



State of New Jersey

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August 26, 2005

BY FAX & FIRST CLASS MAIL

Assemblyman Louis Greenwald
900 Whitehorse Pike
Oaklyn, New Jersey 08107

Assemblyman Samuel Thompson
5 Lincroft Avenue
Old Bridge, New Jersey 08857

Advisory Opinion No. 03-2005

Dear Assemblymen Greenwald and Thompson:

The Commission has considered your requests for an advisory opinion and directed me to issue this response. You are candidates for the State Assembly in the Sixth and Thirteenth Legislative Districts, respectively, which have been selected as the 2005 general election districts to participate in the New Jersey Fair and Clean Elections Pilot Project, pursuant to P.L.2004, c.121 (hereafter, the Act). Pursuant to the Act and recently-adopted Commission regulations, you have each filed a New Jersey Fair and Clean Elections Pilot Project Declaration of Intent (Form CE-1) to indicate that you are seeking to become certified as Clean Elections candidates in the 2005 general election.

Question Presented

You have asked whether or not, in light of the requirement in the Clean Elections Pilot Project that qualifying contributions be received by means of either a check or money order, you may use a "check card process associated with one's checking account" to accept \$5.00 and \$30.00 Clean Elections qualifying contributions.

Commission Response

The Commission advises you that it is permissible to use a "check card process" associated with a contributor's checking account, under the conditions set forth below, as a means of accepting

qualifying contributions in the 2005 Clean Elections Pilot Project. The Commission further advises you that application of this response is specifically limited to the 2005 Clean Elections Pilot Project because of the unique requirements of the program.

The Clean Elections Pilot Project

A major innovation in the ethics reform legislation enacted by the Legislature in 2004 was the New Jersey Fair and Clean Elections Pilot Project. Pursuant to the provisions of the Act, your Legislative Districts, the Sixth and Thirteenth, were selected by the chairpersons of the New Jersey Democratic and Republican State Committee as the Pilot Project districts.

To be certified as a Clean Elections Assembly candidate in the 2005 general election Pilot Project, you must, during the qualifying period (which ends at 4:00 P.M. on September 7, 2005), collect 1,500 qualifying contributions. Pursuant to P.L.2004, c.121, §3 and N.J.A.C. 19:25-23.1, qualifying contributions are contributions, totaling \$20,000, from 1,500 individuals who are registered voters in the candidate's legislative district. The 1,500 contributions are comprised of at least 1,000 contributions of \$5.00 and at least 500 contributions of \$30.00 "in the form of a check or money order" payable to the [Clean Elections] fund [established by the Department of Treasury]." (Emphasis added.)

Once certified as a Clean Elections candidate by the Commission, a candidate will receive an initial grant of public funds to conduct his or her 2005 general election campaign (\$65,100.00 in District 6 and \$59,175.00 in District 13) and may be eligible to receive additional funds under certain circumstances; see P.L.2004, c.121, §10 and §11, and N.J.A.C. 19:25-23.9 and 19:25-23.16 through 23.19.

Discussion

You have asked the Commission to determine whether or not the use of a "check card process," associated with a contributor's checking account, comports with the statutory and regulatory requirement that a Clean Elections qualifying contribution be received in the "in the form of a check or money order." The Commission concludes that the "check card process" tied to a contributor's checking account serves as the functional equivalent of a check and that it is permissible to accept a Clean Elections qualifying contribution made using a "check card" and the related checking account that are owned by the individual contributor who is making the contribution. A "check," as defined in Black's Law Dictionary (Eighth Edition), is "drawn on a bank, [and] payable on demand" The Commission believes that a "check card process" tied to an individual's checking account also possesses these characteristics and therefore functions in a manner that closely approximates a banking transaction by means of a paper check.

To ensure that the contribution reporting and recordkeeping requirements of the Act are met, the Commission advises you that the following requirements, similar to those in N.J.A.C. 19:25-10.16 for non-Clean Elections candidates, are applicable to Clean Elections contributions received by means of a "check card process":

1. The date of receipt of a "check card" contribution is the date on which the account owner authorizes the contribution;

2. The amount of the “check card” contribution is the total amount that the account owner authorizes;
3. The account used to make the “check card” contribution must be owned by the individual contributor making the contribution; and,
4. For each “check card” contribution, a written receipt shall be made and maintained, pursuant to N.J.A.C. 19:25-23.5, and the recordkeeping requirements of N.J.A.C. 19:25-23.6 shall be observed.

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

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR, ESQ.