



State of New Jersey

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May 24, 1995

Dorothy K. Leslie, Treasurer  
Election Fund of Maureen Ogden  
51 Cambridge Drive  
Short Hills, New Jersey 07078-1901

**Advisory Opinion 07-1995**

Dear Ms. Leslie:

The Commission has considered your request for an advisory opinion and has directed me to issue this response. You have asked what reporting and contribution limit requirements under the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act), are applicable to the 1995 primary election candidate committee established by Assemblywoman Maureen Ogden, of which you are treasurer, in view of her decision to withdraw her 1995 primary election candidacy.

**Submitted Facts**

You write that Assemblywoman Ogden's 1995 primary election candidate committee, "Election Fund of Maureen Ogden," has filed quarterly candidate reports (Forms R-1) on behalf of Assemblywoman Ogden's 1995 primary election candidacy since April, 1994, and there is currently a balance of over \$4,000 in the committee account. The Commission notes that Assemblywoman Ogden was elected to the General Assembly in the 1993 general election, and Commission records indicate that a Certificate of Organization and Designation of Treasurer (Form D-1) was filed on July 6, 1994, for a candidate committee established for Assemblywoman Ogden's candidacy in the 1995 primary election of the Republican party in the 21st Legislative District. You were designated treasurer of this committee. The most recent campaign report filed by this candidate committee on April 13, 1995, showed an available balance of \$4,925.33 as of the close of the first quarter of this year.

You further write that Assemblywoman Ogden will not seek reelection to her seat in the General Assembly. The Commission notes that it has been advised by the Office of the Secretary of State that Assemblywoman Ogden had not filed nominating petitions with that office as of the deadline for such petitions for the 1995 primary election (April 13, 1995).

### Questions Presented

In view of Assemblywoman Ogden's decision not to seek reelection, you have asked the Commission to respond to the following questions:

1. Should Assemblywoman Ogden's 1995 primary election candidate committee continue filing quarterly reports through the remainder of Assemblywoman Ogden's term and, if so, for what election should those reports be designated?

2. In the event that Assemblywoman Ogden's candidate committee receives contributions for officeholding expenses, what contribution limits are applicable, and are contributions made by her from her personal funds subject to those limits?

### Commission Response-Question 1

A candidate committee must continue filing reports until such time as it concludes its business for an election and has been dissolved, see N.J.S.A. 19:44A-16b. Reporting must continue until there is no remaining balance in any depository account, and there are no substantial outstanding obligations, see N.J.A.C. 19:25-8.7, Termination of election fund reporting. Therefore, the candidate committee established by Assemblywoman Ogden must continue filing reports under the Act until such time as it has expended all its funds, and is otherwise dissolved. The expiration of a candidate's term of office does not extinguish this reporting obligation.

In regard to the question of which election candidacy the reports should be ascribed to, the Commission directs that they can only be designated for the 1995 primary election because it is that primary election candidacy that is being dissolved. It would be inappropriate to designate them as reports for an election candidacy that did not exist, as would be the case if Assemblywoman Ogden's reports were designated for the 1995 general election. Furthermore, there is no legal or administrative reason why reports designated for a prior election cannot continue to be filed after the date of that election. To the contrary, N.J.S.A. 19:44A-16b explicitly contemplates that a candidate, including one who has lost an election and has no immediate intention to embark on a future candidacy, can certify on the 20-day postelection report, "...or at anytime thereafter," that the candidate committee has wound up its business as to the late election. The above-quoted statutory phrase recognizes that there will be cases of candidate committees that have not concluded their business for a past election as of the due date of the 20-day postelection report, and they will not be transferring their funds to a successor candidate committee for a subsequent election candidacy by the candidate. Instead, such committees must file subsequent quarterly postelection reports pursuant to the Act until the committee is dissolved.

Therefore, the Commission hereby advises you that Assemblywoman Ogden's candidate committee must continue filing quarterly reports designated for the 1995 primary election until such time as it has wound up its business for that election and is dissolved.

## Question 2

The 1993 amendments (Chapter 65, Laws of 1993) established limits on the amounts that a candidate could receive as campaign contributions on a "per election" basis, see N.J.S.A. 19:44A-11.3. The amendments also established restrictions on the permissible uses that a candidate or candidate committee could make of contribution proceeds, the principal uses being payment of campaign expenses, or "ordinary and necessary expenses of holding public office," see N.J.S.A. 19:44A-11.2. Finally, the amendments expanded the definition of the term "candidate" to include not only an individual seeking elected office, but also an individual elected to that office and who receives contributions and makes expenditures for any of the purposes provided in the permissible use statute "...during the period of his service in that office." See N.J.S.A. 19:44A-3c, defining "candidate."

Applying these statutory provisions to the facts presented in this request, the Commission draws the following conclusions:

1. Since Assemblywoman Ogden has established a candidate committee for the 1995 primary election, and that committee must continue to operate until she can conclude her 1995 primary election candidacy, she may continue to receive contributions for that committee to meet its costs of concluding her candidacy, or for holding her office in the General Assembly, notwithstanding her present intention to terminate her candidacy. Such campaign costs could include, for example, satisfaction of obligations created at the time she was seeking election, or compliance costs in dissolving her candidate committee. Further, the committee may continue to receive contributions to meet expenses arising out of her ordinary and necessary officeholding activities.

2. Since Assemblywoman Ogden will not become a candidate as that term is defined by the Act in the 1995 general election, or in any other future election for the foreseeable future, she cannot establish a candidate committee for a future election. The only vehicle that exists for her to continue receiving contributions is her 1995 primary election candidate committee. Accordingly, all contributions received by that candidate committee must continue to conform to the contribution limits applicable to her 1995 primary election candidacy. For example, in the event an individual made a contribution of \$1,000 to the candidate committee at the time when Assemblywoman Ogden was seeking the nomination for election in the 1995 primary election, that individual is limited to further contributions during the life of the candidate committee that cannot exceed \$500 (to remain within the \$1,500 per election limit in N.J.S.A. 19:44A-11.3). The fact that subsequent to the establishment of her 1995 primary election candidate committee Assemblywoman Ogden has stated her intention not to be a candidate for the nomination, and has not filed nominating petitions, does not act to change the applicability of the contribution limit provisions in N.J.S.A. 19:44A-11.3, 11.4 and 11.5.

3. There is no limit on the amount of personal funds a candidate may contribute to the candidate's own candidate committee. The United States Supreme Court has held that government-imposed restrictions on the amounts that a candidate may expend on behalf of his or her own candidacy are

violative of the candidate's Free Speech, see Buckley v. Valeo, 424 U.S. 1, at 52 (1976). The contribution limit statute provides that nothing contained in it shall be construed to impose any limitation on contributions by a candidate, or by a corporation, one hundred percent of which is owned by the candidate, to that candidate's campaign, see N.J.S.A. 19:44A-11.3d. Since Assemblywoman Ogden retains candidate status in the 1995 primary election because she continues to maintain a candidate committee for that election, and continues to be subject to candidate reporting requirements, limits on contributions to her candidate committee, restrictions on the permissible uses of her candidate committee funds and other candidate provisions of the Act, it would be anomalous to conclude that she was no longer a candidate for the purposes of making unlimited contributions from her personal assets to her candidate committee.

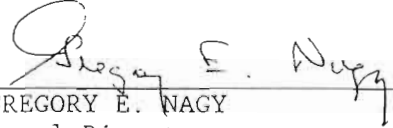
Therefore, the Commission hereby advises that the 1995 contribution limits remain applicable to any future contributions received by the candidate committee Assemblywoman Ogden established for that election, and that Assemblywoman Ogden may make contributions to her candidate committee from her personal assets without limit.

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

VERY TRULY YOURS,

ELECTION LAW ENFORCEMENT COMMISSION

By: \_\_\_\_\_

  
GREGORY E. NAGY  
Legal Director