



State of New Jersey

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Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

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Compliance Director

JAMES P. WYSE
Counsel

April 19, 2006

BY FAX & FIRST CLASS MAIL

Kenneth E. Pringle
P.O. Box 420
Belmar, New Jersey 07719

Advisory Opinion No. 02-2006

Dear Mr. Pringle:

The Commission considered your request for an advisory opinion at its meeting yesterday and directed me to issue this response. You have stated that you intend to form a joint candidates committee for re-election to the office of Mayor in the Borough of Belmar, Monmouth County, in 2006, and you have asked several questions concerning the use of "PolitiCheck.com," a "web-based online political contribution service" that you would like to offer to your supporters to make contributions by "remotely created checks" (RCCs). You have also indicated that you are the majority shareholder in InfoLoop, LLC, which owns "PolitiCheck.com," and that InfoLoop will offer "PolitiCheck.com's" online contribution services to the public at large."

Commission Response

You are hereby advised that you may use "PolitiCheck.com" to receive credit card and RCC contributions for your 2006 candidacy. All contributions received by this method must observe the contribution limits established in the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 *et seq.* (hereafter, the Campaign Reporting Act or Act) and Commission regulations, N.J.A.C. 19:25-1 *et seq.*, and the recordkeeping and reporting requirements of the Act and regulations apply as indicated below. If you participate in both a candidate committee and a joint candidates committee, all contributions received, including those received by credit card or RCC, are subject to the equal attribution rule; see N.J.S.A. 19:44A-11.3e and N.J.A.C. 19:25-11.5. The Commission advises further that, pursuant to N.J.A.C. 19:25-10.16(b) and 19:25-12.2, fees or costs associated with receipt of a contribution by "PolitiCheck.com" must be reported as an expenditure on your campaign reports.

Submitted Facts

As you have described the operation of “PolitiCheck.com,” a contributor will establish a “password-protected account” on the “PolitiCheck.com” Internet website and use the website account to authorize a contribution to you either by means of a credit card or by an “electronically authorized check,” which you have labeled as a “remotely created check” (RCC). You clarified in a telephone conversation with Commission staff that for a credit card contribution, “PolitiCheck.com” will collect credit card information from the contributor and forward that information to the recipient candidate, who will process the electronic transfer of funds from the contributor’s account to the candidate’s account. With a RCC, “PolitiCheck.com” will use a contributor’s checking account information to create a paper check “that is electronically authorized by the maker, but remotely created by PolitiCheck.com’s software.” Whether the contribution is made by credit card or by RCC, you have stated that “PolitiCheck.com” functions as a “conduit for information,” but does not perform any banking function. You have further stated that information collected and provided by “PolitiCheck.com” will include information required for disclosure to the Commission, including the contributor’s name and address, and employer information and occupation.

“PolitiCheck.com” will mail the credit card information or the RCC to the recipient candidate with the disclosure information that is required to report the contribution to the Commission. If the recipient candidate has subscribed to and paid a fee to “PolitiCheck.com,” the recipient will receive an “electronic notice” of the contribution, including the credit card information or RCC information, “as soon as the contribution is authorized” and prior to receipt of the information by mail. You have indicated that the services offered by “PolitiCheck.com” will comply with the requirements of Advisory Opinion 04-2001, which established procedures for receipt of Internet contributions.

Use of Remotely Created Checks (RCCs)

To proceed with your inquiry, the Commission must determine first whether or not to permit the use of a RCC to make a contribution to a candidate. In its past advisory opinions and subsequent regulations, the Commission has acknowledged advances in technology in the banking and financial industry that were not contemplated when the Campaign Reporting Act was enacted and has permitted candidates and committees to accept contributions by means of credit cards and the Internet; see Advisory Opinions 05-1997 and 04-2001, and N.J.A.C. 19:25-10.16. In Advisory Opinion 03-2005, the Commission authorized the use of an electronic “check card process” tied to an individual’s checking account to make a contribution in the 2005 Clean Elections Pilot Project. The Commission similarly concludes that use of a RCC is permissible because it functions as the technological equivalent of a paper check and may serve the salutary purpose of promoting contributor participation in the political process. You are advised that this response is limited to the specific facts you have presented concerning use of “PolitiCheck.com” to receive contributions for your candidacy.

Credit Card Contributions by “PolitiCheck.com”

Before discussing the RCC contributions, the Commission wishes to clarify how credit card contributions made via “PolitiCheck.com” must be treated.

- In those cases where a candidate pays a fee to subscribe to “PolitiCheck.com” and receives immediate electronic notification that a contribution has been made by means of a credit card, the contribution must be treated as received on the date when the account owner or credit card owner

authorizes the contribution on the website. Upon receipt of immediate electronic notification from “PolitiCheck.com” that a credit card contribution has been made, presumably by e-mail, a recipient candidate or treasurer may immediately process the account information and have access to the contribution funds. The Commission finds that the requirements of N.J.A.C. 19:25-10.16, Contributions by electronic transfer of funds, apply to such contributions. N.J.A.C. 19:25-10.16 requires that: the date of receipt of a contribution made by an electronic transfer of funds, including a credit card, is the date on which the account owner or credit card owner authorizes that the contribution be charged to the owner's account or credit card; the amount of the contribution is the total amount that the account owner or credit card owner authorizes to be charged to the account; and, the account used to make the contribution made by an electronic transfer of funds or a credit card must be owned by the individual contributor or other entity making the contribution.

- If a candidate does not subscribe to “PolitiCheck.com,” and receives the information concerning a credit card contribution by mail, you are advised that the contribution must be treated as received on the date when the candidate or treasurer receives notification by mail of the credit card contribution. Once mail notification is received, the recipient candidate or treasurer may immediately process the credit card account information and have access to the contribution funds. At this point in time, except as to the date of receipt pursuant to N.J.A.C. 19:25-10.16(a)1, the requirements of N.J.A.C. 19:25-10.16 attach to the credit card contribution.
- For each contribution made by means of a credit card via “PolitiCheck.com,” regardless of the method by which “PolitiCheck.com” notifies the candidate of the contribution, a recipient candidate must make and maintain a record of all contributor information necessary to report the contribution on reports required to be filed with the Commission; see N.J.A.C. 19:25-7.1. This includes information relevant to a contribution from an individual received by means of a partnership credit card account; see N.J.A.C. 19:25-11.10.

The Commission has restated and consolidated your questions for the purposes of the discussion which follows.

RCC Contributions by “PolitiCheck.com”

Question 1

You asked specifically whether a RCC received through “PolitiCheck.com” is to be treated for the purposes of compliance with the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Campaign reporting Act or Act) and Commission regulations, as a check, pursuant to N.J.A.C. 19:25-10.15, Contributions made by check, or as an electronic transfer of funds, pursuant to N.J.A.C. 19:25-10.16, Contributions by electronic transfer of funds. You requested that a RCC contribution be treated as an electronic transfer of funds and have also asked when the obligation to report a RCC contribution accrues.

Commission Response

A contribution made by means of a RCC, as you have described, possesses characteristics of both a contribution made by means of a traditional paper check, governed by N.J.A.C. 19:25-10.15, Contributions made by check, and of a contribution made by an electronic transfer of funds, pursuant to N.J.A.C. 19:25-10.16, Contributions by electronic transfer of funds. As with a credit card contribution, discussed above, it is therefore necessary to examine the method by which a candidate

receives a RCC in order to determine the date of receipt of the contribution and the resulting obligation to report the contribution.

- You have explained that a candidate who subscribes to “PolitiCheck.com” may “opt to receive the RCC check printing instructions in their own office, in which case they will have the ability to print the RCC on their own printer at the same time they receive the electronic notice” of the RCC contribution. In such cases, you are advised that the contribution must be treated as received at the time the notification and RCC printing instructions are received. Pursuant to N.J.A.C. 19:25-6.1, a contribution is received on the date on which the candidate, treasurer, or other authorized person receives contribution funds. Because a candidate who subscribes to this service will be able to immediately print the RCC, deposit it into a campaign account, and have access to the contribution funds, it is reasonable to treat the contribution as received on the date when the electronic notice is received. The obligation to report the contribution arises on the date of its receipt, and the contribution must be deposited within ten days of receipt; see N.J.S.A. 19:44A-12 and N.J.A.C. 19:25-6.1.
- If a candidate does not subscribe to “PolitiCheck.com,” and receives the RCC and contribution information by mail, the Commission finds that the date of receipt of the RCC contribution is determined in the same manner as a traditional paper check. The contribution is received when the candidate, or his or her treasurer or other authorized individual receives the RCC; see N.J.A.C. 19:25-6.1. The RCC functions in the same manner as a paper check because the candidate has no access to the contribution funds until he or she is in possession of the RCC. The date of receipt of a RCC contribution that has been mailed by “PolitiCheck.com” to the candidate is, pursuant to N.J.A.C. 19:25-6.1, the date on which the candidate, treasurer, or other authorized person receives the RCC. The obligation to report the contribution arises on the date the RCC is received, and the contribution must be deposited within ten days of its receipt; see N.J.S.A. 19:44A-12 and N.J.A.C. 19:25-6.1.

Question 2

You have asked whether or not a candidate receiving a contribution by RCC may rely upon the “unsigned information provided by the contributor [on the “PolitiCheck.com” website] simultaneously with the authorization of the contribution.” At the same time a contributor authorizes a contribution on “PolitiCheck.com” by providing either credit card information or bank account information necessary for a RCC, the contributor also supplies contributor information, including contributor name and address, and occupation and employer information. You have explained that this information is forwarded by “PolitiCheck.com” to the recipient candidate either by mail or electronically.

Commission Response

You are advised that the Act and Commission regulations require that a candidate and his or her treasurer obtain and maintain a record of each contribution received and report all required contributor information; 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, 19:25-7.3, and 19:25-10.16(a)4. Also see and N.J.S.A. 19:44A-16 and N.J.A.C. 19:25-10. Further, a candidate and his or her treasurer are responsible for compliance with the reporting and recordkeeping requirements of the Act and regulations; see N.J.S.A. 19:44A-22a. No provision in the Campaign Reporting Act or the regulations requires that the record of a contribution be obtained in any specific manner. It is therefore permissible for a candidate to obtain the contribution information from “PolitiCheck.com.” However, if the information is incomplete or insufficient in any way, it remains the responsibility of the candidate and treasurer to obtain all required contribution information. As the Commission stated in Advisory Opinion 04-2001, concerning contributions received by the Internet, 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.”

The Commission therefore cannot authorize a candidate to rely on the information provided by a contributor on the “PolitiCheck.com” website. It is the responsibility of the candidate and treasurer, either through information obtained from “PolitiCheck.com” or through their own compliance efforts, to obtain information required to file reports pursuant to the Act and Commission regulations.

In Advisory Opinion 04-2001, the Commission stated that 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. The Advisory Opinion also noted that N.J.A.C. 19:25-7.1(a) and N.J.A.C. 19:25-10.16(a)3 require that a campaign treasurer maintain a record of the name of the account on which a contribution check is drawn and that 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. You are advised that these requirements similarly attach to contributions received via “PolitiCheck.com.”

Question 3

You have asked what rules apply to determine the actual contributor of a contribution made by credit card or RCC and whether or not the requirements of N.J.A.C. 19:25-10.15, Contributions made by check, apply to contributions received via “PolitiCheck.com” on the Internet. You specifically asked for guidance in reporting “electronic” contributions from individuals, corporations, unions, trusts, sole proprietorships, and partnerships. The Commission notes that the purpose of N.J.A.C. 19:25-10.15 is to identify and report the actual source of a contribution. For example, a contribution drawn on a corporate account should not be reported by a candidate as a contribution from the individual bookkeeper who signed the check. It is important to disclose that the corporation has made a contribution to a candidate. Similarly, if a contribution is made by a check drawn on a jointly owned account, the public is entitled to know which owner or owners of the account made the contribution. It is not safe to assume that each joint owner would support the candidate.

Commission Response

You are advised that, as discussed further below, the contribution recordkeeping and reporting requirements for a candidate who accepts a credit card contribution or a contribution by RCC via “PolitiCheck.com” are the same as those applicable to a contribution received by a traditional paper check. N.J.A.C. 19:25-10.15 establishes rules for determining which individual or what entity must be reported by a candidate or committee as the contributor of a contribution made by a paper check. The rule requires examination of bank account information, including ownership of the account, and of the signatures on the check. N.J.A.C. 19:25-10.15, read together with provisions of N.J.A.C. 19:25-10.16, provides the guidance you have requested.

Contributions from Individuals

For example, N.J.A.C. 19:25-10.15(a)1 provides that if a contribution check is signed by an individual who is an owner of the funds in the account on which the check is drawn, the contributor is the individual who signed the check and owns the account. N.J.A.C. 19:25-10.15(a)2 expands on that

concept and requires that “if the check is signed by more than one individual and each of them jointly is a beneficial owner of the funds in the account on which the check is drawn, each of the individuals signing the check and beneficially owning the funds is a contributor.” The rule further states that, unless written instructions provide otherwise, the total contribution amount is divided equally between or among the account owners who signed the check. As you have indicated, there are no signatures on contributions made by credit card or RCC via the Internet to use in this analysis. You have advised further that “credit card transactions either in person, by phone or online all request only a single account holder name, even if the credit card account is jointly held.” N.J.A.C. 19:25-10.16, Contributions by electronic transfer of funds, provides a basis for determining the identity of an individual who has made a contribution by credit card or RCC in compliance with the Campaign Reporting Act, even in the absence of a signature of signatures.

As indicated above, N.J.A.C. 19:25-10.16(a)3 requires that when a contribution is made by means of an electronic transfer of funds, including a credit card, or by RCC, the account to which the contribution is charged must be owned by the individual or entity making the contribution. N.J.A.C. 19:25-7.1(a) further requires that the record of each contribution made and maintained by a candidate and treasurer shall include the name of the account on which a contribution check is drawn. You have stated that a contributor will supply identifying information on the “PolitiCheck.com” website when making a contribution and that this information will be forwarded to the recipient candidate. Presumably, “PolitiCheck.com” will request and provide a candidate with both account ownership information and the identity of the person authorizing the contribution.

The Commission advises you that if the individual authorizing the credit card or RCC contribution is an owner of the account on which the contribution is drawn, as in N.J.A.C. 19:25-10.15(a), that person shall be reported as the contributor. Should the individual authorizing the contribution not be an owner of the account, additional information must be obtained from the contributor before the candidate accepts the contribution, or the contribution must be refunded. You are further advised that where multiple owners of an account wish to make contributions, each owner shall be required to make a separate online contribution and to provide required account and contributor identification information. Regardless of the information supplied by “PolitiCheck.com,” it remains the obligation of a candidate and treasurer to correctly identify and to report all contribution information.

Contributions from Sole Proprietorships

The analysis discussed above for a contribution drawn on an individual’s credit card or RCC account should be applied to a contribution drawn on the account of a sole proprietorship. N.J.A.C. 19:25-10.15(a)6 requires that if a check is drawn on the account of a sole proprietorship or an unincorporated business that is not a partnership, the contributor is the sole proprietor who is the beneficial owner of the funds in the account. Therefore, a candidate must obtain either from “PolitiCheck.com” or its own review information that includes the account to which the electronic contribution is charged and the identity of the person authorizing the contribution. Pursuant to N.J.A.C. 19:25-10.15(a)6, a candidate must report the individual who is the sole proprietor as the contributor. The contributor is not the sole proprietorship.

Contributions from Trusts

N.J.A.C. 19:25-10.15(a)5 requires that if a contribution is drawn on a trust account, the contributor is “the individual who is the beneficial owner of the funds in the account.” This rule can be applied to an account that is the source of a credit card contribution or a RCC. A candidate can obtain information

from “PolitiCheck.com” or through his or her own investigation to determine the identity of the beneficial owner of the account who is required to be reported as the contributor.

Contributions from Corporations and Unions

You are advised that for a contribution drawn on the account of a corporation or labor union, the candidate must obtain information either from “PolitiCheck.com” or through its own efforts, sufficient to determine that the account is owned by the corporation or union that is being reported as the contributor. This approach comports with the requirement in N.J.A.C. 19:25-10.15(a)3.

Contributions Made by Partnership Checks

As you are aware, Commission regulations prohibit a contribution from a partnership entity and require instead that a partnership check be allocated to an individual partner or individual partners; see N.J.A.C. 19:25-11.10, Partnership contributions prohibited, and N.J.A.C. 19:25-10.15(a)7. You have observed that the existing rules governing a contribution made by means of a partnership check are not clear with regard to the percentage to be allocated to each partner. The Commission advises you that nothing in the rules requires that allocation of a partnership contribution check between or among partners must mirror the percentages of ownership established in a partnership agreement. A partnership check may be allocated to or among individual partners in any amount, as determined by the partners, as long as the contribution limit from an individual is observed; see N.J.A.C. 19:25-11.2, Contribution limit chart.

A credit card or RCC contribution drawn on a partnership account must comply with the requirements of N.J.A.C. 19:25-11.10 and will require a candidate to obtain information concerning allocation of the contribution to a partner or partners. This information may be obtained either from “PolitiCheck.com” or through a candidate’s own efforts. In addition, N.J.A.C. 19:25-11.10 requires that a candidate obtain a signed acknowledgement from each partner. However, there is nothing in the Act or regulations to prohibit a candidate from obtaining such acknowledgements from a partnership after the candidate receives notification of receipt of a credit card or RCC contribution made from a partnership account.

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

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR, ESQ.

Background

Kenneth E. Pringle (the "Candidate") intends to run for re-election to the office of mayor of the Borough of Belmar in November 2006, and will be establishing a candidate committee (the "Pringle candidate committee") in due course. The Candidate desires to offer supporters the ability to contribute to his election fund via PolitiCheck.com, a web-based political contribution and pay-to-play compliance monitoring service operated by InfoLoop Corp.¹ The Candidate has not yet used PolitiCheck.com in connection with this election or in connection with any of his prior campaigns. The Candidate seeks the Commission's opinion on the issues raised herein so that the Candidate will be able to properly report the receipt of contributions authorized online over the internet via PolitiCheck.com.

The Candidate hereby waives the 30-day response period.

By way of brief background, contributions via PolitiCheck.com are authorized online via the internet and through a member's password-protected PolitiCheck.com account and can be made by either electronic check or credit card. Contributions by electronic check may be made by electronic funds transfer via the Automated Clearing House ("ACH") system or by a paper check that is electronically authorized by the maker, but remotely generated by PolitiCheck.com in compliance with Check 21 regulations. In lieu of a signature of the maker, such printed checks bear banking industry-recognized language that assures the depository bank that the check will be honored when presented. These electronically authorized, but remotely generated and unsigned, paper checks are referred to herein as "online checks." Online checks are becoming increasingly common and are also used by banks that offer on-line check-writing services to their customers. Simultaneously with the authorization by the contribution of the electronic funds transfer, the contributor's personal and employer information as required by N.J.S.A. 19:44A-12 will be electronically transmitted to the Candidate's treasurer so that he or she can decide whether to accept or decline the contribution, and comply with record-keeping requirements imposed by the Commission's regulations.

The Candidate has already familiarized himself with the Commission's Advisory Opinion 04-2001. In issuing the advisory opinion requested herein, the Commission may properly assume that the PolitiCheck.com services that the Candidate will use will be fully compliant with the requirements governing Internet contributions as set forth on pages 2 and 3 of Advisory Opinion 04-2001.

The Candidate requests an advisory opinion from the Commission on the following issues:

¹ Mayor Pringle is the majority shareholder of InfoLoop Corp. InfoLoop Corp. will offer PolitiCheck.com's online contribution service to the public at large.

I. Do Online Checks constitute “checks” within the meaning of N.J.A.C. 19:25-10.15 or “electronic transfers” as defined by N.J.A.C. 19:25-10.16?

Inasmuch as N.J.A.C. 19:25-10.15 provides that the source of a “check” for reporting purposes is to be attributed on the basis of the signature(s) contained on the check, it would appear that in promulgating this section the Commission intended it to apply only to traditional checks or negotiable instruments that are hand-signed by the maker, and did not contemplate online checks, as described above, such as those that banks and PolitiCheck.com now offer. In seeking the Commission’s clarification of this issue, the Candidate recommends that the Commission limit the applicability of N.J.A.C. 19:25-10.15 to those checks or other negotiable instruments that bear handwritten signatures, and to treat online checks, as described herein, as “electronic transfers” governed by N.J.A.C. 19:25-10.16.

II. If the Commission concludes that online checks constitute “electronic transfers” within the meaning of N.J.A.C. 19:25-10.16, how should such transfers, whether by online check, ACH electronic funds transfer or credit card be attributed for reporting purposes?

Although N.J.A.C. 19:25-10.15 sets forth detailed guidelines as to how contributions via hand-signed checks are to be attributed, N.J.A.C. 19:25-10.16 does not provide any rules regarding the attribution of contributions made via electronic transfers. The Commission’s Advisory Opinion 04-2001 is instructive and helpful on the issue of what records are to be maintained by a treasury with respect to electronic transfer, but even that opinion clearly contemplated only online credit card transactions, and did not appear to contemplate the online check or ACH electronic transfers that PolitiCheck.com will offer. For example, in the section of Advisory Opinion 04-2001 entitled “Recordkeeping requirements,” the Commission determined the following:

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.

New Jersey Election Law Enforcement Commission Advisory Opinion 04-2004, at p. 3.

This raises a threshold issue as to which the Candidate seeks the Commission’s clarification. The Candidate is mindful that his reporting obligation occurs when an electronic transfer is authorized by a contributor rather than when the funds are

deposited, which may occur as long 10 days later, but no later. Accordingly, as in the case of credit card transactions initiated over the internet, a candidate committee incurs a reporting obligation as of the date a contribution by electronic transfer is authorized, not when the electronic funds are deposited into the depository account. Typically at the time the electronic funds transfer is authorized, the candidate committee is only in possession of such information regarding the name and ownership of the source account of the contribution as is provided by the contributor. The Candidate requests that the Commission expressly clarify that candidates are permitted to rely for reporting purposes upon the information furnished by the contributor electronically, subject to the attribution issues outlined below relating to contributions from the accounts of sole proprietorships, partnerships and limited liability companies. By requesting that the Commission expressly authorize candidates to rely upon information provided electronically by the contributor at the time a contribution by electronic funds transfer is authorized, the Candidate is not requesting that the Commission reconsider or alter the above-quoted language from Advisory Opinion 04-2001 governing record-keeping requirements as they relate to records of the actual electronic fund transfer transaction.

The Candidate assumes that it is the Commission's intent that the attribution rules governing electronic contributions would be similar to those that apply pursuant to N.J.A.C. 19:25-10.15 to handwritten checks, and respectfully offers the following comments, suggestions and requests for clarifications in its Advisory Opinion:

A. Contributions from Individuals via Electronic Funds Transfer

The attribution rules for contributions from individuals via handwritten check, N.J.A.C. 19:25-10.15(a)(1) and (2) are straightforward and relatively easy to apply. The Candidate would propose that contributions by electronic transfer from natural persons be attributed to the person(s) who is/are identified to be the contributor(s) in an electronically transmitted disclosure that authorizes, accompanies, or is generated and transmitted to the candidate or organization simultaneously with, the authorization or instructions for the electronic transfer. For example, credit card transactions either in person, by phone or online all request only a single account holder name, even if the credit card account is jointly held, say, between a husband and wife. In the case of online checks, the Commission could require that the contribution be allocated jointly to the names appearing on the online check or in a notice of electronic funds transfer, or that each electronic transfer be attributed to a single individual as designated by the contributor on an electronically transmitted disclosure that accompanies, or is generated and transmitted to the candidate or organization simultaneously with, the authorization or instructions for the electronic transfer.

B. Contributions via Electronic Transfer from Corporations, Labor Unions and Trusts

The attribution rules for contributions from corporations, labor groups and organizations, political organizations and committees, or from trusts, N.J.A.C. 19:25-10.15(a)(3)-(5) are also straightforward and relatively easy to apply. The Candidate would propose that contributions by electronic transfer from such contributors be

attributed to the entity as designated by the contributor on an electronically transmitted disclosure that authorizes, accompanies, or is generated and transmitted to the candidate or organization simultaneously with, the authorization or instructions for the electronic transfer.

C. Contributions via Electronic Funds Transfer from Sole Proprietorships

The attribution rules for contributions by handwritten check from the bank account of a sole proprietorship are more complex. For example, N.J.A.C. 19:25-10.15(a)(6) provides the following:

6. If the check is signed by an authorized representative of a sole proprietorship that is an unincorporated business entity, and the check is drawn on the account of the sole proprietorship, the contributor shall be the individual who is the sole proprietor having beneficial ownership of the funds in the account on which the check is drawn. If the signatory of the check is an individual other than the sole proprietor beneficially owning the account, the campaign or organizational treasurer shall obtain the signature of the sole proprietor, which signature shall be made on the check, or made on some supporting written document expressing the intent of the sole proprietor to make the contribution as an individual. A sole proprietorship shall not be a contributor.

The Candidate would propose that the Commission direct that Candidates attribute contributions by electronic fund transfer from sole proprietorship to the individual identified as the owner of the sole proprietorship on an electronically transmitted disclosure that accompanies, or is generated and transmitted to the candidate or organization simultaneously with, the authorization or instructions for the electronic transfer.

D. Contributions via Electronic Funds Transfer from Partnerships or Limited Liability Companies

The attribution rules for contributions by handwritten check from the partnerships and limited liability companies ("LLC") are ambiguous even as set forth N.J.A.C. 19:25-10.15(a)(7), and should be clarified both with respect to that section and in regard to electronic transfers. For example, N.J.A.C. 19:25-10.16(a)(7) provides the following:

If the check is signed by an authorized representative of a partnership entity as defined in N.J.A.C. 19:25-11.10(b), or of a limited liability company as defined in N.J.A.C. 19:25-11.10(c), and the check is drawn on the account of the partnership entity or limited liability company, the contributor shall be an individual (or individuals) who is a partner of that partnership.

Before turning to the question of how this rule should be construed in the context of electronic transfers, the Candidate would note that it is unclear on its face how even handwritten checks from partnerships and LLCs are to be attributed. For example, although it is clear that the Commission intends that no contribution is to be attributed to a partnership or LLC as an entity, the above-quoted rule provides little guidance as to how, or to which members, or in what percentages, a contribution from such a source is to be apportioned. For example, if ABCD Engineering, LLC were to contribute \$1,200 to a campaign, and there are four members of this LLC (member A has a 70% interest, and members B, C and D each have 10% interests), can the amount be divided equally between the four members (meaning that none of the contributors would be identified), or should the amount be apportioned on the basis of the respective interests in the LLC as disclosed by the contributor to the candidate.

Whichever approach the Commission decides upon, the Candidate requests that the Commission permit candidates to rely upon information electronically transmitted from the contributor, and that the Commission not require a signed instruction (see, e.g., N.J.A.C. 19:25-10.15(a)(6), as that would defeat the purpose of offering contributors the convenience of contributing online.