



State of New Jersey

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April 19, 2006

BY FAX & FIRST CLASS MAIL

Mark D. Sheridan, Esq.  
General Counsel  
New Jersey Republican State Committee  
150 West State Street, Suite 230  
Trenton, New Jersey 08608

### Advisory Opinion No. 03-2006

Dear Mr. Sheridan:

The Commission considered your request for an advisory opinion at its meeting yesterday and directed me to issue this response. You have asked two questions concerning application 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. 19:25-1 et seq., to a particular bank account, the Federal account, established by the New Jersey Republican State Committee (NJRSC).

#### Questions Presented

You have asked whether or not contributions that are deposited into the NJRSC's Federal account, established pursuant to the provisions of the Federal Election Campaign Act (hereafter, FECA), 2 U.S.C. 431 *et seq.*, and reported to the Federal Election Commission (FEC), are subject to the provisions of the Campaign Reporting Act and Commission regulations. You have also asked whether or not contributions deposited into the NJRSC's Federal account are subject to New Jersey contribution limits established by the Campaign Reporting Act. In each question, you have specifically stated that his inquiry does not concern a "Levin account." "Levin accounts" will be discussed further below.

#### Commission Response

You are advised that as long as funds in the NJRSC Federal account are used exclusively for federal election purposes and not spent on State elections or candidates, the Commission finds it has no jurisdiction over the NJRSC Federal account. Therefore, the Commission has no jurisdiction over contributions that are deposited into the NJRSC's Federal account, and the State political party contribution limits of the Campaign Reporting Act do not apply to contributions deposited into that account.

### Submitted Facts

You have indicated that the NJRSC files reports of contributions and expenditures with the Commission as the State committee of a political party, pursuant to N.J.S.A. 19:44A-8, and has established a depository account, pursuant to N.J.S.A. 19:44A-10, “to fund the NJRSC’s activities in connection with elections for State office.” Review of the Political Party Committee Designation of Organizational Treasurer and Depository (Form D-3) filed by the NJRSC on July 1, 2005, pursuant to N.J.S.A. 19:44A-10 and N.J.A.C. 19:25-4.6, and the most recent NJRSC quarterly report filed, indicates that the NJRSC currently maintains two State political party committee depository accounts, “NJ Republican State Committee” and “NJRSC-Hispanic Leadership Council.”

You have explained that, in addition to its status as the State political party committee of the Republican Party in New Jersey, pursuant to N.J.S.A. 19:5-4, the NJRSC is also registered with the FEC as a “political committee,” specifically as a “State Committee.” As such, the NJRSC maintains a “Federal account.” You stated that “[m]onies deposited into the [NJRSC’s] Federal account are solicited in accordance with Federal law and all contributions and expenditures are reported to the FEC . . . . Monies contained in the NJRSC’s Federal account are used to fund the NJRSC’s activities in connection with Federal campaign activities.” (emphasis added). You have indicated that the NJRSC and its Federal account are subject to the FECA and FEC regulations, specifically 2 U.S.C. §§431(4)(C), 431(15), 433, and 434, and 11 C.F.R. §§100.5, 100.14, 102.1, 110.1(c)(5), and 300.30.

### Discussion

You have cited relevant portions of the Campaign Reporting Act and regulations to support your position that the Act and Commission regulations apply only to NJRSC activity in its State accounts in connection with State elections and do not apply to funds that are deposited into the NJRSC Federal account and are used “to fund the NJRSC’s activities in connection with Federal campaign activities.”

The Commission finds that the scope of the Campaign Reporting Act and Commission regulations does not reach activity by the NJRSC that is strictly limited to Federal elections and is funded through the NJRSC Federal account. The Campaign Reporting Act and Commission regulations are intended to regulate NJRSC activity in relation to State, not Federal elections. This reading is supported by the public policy of the Campaign Reporting Act, which is to “limit political contributions and to require the reporting of all contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office or to aid or promote the passage or defeat of a public question in any election . . . .” See N.J.S.A. 19:44A-2. The term “candidate” is specifically defined at N.J.S.A. 19:44A-3c to mean “an individual seeking election to a public office of the State or of a county, municipality or school district at an election.” The definition makes no reference to a candidate for Federal office. Further, N.J.S.A. 19:44A-4 limits the reach of the Campaign Reporting Act to any public question put to the voters of New Jersey and to “any election for any public office of the State or any political subdivision thereof . . . .” Again, there is no reference to Federal election activity.

The FECA and the FEC regulations implementing the law state their exclusive application to Federal election activity and the resulting preemption of State law by declaring that “[t]he provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supercede and preempt any provision of State law with respect to election to Federal office.” See 43 U.S.C. §453 and 11 C.F.R. §108.7. The rule establishes that federal law specifically supercedes State law concerning the following three activities:

- (1) Organization and registration of political committees supporting Federal candidates;
- (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and
- (3) Limitation on contributions and expenditures regarding Federal candidates and political committees. 11 C.F.R. §108.7(b).

The Commission concludes that the FECA and FEC regulations, and not the Campaign Reporting Act and Commission regulations, govern the NJRSC’s Federal account because the funds in the NJRSC’s Federal

account are used by the NJRSC as a federal political committee to support activity in connection with Federal campaigns.

As a result, the Commission confirms your understanding that an individual who, in a calendar year, has contributed \$25,000 in the aggregate to the NJRSC State account or accounts and \$10,000 to the NJRSC Federal account has not exceeded the \$25,000 annual contribution limit applicable to the NJRSC pursuant to the Campaign Reporting Act and Commission regulations; see N.J.S.A. 19:44A-11.4 and N.J.A.C. 19:25-11.2.

#### **“Levin” Accounts**

The Commission has considered materials available from the FEC and notes that, pursuant to the FECA, a political party committee, such as the NJRSC, that engages in both federal and State election activity may have several bank accounts. One type of account, known as a “Levin account,” was created as a result of the Bipartisan Campaign Reform Act of 2002, which amended the FECA, Pub. L. 107-155, 116 Stat. 81 (March 27, 2002). The Commission understands that funds in a “Levin” account are subject to different restrictions from those applicable to funds in the NJRSC Federal account. Specifically, “Levin” funds “must be lawful under the laws of the State in which the committee is organized,” are subject to State law with regard to contribution limits, and are limited to \$10,000 per calendar year from any source. See 11 C.F.R. §300.31(b), (c), and (d)(1)-(2). Also see “Federal Election Commission Campaign Guide, Political Party Committees” (April 2004), pp. 1-4 and 41-42.

“Levin” funds are described as nonfederal funds that are “donated to state, district and local party committees, in accordance with state law, from corporations, labor organizations and other persons in amounts not to exceed \$10,000 per calendar year.” Federal Election Commission Record, January 2006, p.14; also see 11 C.F.R. §300.31. Further, “Levin” funds may be spent not only on certain federal election activity, but also for purposes permitted under State law; see 11 C.F.R. §300.32(b)-(d). You have indicated that your inquiry does not concern a NJRSC “Levin” account. However, because “Levin” funds may be used for purposes permitted under New Jersey law, the Commission wishes to take this opportunity to advise you that, unlike funds in the NJRSC Federal account, funds contributed to a “Levin” account would be subject to the requirements of the Campaign Reporting Act and Commission regulations and would count toward the State political party committee annual \$25,000 contribution limit.

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.



Advisory Opinion Request For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
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(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
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N.J. ELECTION LAW ENFORCEMENT COMMISSION

PLEASE PROVIDE THE INFORMATION REQUESTED BELOW

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 include the following:

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

Full name of Person, Committee, or Entity:
New Jersey Republican State Committee

Mailing Address:
150 West State Street, Suite 230

\*Day Telephone Number:
(609) 989-7300

Trenton, New Jersey 08608

\*Evening Telephone Number:

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

Yes [checked] No [ ]

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

- Candidate committee [ ] Recall committee [ ]
Joint candidates committee [ ] Recall defense committee [ ]
Political committee [ ] Personal financial disclosure statement [ ]
Continuing political committee [ ] Other (please describe): [ ]
Political party committee [checked]
Legislative leadership committee [ ]

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., 2005 general election) or calendar years, and identify filing capacity:

[ ]

c. If reports are or were filed under a different name than that appearing in Question #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).

Are contributions deposited into the NJRSC's federal account (not Levin account) established pursuant to 2 U.S.C. 431 et seq. and reported to the Federal Election Commission pursuant to 2 U.S.C. 434, subject to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. and the Regulations of the New Jersey Election Law Enforcement Commission N.J.A.C. 19:25-1 et seq.? Are contributions to the NJRSC's federal account (not Levin account) established pursuant to 2 U.S.C. 431 et seq. attributable toward an individual contributor's contribution limits as set forth in N.J.A.C. 19:25-11.2?

\*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

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:

See Attached

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:

See Attached

6. Person who is submitting this advisory opinion request on behalf of the committee or entity listed in Question #1:

Full Name:

Mark D. Sheridan

Mailing Address:

Drinker Biddle & Reath

500 Campus Drive

Florham Park, New Jersey 07932

\*Day Telephone Number:

(973) 360-1100

\*Evening Telephone Number:

Fax Number:

(973) 360-9831

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee, or entity

Other (please describe): \_\_\_\_\_

7. ~~Thereby 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 13, 2006  
Dated:



Signature:

Mark D. Sheridan  
973-549-7336  
mark.sheridan@dbr.com

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April 13, 2006

HAND DELIVERY

Election Law Enforcement Commission  
Attn: Nedda Massar, Esq.,  
Legal Director  
28 West State Street – 13<sup>th</sup> Fl.  
Trenton, New Jersey 08625-0185

Re: New Jersey Republican State Committee Request For Advisory Opinion

Commissioners:

I write in my capacity as General Counsel to the New Jersey Republican State Committee (the "NJRSC"). The NJRSC seeks an Advisory Opinion from the New Jersey Election Law Enforcement Commission (the "Commission") regarding the NJRSC's obligations under the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (the "Act") and the Regulations of the New Jersey Election Law Enforcement Commission N.J.A.C. 19:25-1 et seq. (the "Regulations") relating to certain contemplated activities. The precise questions sought to be addressed are set forth below. In addition, the NJRSC has provided all facts it believes are necessary for the Commission to render an Advisory Opinion. Finally, the NJRSC has set forth below the result it seeks and the basis for its conclusion that the desired result is appropriate under New Jersey law.

I regret to advise you that due to the urgency of this matter, the NJRSC is unable to grant the Commission an extension of the 10 day response period provided for in N.J.S.A. 19:44A-6.

**QUESTIONS PRESENTED**

Are contributions deposited into the NJRSC's federal account (not Levin account) established pursuant to 2 U.S.C. 431 et seq. and reported to the Federal Election Commission pursuant to 2 U.S.C. 434, subject to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. and the Regulations of the New Jersey Election Law Enforcement Commission N.J.A.C. 19:25-1 et seq.?

Are contributions to the NJRSC's federal account (not Levin account) established pursuant to 2 U.S.C. 431 et seq. attributable toward an individual contributor's contribution limits as set forth in N.J.A.C. 19:25-11.2?

Daniel F. O'Connell,  
Partner responsible for  
Florham Park Office

Election Law Enforcement Commission  
April 13, 2006  
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### FACTS

The NJRSC is a political party committee organized pursuant to N.J.S.A. 19:5-4 and registered with the Commission. See N.J.S.A. 19:44A-8. The NJRSC has established a State account as required by N.J.S.A. 19:44A-10. Monies deposited in the State account are solicited in accordance with New Jersey law and all contributions and expenditures are reported to the Commission. Monies contained in the State account are used exclusively to fund the NJRSC's activities in connection with elections for State office.

The NJRSC is also registered as a "political committee" with the Federal Election Commission (the "FEC"). See 2 U.S.C. §431(4)(C); 2 U.S.C. §433<sup>1</sup>. Specifically, the NJRSC is registered as a "State committee." See 2 U.S.C. §431(15). The NJRSC has established a Federal election account pursuant to 11 C.F.R. §300.30. Monies deposited into the Federal account are solicited in accordance with Federal law and all contributions and expenditures are reported to the FEC in accordance with 2 U.S.C. §434. Monies contained in the NJRSC's Federal account are used to fund the NJRSC's activities in connection with Federal campaign activities. See 11 C.F.R. §300.30.

### CONTEMPLATED ACTIVITIES AND STATUS

A contributor to the NJRSC, an individual, wishes to make a contribution of \$10,000 to the NJRSC's Federal account, the maximum contribution allowable under Federal law. See 11 C.F.R. §110.1(c)(5). The same contributor desires to make a contribution of \$25,000 to the NJRSC's State account, the maximum contribution allowable under State law. See N.J.A.C. 19:25-11.2.

The NJRSC has not accepted either contribution from the contributor. Absent a ruling from the Commission, the NJRSC is concerned that accepting the \$25,000 contribution into its State account and subsequently accepting the \$10,000 contribution into its Federal account would result in the NJRSC violating N.J.A.C. 19:25-11.1.

### DESIRED RESULT

The NJRSC seeks a determination that contributions made to the NJRSC's Federal account are not subject to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. or the Regulations of the New Jersey Election Law Enforcement Commission N.J.A.C. 19:25-1 et seq. and consequently, contributions to the NJRSC's Federal account by an individual contributor do not affect that

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<sup>1</sup> See also 11 C.F.R. §§100.5, 100.14, 102.1

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contributor's contribution limits under State law. Stated differently, the NJRSC seeks a determination from the Commission that by accepting a \$25,000 contribution into its State account and a \$10,000 contribution into its Federal account, both contributions coming from a single contributor, the NJRSC has not accepted a contribution in excess of contribution limits in violation of N.J.A.C. 19:25-11.1.

The NJRSC believes the result it seeks is consistent with New Jersey law. The NJRSC is not asking the Commission to determine whether the factual scenario outlined above is permissible under Federal law.<sup>2</sup> The NJRSC is likewise not asking the Commission to determine the applicability of the Act or the Regulations to a Levin account.

### ANALYSIS

Pursuant to N.J.S.A. 19:44A-4, the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., is applicable "in any election for any public office of the State or any political subdivision thereof..." Importantly, N.J.A.C. 19:25-1.9 of the Regulations of the New Jersey Election Law Enforcement Commission, provides that: "[t]he reporting thresholds and contribution limits for...political party committees...set forth in the Act and in the provisions of this chapter shall be applicable in any election subject to the Act pursuant to N.J.S.A. 19:44A-4..." Consequently, the Act and the Regulations relating to political party committees such as the NJRSC are applicable only to elections for State office and not to elections for Federal office.

Pursuant to 2 U.S.C. §453, the provisions of the Federal Election Campaign Act of 1971, as amended<sup>3</sup>, "supercede and preempt any provisions of State law with respect to election to Federal office." The regulations promulgated by the FEC specifically provide: "Federal law supercedes State law concerning the – (1) Organization and registration of political committees supporting Federal candidates; (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and (3) Limitations on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. §108.7. Thus, State statutes relating to contribution limits and reporting requirements pertaining to the NJRSC, in its capacity as a "political committee" under Federal law, are preempted and superceded by Federal law.

The contemplated contribution to the NJRSC's Federal account is not subject to the Act or the Regulations. Based upon the foregoing discussion of the respective State and Federal laws relating the NJRSC's State and Federal accounts, the NJRSC's Federal

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<sup>2</sup> The NJRSC notes that it believes the contemplated action to be permissible under Federal law.

<sup>3</sup> Amendments include the provisions of the Bipartisan Campaign Reform Act.

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account and all contributions to and all expenditures from that account are governed solely by Federal law. Indeed, pursuant to 2 U.S.C. §453 and 11 C.F.R. §108.7, New Jersey is specifically preempted from regulating the NJRSC in its capacity as a "political committee" created pursuant to 2 U.S.C. §431. The Act thus cannot be found to regulate or govern contributions to the NJRSC's Federal account. Moreover, New Jersey's election laws demonstrate a specific intent to limit regulation to those entities and accounts relating to elections to State office. See N.J.S.A. 19:44A-4. The plain language of N.J.A.C. 19:25-1.9 manifests this intent. By its terms, N.J.A.C. 19:25-1.9 limits the applicability of the Regulations to elections for State office. Since the NJRSC's Federal account is not utilized in connection with State elections, New Jersey law is not, and indeed cannot, be deemed applicable to transactions involving that account.

Because New Jersey is preempted from regulating contributions to the NJRSC's Federal account and further because the Act and the Regulations apply only to contributions and committees relating to State elections, ELEC cannot attribute contributions to NJRSC's Federal account to an individual contributor so as to reduce the applicable contribution limit under New Jersey law. Were the Commission to do so, it would violate not only 2 U.S.C. 453 and 11 C.F.R. §108.7 but, it would also exceed its own authority under N.J.S.A. 19:44A-4 and N.J.A.C. 19:25-1.9.

### CONCLUSION

The NJRSC respectfully submits that based upon the foregoing, New Jersey law is inapplicable to contributions to the NJRSC's Federal account and consequently, the NJRSC is entitled to accept contributions to its Federal account, subject to Federal law, even if the contributor has also made the maximum contribution allowable under State law.

Thank you for your considerations in this matter.

Very truly yours,



Mark D. Sheridan

MScs  
Enclosure