



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Counsel

April 30, 2001

BY FAX & FIRST CLASS MAIL

Peter G. Sheridan, Esq.
Graham, Curtin & Sheridan
50 West State Street, Suite 1008
Trenton, New Jersey 08608

Advisory Opinion No. 05-2001

Dear Mr. Sheridan:

Your request for an Advisory Opinion on behalf of DiFrancesco for Governor (hereafter, DFG), the candidate committee of former gubernatorial primary election candidate Donald DiFrancesco, was considered by the Commission at its special meeting of April 27, 2001, and the Commission has directed me to issue this response. You have asked what procedures might permit campaign contributions received by DFG to be transferred or redesignated by contributors to the successor gubernatorial primary election candidacy of Robert "Bob" Franks, Franks for Governor, Inc. (hereafter FFG), and also permit FFG to be eligible for public matching funds for those contributions. Your request is supported by an affidavit from William Baroni, Esq., counsel to FFG.

In addition to the question Mr. Baroni and you have raised, the Commission has undertaken to establish dates for FFG to apply for debate and public matching fund qualification, and for the holding of the initial primary election candidates' debate, and those dates are set forth in this opinion letter which will be circulated to 2001 gubernatorial primary election candidates who submitted applications to become debate and matching fund qualified.

Submitted Facts

As you state in your request, on April 25, 2001, Acting Governor DiFrancesco resigned as a candidate from the Republican Party primary election to be conducted on June 26, 2001. Prior to that resignation, the Commission notes that the date of the 2001 primary election was changed from June 5, 2001 to June 26, 2001 by the enactment of P. L. 2001, c. 73, on April 23, 2001. Further, the Commission is advised that on April 26, 2001, pursuant to N.J.S.A. 19:23-12, Mr. Franks was certified by the committee on vacancies appointed in Mr. DiFrancesco's nominating petition as that committee's replacement nominee candidate. Also on April 26, 2001, Mr. Franks filed with the

Commission a Single Candidate Committee - Certificate of Organization and Designation of Campaign Treasurer and Depository (Form D-1) establishing his 2001 gubernatorial primary election campaign treasurer and depository account. Ronald Gravino, who is also the DFG treasurer and submitted a supporting affidavit with this request for an advisory opinion, was named the FFG treasurer.

You write that DFG proposes to transfer contributions DFG received prior to the time of Acting Governor DiFrancesco's resignation as a primary election candidate to FFG. Specifically, DFG contemplates sending a letter to each of its contributors (who contributed an amount of \$400 or over) offering the contributor the option of receiving a refund of a portion of the contribution amount or transferring that refund amount to the FFG campaign. The amount of the refund or transfer would be approximately 23 per cent of the amount contributed to DFG, and the remainder will be used to meet DFG's expenditures. For example, you write that a contributor of \$2,600 to DFG would be offered a refund or transfer to FFG of \$600, and a contributor of \$1,300 would be offered \$300.

In support of your request, you have submitted (as Exhibit A) a proposed sample of the letter DFG anticipates circulating to its contributors. Written over Mr. Gravino's name in his capacity as DFG treasurer, the proposed text advises the contributor that Acting Governor DiFrancesco has withdrawn from the Republican primary election and will not run for election as the Republican candidate for Governor (in the general election). The letter states that Acting Governor DiFrancesco supports Mr. Franks' candidacy. Mr. Gravino's letter further advises that the contribution to DFG from the contributor "...can be applied (minus a deduction for DFG campaign expenditures) to Franks for Governor, Inc. ("FFG"), or it may be returned to you."

In concluding, Mr. Gravino's letter provides as follows: "Unless you advise me within three days of the date of this letter, your contribution to DFG will be transferred to FFG and credited against the maximum \$2,600 contribution cap for gubernatorial primary candidates. If you would prefer to have the contribution returned, notify us within three days, and I will see to it that you receive a check as quickly as possible." The remainder of the text provides telephone and fax numbers for contacting Mr. Gravino's office.

You have also submitted affidavits from Mr. Baroni, counsel for Franks for Governor, Inc (FFG), and from Mr. Gravino, which affidavits are hereby incorporated by reference in this opinion request.

Mr. Baroni's affidavit, in pertinent part, indicates the support of FFG for your request, and notes that a fundraiser for FFG is scheduled for May 21, 2001. Mr. Baroni states that unless a transfer of funds from DFG is permitted, FFG will be "severely handicapped" because "...realistically, there will be no funds available for several weeks, and no matching funds until early June, 2001." He observes that until money becomes available no radio or television time can be reserved, and retaining professional consultants will be difficult.

Mr. Baroni also argues that the provisions contained in Commission Regulation N.J.A.C. 19:25-16.11(d) permitting refund checks to be issued to contributors do not pose a "viable solution." He notes that the legislation which changed the date of the primary election also contained provisions concerning a candidate nominated by the committee on vacancies. In pertinent part, Section 5 of Chapter 73 provides as follows:

“...the candidate nominated in the certificate shall: (a) be given, on an accelerated basis determined by the Election Law Enforcement Commission, the opportunity to become a qualified candidate as defined in subsection m. of section 3 of P. L. 1973, c. 83 (C.19:44A-3) for the primary election...”

Mr. Baroni cites this statutory text to demonstrate that the proposed transfer of funds subject to the letter to the contributors will “accelerate” FFG’s ability to qualify for (debate participation and matching public funds), which acceleration he submits is “...the type of action the legislature envisioned.”

In his affidavit, Treasurer Gravino states that DFG has approximately \$1.2 million in an account established for receiving contributions, and in a separate account established for public matching funds another \$2 million. He states that DFG has outstanding obligations of approximately \$450,000, including a reserve for unanticipated expenses. He further writes that if the requested transfer action is approved by the Commission, DFG intends to transfer approximately \$720,000 to FFG “...so long as the contributors do not object. If the contributor objects, DFG will make a *pro rata* repayment to the contributor in accordance with N.J.A.C. 19:25-6.5(a)5.” The transfer will be made to FFG within three business days of the mailing of the letter to the contributor. Further, if the contributor objects beyond the three-day period, Mr. Gravino represents that FFG will make the *pro rata* repayment.

The Commission notes that in your letter accompanying this request you have written that you are referring to the transfer of “non-public funds,” by which you presumably mean contributions received by DFG from contributors (as opposed to public matching funds received by DFG). In regard to public matching funds, you write: “DFG shall return all (underscoring supplied in your letter) public matching funds.” By that reference, the Commission understands you to mean the approximately \$2 million in public matching funds recited in Treasurer Gravino’s affidavit. Commission records indicate that \$2,015,470 has been awarded to date to DFG in public matching funds.

Question Presented

What procedures are required for the candidate designated by the committee on vacancies, that is Franks for Governor, Inc. (FFG), to solicit contributions eligible for match with public funds pursuant to N.J.S.A. 19:44A-29, *et seq.*, from contributors who contributed to the resigned candidate’s committee, DiFrancesco for Governor, Inc. (DFG)? Additionally, the Commission has considered what scheduling adjustments must be undertaken in view of the changed 2001 primary election date, and the selection of Mr. Franks by the DFG committee on vacancies.

Commission Response

Initially, the Commission observes that the circumstances surrounding this request are unprecedented. The 2001 gubernatorial primary election is the first since the enactment of the public financing program in 1974 that has been postponed, and the first in which a nominee candidate resigned before the primary election was conducted and after qualifying for and receiving public funds. It is also the first in which a replacement candidate has been nominated by a certificate filed by the resigned candidate’s committee on vacancies.

Further, the statute postponing the date of the 2001 primary election contains a provision directing the Commission to provide that successor nominee the opportunity to become a qualified candidate (that is, a candidate qualified to participate in gubernatorial debates and apply for public matching funds). See Laws of 2001, chapter 73, section 5, enacted April 23, 2001 (hereafter, Section 5). Section 5, in pertinent part, provides:

In the event that a certificate provided for in R.S.19:23-12 is filed for a candidate for nomination for election to the office of Governor, the candidate nominated in the certificate shall: (a) be given, on an accelerated basis determined by the Election Law Enforcement Commission, the opportunity to become a qualified candidate as defined in subsection m. of section 3 of P.L.1973, c. 83 (C.19:44A-3) for the primary election; (b) if the candidate so nominated becomes a qualified candidate, be eligible to receive the maximum amount from the fund for election campaign expenses, as provided by law, which any other qualified candidate may be eligible to receive for the primary election pursuant to section 8 of P.L.1974, c.26 (C.19:44A-33), regardless of the amount from that fund received and expended by the candidate for whom the substitution has been made; (c) participate in the gubernatorial primary election debates held pursuant to sections 9 through 11 of P.L.1989, c.4 (C.19:44A-45 et seq.); and (d) fulfill any of the other responsibilities required of a qualified candidate, as provided for in P.L.1973, c.83 (C.19:44A-1 et seq.), P.L.1974, c.26 (C.19:44-27 et al.) or any other applicable rule or regulation derived therefrom.

As recited in the submitted facts above, Mr. Franks was designated on April 26, 2001 as Acting Governor DiFrancesco's successor nominee candidate. Accordingly, as the Commission understands Section 5, that statute directs the Commission to provide to Mr. Franks' candidate committee, FFG, "on an accelerated basis" the opportunity to qualify for debate participation and matching fund eligibility. Further, in the event FFG meets the qualification requirements, FFG shall be eligible to receive the maximum amount of public matching regardless of the public matching funds received previously by the candidate committee of the resigned nominee candidate, DiFrancesco for Governor (DFG). Section 5 also requires that FFG be afforded the opportunity to participate in debates, and to "...fulfill any of the other responsibilities required of a qualified candidate...."

Therefore, as the Commission perceives its task, the Commission must adjust certain deadlines and examine its regulations to provide the opportunity for FFG to qualify for debates and public financing, but not do so to the detriment of key statutory and regulatory safeguards such as protection of disclosure, contribution limits, and the intent of the contributors. In sum, the Commission must strive to maintain a level playing field for all gubernatorial candidates while at the same time accommodating the scheduling adjustments necessitated by the entry of the replacement nominee candidacy of FFG. Also, the Commission must critically examine the documentation requirements of the matching fund procedures to determine if any raise unnecessary impediments to the accelerated opportunity contemplated by Section 5. By "unnecessary," the Commission means documentation procedures that would unduly hamper the solicitation and handling of contributions necessary to become a qualified candidate but that do not serve any compelling interest in the audit and other safeguards designed to promote accountability to the public for awarding matching funds.

Qualification Deadline

In regard to scheduling of 2001 primary election dates, the Commission has established May 18, 2001, as the date by which FFG must apply to qualify for participation in debates, and public fund eligibility, see N.J.S.A. 19:44A-3m(3). The date provided in the statute is "...the last day for filing petitions to nominate candidates to be voted upon in a primary election for the general election in which the office of Governor is to be filled..." Since the primary election will be conducted on June 26, 2001, and the county clerks must certify the ballot 48 days prior to that date (see N.J.S.A. 19:23-21), pursuant to P.L. 2001, c.73, that date is now May 9, 2001. The Commission believes it has the administrative discretion and duty under Section 5 to establish a date that will provide a reasonable opportunity to collect contributions in amounts not greater than \$2,600 each to meet the \$260,000.00 threshold contemplated in the Act and regulations; see N.J.A.C. 19:25-16.18. The Commission has therefore selected the date of May 18, 2001, which date in the Commission's view provides sufficient time for the replacement candidate to conduct fundraising, for the Commission to review the contributions submitted for qualified candidate status, and for the subsequent holding of debates including that candidate should the candidate become qualified to participate.

Gubernatorial Primary Election Debates

In regard to the gubernatorial primary election debates, the Commission received applications from and selected the debate sponsors on April 4, 2001, pursuant to N.J.S.A. 19:44A-46c, which required the selections to be made by April 16, 2001. (See Public Minutes of April 4, 2001, Item 3, Selection of 2001 Gubernatorial Primary Election Debate Sponsors.) The first of the two debates mandated in the Act "...shall occur not earlier than the date on which the ballot for the primary election to the office of Governor is finally certified by the Secretary of State to the clerks of the several counties..." (See N.J.S.A. 19:44A-46a.) As discussed above, 48 days prior to that date is May 9, 2001, which date is prior to the deadline of May 18, 2001 established by the Commission for the replacement candidate to qualify to participate in public financing and candidates' debates in the 2001 gubernatorial primary election. The Commission notes that the committee on vacancies is permitted under law to select its replacement nominee as late as 48 days prior to the primary election; see N.J.S.A. 19:23-12. In such a case, there would be no time provided for such a replacement nominee to conduct fundraising after being selected by the vacancy committee in order to become a qualified candidate pursuant to N.J.S.A. 19:44A-3m(3), and therefore as a practical matter the replacement candidate would be excluded from debate participation. Therefore, the Commission believes it has the discretion and duty under Section 5 to establish a date for the first debate that provides sufficient time for the replacement candidate to apply for qualification without unduly compressing the time period for debates to be conducted. Accordingly, the Commission has established May 29, 2001 as the earliest date for the initial debate to be conducted, which date the Commission believes allows sufficient time for the replacement candidate to attempt to qualify for debate participation. The Commission will so advise the selected sponsors and all participating candidates.

Contributions Submitted for Match

In regard to your inquiry concerning procedures for FFG to employ in soliciting contributions eligible for match, you are hereby advised that the procedures set forth in your request will **not** permit such contributions to be eligible for matching funds.

The Commission is not persuaded that contributor intent may be inferred from the absence of action by a contributor in response to a contribution solicitation letter from DFG. To the contrary, in the Commission's view the exercise of Free Speech by the making of a political contribution requires affirmative action by that contributor. Nothing in the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act), or in the Commission regulations promulgated under that Act, supports a procedure for receiving a contribution from a contributor without that contributor exercising control over the making of his or her contribution at the time that it is contributed. Accordingly, you are hereby advised that the procedure set forth in your advisory opinion request is impermissible, and any contribution solicited by the procedures contemplated in this request will **not** be eligible for matching public fund consideration.

However, as you have observed, N.J.S.A. 19:44A-11.2a(5) and N.J.A.C 19:25-6.5(a) permit a pro-rata repayment of contributors, except that contributors of \$400 or less may be excluded from the repayment. Further, the Commission has accepted for matching fund eligibility contributions in the form of checks from a federal candidate's campaign committee payable to the contributor who in turn endorsed that check as payable to the gubernatorial candidate committee of that candidate. (See Public Minutes of April 15, 1997, page 8, Andrews Campaign Submission 1.) The effect was that a contributor to the federal candidacy was permitted by virtue of his or her endorsement to redirect the contribution from the federal to the gubernatorial candidacy. In this regard, the provisions of N.J.A.C 19:25-16.11(d) become instructive:

19:25-16.11 Contributions eligible for match

(d) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his or her campaign committee, if such check, money order or instrument contains all of the foregoing information.

The Commission notes that this regulation specifically provides for a written statement identifying the contributor, the recipient candidate, the amount and date of receipt of the contribution, and the signature of the contributor.

You and Mr. Baroni have argued in your request, and in your oral presentation before the Commission at its special meeting of April 27, 2001, that the time constraints imposed by the unprecedented circumstances surrounding the replacement candidacy of Mr. Franks effectively preclude DFG from undertaking the procedure approved in the Andrews submission. That procedure would include issuing checks for repayment to DFG contributors pursuant to N.J.A.C 19:25-6.5(a), with the expectation that all or some of those contributors will endorse those checks to FFG pursuant to N.J.A.C. 19:25-16.11(d) and return them to FFG in enough time to meet the qualified candidate deadline established herein. The Commission is mindful of the fact that, unlike the circumstance in the Andrews submission described above, it appears that almost all the contributions received by DFG have already been submitted to and approved by the Commission for

matching funds as part of the submissions that DFG made to the Commission prior to Acting Governor DiFrancesco's resignation. In short, almost all the DFG contributions that you contemplate returning were already found by the Commission to be matching fund eligible.

Accordingly, the Commission believes the following procedure will protect the Commission's interest in establishing an audit trail and accountability for each contribution the Commission can consider for matching fund eligibility for Candidate Franks:

- Matching fund eligibility must be based on a written statement from each contributor to FFG containing the information set forth in N.J.A.C. 19:25-16.11d above. The signature of the contributor must appear on the written statement.
- Such statements must be in the form of written authorization from the contributor addressed to DFG and directing DFG to contribute all or a portion of the contributor's prior DFG contribution amount to FFG.
- The written statement must contain an unambiguous and prominent notice to the contributor that the amount indicated by the contributor will constitute a contribution from that contributor to FFG in the 2001 primary election, and that such amount counts towards the contribution limit of that contributor to FFG, which contribution limit is \$2,600 in the 2001 primary election.
- Upon receiving such a signed, written statement, DFG must make a check or other similar written instrument payable to FFG in the amount authorized on the written statement, and must provide in the memo portion of the check or instrument the name of the contributor written legibly.
- DFG must provide to FFG a copy of the written statement, the check from DFG payable to FFG, and a copy of the check DFG received from that contributor.
- FFG must deposit the check from DFG within ten days of receipt of the authorization into its matching fund account, and must retain a bank-receipted copy of the deposit slip pertinent to that check from FFG.
- As part of a submission for matching funds pursuant to N.J.A.C. 19:25-16.18, FFG must submit to the Commission a copy of the contributor's written authorization statement, a copy of the contributor's check to DFG, a copy of the check from the DFG account to the FFG account, and a copy of the receipted deposit slip evidencing the fact that FFG has deposited the DFG check.

The Commission notes that nothing contained in these procedures is intended to preclude any other gubernatorial candidate in the 2001 primary election from soliciting contributions from DFG contributors.

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

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
GREGORY E. NAGY
Legal Director

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

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COMMISSION

April 27, 2001

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VIA FACSIMILE - 609-777-1457

New Election Law Enforcement Commission
28 West State Street, 12th Floor
Trenton, New Jersey 08625-0185

Attention: Nedda Masser, Esq.

Re: **Advisory Opinion Request No. 05-2001**

Dear Commissioners:

In anticipation of discussion of an expected request for an advisory opinion from Peter G. Sheridan, Esq., counsel to DiFrancesco for Governor, Inc. (hereinafter "DiFrancesco"), as to whether or not DiFrancesco may contact its contributors by letter to request that they apply their contributions to Robert Franks, Schundler for Governor, Inc. (hereinafter "Schundler") states its position on this request for an advisory opinion as follows.

The regulations of the Election Law Enforcement Commission provide that the permissible uses for campaign funds are limited to those defined in N.J.A.C. 19:25-6.5 including:

The pro-rata repayment of contributors, except that contributors of \$400.00 or less may be excluded from repayment. [N.J.A.C. 19:25-6.5(a)(5)]

The governing regulations do not permit the transfer or assignment of campaign contributions from one candidate to another.

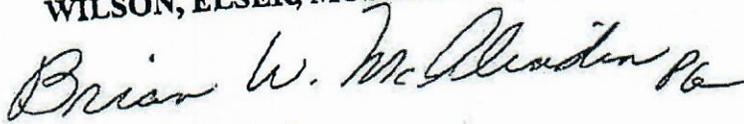
N.J.A.C. 11.1(a) provides that all candidates shall observe the contribution limits set forth in the regulations. These contribution limits include a provision that each candidate, whether or not intending to participate in public funding, shall not knowingly accept from any person or candidate any contribution in the aggregate in excess of \$2,600.00 in any primary election. N.J.A.C. 19:25-16.6(a); N.J.A.C. 19:25-16.8(a).

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Page 2

The regulations prepared by this Commission and governing the anticipated request for an advisory opinion make clear that the wholesale transfer of contributions from DiFrancesco to Robert Franks is not permitted by law. Schundler respectfully submits that the regulations governing this issue are clear and that the DiFrancesco contribution funds must be returned to contributors pursuant to the applicable regulations cited above.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP



Brian W. McAlindin

BWM/pg

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April 27, 2001

VIA HAND DELIVERY

Frederick Herrmann, Ph.D.
Executive Director
Election Law Enforcement Commission
National State Bank Bldg., 13th Flr.
28 West State St., P.O. 185
Trenton, N.J. 08825-0185

Dear Mr. Herrmann:

Please find enclosed the original and five (5) copies of a Request for Advisory Opinion on behalf of DiFrancesco for Governor ("DFG"). This Request for Advisory Opinion also includes a supporting Affidavit of Ronald Gravino, Certification of William Baroni and sample letter to contributors.

In summary, DFG requests an Advisory Opinion on an emergent basis regarding the transfer of non-public funds to Franks for Governor ("FFG") provided that a letter is sent to each contributor. DFG shall return all public matching funds. If a contributor so requests, pro-rata repayment shall be made. If a request for pro-rata repayment is received after the monies are transferred, FFG has agreed to make such repayment. If no request for repayment is made, DFG will transfer the pro-rata amount to FFG.

Transferring funds to FFG (subject to this letter to contributors) is in accord with the most recent legislative directive. On April 23, 2001, the legislature declared that the Commission must "qualify" a substitute candidate on a "accelerated" basis. The Advisory Opinion requested will accelerate qualification because FFG will receive an amount not to exceed \$720,000. This permits FFG to immediately meet the statutory requirement to raise \$260,000. Upon approval by the Commission of the transfer subject to the letter, FFG can then in good faith incur obligations of an equal amount which is also a necessary element to become qualified to receive public matching funds.

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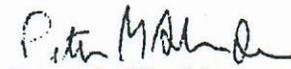
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A PROFESSIONAL ASSOCIATION

Frederick Herrmann, Ph.D.
April 27, 2001
Page 2

The directive of the legislature is clear, concise and this request is based on the precise facts that the legislature envisioned. The Commission should follow the statutory mandate.

Respectfully submitted,


Peter G. Sheridan

PGS:hgt

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) 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

DiFrancesco for Governor, Inc.

Mailing Address

Peter G. Sheridan, Esq.
c/o Graham, Curtin & Sheridan
50 West State Street
Trenton, New Jersey 08608

Day Telephone No.
609-695-0098

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

Yes X No

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

Candidate Committee <u>X</u>	Recall Committee	-	-
Joint Candidate Committee	Recall Defense Committee	-	-
Political Committee	Lobbyist	-	-
Continuing Political	Legislative Agent	-	-
Political Party Committee	Personal Financial Disclosure statement	-	-
Legislative Leadership	Other (please describe)	-	-

- 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.

N/A

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

N/A

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

DiFrancesco for Governor, Inc. ("DFG") hereby requests an Advisory Opinion on the issue of whether campaign contributions in an amount not to exceed \$720,000 can be transferred to Franks for Governor, Inc. ("FFG"). DFG shall return all public matching funds received. These funds are not an issue. Specifically, DFG wishes to send a letter (attached as Exhibit A) to all contributors providing them with the option of (1) having the contribution (minus a percentage to be calculated for DFG campaign related expenditures) returned to them, or (2) apply their pro-rata repayment contribution to FFG. This request is on an emergent basis for the reasons set forth in the Certification of William Baroni.

The pertinent regulations involved are N.J.A.C. 19:25-16.11(d) (contribution identification) and N.J.A.C. 19:25-16.34 (repayment of public or other funds); N.J.A.C. 19:25-16.6 (contribution limits for the primary election); N.J.A.C. 19:25-15.6 (contribution limits for the general election); N.J.A.C. 19:25-16.26 (use of transferred funds) and N.J.A.C. 19:25-6.5(5) (use or disposition of campaign funds; allowance for the pro-rata repayment of contributions).

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 reporting or other requirements under the Act (attach additional sheets if necessary).

On April 25, 2001, Republican primary candidate Donald DiFrancesco withdrew from consideration in the Republican primary election to be held on June 26, 2001. Also, on April 25, 2001, Robert ("Bob") Franks was appointed by the Committee on Vacancies to run in the Republican gubernatorial primary. Several contributors to Mr. DiFrancesco's campaign, DiFrancesco for Governor, Inc. ("DFG") have indicated they would like to transfer their contributions to Mr. Franks' campaign, Franks for Governor, Inc. ("FFG").

Accordingly, DFG would like an opinion on how those contributions may be transferred to FFG. DFG has been in existence since January 4, 2001. There is approximately \$450,000 in outstanding obligations incurred by DFG and DFG wishes to transfer an amount not to exceed \$720,000 to FFG. There is approximately \$1.2 million on account. See Affidavit of Ronald Gravino.

DFG proposes to send a letter to each of its contributors (attached as Exhibit A) which provides the contributor with the option of a refund or a transfer of the contribution to FFG. In both instances, this amount would be reduced by a percentage sufficient to meet DFG's expenditures. Each contributor would be entitled to a refund of approximately 23% of his or her contribution. See also, Affidavit of Ronald Gravino attached hereto. The contribution limit set forth in N.J.A.C. 19:25-16.6 (for the primary election) mandate that a gubernatorial candidate not accept more than \$2,600 from any single contributor for the primary election. As set forth in the attached Certification of Ron Gravino, DFG treasurer, most contributions to DFG have been in round amounts such as \$2,600 and \$1,300. Based upon the expected expenditure projections, DFG proposes to refund approximately \$300 to each \$1,300 and \$600 to each \$2,600 contributor. If the DFG contributor chooses instead to have his or her contribution transferred to FFG, the FFG campaign will credit such amount against that contributor's \$2,600 cap. The contemplated transfers have not been initiated. The proposed correspondence has not been sent to any contributors.

DFG has standing to request this opinion since it is the candidate committee who has qualified for public matching funds.

The opinion of the Commission will affect DFG's reporting requirements and its record keeping responsibilities.

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

DFG seeks permission to send out the attached letter allowing the option of refund of campaign contributions or transfer of the contributions to FFG. In addition, DFG seeks to make the transfer to FFG.

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

Full name: Peter G. Sheridan, Esq.

Day Telephone: (609) 695-0098

Mailing Address:

Evening Telephone: (609) 275-4903 (H)
(609) 658-7283 (cell)

Graham, Curtin & Sheridan, P.A.
50 West State Street, Suite 1008
Trenton, New Jersey 08608

Fax No.: (609) 695-1298

a. **Official capacity of person requesting opinion:**

- Candidate
- Treasurer
- Organizational Treasurer

New Jersey Attorney representing person,
committee or entity:

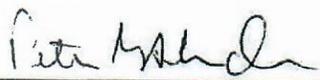
Other _____

7. ~~I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-8F 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 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**

Graham, Curtin & Sheridan, P.A.

4/27/01
Date

By: 
Peter G. Sheridan, Esq.
Attorney for DiFrancesco For Governor