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April 19, 2001

BY FAX & FIRST CLASS MAIL

William W. Pascoe, III
Campaign Manager
Schundler for Governor, Inc.
395 Pleasant Valley Way
West Orange, New Jersey 07502

Advisory Opinion No. 04-2001

Dear Mr. Pascoe:

Your request for an Advisory Opinion has been considered by the Commission, and the Commission has directed me to issue this response. You have asked whether or not the Schundler gubernatorial candidate committee may accept contributions by means of the Internet and whether or not those contributions will qualify for match with public funds. You have stated in your request that Candidate Schundler "does not plan to seek public funds for the primary election." You have also stated that none of the activities described in the Advisory Opinion Request has been undertaken by the candidate committee.

The Commission notes that on April 12, 2001, Candidate Schundler submitted documentation, pursuant to N.J.S.A. 19:44A-45a and N.J.A.C. 19:25-16.37 and 16.38, to establish his qualification to participate in the 2001 primary election Republican gubernatorial candidates' debates and to qualify to apply for primary election matching funds at a later date, but that he has not applied, as of this date, to receive 2001 primary election public matching funds.

Commission Response

The Commission finds that the Schundler candidate committee may accept contributions over the Internet and may submit those contributions for match with gubernatorial public matching funds provided that the requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 *et seq.* (hereafter, the Campaign Reporting Act) and Commission regulations, N.J.A.C. 19:25, for receipt and deposit of the contributions, recordkeeping for the contributions and related expenditures, and contribution limits are entirely observed.

These requirements include:

Receipt and Deposit of Contributions

- *Separate depository account and deposit of each contribution directly into the separate account within ten days of receipt.* The Campaign Reporting Act requires that each candidate committee establish a separate campaign depository account and that all contributions received by the candidate committee be deposited directly into that account within ten days of receipt from a contributor; see N.J.S.A. 19:44A-9c, 10, and 12. An Internet vendor acts as an agent or person authorized by the candidate committee to receive contribution funds, and all funds, whether received by a candidate committee or its agent, are required to be deposited directly into the separate campaign depository account within ten days of receipt; see N.J.S.A. 19:44A-12 and N.J.A.C. 19:25-6.1.
- *Commingling of a New Jersey candidate's funds at any time with funds of any other candidate or committee is prohibited.* Contributions to a New Jersey candidate received by credit card via the Internet may not at any time be commingled in an account with funds belonging to any other candidate or committee, and must be deposited into a separate depository account established and maintained for each New Jersey candidate committee. With regard to a publicly-financed gubernatorial campaign, the Commission notes that any funds remaining at the conclusion of the campaign are required to be returned to the State; see N.J.S.A. 19:44A-35c and N.J.A.C. 19:25-15.47 and 16.34. It is therefore imperative to protect the interest of the State in the return of unspent funds by maintaining contributions in a separate bank account that is protected and insulated from creditors of the Internet vendor and other candidates.
- *Merchant account for receipt of Internet contributions must be established as a candidate committee depository account.* If a contribution is held in a merchant account during the Internet contribution process for any period of time prior to its deposit in the New Jersey candidate's depository account, that merchant account must be established as a separate escrow account for the New Jersey candidate, in the name of the New Jersey candidate. The New Jersey candidate must file a Single Candidate Committee-Certificate of Organization and Designation of Campaign Treasurer and Depository (Form D-1) for the account. The merchant account must be insulated from creditors of the company providing the Internet contribution services, and therefore funds must be held in escrow for the New Jersey candidate.
- *Identification of contribution on credit card statement.* Each contribution to a New Jersey candidate or committee received via the Internet must be separately identified on the contributor's credit card or bank statement, and the contribution transaction reported on the statement must include the name of the recipient candidate or committee.
- *Deposit into bank authorized to do business in New Jersey.* Each bank into which contributions to a New Jersey candidate or committee are deposited must be authorized to transact business in New Jersey and must maintain a branch office in this State; see N.J.A.C. 19:25-5.2.

Contribution and Expenditure Reporting and Recordkeeping:

- *Contribution date of receipt.* The date of receipt of a contribution made over the Internet by an electronic transfer of funds is the date on which the account owner or credit card owner authorizes the contribution to be charged to the owner's account or credit card; see N.J.A.C. 19:25-10.16(a)1.

- *Contribution amount.* The amount of a contribution received via an electronic transfer of funds over the Internet is the full amount of the contribution authorized by the contributor, and that amount shall not be reduced for any fees that may be deducted by the Internet company, credit or debit card company, or merchant bank for its services; see N.J.A.C. 19:25-10.16(a)2.
- *Fees for receipt of Internet contributions.* Any fees or costs imposed upon a candidate committee by an Internet vendor or financial institution for receipt or processing of Internet contributions must be itemized and timely reported by the candidate and treasurer on election cycle and quarterly reports as an expenditure to the Internet vendor or financial institution; see N.J.A.C. 19:25-12.
- *Recordkeeping requirements.* The campaign treasurer is required to make and maintain a written record of each contribution received, including a contribution received via the Internet; see N.J.S.A. 19:44A-12, which requires a “written record of all funds” received, and N.J.A.C. 19:25-7.1, 7.3, and 10.16(a)4. The record for each contribution must include the name and address of the contributor, the amount and date the contribution was received, and if the contributor is an individual, the occupation of the individual and the name and mailing address of the individual’s employer.

N.J.A.C. 19:25-7.1(a) requires that a campaign treasurer maintain a record of the name of the account on which a contribution check is drawn. N.J.A.C. 19:25-10.16(a)3 requires that when a contribution is made by means of a credit or debit card, that is by an electronic transfer of funds, the account to which the contribution is charged must be owned by the individual or entity making the contribution. To insure that these two requirements are met, the Commission finds that for each contribution received via the Internet, the campaign treasurer is required to maintain a record of the name of the account to which the contribution is charged or debited.

- *Four-year record retention requirement.* For all contributions, including those received via the Internet, and for all expenditures, including those related to fees for Internet contribution transactions, a candidate and treasurer must observe the four-year record retention requirement; see N.J.S.A. 19:44A-12 and N.J.A.C. 19:25-7.
- *Documentation of deposit of contributions.* As discussed above, a candidate committee is required to maintain a separate campaign account for deposit of all contributions and to maintain all records relevant to receipt of contributions for four years. These records include deposit slips and monthly bank statements for the campaign depository. A candidate committee is required to obtain and maintain records of the deposit of all contributions into any account used to receive Internet contributions.

Responsibility for Compliance with the Campaign Reporting Act and Commission Regulations:

- *Candidate and treasurer are responsible for compliance with the Campaign Reporting Act and Commission regulations.* The Campaign Reporting Act makes each candidate and campaign treasurer responsible for compliance with the reporting and recordkeeping requirements; see N.J.S.A. 19:44A-22a. In order to comply, each New Jersey candidate and treasurer must have immediate access to contributor information obtained by an Internet vendor for each contribution transaction. A candidate and treasurer are required to report contributor information on timely candidate and committee reports, including supplemental contributor reports of contributions in excess of \$400.00, and 48-hour notices of contributions in excess of \$800.00; see N.J.S.A. 19:44A-8 and 16 and N.J.A.C. 19:25-8 et seq. and N.J.A.C. 19:25-9 et seq. Further, it is the responsibility of a candidate and treasurer to determine

whether or not a contribution, or aggregate contributions, from a contributor is in an amount that exceeds the applicable contribution limit, and to return the excessive portion of the contribution within 48-hours of receipt; see N.J.A.C. 19:25-11.8. The fact that an Internet vendor solicits and handles contributions to a candidate committee does not affect the legal responsibility a candidate and treasurer have for compliance with all requirements of the Campaign Reporting Act and Commission regulations.

Contributions Eligible for Match with Public Funds:

The following additional requirements apply to contributions received via the Internet that will be submitted for match with public funds:

- *Maintain signature requirement for each contribution from an individual submitted for match.* The requirement to obtain a contributor's signature serves an important enforcement purpose and will be strictly enforced. The Commission's public financing staff reviews contributions prior to distribution of public matching funds to a publicly-financed gubernatorial candidate, and review of signatures on contribution checks and on other supporting documents is an integral part of the Commission's examination of contributions submitted for match; see N.J.A.C. 19:25-15.14(d), 15.15(f), 16.11(d), and 16.13(f). The Commission finds that the absence of signature information for contributions made by credit card over the Internet would significantly compromise its ability to determine whether or not a contribution is in an excessive amount (that is, an amount greater than the \$2,600 contribution limit) and to conduct detailed review of contributions for compliance with all statutory and regulatory mandates.

Observance of the signature requirement does not preclude matching of contributions received via the Internet. Instructions to the contributor may be placed on the Internet website directing that an additional step is necessary to permit the candidate to apply for public matching funds. The contributor may print a copy of the on-line contribution form, sign the form, and send or deliver it to the publicly-financed candidate. If a gubernatorial candidate wishes to submit an Internet contribution for match, he or she may submit a copy of the signed form with his or her application to the Commission to receive public matching funds.

- *Separate account for deposit of contributions intended for match with public funds.* N.J.S.A. 19:44A-32 and N.J.A.C. 19:25-15.17(b) and 16.18(b) direct that a publicly-financed gubernatorial candidate establish a separate depository account in a national or state bank, entitled a "matching fund account," and that to be eligible for match with public funds, a contribution shall be deposited into that account; see N.J.A.C. 19:25-15.15(f) and 16.13(f). The Commission notes that if a gubernatorial candidate establishes a website for the receipt of contributions, the candidate may have to establish two matching fund accounts, one for the receipt of traditional contributions such as checks and money orders, and the other as a merchant account for the deposit of contributions received by electronic transfer of funds via the Internet. The Commission concludes that if the candidate properly notifies the Commission of the establishment of each account, by filing the Single Candidate Committee-Certificate of Organization and Designation of Campaign Treasurer and Depository (Form D-1), two matching fund accounts may be established and maintained in a gubernatorial election.

- *Documentation of deposit of Internet contributions submitted for match:* N.J.A.C. 19:25-15.15(f) and 16.13(f) require that a deposit slip or equivalent bank record specifically identifying the contributor and the amount of the contribution be filed with the Commission as evidence of deposit into the candidate's account of the contribution for which matching funds are sought. Before public matching funds are provided to a gubernatorial candidate, the Commission finds that it is reasonable to expect proof that contributions have been deposited into a candidate's account. Use of the Internet as a vehicle for

receiving contributions does not necessitate any change in these requirements, which exist to protect the integrity of matching fund eligibility.

The Commission observes that even without an Internet vendor to provide the services described in your Advisory Opinion Request, a gubernatorial candidate may use Internet technology as a component of its fundraising methods. A publicly-financed gubernatorial candidate has the option to solicit matchable contributions by credit card without the use of an Internet vendor; see N.J.A.C. 19:25-10.16, 15.15(f), and 16.13(f). That option would entail establishing a merchant account for processing of credit card contributions solicited on the candidate's website. This procedure avoids the possibility of commingling contributions to the gubernatorial candidate with contributions made to other candidates who may be clients of the Internet vendor and avoids the necessity of an escrow account.

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

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR
Deputy Legal Director