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July 28, 1998

William J. Irwin, Treasurer
Tracy Ford Muhammad for City Council
370 Hale Street
New Brunswick, New Jersey 08901

Advisory Opinion 06-1998

Dear Mr. Irwin:

The Commission has considered your request for an advisory opinion and has directed me to issue this response. You have asked "what level of participation, if any, is permissible for a candidate (or representative) in a political committee whose sole purpose is to advocate for a public question." (emphasis supplied)

Submitted Facts

You state in your request for an advisory opinion that a number of New Brunswick residents are collecting petition signatures to place a public question on the 1998 general election ballot in New Brunswick asking whether or not voters wish to change from a Type I (appointed) school district to a Type II (elected) school district. Residents of New Brunswick are further interested in forming a political committee to support the passage of the public question. You have chosen the word "participate" to describe involvement by the candidate and yourself in possible activities which may be undertaken by the political committee and have specifically enumerated the following examples of contemplated activities: collecting signatures on petitions to place the public question on the ballot; participating in public education about the ballot question; handing out literature paid for by the public question committee; participating in public announcements; and conducting fundraising events.

Review of ELEC records indicates that a Single Candidate Committee-Certificate of Organization and Designation of Campaign Treasurer and Depository (Form D-1) was filed on March 30, 1998, indicating that Tracy Ford was a candidate for City Council in the City of New Brunswick in the 1998 general election, and that the name of his candidate committee was "Tracy Ford Muhammad for City Council." Form D-1 designated you as campaign treasurer. Also on that date, Candidate Ford certified and filed a Candidate - Sworn Statement (Form A-1) for the 1998 general election. For the purpose of issuing this response to your request, the Commission has assumed that Candidate Tracy Ford, who

filed Forms D-1 and A-1, is the same person as the candidate identified in the name of the candidate committee, "Tracy Ford Muhammad for City Council."

Question Presented

Do the specific activities enumerated in your advisory opinion request, if undertaken by a 1998 general election candidate and by you as a campaign treasurer in the 1998 general election, in a public question political committee, violate N.J.S.A. 19:44A-9h which provides, in pertinent part, that "no candidate shall establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of, any political committee or any continuing political committee"?

Response

You are hereby advised that a candidate does not violate N.J.S.A. 19:44A-9h (hereafter, Section 9h) by his or her mere attendance at, assistance with, or participation in the political committee activities which are specifically enumerated in your advisory opinion request. Rather, the Commission advises you that the test for violation of Section 9h is whether or not a candidate takes part directly or indirectly in control of or decision-making with regard to the specific activities of the public question political committee.

You are also advised that the Section 9h prohibition is applicable only to candidates, and the Commission is unaware of any statutory or regulatory prohibition against your participation, while serving as a campaign treasurer, in the activities which you have enumerated in your request.

Discussion

N.J.S.A. 19:44A-3c defines a candidate as "an individual seeking election to a public office" in a New Jersey municipality. Tracy Ford has indicated that he is a candidate for municipal office in New Brunswick in the 1998 general election by filing with the Commission Forms D-1 and A-1, noted above. He is therefore subject to the Section 9h prohibitions against candidate participation in the direct or indirect management or control of a political committee which are discussed further below.

Amendments to the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, *et seq.* (hereafter, the Campaign Reporting Act), enacted in 1993, provide that a candidate may establish only a candidate committee, a joint candidates committee, or both, to receive contributions and make expenditures in an election; see N.J.S.A. 19:44A-9a. Section 9h, also enacted in 1993, prohibits a candidate from establishing a political committee or continuing political committee (hereafter, CPC) and from directly or indirectly managing or controlling a political committee or CPC. In Advisory Opinion 07-1994 (copy attached), the Commission applied Section 9h to CPC activities contemplated by a candidate, and explained the reason for the prohibition on a candidate's participation as follows:

Prior to enactment into law of the 1993 amendments, candidates commonly maintained in addition to their campaign accounts one or more continuing political committees (CPCs), frequently referred to in ELEC parlance as "personal PACs." However, the 1993 amendments limited the amount that a candidate could accept as a contribution in any election from a contributor.

In order to make these contribution limits viable, the [1993] amendments limited a candidate to the establishment of the candidate committees. . . and specifically prohibited a candidate from establishing a continuing political committee. . . .

For the same reason, to protect the viability of the contribution limits, the 1993 amendments also prohibit a candidate from establishing a political committee, such as the committee you have described, and from participating directly or indirectly in the management or control of a political committee or CPC because exercise of such control may result in benefits to the candidate and his or her campaign from the activities of the political committee or CPC. A determination as to whether or not a candidate may engage in each of the activities you have enumerated in your request is extremely fact sensitive, and the Commission advises you that a candidate must therefore confine himself or herself to only those activities where he or she does not participate directly or indirectly in the political committee's management or decision-making.

For example, if a candidate participated in a decision by a public question political committee to produce a piece of literature in support of the public question described above, the effect of the political committee's decision might be to promote the particular candidate as well as the views of the public question committee, and there might be significant benefit to that candidate's campaign from his or her participation in the decision made by the public question political committee. The ability to use the political committee as an additional forum to serve the candidate's purposes or promote directly or indirectly his or her candidacy, whether intended or not, would contravene Section 9h. However, the prohibition in Section 9h does not prevent a candidate from working as a volunteer who distributes literature produced by a public question political committee as long as the candidate does not participate in decisions with regard to how, when, or where the literature is to be distributed.

In Advisory Opinion 07-1994, the Commission advised a candidate that the following activities if undertaken by a candidate as a participant in a CPC were indicative of management or control of the CPC and were prohibited by Section 9h: naming of the candidate on the letterhead of the CPC; use of the candidate's name as "honorary chair" of the CPC; and use of the candidate's signature on the CPC's fundraising communication. In that advisory opinion, the Commission was also asked whether or not the candidate could act as the "principal spokesperson" of the CPC. The Commission advised that, to the extent that being a spokesperson implies that the candidate is engaging in direct or indirect control or management of the CPC, such conduct is proscribed. The Commission concluded in Advisory Opinion 07-1994 that a candidate could not undertake activity that implied his or her "participation in formation of the CPC's policies," and also found that it is not necessary that a candidate "serve as a trustee, officer or employee" of a CPC to come within the Section 9h prohibition.

The Commission advises you that the prohibitions described in Advisory Opinion 07-1994 apply if activities are undertaken by Candidate Ford in a public question political committee. For example, you have suggested that the candidate might participate in "public education about the public question." The Commission finds that the candidate's mere participation in a public education program does not necessarily result in the conclusion that the candidate has assumed the role of spokesperson for the committee, or is exerting management or control over the content of the program, depending on what precise activities are contemplated in the phrase "public education." As the Commission explained in Advisory Opinion 07-1994, if the phrase "public education" includes serving as spokesperson for a committee, such a role suggests that a candidate is directly or indirectly involved in the control or

management of the committee, which activity is prohibited by Section 9h. The Commission further concluded that, as long as the candidate does not take part in decision-making or control with regard to the content of a communication, Section 9h does not preclude a committee "from making reference to or discussing the policies of a candidate . . . in communications to the public" because this activity does not rely on the candidate's permission or approval.

As long as the candidate is not involved in the public question political committee's decisions formulating policy with regard to circulating petitions to place the public question on the ballot, the Commission concludes that conduct such as obtaining signatures on petitions does not appear to be proscribed by Section 9h. The Commission similarly finds that it is permissible for a candidate to attend a fundraising event for the political committee, but a candidate may not sign or otherwise lend the use of his or her name to the committee's fundraising efforts. To do so would indicate the candidate's influence or control over fundraising policy and decisions.

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

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR
Deputy Legal Director