



## State of New Jersey

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### ELECTION LAW ENFORCEMENT COMMISSION

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March 19, 1986

Donald Jump, Treasurer  
Russo for Governor Campaign of 1985  
P. O. Box 1839  
Toms River, NJ 08753

#### Advisory Opinion No. OJ-1986

Dear Mr. Jump:

Your letter to the Election Law Enforcement Commission requesting an Advisory Opinion has been considered by the Commission and I have been directed to issue this response. You have asked whether certain funds remaining in the campaign account of a gubernatorial candidate in the 1985 primary election may be used for paying an unsatisfied debt remaining from that campaign. For the reasons herein stated, you are advised that to the extent such remaining funds are derived from contributions in excess of \$800 to the candidate they must be returned to the contributors who donated them, or must be delivered to the Commission in the event that return to such contributors proves impossible.

John F. Russo was a candidate in the 1985 gubernatorial primary election and opted to receive partial public financing of his candidacy (hereafter, the Russo Campaign). You write that the Russo Campaign has attempted to return a portion of certain contributions received in excess of the \$800 contribution limit. Gubernatorial candidates in primary and general elections, whether or not accepting partial public funding, are prohibited from receiving contributions in excess of \$800 from any single contributor; see N.J.S.A. 19:44A-29. Although your letter does not set forth the specific measures undertaken by the Russo Campaign to return these excess funds, the Commission infers that the Russo Campaign has delivered checks for the excess amounts to the contributors who provided them but as of this date those checks have not been negotiated by some contributors. You further write that the Russo Campaign has received certain services for which it has tendered checks to the vendors who provided them. However, some of these checks have not been negotiated by the vendors as of the date of your letter, and the Russo Campaign now proposes to use the balance in its campaign account to pay an outstanding debt owed to a consulting firm, R. J. Sann and Associates. The Commission understands from your letter that payment of the outstanding debt owed to the consultants would result in insufficient funds being on hand in the campaign account to cover checks previously tendered by the Russo Campaign to contributors for the excess contributions and to other vendors.

The Commission hereby directs that any proceeds remaining in the Russo Campaign account as a result of excess campaign contributions cannot be applied to any campaign purpose, including the payment of unsatisfied debts. The Russo

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Campaign must undertake forthwith every reasonable effort to return such excess contributions to the appropriate contributors. Your letter of inquiry does not specify what measures the Russo Campaign has undertaken to date other than to tender checks which remain unnegotiated. The Commission suggests that the Russo Campaign immediately consider other means of returning the excess contribution amounts, such as use of postal money orders sent by certified mail or personal courier. Furthermore, the Russo Campaign should undertake to advise such contributors that unless they accept the return of the excess contributions, the excess amounts will be delivered to the Commission for deposit in the general treasury of the State. The Commission believes that if the Russo Campaign were permitted to apply the proceeds from the excess contributions towards the satisfaction of any campaign debt, or for any other campaign purpose, the statutory mandate of N.J.S.A. 19:44A-29 would be violated. The purpose of the \$800 contribution limit is to minimize the possibility of a contributor exercising undue influence over any candidate. The Commission is concerned that permitting a candidate to use excess contributions under the circumstances you have described would have the unintended effect of encouraging contributors not to negotiate checks returning such excess contributions so that the contributor could circumvent the \$800 limit.

In regard to payment to vendors for services received, the Commission does not express any view in regard to the rights of such creditors, or the priority such creditors may have in regard to any debt owed to them by the Russo Campaign. Your letter has not specified what measures the Russo Campaign has undertaken to determine whether the tendered checks were actually received by the vendors, or whether any of these vendors intend to make an "in-kind" contribution to the Russo Campaign by virtue of not accepting payment for their services. If these vendors intend to make an "in-kind" contribution to the Russo Campaign by forgoing payments of the amounts owed to them, or a portion of the amounts owed, they may do so provided that any payment forgiven does not exceed the \$800 contribution limit when added together with any prior contribution made by that vendor. However, if it is not the intention of the vendors to make a contribution to the Russo Campaign, further efforts should be undertaken by the Russo Campaign to complete payment expeditiously. The Commission is confident that the Russo Campaign can accomplish payment using postal money orders or some other method unless some extraordinary circumstances exist which are not described in your letter of inquiry.

In regard to your representation that an outstanding debt exists to the consulting firm of R. J. Sann and Associates, the Commission notes that the 60-day postelection report filed on March 10, 1986 with the Commission does not disclose the existence of any such outstanding debt, nor does any other campaign report filed on behalf of the Russo Campaign. You should undertake immediately to amend the campaign reports filed on behalf of the Russo Campaign to reflect the date that the debt was incurred, and to disclose the precise amount and nature of this obligation. Furthermore, pursuant to Commission Regulation N.J.A.C. 19:25-16.J3, all moneys remaining available to a qualified candidate after the liquidation of all obligations must be repaid to the Commission no later than 6 months after the date of the primary election. As of this date, the Commission has not received any payment from the Russo Campaign. The reports filed by the campaign indicate that campaign related obligations exceed

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the available funds of the campaign to pay such obligations. However, the Commission wishes to bring to your attention that in the event that further fund raising is conducted by the Russo Campaign to pay any outstanding obligation, any proceeds in excess of those obligations must be submitted to the Commission forthwith.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory E. Nagy  
Gregory E. Nagy  
Staff Counsel

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