see also N.J.A.C. 19:25-15.17(d). Likewise, a statement of expenditures with specified information must be maintained. N.J.A.C. 19:25-15.36(b). The correctness of all the statements of contributions and expenditures required in N.J.A.C. 19:25-15.36 must be certified by the treasurer or deputy treasurer of the State committee and provided to the campaign treasurer of the gubernatorial candidate. N.J.A.C. 19:25-15.37. The funds from the SCMFA can be transferred to a candidate committee’s matching fund account. N.J.A.C. 19:25-15.38.

You suggest that federal law permits the joint fundraising effort you propose and that it preempts any contradictory State law. The provisions of the Federal Election Campaign Act “supersede and preempt any provision of State law with respect to election to Federal office.” 52 U.S.C. § 30143(a) (emphasis added). You propose joint fundraising activities related to a gubernatorial candidate, election to State office.

The compelling public policy of the Program is that “candidates for election to the offices of Governor and Lieutenant 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. As the Program involves public funds, the Commission must administer it carefully and cautiously. The Campaign Act and Commission regulations do not permit a State committee to raise funds eligible to be matched by public

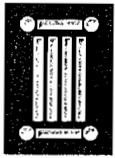
funds in the primary election. See N.J.A.C. 19:25-16.1 through 19:25-16.49. The State committee is permitted to raise funds for publicly financed gubernatorial candidates in the general election, and transfer those funds to the candidate committee's matching fund account pursuant to Commission regulations. N.J.A.C. 19:25-15.32 through 19:25-15.38. The JFC you propose, an entity not regulated by ELEC, is not permitted pursuant to the Campaign Act and Commission regulations to raise and transfer funds that are eligible for public matching funds.

Conclusion

You are advised that the Campaign Act and Commission regulations do not permit the formation of a JFC, consisting of the NJDSC's state and federal accounts and the candidate committees of the gubernatorial candidates, or a joint depository shared by more than one reporting entity. As the Campaign Act and Commission regulations do not provide for a JFC or a joint depository, the question of whether funds raised by the JFC are eligible for matching public funds under the Program is moot.

Very truly yours,
Election Law Enforcement Commission

By: 
Demery J. Roberts, Esq.



**GENOVA
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Rajiv D. Parikh, Esq.
Partner
Member of NJ and NY Bars
rparikh@genovaburns.com
Direct: 973-535-4446

April 21, 2017

VIA UPS OVERNIGHT

ELEC RECEIVED

APR 24 2017

New Jersey Election Law Enforcement Commission
28 West State Street
13th floor
Trenton, New Jersey 08608

Re: Request for Advisory Opinion

Dear Commissioners:

This firm represents the New Jersey Democratic State Committee (the "NJDCS"). Enclosed please find an original and one (1) copy of a Request for Advisory Opinion and letter. Kindly return a copy of each document marked "received" in the enclosed self-addressed stamped envelope.

Please contact me if you have any questions, or require any additional information.

Very truly yours,

GENOVA BURNS LLC


RAJIV D. PARIKH

ADK/RDP:dmc
enc.

13952610 (21726.013)



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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APR 24 2017

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:
New Jersey Democratic State Committee ("NJDCS")

Mailing Address:
c/o Genova Burns LLC

494 Broad Street, Newark, New Jersey 07102

*Day Telephone Number:
973-533-0777

*Evening Telephone Number:
973-533-0777

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 []
Joint candidates committee []
Political committee []
Continuing political committee []
Political party committee [X]
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).

(1) May the candidate committees of one or more Democratic gubernatorial candidates in the 2017 gubernatorial primary election and the candidate committee of the eventual Democratic nominee in the 2017 gubernatorial general election participate in a joint-fundraising effort with the NJDCS's New Jersey account and the NJDCS's federal account subject to the principles and procedures set forth in Advisory Opinion 01-1996? (2) Are proceeds from this joint-fundraising effort allocable to the applicable gubernatorial campaign committee eligible for qualification and match, if that gubernatorial candidate intends to participate in the gubernatorial public-financing program?

*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:

The NJDSC is a Commission-registered state political party committee. In accordance with ELEC Advisory Opinion 03-2006, the NJDSC maintains both Commission-registered New Jersey bank accounts, with funds raised in compliance with the Act and used solely in connection with New Jersey State and local elections in accordance with the permissible uses of campaign funds set forth in the Act (the "New Jersey Account"); and a federal bank account that is registered with the Federal Election Commission (the "FEC"), with funds raised in compliance with the Federal Election Campaign Act (the "FECA") and used solely in connection with federal elections in accordance with the permissible uses of campaign funds set forth in the FECA (the "Federal Account").

The NJDSC wishes to engage in lawful joint-fundraising activities with one or more Democratic gubernatorial candidates in the 2017 gubernatorial primary election and the candidate committee of the eventual Democratic nominee in the 2017 gubernatorial general election. Specifically, the joint-fundraising activities would involve raising funds for the NJDSC's New Jersey Account (which is registered with the Commission), the NJDSC's Federal Account (which is registered with the FEC), and the gubernatorial candidate committee (which is registered with the Commission).

To that end, the three entities (the "Participating Committees") propose to form a joint-fundraising committee ("JFC"). The JFC will structure its activities to comply with the Commission's regulations and the FEC's detailed joint-fundraising rules. Adhering to both sets of rules will ensure that the fundraising activity satisfies the core principles of New Jersey law: (1) compliance with all contribution limits and source restrictions; (2) transparency with respect to the allocation of contributors' contributions; (3) comprehensive reporting of contributions and expenditures; and (4) maintenance of records.

To date, the NJDSC has not engaged in any such joint-fundraising activity.

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 NJDSC seeks an Advisory Opinion that states (1) that the candidate committees of one or more Democratic gubernatorial candidates in the 2017 gubernatorial primary election and the candidate committee of the eventual Democratic nominee in the 2017 gubernatorial general election may participate in a joint-fundraising effort with the NJDSC's New Jersey account and the NJDSC's federal account subject to the principles and procedures set forth in Advisory Opinion 01-1996 and (2) that proceeds from this joint-fundraising effort allocable to the applicable gubernatorial campaign committee are eligible for qualification and match, if that gubernatorial candidate intends to participate in the gubernatorial public-financing program. Our reasons supporting these results are set forth in the letter we have submitted with this request. We ask, therefore, that the Commission incorporate the enclosed letter as part of this request.

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

Full Name:
Rajiv D. Parikh, Esq.

Mailing Address:
Genova Burns LLC
494 Broad Street, Newark, New Jersey 07102

*Day Telephone Number:
973-533-0777

*Evening Telephone Number:
973-533-0777

Fax Number:
973-533-1112

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).

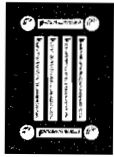
8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

APRIL 21, 2017

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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ELEC RECD

APR 24 2017

April 21, 2017

VIA UPS OVERNIGHT

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

Re: Request for Advisory Opinion

Dear Commissioners:

We write on behalf of our client, the New Jersey Democratic State Committee (the "NJDCS"). The NJDCS is organized as and registered with the New Jersey Election Law Enforcement Commission (the "Commission") as a state political party committee. In 1996, the Commission confirmed that joint-fundraising activity between the federal and New Jersey accounts of a New Jersey state political party committee was permissible and that nothing in the New Jersey Campaign Contributions and Expenditure Reporting Act¹ (hereafter "the Act") or the regulations promulgated thereunder² prevented such joint-fundraising activity. Specifically, the Commission advised that the New Jersey Republican State Committee (the "NJRSC") was permitted to "receive and accept a contribution ... and to allocate or divide the proceeds between an account established for federal election activity pursuant to [federal law] ... and a bank account established pursuant to [the Act]," provided that the NJRSC complied with the detailed joint-fundraising rules prescribed by the Commission in Advisory Opinion 01-1996 (reconsideration).³ That opinion held that, subject to certain record-keeping and other safeguards designed to protect the Commission's oversight and auditing authority, contribution checks may be received and allocated between a New Jersey state political party committee's federal and state accounts in conformity with the contribution limits and reporting requirements of the Act and the Commission's regulations.

The NJDCS now seeks to confirm the following: (1) that the candidate committees of one or more Democratic gubernatorial candidates in the 2017 gubernatorial primary election and the candidate committee of the eventual Democratic nominee in the 2017 gubernatorial general election may participate in a joint-fundraising effort with the NJDCS's New Jersey account and the NJDCS's federal account subject to the principles and procedures set forth in

¹ N.J.S.A. 19:44A-1, et seq.

² N.J.A.C. 19:25-1, et seq.

³ N.J. ELEC Adv. Op. 01-1996 (Feb. 29, 1996).

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April 21, 2017
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Advisory Opinion 01-1996 and (2) that proceeds from this joint-fundraising effort allocable to the applicable gubernatorial campaign committee are eligible for qualification and match, if that gubernatorial candidate intends to participate in the gubernatorial public-financing program.

I. FACTUAL BACKGROUND

The NJDSC is a Commission-registered state political party committee. In accordance with ELEC Advisory Opinion 03-2006, the NJDSC maintains both Commission-registered New Jersey bank accounts, with funds raised in compliance with the Act and used solely in connection with New Jersey State and local elections in accordance with the permissible uses of campaign funds set forth in the Act⁴ (the “New Jersey Account”); and a federal bank account that is registered with the Federal Election Commission (the “FEC”), with funds raised in compliance with the Federal Election Campaign Act (the “FECA”) and used solely in connection with federal elections in accordance with the permissible uses of campaign funds set forth in the FECA⁵ (the “Federal Account”).

The NJDSC wishes to engage in lawful joint-fundraising activities with one or more Democratic gubernatorial candidates in the 2017 gubernatorial primary election and the candidate committee of the eventual Democratic nominee in the 2017 gubernatorial general election. Specifically, the joint-fundraising activities would involve raising funds for the NJDSC’s New Jersey Account (which is registered with the Commission), the NJDSC’s Federal Account (which is registered with the FEC), and the gubernatorial candidate committee (which is registered with the Commission).

To that end, the three entities (the “Participating Committees”) propose to form a joint-fundraising committee (“JFC”). The JFC will structure its activities to comply with the Commission’s regulations and the FEC’s detailed joint-fundraising rules. Adhering to both sets of rules will ensure that the fundraising activity satisfies the core principles of New Jersey law: (1) compliance with all contribution limits and source restrictions; (2) transparency with respect to the allocation of contributors’ contributions; (3) comprehensive reporting of contributions and expenditures; and (4) maintenance of records. Specifically, the JFC and Participating Committees will engage in the practices below to satisfy all legal obligations:

Separate depository account: A separate bank account will be established solely for the receipt and disbursement of joint-fundraising proceeds. Pursuant to the Act, the depository account will be located at a bank that is authorized to transact business in New Jersey. Additionally, the NJDSC’s New Jersey Account and the gubernatorial candidate committee will submit the

⁴ N.J.S.A. 19:44A-11.2.

⁵ 52 U.S.C. § 30114(a).

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appropriate Form DX filings to the Commission, listing the bank account as an additional depository.

Written agreement: Pursuant to federal law, the Participating Committees will enter into a written agreement in advance of any joint-fundraising activities. The agreement will state a default formula for the allocation of fundraising proceeds, but will provide that each contributor may alter that formula by a signed authorization. The default formula will indicate the proportion of each contribution to be allocated to each Participating Committee. A copy of the agreement will be retained by the JFC and the Participating Committees in compliance with N.J.A.C. 19:25-15.42.

Contributor consent: Pursuant to federal and state law, the JFC will only deposit contributions from contributors who provide a signed acknowledgment that they assent to allocate their contribution according to the default formula (which will be set forth on the acknowledgement form) or, alternatively, that they prefer a different formula for allocating their contribution. For Internet contributions, the signature will be obtained pursuant to the protocols set forth in ELEC Advisory Opinion 01-2016. As a result, there will be a written record of the contributor's assent to the allocation of his or her contribution among the three Participating Committees.

Reporting and recordkeeping: Pursuant to federal law, the JFC will register as a separate committee with the FEC. It will disclose all incoming receipts to the JFC and all disbursements from the JFC (including payment of joint-fundraising expenses, along with the allocations made to each of the Participating Committees). Pursuant to federal law, the joint-fundraising expenses will be borne by the Participating Committees in proportion to their share of overall receipts. In addition, the joint-fundraising expenses allocated to the gubernatorial candidate committee would count toward that candidate's expenditure limits if he or she is participating in the gubernatorial public-financing program. Pursuant to state law, specifically the Commission's guidance in Advisory Opinion 01-1996, each Commission-registered committee will disclose on its filings only the amount deposited into each account attributable to each contributor and the amount spent on fundraising expenses attributable to the committee. The JFC and Participating Committees will collect records of contributions and expenditures, and will maintain all such records for a period of four years pursuant to N.J.A.C. 19:25-15.42.

Contribution limits and source restrictions: Contributions will only be deposited into the JFC depository account if they comply with all federal and New Jersey campaign-finance rules. The JFC and Participating Committees will screen all contributions to ensure that applicable limits and source restrictions are observed.

New Jersey Election Law Enforcement Commission
April 21, 2017
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II. LEGAL DISCUSSION

For the reasons set forth herein, the Commission should confirm that: (1) a gubernatorial candidate committee may participate in a joint-fundraising effort with the NJDSC's New Jersey Account and the NJDSC's Federal Account subject to the principles set forth in Advisory Opinion 01-1996 and (2) proceeds from this joint-fundraising effort allocable to the gubernatorial campaign committee are eligible for qualification and match, if the gubernatorial candidate intends to participate in the gubernatorial public-financing program.

As a starting point, New Jersey law contemplates that joint-fundraising activity will take place. In addition to the joint-fundraising activities of a state political party committee's New Jersey and federal accounts described in ELEC Advisory Opinion 01-1996, New Jersey law permits groups of candidates for State elections to form joint candidates committees when they seek election to the same elective public offices in the same election.⁶ Moreover, the Act expressly permits a treasurer "to transfer ... funds to the duly designated campaign ... of another candidate or committee, for inclusion in the campaign depository thereof, without first so depositing them."⁷

In short, the Act and the Commission's regulations already contemplate certain joint-fundraising activities. The NJDSC's proposal seeks to allow greater cooperation between a state political party committee and its gubernatorial candidates, while providing contributors with greater convenience in making contributions—all while adhering to the Act's contribution restrictions and providing to the public and to the Commission a full disclosure and accounting of all contributions.

In addition, other jurisdictions allow political committees to hold joint-fundraising events so long as certain requirements are met. For example, Illinois expressly permits a "political committee [to] divid[e] the proceeds of joint-fundraising efforts; provided that no political committee may receive more than the limit from any one contributor, and provided that an independent expenditure committee may not conduct joint-fundraising efforts with a candidate political committee or a political party committee."⁸ Similarly, in Advisory Opinion 01-1996, the Commission noted that the FEC has issued extensive rules governing joint fundraising for "both federal and non-federal election" activities, citing to the notice provisions, joint-fundraising rules, and allocation rules set forth in Sections 102.5, 102.17, and 106.5, respectively, of the FEC's regulations.

⁶ N.J.A.C. 19:25-1.7, 19:25-4.1(a), 19:25-4.2.

⁷ N.J.S.A. 19:44A-12.

⁸ 10 Ill. Comp. Stat. Ann. 5/9-8.5.

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A. The proposal complies with New Jersey law.

The NJDSC's proposed activities are fully consistent with New Jersey law. In its 1996 opinion, the Commission implicitly recognized that the federal regime governing joint-fundraising activity is broadly consistent with New Jersey campaign-finance law principles, even though the Act does not explicitly authorize the activity. The NJDSC's proposal is also consistent with those principles and is also consistent with other principles of New Jersey campaign-finance law.

Separate depository account: Joint-fundraising proceeds will be deposited in an account established pursuant to FEC rules and then will be allocated to each Participating Committee, according to the contributor's stated intent (acknowledged in a written signature), within ten days of their receipt as set forth in Advisory Opinion 01-1996.⁹ The joint-depository account will be located at a bank authorized to transact business in New Jersey; and the Commission-registered Participating Committees will make the appropriate Form DX filings no later than five days after designating the additional depository.¹⁰

Contributor consent: The JFC will only deposit contributions from contributors who provide a signed acknowledgment that they assent to allocate their contribution according to the default formula or, alternatively, according to the contributor-requested allocation of contributions. For Internet contributions, the signature will be obtained pursuant to the protocols set forth in ELEC Advisory Opinion 01-2016.¹¹ Accordingly, for each contributor, Commission-registered committees will be able to provide the Commission with both a copy of the financial instrument used to make the contribution (for example, a check copy or Internet receipt) and a signed acknowledgment certifying how the contributor wants to allocate the contribution.

Reporting and recordkeeping: The treasurers of the Commission-registered Participating Committees will report all financial activity that is related to the JFC, and attributable to the Commission-registered accounts, on their respective Forms R-1.¹² The JFC and each Participating Committee will maintain a written record of each contribution received, which will include the name and address of the contributor, the amount and date the contribution was received, and the occupation of the individual and the name and mailing address of the individual's employer.¹³ Such records will be maintained for a period of at least four years.¹⁴

⁹ N.J.S.A. 19:25-6.1, 6.2.

¹⁰ N.J.A.C. 19:25-5.4(a); N.J. ELEC, *Compliance Manual for Candidates* (Nov. 2016) at 7.

¹¹ See N.J. ELEC Adv. Op. 01-2016 (Dec. 20, 2016); N.J. ELEC Adv. Op. 04-2001 (Apr. 19, 2001).

¹² N.J.A.C. 19:25-5.4(a); N.J. ELEC Adv. Op. 01-1996 (Feb. 29, 1996).

¹³ N.J.S.A. 19:44A-12; N.J.A.C. 19:25-7.1, 7.3, 10.16(a)(4).

¹⁴ See N.J.S.A. 19:44A-12; N.J.A.C. 19:25-7.3.

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The Participating Committees will make available all records required by the Commission to verify the reporting of joint-fundraising activities. All contributions received, and expenditures made, that are attributable to the NJDSC's federal account will be viewable on the FEC's website.

Source restrictions and contribution limits: The JFC will not accept contributions from prohibited sources under New Jersey law (banks, insurance corporations, public utilities, cable-television corporations, certain casino interests, and partnership entities) and will screen all contributions to ensure that aggregate contributions do not exceed the Act's limits.¹⁵ The full amount of the contribution, based on the contributor's prescribed allocation, will count against the contributor's contribution limit for each Commission-registered Participating Committee.

Federal law also dictates that this approach be used: Federal regulations dictate precisely how joint fundraising must be structured when a federal committee is involved in the activity.¹⁶ These rules are not optional; they are mandatory. In the FECA, Congress made explicit its intention to expressly preempt any state law bearing on the financing of federal elections. FECA provides that "the provisions of [FECA], and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office."¹⁷ The Commission has already observed that joint fundraising "for both federal and State purposes is a wide-spread practice" supported by considerable federal "regulatory controls" and rules that govern the allocation of expenses.¹⁸ Because the FEC has promulgated regulations to govern joint federal-nonfederal fundraising, these regulations preempt any contrary state laws or regulations to the extent that a conflict exists. The proposal set forth above is consistent with federal regulations and, we respectfully submit, New Jersey law supports the proposal as well.

- B. Proceeds allocable to the gubernatorial campaign committee are eligible for qualification and match, if the candidate intends to participate in the public-financing system.

The procedures set forth above meet the requirements to allow proceeds allocable to the gubernatorial candidate committee to be eligible for qualification and match, if the candidate intends to participate in the public-financing system.

First, as noted above, all contributions will be accompanied by a signed written

¹⁵ N.J.S.A. 19:34-32, 19:34-35, 5:12-138; N.J.A.C. 19:25-11.10.

¹⁶ 11 C.F.R. § 102.17.

¹⁷ 52 U.S.C. § 30143(a).

¹⁸ N.J. ELEC Adv. Op. 01-1996 (Feb. 29, 1996) at 3.

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acknowledgment certifying how contributors wish to allocate their contributions.¹⁹ For Internet contributions, the signature will be obtained pursuant to the protocols set forth in ELEC Advisory Opinion 01-2016.²⁰

Second, the gubernatorial candidate committee will be able to provide the Commission with the following documentation associated with each contribution: appropriate documentation of deposit (as set forth in Advisory Opinion 04-2001 for checks and Advisory Opinion 01-2016 for Internet contributions) into the JFC bank account and the contributor's signed acknowledgment certifying how he or she wishes to allocate the contribution. If additional documentation is required by the Commission, the gubernatorial candidate committee will be happy provide it.

Third, the gubernatorial candidate committee will maintain a separate matching account for its allocated share of contributions received from the JFC.²¹

Accordingly, the Commission should recognize that proceeds allocable to the gubernatorial campaign committee are deemed eligible for match. All required submission information—including scanned copies of applicable documents and contributor information—would be provided to the Commission by the gubernatorial candidate committee.

III. CONCLUSION

For the reasons stated above, the NJDSC respectfully requests that the Commission grant this request. The NJDSC also notes that it is willing to implement any additional reasonable safeguards or recordkeeping requirements that the Commission proposes, so long as they do not conflict with federal law.

¹⁹ See ELEC Adv. Op. 04-2001 (April 19, 2001), at 4, *citing* N.J.A.C. 19:25-15.14(d), 15.15(f), 16.11(d), 16.13(f).

²⁰ See N.J. ELEC Adv. Op. 01-2016 (Dec. 20, 2016); N.J. ELEC Adv. Op. 04-2001 (Apr. 19, 2001).

²¹ See N.J. ELEC Adv. Op. 04-2001, *citing* N.J.A.C. 19:25-15.15(f), 15.17(b), 16.13(f), 16.18(b).

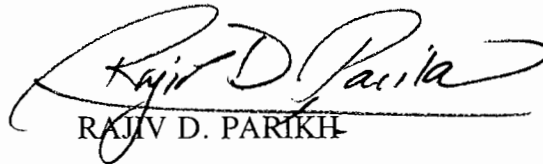


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Please contact me if you have any questions, or require any additional information.

Very truly yours,

GENOVA BURNS LLC

A handwritten signature in black ink, appearing to read "Rajiv D. Parikh", is written over a horizontal line. Below the line, the name "RAJIV D. PARIKH" is printed in a bold, all-caps, sans-serif font.

RAJIV D. PARIKH

ADK/RDP:dmc

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