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October 1, 1998

Edward T. Gallagher, Treasurer
Election Fund of Conners-Conaway for Assembly
907 Morgan Avenue
Palmyra, New Jersey 08065-1935

Advisory Opinion No. 08-1998

Dear Mr. Gallagher:

The Commission has considered your request for an advisory opinion and has directed me to issue this response. You have asked if the funds of an existing 1999 primary election joint candidates committee, "Election Fund of Conners-Conaway for Assembly," of which you are treasurer, may be transferred to a single candidate committee to be established for a 1998 special general election candidacy of Mr. John F. Conners, Sr. for Assembly.

Submitted Facts

Commission records indicate that Mr. Conners and Assemblyman Herbert C. Conaway, Jr., formed a joint candidates committee (JCC) for their candidacies for the two seats in the State Assembly representing the 7th District in the 1997 general election (hereafter, 1997 general election Conners-Conway JCC). Neither candidate established a single candidate committee, and therefore the 1997 general election Conners-Conaway JCC was the candidates' sole financing vehicle in that election. The results of the 1997 general election appeared to be that both candidates were elected to seats in the 1998-99 General Assembly representing the 7th District. However, the Commission is advised that the 1997 general election results as to then-Assemblyman Conners were challenged in the Superior Court of New Jersey, and on September 10, 1998, the Honorable Harold B. Wells, III, A.J.S.C., set aside the results of the November 4, 1997 general election as to Assemblyman Conners and annulled the Certificate of Election issued to him. The Order also established a special general election to be held on November 3, 1998, to fill the vacancy for the unexpired term. The Division of Elections has advised the Commission that on September 16, 1998, Mr.

Conners was certified by the chairperson of the State Democratic Committee as the Democratic candidate in the special general election.

According to campaign reports filed with the Commission on April 15, 1998, a new joint candidates committee was established for State Assembly for the 1999 primary election candidacies of then-Assemblyman Conners and Assemblyman Conaway (hereafter, 1999 primary election Conners-Conaway JCC), and it filed a preelection first quarter report for calendar year 1998 (Form R-1) reporting that an unspent balance of \$6,015 had been transferred (that is, rolled over) from the 1997 general election Conners-Conway JCC to the 1999 primary election Conners-Conaway JCC. The most recent report filed by the 1999 Conners-Conaway JCC was its preelection report for the second quarter of calendar year 1998, and it reported an available balance of \$14,907 as of June 30, 1998. Neither candidate has to date filed any report indicating that either of them has established a single candidate committee for the 1999 primary election.

You write that as of the date of your September 18, 1998 letter requesting this opinion the balance in the 1999 primary election Conners-Conaway JCC was \$15,609.62. You state that no transfer of funds has been made to the "Jack Conners for Assembly Committee," which you further state will be a single candidate committee established for Mr. Conners' 1998 special general election candidacy (hereafter, 1998 special general election Conners Committee). You write that the 1999 primary election Conners-Conaway JCC wishes to use its funds to finance the 1998 special general election candidacy of Mr. Conners.

Questions Presented

Can any of the funds of the 1999 primary election Conners-Conaway JCC be transferred to the 1998 special general election Conners Committee and, if so, what amount can be transferred?

Response

You are hereby advised that the 1999 primary election Conners-Conaway JCC may make a contribution to the 1998 special general election Conners Committee in an amount of up to the permissible contribution limit of \$11,800 (as discussed in Section 1 of this opinion below), or may transfer or rollover all of its unspent funds to the 1998 special general election Conners Committee subject to the restrictions discussed in Section 2 of this opinion below.

Section 1. The Commission understands the contribution limits contained in the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act) to permit the 1999 primary election Conners-Conaway JCC to make a contribution to a single candidate committee in the 1998 special general election in an amount not to exceed \$11,800. The contribution limit for a candidate committee contributing to another is \$5,900 per election, see N.J.S.A. 19:44A-11.3(c), adjusted in 1997 from \$5,000 to \$5,900 pursuant to N.J.S.A. 19:44A-7.2b(9). However, because the 1999 primary election Conners-Conaway JCC is a joint candidates committee comprised of two candidates, the Act permits it to contribute up to twice the \$5,900 limit (that is, \$11,800) to the 1998 special general election Conners Committee; see N.J.S.A. 19:44A-11.3c(2)(a). The Commission notes that should the 1999

primary election Connors-Conaway JCC choose to make a maximum contribution to the 1998 special general election Connors Committee in an amount of \$11,800, it must avoid making any further expenditures that could be construed as aiding or promoting Mr. Connors' 1998 special general election candidacy. Such further expenditures would be viewed by the Commission as being coordinated between the two committees, and result in coordinated contributions that in the aggregate exceeded the \$11,800 limit.

Section 2. Alternatively, your inquiry suggests that the 1999 primary election Connors-Conaway JCC may choose to transfer all of its funds (apparently \$15,609.62 as of the date of this request) to the 1998 special general election Connors Committee. The Commission hereby advises that the 1999 primary election Connors-Conaway JCC could make such a transfer, commonly described as a rollover, provided it complies with restrictions set forth in Advisory Opinions Nos. 06-1995 and 04-1996 (copies enclosed).

Those requirements and restrictions require dissolving the 1999 primary election Connors-Conaway JCC and transferring all of its funds to the 1998 special general election Connors Committee. Under that course of action, contributions received by the 1999 primary election Connors-Conaway JCC and by the 1998 special general election Connors Committee would be required to be aggregated for contribution limit purposes under procedures set forth below. Finally, at the conclusion of the 1998 special general election candidacy of Mr. Connors and the dissolution of his 1998 special general election candidate committee, new contribution limits would be available for a 1999 single candidate primary election candidate committee established by Mr. Connors solely.

The Commission has previously approved the transfer or rollover of candidate committee funds raised for one election to another election, the most typical example being a primary election candidate who wins the party nomination and transfers or rollover unspent primary election funds to the candidate's general election committee. In this case, the 1999 primary election Connors-Conaway JCC seeks to transfer or rollover its funds prior to the conclusion of the 1999 primary election because of the circumstance of Mr. Connors' intervening 1998 special general election candidacy, which arose as the result of the Superior Court decision to invalidate the 1997 general election results. In Advisory Opinion No. 06-1995 (copy enclosed), a similar fact pattern was presented to the Commission. A candidate who had been elected to the Assembly in the 1993 general election rolled over funds to the candidate's 1995 primary election committee for Assembly. However, because of the subsequent death of the State Senator for that District, the candidate resigned from the Assembly in early 1995 and was appointed to the vacant seat in the Senate. The candidate then became a candidate for the unexpired term of that Senate seat in a 1995 special primary election, and asked the Commission to approve the transfer of the candidate's Assembly 1995 primary election committee to the candidate's Senate 1995 special primary election committee.

The Commission held in Advisory Opinion No. 06-1995 that the transfer was permissible, a result that recognizes that the Act permits a candidate to transfer unspent funds from one election to another, even if the elections are for different offices. (See also Advisory Opinion No. 04-1996, copy enclosed, in which the candidate was advised that funds in the candidate's Assembly committee could be transferred to a committee the candidate contemplated possibly establishing for a State Senate candidacy.) In Advisory Opinion No. 06-1995, in order to protect the integrity of contribution limits, the Commission set two conditions on the rollover. First, the prior candidate committee (i.e., the Assembly

committee) had to be dissolved, that is the Assembly committee was required to transfer all of its funds to the Senate committee and cease functioning. Second, in order to protect contribution limits, each contribution received by the Assembly committee had to be aggregated with any other contribution received from the same contributor by the surviving Senate committee; see pages 3 and 4, A.O. 06-1995.

This request for the first time asks the Commission to rule on the transfer or rollover of funds from a joint candidates committee consisting of two candidates to a single candidate committee. The contribution limit for a joint candidates committee consisting of two candidates is twice that of a single candidate committee, that is an individual contributor, for example, can contribute up to \$3,600 in an election to the joint candidates committee but only up to \$1,800 in an election to the single candidate committee. The commonly-called equal attribution rule provided in the Act at N.J.S.A. 19:44A-11.3e must therefore be applied to the contributions received by the 1999 primary election Connors-Conaway JCC. Under that rule, since the contributions were received by a joint candidates committee consisting of two candidates, only one half of any contributor's contribution amount would be treated as a contribution to Mr. Connors' 1998 special general election committee. For example, if an individual contributed \$3,600 to the 1999 primary election Connors-Conaway JCC, one-half of that contribution, that is \$1,800, would be treated for contribution limit purposes as a contribution from that contributor to the 1998 special general election Connors committee, and one-half or \$1,800, would be treated as a contribution to any committee established by Assemblyman Conaway for his 1999 primary election candidacy for Assembly. Since \$1,800 is the maximum amount an individual can contribute to a candidate in an election, that contributor could not make any further contribution to the Connors 1998 special general election committee.

In considering rollover of unspent funds from a joint candidates committee to a single candidate committee, one other issue requires discussion. Once contributions are received by a joint candidates committee they become subject to the joint or collective use of the candidates. Two candidates in a joint committee may, for example, decide to spend all or most of those funds for only one of their candidacies. Nothing in the Act provides that the funds must be expended equally or proportionately among the joint candidates. For this reason, the Commission finds no authority that would restrict joint candidates, if they so wished, from transferring or rollingover all the joint candidate committee funds to a single candidate committee of one of them.

The most similar statutory guidance for the special circumstance presented in this request is the case of an elected candidate who while in office and after establishing a joint candidates committee for the next regular election becomes in the interim subject to a recall election, and therefore seeks to transfer or rollover funds raised by the joint candidates committee established for the next regular election to a single candidate recall defense committee. Pursuant to the Uniform Recall Election Law, which became effective in 1995, a single candidate recall defense committee "...shall be permitted to receive without limit contributions from the candidate committee or joint candidates committee of the elected official sought to be recalled;" see N.J.S.A. 19:27A-17b (underscoring added). Therefore, in a recall election candidacy, which from a campaign finance perspective appears to be a case similar to the facts you present, the statutory authority explicitly provides that the funds of the joint candidates committee the elected official is participating in may, if the joint candidates so

determine, transfer all of the joint candidates committee funds to the single candidate recall defense committee.

Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
GREGORY E NAGY