



*State of New Jersey*

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October 19, 2005

Amy Handlin  
20 Rimwood Drive  
Lincroft, New Jersey 07738

Samuel D. Thompson  
5 Lincroft Avenue  
Old Bridge, New Jersey 08857

### **Advisory Opinion No. 04-2005**

Dear Candidates Handlin and Thompson:

The Commission has considered your request for an advisory opinion and directed me to issue this response. You are 2005 general election candidates for State Assembly in the Thirteenth Legislative District. Each of you filed a Declaration of Intent (Form CE-1) to become certified as a Clean Elections candidate in the 2005 general election pursuant to the New Jersey Fair and Clean Elections Pilot Project; see P.L.2004, c.121. As you indicated in your request for an advisory opinion, each of you was unable to meet the criteria for certification as Clean Elections candidate in the 2005 Pilot Project.

The Pilot Project required that you collect, during the qualifying period (which ended at 4:00 P.M. on September 21, 2005), 1,500 contributions from voters registered to vote in the Thirteenth Legislative District. Pursuant to P.L.2004, c.121, §3 and N.J.A.C. 19:25-23.1, the 1,500 contributions were required to consist 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].” You have explained that because you did not collect the required number of qualifying contributions and therefore did not file a Clean Elections submission, you currently have the qualifying contributions in your possession.

### **Question Presented**

You have asked whether or not you may return each qualifying contribution to its contributor who may opt either to keep the contribution or to turn over the contribution to the Commission for deposit into the Clean Elections Fund established pursuant to P.L.2004, c.121, §5.

## Commission Response

For the reasons discussed below, the Commission advises that you may return each qualifying contribution to its contributor who may elect to either keep the contribution or forward it to the Commission for deposit into the Clean Elections Fund.

### Discussion

The Clean Elections Act and implementing Commission regulations are silent with regard to a candidate who was not able to meet the criteria for certification by the Commission as a Clean Elections candidate, and there is therefore no specific direction concerning disposition of qualifying contributions by candidates who have not been certified as Clean Elections candidates. The Commission notes that the Clean Elections Act requires that each qualifying contribution check or money order be made payable to the Clean Elections Fund; see P.L.2004, c.121, §3 and N.J.A.C. 19:25-23.1. It may therefore be argued that this requirement is evidence of a Legislative intent that all qualifying contributions, regardless of whether or not a candidate is ultimately certified as a Clean Elections candidate, be deposited into the Fund. Qualifying contributions are one among several financial sources that are intended to provide funding for the public fund grant amounts awarded to certified Clean Elections candidates; see P.L.2004, c.121, §5 (hereafter, Section 5).

You have suggested that each Clean Elections qualifying contribution is intended by the contributor to show support for a specific candidate, and it is therefore appropriate to return a qualifying contribution to the contributor. You have noted the specific text in the Clean Elections Act which states that qualifying contributions are solicited by and made to a particular candidate, and such contributions are intended “to show that . . . [a candidate] has sufficient support.” See P.L.2004, c.121, §8. Further, you have noted that the definition of a qualifying contribution states that it is a “contribution of money made to a participating candidate by any individual.” (Emphasis added) See P.L.2004, c.121, §5 and N.J.A.C. 19:25-23.1.

You have further contrasted the Clean Elections program, where each candidate collects qualifying contributions from individual contributors, with the gubernatorial public financing program, where members of the public make contributions through an income tax check-off to the Gubernatorial Elections Fund, established pursuant to N.J.S.A. 54A:9-25.1, but not to any particular candidate. As you indicated, contributions to the Gubernatorial Elections Fund may be distinguished from Clean Elections contributions because the gubernatorial contributions are not intended to support any specific gubernatorial candidate.

### Conclusion

In the absence of any specific statutory provision dealing with candidates who have not been certified as Clean Elections candidates, and in light of the inconsistent statutory texts, as discussed above, the Commission concludes that you may return qualifying contributions to contributors who may decide whether or not to keep the contributions or provide them to the Commission for return to the State. The Commission advises you that a qualifying contribution may not in any case be endorsed for or deposited into a campaign account. The Commission requests that on or before November 18, 2005, you file a report of all qualifying contributions received and any seed money contributions received and expenditures made.

Please do not hesitate to contact me if I may be of any assistance. Thank you for submitting your request and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT  
COMMISSION

By: \_\_\_\_\_  
NEDDA G. MASSAR, ESQ.