



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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April 18, 2000

John P. Ginty
30 Corsa Terrace #2B
Ridgewood, New Jersey 07450

Advisory Opinion No. 01-2000

Dear Mr. Ginty:

The Commission has directed me to send you its response to your request for an advisory opinion on behalf of the Republican Victory Council, an entity that has applied to the Commission to be certified as a continuing political committee (hereafter, CPC), (a copy of your request is attached to this opinion). You have asked whether or not an elected officeholder who no longer maintains a candidate committee is a "candidate" within the meaning of the Campaign Contributions and Expenditures Reporting Act (hereafter, the Reporting Act) and is therefore prohibited from participating in the establishment of this proposed CPC.

Submitted Facts

On March 16, 2000, the Compliance and Information Section of the Commission received a CPC Registration Statement (Form D-4, copy attached) under the name Republican Victory Council (hereafter, RVC), with you named as the organizational treasurer. In response to Question 7 on the Form D-4, the RVC indicated that a participant in the initial organization of the CPC was Steven Lonigan, an individual who is identified in response to Question 10 as the mayor of Bogota Borough (Bergen County). The interests and objectives of the RVC are described as promoting "...a mainstream, conservative Republican agenda in New Jersey," as promoting "...the active participation of individuals and grassroots organizations with the New Jersey Republican Party through local and community action," and as supporting "...strong conservative Republicans for election to local and state offices." (See response to Question 9.) Because an elected officeholder was listed as an organizer of the CPC, you have been advised that the application of the RVC for CPC status would be denied.

In his 1999 general election candidacy, Mayor Lonigan established both a candidate committee, Taxpayers for Mayor Lonigan, and a joint candidates committee (JCC), Bogota Republican Campaign Committee '99. He was elected and currently holds the office of Mayor in that municipality for a four-year term. On April 11, 2000, the date of receipt of this request, campaign reports were filed for both

Mayor Lonegan's candidate committee and joint candidates committee, and both were certified by the candidates and treasurer as final reports. The April 11, 2000 report of his candidate committee, Taxpayers for Mayor Lonegan, reports a disbursement of \$2,750 to RVC, made care of Mr. Ginty. The April 11, 2000 report of the joint candidates committee reports a disbursement made as recently as April 10, 2000.

You write that because the RVC seeks to have its status as a CPC approved by the Commission, it has standing to pursue an advisory opinion. You contend that Mayor Lonegan is no longer a "candidate" as that word is used in the Campaign Contributions and Expenditures Reporting Act (hereafter, Campaign Reporting Act), and as the word is used in the Commission's Compliance Manual.

Mayor Lonegan, under separate cover, has submitted a letter stating that he is not a candidate (for Mayor of Bogota Borough) at this time, and he does not intend to file as a candidate "now or in the foreseeable future." (See attached letter, dated April 10, 2000.)

Questions Presented

1. Does an entity applying for certification as a continuing political committee (CPC) have standing to seek an advisory opinion concerning the possible applicability of the Reporting Act to one of its organizers, who is an elected officeholder (i.e., Mayor Lonegan)?

2. Assuming RVC has standing to seek this advisory opinion, does the Reporting Act prohibit an elected officeholder from participating directly or indirectly in a CPC if that officeholder is not maintaining a candidate committee for that office in any election?

Suggested Responses

1. Because the certification of the RVC as a continuing political committee has not been approved by the Compliance and Information Section, and the grounds for denying approval is that an elected officeholder is named as an organizer of the RVC, the RVC has sufficient interest in the outcome of this advisory opinion to have standing. Furthermore, it appears that it is Mayor Lonegan's intent to participate in this request, and he has submitted a letter making representations concerning his cessation of fundraising and non-candidate status. Accordingly, the Commission views this request as made jointly by Mayor Lonegan on his own behalf, and by Mr. Ginty on behalf of RVC, and that both the RVC entity, and Mayor Lonegan as a candidate and officeholder, are subject to the Commission's holding.

2. The Commission hereby finds that an elected official comes within the definition of "candidate" even if that elected official closes his or her candidate committee for that office after assuming the office, and that elected official remains within the definition as long as he or she holds elected office. Therefore, the inclusion of an elected officeholder as an organizer of the entity on the application for certification (Form D-4) is grounds for denial of CPC certification. However, the RVC may be certified as a CPC upon the removal of the elected official as an organizer and participant in the CPC.

Discussion

Prior to the enactment of comprehensive amendments to the Reporting Act in 1993, there was no prohibition against a candidate for elected office in this State participating in a continuing political committee (CPC). However, the 1993 amendments included provisions limiting the amount of money that a candidate may accept from a contributor as a contribution to the candidate's campaign, see N.J.S.A. 19:44A-11.3. Further, the amendments added a provision limiting a candidate to certain permissible uses of funds received as contributions and expressly prohibited personal use of such funds, see N.J.S.A. 19:44A-11.2 (hereafter, Section 11.2). Significantly, in contrast to the restrictions on a candidate committee, there is no limit on the amount than an individual is permitted to contribute to a CPC (see N.J.S.A. 19:44A-11.5), nor is there any restriction on the permissible uses of contributions received by a CPC.

Also enacted as part of the 1993 amendments was the following provision: "On or after the 366th day following the effective date of P.L. 1993, c. 65, 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." (See N.J.S.A. 19:44A-9h(1)).

The above-quoted prohibition (hereafter, Section 9h) promotes uniform application of contribution limits. It limits a candidate to fundraising through a candidate committee, joint candidates committee, or both, and prohibits the candidate from direct or indirect participation in a political committee or a CPC. If a candidate were permitted to participate in the activities of a political committee or CPC, which committees can receive unlimited contributions from individuals, that candidate would be in a position to receive direct benefits for his or her candidacy, such as CPC purchase of advertising that has a favorable impact on the candidate's campaign. Such a candidate would obviously be in an advantageous position over a candidate receiving only contributions subject to contribution limits through a candidate committee, or joint candidates committee. The legislative purpose therefore of Section 9h is to prevent circumvention of contribution limits by prohibiting the establishment and use of CPCs that have the appearance of being independent of a candidate but effectively serve as a surrogate for the candidate's campaign committee.

The United States Supreme Court, in its progenitor campaign finance opinion, Buckley v. Valeo, 424 U.S. 1 (1976), upheld the constitutional validity of limits on the amounts candidates in federal elections may receive as contributions. In finding a constitutionally sufficient justification for the \$1,000 federal limit, the Court observed: "To the extent large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our representative democracy is undermined" (at 26-27, emphasis added). In its more recent opinion in Nixon v. Shrink Missouri Government PAC, ___ U.S. ___ (January 24, 2000), a similar public interest was relied on in upholding the constitutional validity of contribution limits applicable to candidates in Missouri elections, which limits were lower than those applicable in this State. The salutary public purposes articulated in those opinions would not be achieved if the Reporting Act is construed as this opinion request appears to suggest, that is if the Reporting Act is construed to limit contributions to candidates (who are potential officeholders), but not contributions to current officeholders.

The Reporting Act defines "candidate" at N.J.S.A. 19:44A-3c, (as amended recently to include exploratory campaign activity by P.L. 1999, c.57) as follows:

The term ‘candidate’ means: (1) an individual seeking election to a public office of the State or of a county, municipality or school district at an election; except that the term shall not include an individual seeking party office; (2) an individual who shall have been elected or failed of election to an office, other than a party office, for which he sought election and who receives contributions and makes expenditures for any of the purposes authorized by section 17 of P.L. 1993, c. 65 (C.19:44A-11.2) during the period of his service in that office; and (3) an individual who has received funds or other benefits or has made payments solely for the purpose of determining whether the individual should become a candidate as defined in paragraphs (1) and (2) of this subsection.” (emphasis added)

Mindful of the salutary purposes of Section 9h, the Commission understands part 2 of the definition (as highlighted above) to include an individual who is elected to public office, and who has raised contributions and made expenditures to achieve that elected office. Further, in order to give meaningful effect to Section 9h, once an individual holding elected office has met the “candidate” definition, that candidacy cannot be terminated while the individual remains in office.

Mayor Lonigan writes that he is “...not intending to file as a candidate now or in the foreseeable future.” By that statement he presumably means that he does not presently intend to seek reelection to the office of Mayor, or to seek any other elected office. Nevertheless, without questioning the sincerity of that intent, there is no authority in the Reporting Act for the Commission to compel an elected officeholder not to seek reelection at a future date. Further, innumerable circumstances may arise under which an elected office holder who has ceased receiving contributions may be compelled or wish to recommence. For example, a local elected official may be subject to a recall election. In such a scenario, the elected official would be compelled to resume raising contributions and making expenditures subject to the Reporting Act in order to defend against the recall effort; see N.J.S.A. 19:27A-1, et seq.

Also, even assuming no future candidacy is undertaken, the Commission notes that one of the permissible uses of candidate contributions provided in the Reporting Act is the payment of ordinary and necessary officeholding expenses; see N.J.S.A. 19:44A-11.2a(6). This statute expresses a legislative judgment that legitimate officeholding expenses are sufficiently connected to election related activity to justify the use of candidate committee funds to pay for them. Such officeholding expenses can include, for example, paying the expenses for communications to constituents; see N.J.A.C. 19:25-6.7(e)1. In light of the purposes of the RVC as described in its application for CPC certification, that is the RVC statement that it will undertake “local and community action” to promote activity of individuals within the New Jersey Republican Party, there appears to be a substantial probability that the RVC will be undertaking communications to the public, including presumably communications that will be circulated to the constituents of Mayor Lonigan. If Mayor Lonigan is permitted to take a position in the RVC that leaves him in a position to exercise control over the RVC, or be in a position to influence the members of the RVC by virtue of his participation in that organization, it is conceivable that the RVC’s communications might effectively serve the same or a similar purpose as officeholding communications that would otherwise have been paid for by Mayor Lonigan’s candidate committee.

Mr. Ginty writes that Mayor Lonigan will not raise funds for the Mayor’s “own political endeavors” while a member of the RVC. That statement suggests that should the Mayor find it necessary to resume raising contributions as an active candidate after joining the RVC, he could resign from it. However, in staff’s view, resignation from the CPC will not effectively cure the contribution limit problem Section 9h is intended to prevent. While serving as an active participant in RVC, the Mayor is in a position to exercise control over a continuing political committee that is free to raise funds without limits on contributions from individuals, and free to spend those funds for any purpose. Without

questioning the sincerity of Mr. Ginty's statement, the line between the political objectives of the elected officeholder and that of the committee as a joint enterprise are not as easily drawn as Mr. Ginty's request contends. For example, it would be unreasonable to the point of straining credulity to suppose that a person holding an elected office, possibly aware that a recall effort was being organized, or possibly contemplating seeking reelection as his or her term of office drew to a close, would not be tempted to direct the resources of the continuing political committee for the advancement of that officeholder's possible election candidacy, particularly if the other members of the joint enterprise, persuaded or influenced by the officeholder, concurred. Even without intending to do so, the very fact that the CPC can expend funds generated from unlimited contributions to promote a political agenda in which the elected official is participating inures to the political benefit of that elected official, and that benefit cannot be effectively disavowed or repudiated by resignation from the CPC if the elected official once again assumes the mantle of an active election candidacy.

A second purpose served by the Section 9(h) is to prevent erosion of the permissible use restrictions on contributions received by candidates, including the prohibition against personal use. Mayor Lonegan's April 11, 2000 candidate committee report discloses that \$2,750 was disbursed from his candidate committee funds to the RVC. As previously noted above, candidate committee funds are subject to permissible use restrictions, including the prohibition against personal use, but there are no parallel restrictions on the uses of CPC funds. While there is no suggestion intended that this disbursement was motivated by anything other than legitimate political reasons, the fact is that if the disbursement remains as a contribution to the CPC, the potential exists for these funds to be used for purposes that would be impermissible if they remained as candidate funds. The Commission notes that in Advisory Opinion No. 09-1995 (copy attached), a candidate who was not an officeholder and who was terminating his candidacy was denied permission to transfer his candidate committee funds to a CPC he proposed establishing for this reason.

Mayor Lonegan sought and was elected to the office of Mayor of Bogota Borough, and he received contributions or made expenditures from his 1999 general election candidate committees up to April 10, 2000, a date after he assumed the Mayor's office. Consequently, he received contributions or made expenditures during the period he held that office, and he came within the above-quoted definition of "candidate." Mayor Lonegan represents that he no longer wishes "to file as a candidate now or in the foreseeable future." However, that representation does not act to remove him from the statutory definition of "candidate" once he came within its scope.

Having determined that Mayor Lonegan is and remains a "candidate" as that term is defined in the Reporting Act, the Commission concludes that it has authority to deny CPC status to RVC as long as Mayor Lonegan remains identified as an organizer and participant in it. The Reporting Act provides after receiving an application for CPC status on the form the Commission provides for that purpose (Form D-4), the Commission "...shall determine whether the group, corporation, partnership, association or other organization is a continuing political committee for the purposes of this Act;" see N.J.S.A. 19:44A-8b(1). Implicit in the process of determining if an entity meets the definition of a CPC is application by the Commission of the criteria and requirements for a CPC within that Reporting Act. Section 9(h) prohibits a candidate from involvement in a CPC. The Reporting Act should not be construed to compel the Commission to certify an entity as a CPC where that certification results in a violation of the Reporting Act by a candidate. Further, the inclusion of a candidate as an individual organizing the CPC suggests the entity may be a candidate committee as opposed to a CPC.

For the above reasons, the Commission declines to certify the RVC as a CPC based on the information on the Form D-4 it has submitted, and Mayor Lonigan is advised that he may not 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 as long as he remains in his current elected office. Should the RVC file an amended Form D-4 to exclude Mayor Lonigan as a participant, and no other reason appears on an amended Form D-4 for denying certification, the Commission will certify the RVC as a continuing political committee.

The Commission wishes to express its appreciation to you for submitting this request.

ELECTION LAW ENFORCEMENT COMMISSION

BY: _____

GREGORY E. NAGY

Legal Director

**RECEIVED
VIA FAX**



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity

Republican Victory Council

Mailing Address

38 East Ridgewood Ave. #345

Day Telephone No.

(201) 689 1640

Ridgewood, NJ 07450

Evening Telephone No.

(201) 689 1640

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes

No

a. If yes, indicate in what capacity it is filing:

- | | | | |
|----------------------------------|--------------------------|---|--------------------------|
| Candidate committee | <input type="checkbox"/> | Recall committee | <input type="checkbox"/> |
| Joint candidates committee | <input type="checkbox"/> | Recall defense committee | <input type="checkbox"/> |
| Political committee | <input type="checkbox"/> | Lobbyist | <input type="checkbox"/> |
| Continuing political committee | <input type="checkbox"/> | Legislative agent | <input type="checkbox"/> |
| Political party committee | <input type="checkbox"/> | Personal financial disclosure statement | <input type="checkbox"/> |
| Legislative leadership committee | <input type="checkbox"/> | Other (please describe): _____ | <input type="checkbox"/> |

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

Original, initial registration application was filed on March 13, 2000. The RVC seeks registration as a CPC.

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

Whether a sitting mayor in New Jersey is a candidate in accordance with the definition of a "candidate" provided on page 1 of the Compliance Manual for Campaign Reporting (dated January 1997), and is thereby prohibited from participating in a CPC as per page 20 of the Compliance Manual for CPCs, LLCs and PPCs (dated March 1997).

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

The RVC seeks to have its status as a CPC approved. We believe we are in compliance with all the rules as described in the materials provided to us by ELEC. In anticipation of registration as a CPC, the RVC has not yet expended funds for or against any candidate or issue. As the applicant, the RVC (and its Treasurer John Ginty) has the standing to seek this advisory opinion. The opinion will directly affect the membership of the RVC going forward, and the RVC's registration requirements may be affected similarly.

The RVC's Argument:

ELEC has informed the RVC that Steve Loughran may fulfill the definition of a "candidate" because (1) he was elected and (2) he would "receive contributions and make expenditures" while a member of the RVC.

We disagree.

The plain meaning of the "candidate" definition on page 1 of the Compliance Manual (Jan 1997) would indicate that a sitting mayor who continues to raise and/or expend funds for his personal efforts as a candidate or officeholder may NOT CONCURRENTLY participate in an organization that raises and expends funds for candidates and/or issues. That is a common sense way to prohibit politicians from evading the spirit of the regulations by encouraging supporters to contribute to multiple accounts simultaneously.

(See additional sheet)

Additional sheet

- 4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

The RVC is adhering to the clear definition of a "candidate" because Steve Longan closed down his personal campaign fund (Taxpayers for Mayor Longan). He is not now raising and will not raise any funds for his own political endeavors while a member of the RVC. The RVC is not a vehicle for Steve Longan or any other individual candidate or potential candidate. Should Steve Longan ever decide to run for any other office, he will formally resign from the RVC and John Garty will provide a copy of that letter to ELEC.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

The RVC seeks an advisory opinion that endorses the RVC's "plain reading" of the definition of "candidate" on page 1 of the Compliance Manual dated January 1997. The RVC believes that Steve Luegan is not a candidate based on the clear meaning of the definition, and that Steve Luegan should be permitted to participate in the RVC's activities, in compliance with all New Jersey state laws and election regulations.

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name:

JOHN P. GINTY

Mailing Address:

30 COSA TERRACE # 2B

Ridgewood, NJ 07450

Day Telephone No.

(212) 783-7814

Evening Telephone No.

(201) 689-1640

Fax Number:

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee or entity

Other (please describe):

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

April 7, 2000

Dated:

John P. Ginty

Signature