



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

William H. Eldridge
Chairman

Owen V. McNary, III
Vice Chairman

David Linett
Commissioner

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

Frederick M. Herrmann, Ph.D.
Executive Director

Jeffrey M. Brindle
Deputy Director

Gregory E. Nagy
Legal Director

James P. Wyse
Counsel

April 19, 1995

Allen S. Zeller, Treasurer
Friends of Senator Wayne R. Bryant
P.O. Box 526
Camden, New Jersey 08102

Advisory Opinion No. 06-1995

Dear Mr. Zeller:

The Commission has directed me to issue this response to your request for an advisory opinion. You have asked several questions concerning the applicability of the contribution limits contained in the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Reporting Act) to campaign funds contributed to Senator Wayne R. Bryant while he was a member of the General Assembly and prior to his appointment to the State Senate.

Submitted Facts

At the conclusion of his successful 1993 general election candidacy for General Assembly, then-Assemblyman Bryant established a candidate committee which began filing reports with the Commission on behalf of an anticipated 1995 primary election Assembly campaign. That candidate committee filed reports under the name, Elect Assemblyman Wayne R. Bryant. The most recent report filed on behalf of this committee was received on February 17, 1995, and disclosed an unspent balance of \$157,023.52 as of that date. It was certified as a final report by the candidate and treasurer, and there was a notation that this balance had been transferred to Friends of Senator Wayne R. Bryant, the candidate committee for Senator Bryant's 1995 special primary election candidacy for State Senate.

Mr. Zeller writes that on February 9, 1995, Senator Bryant was appointed to fill a vacant seat in the State Senate, representing the Fifth Legislative District. The vacancy was created by the death of Senator Walter Rand. At or about that time, Senator Bryant resigned his seat as a member representing the Fifth Legislative District in the State Assembly.

On February 17, 1995, Senator Bryant filed a Form D-1 (Designation of Campaign Treasurer and Depository) to establish a candidate committee for his campaign for nomination for election in the 1995 special primary election

for the remaining two years of the late Senator Rand's Senate seat for the Fifth Legislative District. On April 12, 1995, Senator Bryant filed a nominating petition with the Secretary of State's Office to be a candidate for nomination for election in the June 6, 1995 special primary election for the Senate seat.

ELEC has no record of any joint candidates committee being established on behalf of Senator Bryant for either his 1995 special primary election candidacy for Senate, or for his now-concluded 1995 primary election candidacy for General Assembly, and for the purposes of this opinion assumes none was established.

Questions Presented

You have asked the following questions:

1. May the funds that were raised for Senator Bryant at the time he was an Assemblyman and for his 1995 primary election candidate committee for State Assembly (that is, the Elect Assemblyman Wayne R. Bryant campaign account) be transferred to the election account established for Senator Bryant's 1995 special primary election Senate candidacy?
2. Do the contribution limits apply to the 1995 special primary election for nomination for election to the two years remaining in the late Senator Rand's term?
3. Assuming Senator Bryant wins the nomination of his political party in the 1995 special primary election, do new contribution limits arise for his 1995 special general election candidacy?
4. Assuming Senator Bryant is elected to the State Senate in the 1995 special general election, do new contribution limits arise in the event he undertakes a candidacy for nomination for election for a full term to the same seat in the 1997 primary election?

Commission Response: Question 1

For the reasons stated below, the Commission hereby advises you that Senator Bryant may transfer the funds in his 1995 Assembly primary election candidate committee to his 1995 Senate special primary election candidate committee.

Amendments made to the Reporting Act in 1993 (Laws of 1993, chapter 65, effective April 7, 1993) added provisions that regulate the permissible uses to which candidates can apply contributions they received, and establish limits on the amounts of contributions that candidates can receive. Specifically, N.J.S.A. 19:44A-11.2 restricts the use of contributions received by a candidate to six permissible uses: the payment of campaign expenses, contributions to charity, the payment of ordinary and necessary officeholding expenses, and other uses. The term "campaign expenses" is defined in the statutory text to mean expenses incurred by the candidate or candidate committee in connection with "an election campaign," and there is no statutory

limitation to the effect contributions can be expended only for the specific election for which they were initially received. Similarly, the statute permits the use of contributions for "the payment of ordinary and necessary expenses of holding public office," and there is no specific restriction limiting such use to solely the officeholding term for which the candidate was running when the contributions were received.

Therefore, applying the permissible use restrictions statute does not preclude, for example, a candidate who wins the party nomination in a primary election from transferring unspent contributions received in that primary election candidate committee account to the candidate's general election candidate committee for that same office. Further, in the event the candidate is elected to that public office in the general election, nothing in the permissible use statute prohibits the officeholder from using contributions remaining unspent in the general election candidate committee account for permissible "ordinary and necessary" officeholding expenses.

The question presented here is whether the fact that Senator Bryant has been appointed to, and is a candidate for, a different public office than the one for which he received his unspent contributions prevents him from transferring those contributions. Pertinent to the resolution of this question is another section of the 1993 amendments, N.J.S.A. 19:44A-9g (hereafter, Section 9g), which reads as follows:

An individual who is a candidate for two or more public offices in an election or in separate elections shall establish separate candidate committees or separate joint candidates committees or both for each office contested.

Section 9g mandates that separate accounts must be established for each office a candidate seeks. In order to protect the viability of the system of contribution limits, a candidate for two or more different offices cannot be permitted to transfer funds without restrictions between these accounts. For purposes of illustration, assume a candidate has received from an individual a maximum contribution of \$1,500 for a State office, and another \$1,500 from that individual for a local office candidacy in the same election. If the candidate were permitted to make unrestricted transfers from one account to another, a total of \$3,000 (twice the individual limit) could be applied by the candidate for only one of the candidate's candidacies.

In the case of Senator Bryant, however, the Commission is satisfied that contributions made to his 1995 Assembly primary election candidate committee can be transferred to his 1995 Senate special primary election candidate committee without jeopardizing the purposes of contribution limits, subject to the following conditions:

1. The amount to be transferred out of the 1995 Assembly primary election candidate committee must leave it with no available balance, and the candidate committee must be closed pursuant to N.J.S.A. 19:44A-16b and N.J.A.C. 19:25-8.7; and,

2. Each contribution received by the 1995 Assembly primary election candidate committee (that is, Elect Assemblyman Wayne R. Bryant) must be aggregated with any other contribution received from the same contributor by the 1995 Senate special primary election candidate committee for the purposes of applying any of the contribution limits pertinent to a candidate committee, see N.J.S.A. 19:44A-11.3. For example, if Senator Bryant's 1995 Assembly primary election candidate committee received a contribution of \$1,000 for that election from an individual, Senator Bryant's 1995 Senate special primary election candidate committee may accept a contribution of no more than \$500 from that individual in order to stay within the \$1,500 per election contribution limit established by N.J.S.A. 19:44A-11.3.

The Commission does not construe Section 9g to require that Senator Bryant maintain both Assembly and Senate candidate committee accounts under circumstances such as presented in this request. Senator Bryant has resigned his Assembly seat, is no longer a candidate for nomination for election to the Assembly in the 1995 primary election, is currently holding office as a Senator, and is a candidate exclusively for nomination for election to the Senate in the 1995 special primary election. In effect, he is only holding a single public office (Senator) and is in an election contest for that single public office (Senate). Section 9g therefore does not prevent the closing of his Assembly candidate committee by transferring its funds to his Senate candidate committee. Further, as a member of the Senate, and no longer a member of the Assembly, he should have access to his campaign funds to meet his Senate officeholding expenses. The Commission perceives no jeopardy to contribution limits in this result as long as the conditions it has set forth above are observed.

Question 2

The Commission hereby advises you that contribution limits apply to Senator Bryant's 1995 special primary election. The 1993 amendments provide that the limits on amounts that a candidate committee can receive be on a "per election" basis, see N.J.S.A. 19:44A-11.3. The word "election" is defined at N.J.S.A. 19:44A-3e to mean any election described in N.J.S.A. 19:44A-4, which in turn provides that the Reporting Act applies: "d. In any election for any public office of the State or any political subdivision thereof; (with the exception of an election for political party office, not here relevant)." Clearly, the office of State Senator is a State office within the meaning of N.J.S.A. 19:44A-4d, quoted above, and nowhere does the Reporting Act suggest that because the election is only for the remaining two years of the four-year term the campaign reporting or contribution limit provisions are inapplicable.

Question 3

In the event Senator Bryant wins the 1995 special primary election for State Senate in the Fifth Legislative District and becomes a candidate for election to that office in the 1995 special general election, the Commission concludes that he would be permitted to accept contributions for the 1995 special general election without regard to the amounts contributed from those contributors in the prior 1995 special primary election. As noted in the response to Question 2 above, contribution limits are applicable on a "per election" basis (see N.J.S.A. 19:44A-11.3), and the 1995 special primary

election and 1995 special general election are separate elections. Also, Senator Bryant could transfer any unexpended balance from his 1995 special primary election candidate committee to his 1995 special general election candidate committee because Subsection 9g (previously quoted in the discussion of Question 1) would not be applicable. Senator Bryant will be seeking the same public office in both the 1995 special primary election and the 1995 special general election, that is the office of member of the State Senate.

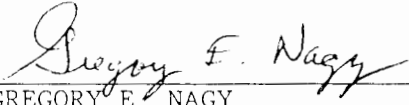
Question 4

In the event Senator Bryant is elected to the remaining two years of the State Senate term in the 1995 special general election, and assuming he becomes a candidate for nomination for election for a full four-year term in the 1997 primary election for the same office, the Commission concludes Senator Bryant would be permitted to transfer any unexpended balance from his 1995 special general election candidate committee to his 1997 primary election candidate committee, for the same reasons as expressed in the response to Question 3, above. Also, he would be permitted to accept contributions from persons without regard to the amounts contributed by those persons in the prior 1995 special general election.

Thank you for this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY E. NAGY
Legal Director