



State of New Jersey

## ELECTION LAW ENFORCEMENT COMMISSION

JERRY FITZGERALD ENGLISH  
Chair

PETER J. TOBER  
Vice Chair

ALBERT BURSTEIN  
Commissioner

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/>

FREDERICK M. HERRMANN, Ph.D.  
Executive Director

JEFFREY M. BRINDLE  
Deputy Director

NEDDA G. MASSAR  
Legal Director

EVELYN FORD  
Compliance Director

JAMES P. WYSE  
Legal Counsel

June 19, 2007

Gregory E. Nagy, Esq.  
Genova, Burns, & Vernoia  
Trinity Centre  
115 Broadway, 15<sup>th</sup> Floor  
New York, New York 10006

### Advisory Opinion No. 02-2007

Dear Mr. Nagy:

The Commission considered your request for an advisory opinion at its meeting today and directed me to issue this response. Your request is made on behalf of New Jersey Organization for a Better State (hereafter, NEW JOBS), an entity that is currently filing reports with the Commission as a continuing political committee (hereafter, CPC), and Cooper, Levenson, April, Niedelman, Wagenheim, P.A., a law firm that received \$50,000 or more in calendar year 2006 from contracts with New Jersey government entities (hereafter, Cooper Levenson or the firm).

This response is based upon information provided in two documents, an Advisory Opinion Request Form, received on June 5, 2007, from NEW JOBS, and your letter received on June 13, 2007, which asks that Cooper Levenson be joined as a party to the advisory opinion request and includes supplemental information.

Please be advised that this response is limited to the question presented below, which was included in your letter of June 13<sup>th</sup>. Information contained in the Advisory Opinion Request Form is necessary to respond to your inquiry. However, the Commission expresses no opinion herein regarding the filing or other obligations of NEW JOBS pursuant to the business entity disclosure provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, et seq. (hereafter, the Campaign Reporting Act), specifically N.J.S.A. 19:44A-20.27, and Commission regulations, specifically N.J.A.C. 19:25-26.4, 26.5, and 26.6, because during 2006, as represented in the Advisory Opinion Request Form, NEW JOBS “did not hold or seek public contracts in New Jersey.”

### Question Presented

You have asked whether or not Cooper Levenson, as a “business entity,” is required by N.J.A.C. 19:25-26.6 to report on its business entity annual disclosure statement, filed pursuant to N.J.A.C. 19:25-26.4 and 19:25-26.5, each contribution in excess of \$300.00 made in 2006 by NEW JOBS to New Jersey candidates and committees.

### **Commission Response**

N.J.S.A. 19:44A-20.27 and N.J.A.C. 19:25-26.6 require that if a “business entity,” as discussed further below, directly or indirectly controls a CPC, reportable contributions made by that CPC are deemed to be contributions made by the “business entity” and are required to be reported by the “business entity” on its annual disclosure statement.

The Commission hereby advises you that participation by Cooper Levenson, a business entity, in the organization, decision-making, and policy-making activities of NEW JOBS, a CPC, as described in this inquiry, is not sufficient to constitute direct or indirect control of NEW JOBS. Cooper Levenson does not meet the criteria, established at N.J.A.C. 19:25-26.6(d), for direct or indirect control of a CPC. Therefore contributions made by NEW JOBS are not deemed, pursuant to N.J.S.A. 19:44A-20.27d and N.J.A.C. 19:25-26.6, to be contributions by Cooper Levenson and are not required to be reported by Cooper Levenson on its business entity annual disclosure statement, filed pursuant to N.J.S.A. 19:44A-20.27 and N.J.A.C. 19:25-26.4 and 26.5.

### **Submitted Facts**

Your inquiry states that NEW JOBS is a CPC that files quarterly reports with the Commission, as a “nonpartisan organization that promotes a probusiness climate in New Jersey by endorsing and supporting legislative candidates who actively support economic growth, the creation of private sector jobs, and the lowering of business costs.” On the Continuing Political Committee-Registration Statement and Designation of Organizational Depository (Form D-4), filed September 14, 2006, NEW JOBS is self-described as a “business” or “ideological” CPC.

The inquiry advises that the CPC is “operated by a Board of Trustees composed of almost 50 persons who reflect a wide spectrum of perspectives, such as manufacturers, health care providers, pharmaceutical companies, law firms, and many others.” Further, NEW JOBS conducts events that are “sponsored by New Jersey Business and Industry Association, Chamber of Commerce Southern New Jersey, Atlantic County Chamber of Commerce, Morris County Chamber of Commerce, Meadowlands Regional Chamber of Commerce and other regional business groups.” As indicated above, the inquiry states that NEW JOBS did not seek or hold any contracts during 2006 with New Jersey public entities. However, as the Commission has verified with you, NEW JOBS believes that businesses “represented on its Board of Trustees,” including Cooper Levenson, have received \$50,000 or more in the aggregate during 2006 through agreements or contracts with New Jersey public entities.

According to your letter, Cooper Levenson, a professional corporation, contributed more than \$300 to NEW JOBS in 2006 and received \$50,000 or more in the aggregate during 2006 through agreements or contracts with New Jersey public entities. Kenneth J. Calemno, who is the Chief Operating Officer of Cooper Levenson, represented the firm during 2006 on the NEW JOBS Board of Trustees and served as its Vice Chair. Mr. Calemno was “one of approximately 50 persons” who served on the Board. You have indicated that under the NEW JOBS by-laws effective in 2006, as Vice Chair, Mr. Calemno might have been called upon to exercise the duties of the chairperson. Further, you have stated that decisions of the NEW JOBS Board were made by resolution and decided by “majority vote of the Trustees present,” but no provision of the by-laws vests greater voting authority in the Vice Chairperson.

### **Discussion**

Reform legislation was enacted in 2004 and 2005 to impose restrictions on the award of contracts to businesses that made certain political contributions; see P.L.2004, c.19, P.L.2005, c.51, and N.J.S.A. 19:44A-20.3-20.25. Additional contracting reform legislation followed in 2005 which added a comprehensive disclosure component to the earlier contracting restrictions; see P.L.2005, c.271 and N.J.S.A. 19:44A-20.26

and 20.27. Together, these legislative provisions are frequently called “pay-to-play” reform. As a result of the disclosure legislation, if a business entity has received \$50,000 or more in a calendar year from its contracts with New Jersey government entities, N.J.S.A. 19:44A-20.27 requires that the business file with the Commission an annual report to disclose its contract activity and its political contributions; also see N.J.A.C. 19:25-26.4 and 26.5. Pursuant to N.J.A.C. 19:25-26.5(b), the first such annual report is due for filing on September 28, 2007.

The Commission concludes that as a professional corporation, Cooper Levenson is a “business entity” as that term is defined in the business entity disclosure provisions of the Campaign Reporting Act and Commission regulations; see N.J.S.A. 19:44A-20.27d and N.J.A.C. 19:25-26.1. You have indicated that Cooper Levenson received \$50,000 or more in the aggregate during 2006 through agreements or contracts with New Jersey public entities. As a result, the Commission finds that Cooper Levenson is required by N.J.S.A. 19:44A-20.27 and N.J.A.C. 19:25-26.4 and 19:25-26.5 to file the business entity annual disclosure statement on or before September 28, 2007 to report 2006 activity.

N.J.S.A. 19:44A-20.27d requires that a business entity that is not a natural person, including a professional corporation such as Cooper Levenson, disclose on the annual statement contributions in excess of \$300 made not only from its business entity funds, but also contributions made by any CPC organized under Section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity; see also N.J.A.C. 19:25-26.6. Such contributions by a controlled CPC are deemed to be contributions of the business entity. The Commission has confirmed that NEW JOBS filed the Political Organization Notice of Section 527 Status (Form 8871) with the Internal Revenue Service. It is therefore necessary to determine whether or not Cooper Levenson directly or indirectly controlled NEW JOBS in 2006 and must as a result report NEW JOBS’ contributions made during 2006 on the firm’s annual disclosure statement.

N.J.A.C. 19:25-26.6(d) provides that:

the criteria to be applied to determine whether or not a business entity directly or indirectly controls a continuing political committee shall include, but not be limited to, whether or not the business entity participates as an organizer of the continuing political committee, participates in decision-making with regard to the specific activities of the continuing political committee, or participates in formation of the policies of the continuing political committee.

Applying the facts submitted concerning the relationship between NEW JOBS and Cooper Levenson to the criteria in N.J.A.C. 19:25-26.6(d), the Commission finds that while Cooper Levenson participated in NEW JOBS’ decision-making on specific activities and policy-making in 2006, because Mr. Calemme was on the NEW JOBS Board of Trustees and served as its Vice Chair, the role played by the firm in 2006 was not sufficient to exert direct or indirect control over that decision-making and policy-making process. Mr. Calemme was one among “approximately 50 persons” serving on the NEW JOBS Board, his vote on any decision carried no greater weight than the vote of any other Board member, and decisions were made by “majority vote of the Trustees present.” The Commission finds significant that NEW JOBS is not organized to promote the interests of any single business entity and cannot be identified with any one particular business entity. In fact, the members of NEW JOBS’ Board of Trustees are drawn from many areas of business interest, including “manufacturers, health care providers, pharmaceutical companies, law firms, and many others.”

In concluding the Cooper Levenson does not directly or indirectly control NEW JOBS, and is therefore not required to report NEW JOBS’ contributions on its business entity annual disclosure statement, the Commission looked for guidance, as suggested in the inquiry, to subsection (c) of N.J.A.C. 19:25-26.6. This provision establishes a standard for determining whether or not a business entity has direct or indirect control of a subsidiary and therefore whether or not the subsidiary’s contributions are deemed to be reportable contributions of the business entity. N.J.A.C. 19:25-26.6(c) requires that:

where a corporation owns sufficient shares or voting interest in a second corporation to elect a majority of the directors or trustees of the second corporation, or where a business entity has sufficient control of a second business entity to direct the decision-making of the second business entity, the second corporation or second business entity shall be a subsidiary directly or indirectly controlled by a business entity. (emphasis added)

The rule examines whether or not the business entity elects a majority of the directors of the subsidiary or directs the decision-making of the subsidiary as ways to measure control of the subsidiary. The Commission believes that application of a similar standard is an effective measure for determining whether or not Cooper Levenson directly or indirectly controls NEW JOBS. The Commission finds that in the relationship between NEW JOBS and Cooper Levenson, the business entity did not in 2006 represent a majority of the Board of Trustees of NEW JOBS and therefore did not have sufficient control of the decision-making process of the CPC's Board of Trustees to require that its contributions be deemed to be contributions of Cooper Levenson.

In contrast, if a CPC were organized to promote the interests of a single business entity that received \$50,000 or more from contracts with New Jersey government entities in 2006, and if its Board of Trustees consisted only of officers of that single business entity, the Commission believes that it might conclude, pursuant to N.J.A.C. 19:25-26.6(d), that the business entity participated sufficiently in decision-making for the CPC to exert direct or indirect control of the CPC. In that case, contributions by the CPC would be deemed to be contributions of the business entity because there would be an identity between the particular business entity and the CPC.

The Commission wishes to thank you for your inquiry.

Very truly yours,

Election Law Enforcement Commission

By: \_\_\_\_\_  
Nedda G. Massar, Esq.



*State of New Jersey*

**ELECTION LAW ENFORCEMENT COMMISSION**

JERRY FITZGERALD ENGLISH  
Chair

PETER J. TOBER  
Vice Chair

ALBERT BURSTEIN  
Commissioner

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/>

FREDERICK M. HERRMANN, Ph.D.  
Executive Director

JEFFREY M. BRINDLE  
Deputy Director

NEDDA G. MASSAR  
Legal Director

EVELYN FORD  
Compliance Director

JAMES P. WYSE  
Legal Counsel

June 14, 2007

Gregory E. Nagy, Esq.  
P. O. Box 157  
Hopewell, NJ 08525

Dear Mr. Nagy:

On June 13, 2007, the Commission received your letter of representation which asked that Cooper, Levenson, April, Niedelman, Wagenheim, P.A., be joined as a requesting party to the inquiry submitted earlier in the name of New Jersey Organization for a Better State (NEW JOBS), a continuing political committee. As we discussed on the telephone, the Commission will consider the request as received on June 13, 2007, pursuant to N.J.A.C. 19:25-18.2(a), and therefore appropriate for Commission action with the addition of Cooper, Levenson, April, Niedelman, Wagenheim, P.A., as a requesting party.

Kindly be advised that the request for an advisory opinion from the Election Law Enforcement Commission will be considered at the Commission meeting on June 19, 2007. The meeting will begin at 11:00 a.m. and will be held at the offices of the Commission, 28 West State Street, Trenton.

Please do not hesitate to contact me if you have any questions about the advisory opinion process.

Very truly yours,

NEDDA G. MASSAR, ESQ.  
Legal Director



















Nedda G. Massar, Esq.

June 12, 2007

Page 2

- The firm made contributions in excess of \$300 in 2006 to NEW JOBS, a certified continuing political committee;
- The firm received \$50,000 or more in the aggregate in 2006 through agreements or contracts with public entities pursuant to *N.J.A.C. 19:25-26.4*;
- The firm was represented by Kenneth J. Calemno on the Board of Trustees of NEW JOBS;
- Mr. Calemno is and was the Chief Operating Officer of the firm;
- Mr. Calemno was one of approximately 50 persons serving on the NEW JOBS Board of Trustees, none of the other Trustees represent the firm;
- Under the by-laws of NEW JOBS effective in 2006, the Board of Trustees has responsibility for the management and control of its business and property, and for fixing the policy of the Organization;
- Mr. Calemno also served as a Vice Chair of the NEW JOBS Board of Trustees;
- Under the by-laws of NEW JOBS, three Vice Chairs can be appointed and they may exercise the duties of the chairperson whenever the chairperson shall be absent or otherwise unable to exercise them.
- Under the by-laws of NEW JOBS, Board decisions were made in the form of resolutions, decided upon by majority vote of the Trustees present (there are no provisions for the Chairperson or the Vice Chairpersons to receive greater voting authority than that of any other Board member).

With these supplemental facts, and incorporating by reference the facts and statement of result submitted by NEW JOBS in its advisory opinion request, Cooper Levenson seeks the advice of the Commission on the following question:

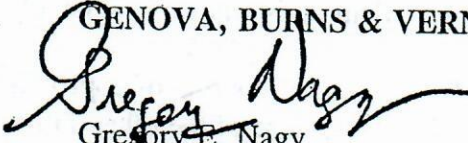
Does *N.J.A.C. 19:25-26.6* require Cooper Levenson, in its capacity as a "business entity" within the meaning of that regulation, to report for "pay-to-play" ("P2P") purposes (*i.e.*, pursuant to *N.J.A.C. 19:25-26.4* and *26.5*), each contribution over \$300 made by NEW JOBS in 2006 to New Jersey candidates or committees?

Nedda G. Massar, Esq.  
June 12, 2007  
Page 3

We understand that the 10 business days provided by *N.J.A.C. 19:25-18.2* for a response by the Commission will begin running upon the date of receipt of this letter. Kindly be advised that Cooper Levenson consents to an extension of that period to June 22, 2007, if necessary.

Thank you for your courtesy.

Sincerely,

GENOVA, BURNS & VERNIOIA  
  
Gregory E. Nagy

GEN:eg

cc: Kenneth J. Calemno, COO, Cooper Levenson  
Douglas Troast, Chairman, NEW JOBS  
Arthur J. Maurice, Treasurer, NEW JOBS

U:\1875\001\06 12 07 ltr to Nedda G. Massar AO Request NY Jobs.doc