



State of New Jersey

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June 16, 1994

Stephen J. Edelstein, Esq.
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Advisory Opinion Request No. 04-1994

Dear Mr. Edelstein:

The Commission considered your request for an advisory opinion at its meeting of June 14, 1994, and has directed me to issue the following response. You have asked whether funds in Thomas D'Alessio's campaign account and funds in three continuing political committees over which Mr. D'Alessio exercises management or control can be consolidated into a single continuing political committee account. For the reasons stated below, the Commission concludes that these funds cannot be deposited into a continuing political committee account, and directs that within two weeks of receipt of this opinion the funds contained within the three continuing political committees you described be deposited into Mr. D'Alessio's candidate committee account, the Tom D'Alessio Campaign Committee. Those funds remain subject to the reporting and other requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., as amended by P.L. 1993, c.65 (hereafter, "the Act") until such time as they are disbursed pursuant to the Act.

Facts

Mr. D'Alessio was a successful candidate for Essex County Sheriff in the 1988 general election, and a successful candidate for Essex County Executive in the 1990 general election. As of April 7, 1993, the date on which comprehensive amendments to the Act became effective (hereafter, "1993 amendments"), he was holding the elected office of Essex County Executive. On February 21, 1994, Mr. D'Alessio and his treasurer, Joseph Thor, were convicted in the United States District Court of New Jersey of federal crimes of conspiracy to commit mail fraud in connection with fundraising and embezzlement of funds subject to reporting under the Act. Shortly after that conviction Mr. D'Alessio resigned his position as Essex County Executive and he therefore no longer holds elected office.

You write that Mr. D'Alessio maintains a candidate committee, the

Tom D'Alessio Campaign Committee (designated as his 1994 primary election depository) and in addition there are three continuing political committees "which are associated" with Mr. D'Alessio. These continuing political committees are: the Tom D'Alessio Essex Executive Committee, the Anniversary Ball Committee, and the Committee for Essex County. You have orally represented and the Commission so assumes for the purposes of this opinion that Mr. D'Alessio exercises management or control over the disposition of funds available to these three continuing political committees. The campaign committee and the three CPCs have the following amounts of money available as unspent balances as of the most recent reports filed with the Commission:

<u>Name Of Fund</u>	<u>Description</u>	<u>Funds On Hand</u>
Tom D'Alessio Campaign Fund	This account was used for the 1988 County Sheriff general election. The most recent report it filed was the 15th 60-day postelection report (Form R-1), filed May 28, 1991. On that same date, the account was designated as Mr. D'Alessio's candidate account for the 1994 primary election for County Executive	\$299,201.41
Tom D'Alessio Essex Executive Committee (CPC)	This CPC was established by a transfer of a remaining balance from the 1990 County Executive general election account. The most recent report is for the first quarter of 1994 (Form R-3), filed April 15, 1994	\$345,562.27
Committee for Essex County (CPC)	These funds were derived from various fundraisers. The most recent report is for the first quarter of 1994 (Form R-3), filed April 15, 1994	\$365,978.72
Anniversary Ball Committee (CPC)	These funds were derived from various fundraisers. The most recent report is for the first quarter of 1994 (Form R-3), filed April 15, 1994	\$517,422.50
TOTAL		<u>\$1,528,164.90</u>

1993 Amendments

The Commission notes that prior to the enactment into law of the 1993 amendments, many candidates maintained campaign accounts for which election-cycle reports were filed (e.g., 29-day preelection report, etc.) while simultaneously maintaining one or more continuing political committees (hereafter, "CPCs"), which filed on a quarterly calendar year basis. These candidate-controlled CPCs are frequently referred to in common parlance as "personal PACs." Because the 1993 amendments created contribution limits on candidates on a "per-election" basis, it was no longer feasible to permit candidates to receive contributions in a candidate-controlled "personal PAC" which reported on a calendar year rather than election-cycle basis. Therefore, the 1993 amendments provide that candidates can establish, maintain or control only candidate committee or joint candidate committee accounts, not "personal PACs," see N.J.S.A. 19:44A-9(h)(1).

The 1993 amendments further require that a candidate holding a "personal PAC" after the effective date of the amendments (April 7, 1993) has a period of 366 days (through April 8, 1994) to wind up the affairs of the "personal PAC" and transfer all of the PAC funds to a candidate committee account. Also, all funds thus transferred to a candidate account became subject to the "personal use" restrictions created by the new law, N.J.S.A. 19:44A-9(h)(1) and N.J.S.A. 19:44A-11.2.

The Commission notes that the 1993 amendments added a new provision (Section 17) which established six permissible uses of funds in a candidate committee account, and prohibited "personal use" of such funds, see N.J.S.A. 19:44A-11.2. However, while the restrictions contained in Section 17 are applicable to candidates, candidate committees, joint candidates committees or legislative leadership committees, the Act does not contain any restrictions on the uses of funds held by CPCs. Therefore, if Mr. D'Alessio is permitted to consolidate all funds in his candidate committee account and his three "personal PACs" into a new CPC, the restrictions on the use of the funds of a candidate or candidate committee will not be in force.

Discussion

The Tom D'Alessio Campaign Fund was designated by Mr. D'Alessio as his candidate committee for the 1994 primary election, and as such is subject to the restrictions in Section 17 on the use of funds. Permitting Mr. D'Alessio to withdraw the funds in this account for deposit in a CPC not subject to Section 17 restrictions would effectively circumvent the restrictions on the permissible uses of these funds by a candidate, including the restriction against personal use of candidate funds; see N.J.S.A. 19:44A-11.2(a). Therefore, the obligation of Mr. D'Alessio to expend these funds in accordance with the restrictions in Section 17 must continue notwithstanding his resignation as an elected officeholder.

In regard to the funds in the three continuing political committees controlled by Mr. D'Alessio, those funds must be forthwith deposited into the account of the 1994 primary election candidate committee established by Mr. D'Alessio (the Tom D'Alessio Campaign Fund). This is because Mr. D'Alessio cannot maintain "personal PACs" and a candidate committee simultaneously, see N.J.S.A. 19:44A-9(h)(1). Once the funds are transferred from the "personal PACs" and deposited into the candidate committee account, these funds also must be subject to the restrictions of Section 17 on candidate funds.

Since the request for this opinion was received on April 8, 1994, and that was the last date under the new law for Mr. D'Alessio to transfer the funds in the candidates' "personal PAC" to the candidate committee account, the Commission will provide a reasonable period of time after issuance of this advisory opinion for Mr. D'Alessio to deposit the funds of the three "personal PACs" into the Tom D'Alessio Campaign Fund. An extension of two weeks after receipt of the advisory opinion seems reasonable to accomplish this end. The Tom D'Alessio Campaign Fund must continue to file reports with the Commission pursuant to N.J.S.A. 19:44A-16 and observe all other requirements of the Act until its funds have been disbursed in conformity with N.J.S.A. 19:44A-11.2 and it files a certification and final accounting pursuant to N.J.S.A. 19:44A-16(b).

In formulating this opinion, the Commission has concluded that Section 17 must be construed to be applicable to a candidate who resigns elected office but retains control over Section 17 funds. If it is not applicable under such circumstances, the public policy objective in Section 17 of insuring that campaign funds be ultimately used only for election-related, charitable, or officeholding purposes is defeated. Section 17, in entirety, reads as follows:

17. a. All contributions received by a candidate, candidate committee, a joint candidates committee or a legislative leadership committee shall be used only for the following purposes:

(1) the payment of campaign expenses;

(2) contributions to any charitable organization described in section 170(c) of the Internal Revenue Code of 1954, as amended or modified, or nonprofit organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, as amended or modified, or nonprofit organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

(3) transmittal to another candidate, candidate committee, or joint candidates committee, or to a political committee, continuing political committee, legislative leadership committee or political party committee, for the lawful use by such other candidate or committee;

(4) the payment of the overhead and administrative expenses related to the operation of the candidate committee or joint candidates committee of a candidate or a legislative leadership committee;

(5) the pro-rata repayment of contributors; or

(6) the payment of ordinary and necessary expenses of holding public office.

As used in this subsection, "campaign expenses" means any expense incurred or expenditure made by a candidate, candidate committee, joint candidates committee or legislative leadership committee for the purpose of paying

election campaign, other than those items or services which may reasonably be considered to be for the personal use of the candidate, any person associated with the candidate or any of the members of a legislative leadership committee.

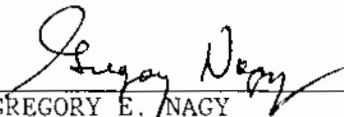
b. No contribution received by a candidate or by the candidate committee or joint candidates committee of a candidate may be used for the payment of the expenses arising from the furnishing, staffing or operation of an office used in connection with that person's official duties as an elected public official.

c. Any funds remaining in the campaign depository of a candidate's candidate committee or joint candidates committee upon the death of the candidate shall be used only for one or more of the purposes established in subsection a. of this section by the committee's organizational treasurer or deputy treasurer or whoever has control of the depository upon the death of the candidate.

The text of Section 17 does not contain specific direction as to what should occur under the circumstance of an elected officeholder's resignation. However, it does address the possibility of termination of elected office by virtue of the demise of the officeholder. Section 17(c) (quoted above) provides that in the event of the death of a candidate, the funds remaining in the candidate committee account shall be used by the treasurer or by any other person controlling the account "...only for one or more of the purposes established in subsection a. of this section...", that is only for one of the permissible uses set forth in Section 17(a). The Commission finds this provision is evidence of legislative intent that campaign funds subject to Section 17(a) restrictions shall remain subject to those restrictions even after an event such as a death (or resignation) of a candidate that results in the termination of the candidate's holding elected office, and this opinion therefore is formulated to promote that salutary policy.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: 
GREGORY E. NAGY
Legal Director

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RETURN RECEIPT REQUESTED