May 21, 1997

Lynn Schundler, Trustee
Committee to Re-elect Mayor Bret Schundler, Inc.
299 Varick Street
Jersey City, New Jersey 07302

Advisory Opinion No. 04-1997

Dear Ms. Schundler:

Kindly be advised that the Commission has considered your request for an advisory opinion on behalf of the Committee to Re-elect Bret Schundler, Inc., the candidate committee established by Mayor Bret Schundler of Jersey City for his candidacy in the May 13, 1997 municipal election. You have asked whether or not that candidate committee can make unlimited contributions to several Jersey City Council candidates who will be participating in a run-off election on June 10, 1997; see attached Advisory Opinion Request No. 04-1997.

Submitted Facts

The Office of the Jersey City Clerk has advised the Commission that the results of the mayoral election conducted on May 13, 1997 are currently being contested in Superior Court. Therefore, there is some question at this time as to whether or not Bret Schundler has been re-elected as Mayor of the City of Jersey City in the municipal election, or whether or not it will be necessary to conduct a run-off election for that office. The Commission is advised that under applicable municipal election statutes, a candidate must receive a majority of the votes cast for an office to be elected. If no candidate receives a majority, the two candidates for the office receiving the highest number of votes participate in a run-off election, which run-off election is scheduled to be conducted on June 10, 1997; see N.J.S.A. 40:45-18 and 19. As of the date this request was reviewed by the Commission at its May 20, 1997 public meeting, unofficial results indicated a narrow majority for Mayor Schundler. Therefore, for the purposes of this opinion only, the Commission will assume that Mayor Schundler will not be a candidate in a run-off election. In the event Mayor Schundler ultimately becomes a candidate in a 1997 run-off election for Mayor, this opinion will not be applicable.

You write that in addition to establishing a candidate committee in the municipal election, the Committee to Re-elect Bret Schundler, Inc. (hereafter, Schundler Municipal Committee), Mayor Schundler participated with nine City Council candidates in establishing a joint candidates committee under the name, Jersey City Mayor Schundler and Council Team (hereafter, Municipal Team Committee). Unofficial results received from the Jersey City Clerk indicate that the following eight Council candidates in the May 13, 1997 municipal election who were part of the Municipal Team Committee did not receive enough votes to be elected, but did receive enough votes to qualify as candidates in the run-off election: Thomas A. DeGise, Fernando L. Colon, Jr., L. Harvey Smith, Catherine Macchi, James A. McLaughlin, Jr., Nancy M. Gaynor, Mariano Vega, Jr., and Pat Sebron.

The Schundler Municipal Committee filed a Form D-1(Single Candidate Committee Certificate of Organization and Designation of Treasurer) listing you as a person authorized to sign checks on behalf of the Committee, and you have identified yourself as a trustee of the Committee in this request. On May 6, 1997, the Commission received an unsigned 11-day preelection report (Form R-1) under the name Bret Schundler. Because unsigned reports are uncertified as to their correctness, there is no legally sufficient assurance that they are in fact filed on behalf of the candidate committee named in the report, and therefore they do not satisfy the reporting requirements of the Act. However, assuming for the purposes of this request only that the uncertified 11-day preelection report filed under Mayor Schundler's name was in fact submitted on behalf of the Schundler Municipal Committee, that report indicates a closing balance of $287,085.80 as unspent funds remaining as of the close of the 11-day report period.

On May 6, 1997 the Commission also received an unsigned 11-day preelection report (Form R-1) under the name "Mayor Schundler & Council Team." Assuming for the purposes of this request only that this uncertified report was in fact submitted on behalf of the Municipal Team Committee, that report indicates the sum of $182,709.32 as unspent funds as of the close of the 11-day preelection report period.

You write that the Schundler Municipal Committee anticipates concluding its activities in the municipal election with a surplus, and that Mayor Schundler would like to make contributions from the Schundler Municipal Committee to some or all of the eight Council candidates listed above who are run-off election candidates. You note that the Municipal Team Committee is expected to be dissolved shortly after the municipal election, and that its fundraising and spending were designed so that its account would have a zero balance of remaining unspent funds at the end of the municipal election; see page 4 of the request, paragraph 3, (Facts).

You suggest that the municipal and run-off elections, although "technically" different elections, should for the purpose of applying the contribution limits to contributions from the Schundler Municipal Committee be regarded as a single election. Specifically, N.J.S.A. 19:44A-11.3c(4) (hereafter referred to as the candidate contribution limit exception, or paragraph c(4)) provides that a candidate for municipal office can make unlimited contributions to another candidate for the same municipal office in the same election. Therefore, you contend that the Schundler Municipal Committee should be permitted to make unlimited contributions in the run-off election to those municipal election City Council candidates who participated in the Municipal Team Committee and who are now candidates in the June 10, 1997 run-off election; see pages 4 and 5 of the request, paragraph 5, (Argument).

Question Presented

May the Schundler Municipal Committee be permitted by virtue of the exception in paragraph c(4) to make contributions not subject to contribution limits to the City Council candidates in the 1997 run-off election who participated in the Municipal Team Committee?

Commission Response

The Commission hereby advises you that a contribution made by the Schundler Municipal Committee to a Council candidate in the 1997 run-off election is subject to the contribution limit applicable to a candidate committee contributing to another candidate committee, that is $5,900 in the aggregate per election; see N.J.S.A. 19:44A-11.3c (hereafter, Subsection 11.3c), which provides a $5,000 aggregate limit per election, and N.J.S.A. 19:44A-7.2 which provides for adjustment of that limit to its present level of $5,900. This result is reached because Mayor Schundler is not a candidate in the run-off election, and since the municipal and run-off elections are two separate elections for all purposes of the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act), the candidate contribution limit exception in paragraph c(4) is inapplicable to contributions made in the run-off election by the Schundler Municipal Committee.

Discussion

As noted above, Subsection 11.3c, limits the amount that the Schundler Municipal Committee can contribute to another candidate committee in another election to $5,900 in the aggregate. The fact that Mayor Schundler participated in a joint candidates committee with Council candidates in the municipal election (Municipal Team Committee) has no pertinence on whether or not the candidate contribution limit exception in paragraph c(4) is applicable to contributions made by the Schundler Municipal Committee to run-off election candidates. Under that exception, a candidate is permitted to make unlimited expenditures to further the election of another candidate for the same office in the same election. Therefore, the sole issue is whether or not the 1997 municipal election candidacy of Mayor Schundler and the 1997 run-off election candidacies of the City Council candidates are viewed as candidacies in the same election for the same office. If so, the exception in paragraph c(4) is applicable; if not, the exception is inapplicable and the $5,900 aggregate contribution limit of subsection 11.3c must be observed.

The Commission finds that the exception is inapplicable under the submitted facts because a municipal election and a run-off municipal election are separate elections for reporting, contribution limit and all other purposes of the Act. Since the Act's enactment in 1973 the Commission has viewed the reporting requirements of the Act as being applicable to municipal and run-off elections separately. If they were viewed as a single election, it becomes unclear how reporting due dates based on the date of the election would be applied. For example, it becomes impossible to determine when the 29-day preelection report, or a 48-hour notice of a major contributor, would be due. Before the municipal election is held, a municipal election candidate cannot know whether or not he or she will have to participate in a run-off election. Therefore, the candidate cannot know 29 days before the date of the municipal election

whether or not the applicable deadline is 29 days before the date of the municipal election, or 29 days before the date of the run-off election. The conflict can only be avoided by reading the Act to mean that the municipal and run-off elections are each separate and distinct elections under the Act, and each has separate reporting requirements.

Viewing the municipal and run-off elections as a single election also has adverse contribution limit consequences. For example, a municipal candidate who receives a maximum contribution of $1,800 from a contributing individual in the 1997 municipal election would not be able to accept any further contributions from that individual in an ensuing run-off election. Therefore, supporters of the candidate in the municipal election, whom the candidate would look to for support in the run-off, will have no or a severely diminished capacity under a single contribution limit to make contributions. The result of a single contribution limit for both elections may be that the Council run-off candidates will be handicapped in soliciting contributions from their supporters, and therefore greatly dependent on the largesse of the successful municipal election candidate for unlimited contributions. The Commission does not believe such a result was intended by the Legislature in creating the exception in paragraph c(4).

The term "election" is defined at N.J.S.A. 19:44A-3e as any election described in Section 4 of the Act, which in turn provides, in pertinent part, "The provisions of this act shall apply...d. In any election for any public office of the State or any political subdivision thereof..." Section 4 supports the understanding that a municipal election and a run-off municipal election are separate elections under the Act because each election presents a candidate with a separate opportunity to be elected to municipal office. A candidate in a municipal election who receives a majority of the votes cast (as opposed to only a plurality) for that office in the municipal election is elected to that office. A run-off election becomes necessary only if no candidate receives a majority, and the two candidates receiving the highest number of votes participate in the run-off; see N.J.S.A. 40:45-18 and 19. But the run-off municipal election is also an election under the Act because the candidate receiving the highest number of votes in that election will be elected.

The Commission concludes that since the municipal election and the run-off are separate elections under the Act, the Schundler Municipal Committee is subject to the $5,900 aggregate contribution limit applicable to one candidate contributing to another in another election pursuant to subsection 11.3.

Thank you for submitting this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

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