



*State of New Jersey*

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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/>

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Compliance Director

JAMES P. WYSE  
Counsel

June 6, 2006

Paul P. Josephson, Esq.  
Hill Wallack  
202 Carnegie Center  
CN 5226  
Princeton, New Jersey 08543-5226

### Advisory Opinion No. 04-2006

Dear Mr. Josephson:

The Commission considered your request for an advisory opinion at its meeting today and directed me to issue this response. Your request is submitted on behalf of three charitable entities and Booker Team for Newark, Inc., the 2006 municipal election joint candidates committee of Newark Mayor-Elect Cory Booker and six council candidates. You have described the charitable entities as “bona fide charitable organizations organized pursuant to Section 501(c)(3) of the Internal Revenue Code.” The three entities are: Newark Now, Inc., Focus Hispanic Center for Community Development, Inc., and the Lancelot H. Owens Scholarship Foundation, Inc. (hereafter, the charities). You have explained that the three charities are contemplating organizing a joint fundraising event to raise funds for the charities and to celebrate the “swearing-in” of Mayor-Elect Booker and his running mates. Your questions concern whether or not such a joint fundraising event will subject the three charities to the requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act or the Reporting Act).

### Questions Presented

1. If the charities jointly conduct a fundraising event, on or about July 1, 2006, from which the “net proceeds . . . will be paid solely to the charities according to an agreed upon formula, . . .” and if Mayor-Elect Booker is a “prominent participant in the event and solicitation materials,” will the charities be subject to the Act?
2. If the charities jointly conduct such a fundraising event, will contributions to the event be subject to the limits and prohibitions of the Act?

3. May the Booker Team for Newark, Inc., the 2006 municipal election joint candidates committee of Newark Mayor-Elect Cory Booker and six council candidates (hereafter, Booker Team), provide technical, staff, and “financial assistance” to the charities that are organizing the fundraising event?

### **Commission Response**

The Commission advises you that:

1. Subject to the conditions described below, the charities are not subject to the requirements of the Act as long as all proceeds of the joint fundraising event are distributed to the charities and applied solely for charitable purposes and no proceeds are distributed to the Booker Team or used to make contributions to candidates or for any political communication or other such purpose.
2. Contributions to a joint fundraising event are not subject to the limits and prohibitions of the Act as long as all proceeds of the joint fundraising event are distributed to the charities and none are used to make political contributions or for other political purposes.
3. The Booker Team may provide technical, staff, and financial assistance, as described below, to the charities, subject to the reporting requirements of the Act.

### **Submitted Facts**

You have indicated that Focus Hispanic Center for Community Development, Inc. was formed in 1967 and is a “Newark-based 501(c)(3) charity” that “sponsors educational, employment and training programs . . . and health and social services programs . . . .” The Lancelot H. Owens Scholarship Foundation, Inc., founded in 1992, “provides educational and leadership development opportunities to youth . . . who have limited financial resources to further their expressed field of educational development at the college level.” Newark Now was established in 2002 “as a citywide civic leadership organization,” and “Mayor-Elect Booker and/or his agents are actively involved in the management and affairs of Newark Now.”

The three charities wish to organize a joint fundraising event to honor Mayor-Elect Booker from which all proceeds, “net of expenses,” will be distributed among the three entities. The charities will divide the tasks related to the event, “including the solicitation of ticket sales, donations, and corporate sponsors.” A separate bank account will be established to deposit and spend funds for the fundraising event. The Booker Team may contribute money to the separate event account prior to its receipt of donations, to provide funds for early event expenses “before donations are received.” It is not known at this time whether or not these advance funds will be repaid to the Booker Team. It is expected that Mayor-Elect Booker will be a “prominent participant” in the event and in the solicitation materials and that speakers at the event may comment on the achievements of Mr. Booker and his running mates.

You have confirmed in separate correspondence that all funds received will be made payable either to the charities or to the separate bank account, and no checks will be made payable to any candidate committee or joint candidates committee. Further, no proceeds will be distributed to the Booker Team or be used by the charities for “making political contributions.”

The Commission notes that in addition to Candidate Booker, Candidates Ronald C. Rice, Dana Rone, Mildred C. Crump, Oscar S. James, II, Luis Quintana, and Carlos M. Gonzalez participated in the Booker Team joint candidates committee in the 2006 municipal election. In addition to participating in the Booker Team joint candidates committee, Mayor-Elect Booker also maintained a single candidate committee, Friends of Cory Booker for Mayor, Inc., in the 2006 municipal election. The most recent campaign report filed by each committee was the 20-day postelection report, received on May 30, 2006.

## Discussion

### Questions 1 and 2

#### *Charitable Event*

The Commission finds that your representations concerning the use of the funds received by the joint fundraising event dictate the responses to your first two questions. Because no proceeds of the event will be paid to or transferred to a candidate, candidate committee, joint candidates committee, political party committee, continuing political committee, political committee, or legislative leadership committee, funds received for the joint fundraising event are not subject to the reporting, contribution limit, and other requirements of the Act. This result is similar to the result reached in Advisory Opinion 03-1996, where the Commission considered the plans of a group of individuals to hold a birthday party for an elected officeholder. One-half of the ticket price to the birthday party was to be used to cover the expenses of the event, and the other half was to be given to the officeholder as a personal gift. The Commission concluded that the event as described was outside the scope of the Act, and advised that its conclusion:

“rests on . . . [the] representation that proceeds of ticket sales are not intended for election purposes. If in fact no portion of the funds solicited for the event are used for any election-related purpose, none of the reporting, contribution limit, recordkeeping, or other requirements of the Reporting Act have any applicability. The provisions of the Reporting Act apply only in a State or local election, see N.J.S.A. 19:44A-4d. If none of the funds to be solicited are intended nor in fact are used to make cash or non-cash (that is, “in-kind”) contributions to a candidate in an election . . . [or] to any committee subject to reporting (that is, a candidate committee, joint candidates committee, continuing political committee, political party committee or legislative leadership committee), none of the requirements of the Act can be applied to the fundraising activity.”

In Advisory Opinion 03-1996, the Commission expressed caution that if any of the proceeds of the birthday party event were to be used to make contributions reportable under the Act, and if the amount of the contributions exceeded either the political committee or continuing political committee reporting threshold, the event committee might be subject to the Act’s reporting requirements; see N.J.S.A. 19:44A-3i (defining political committee) and 19:44A-3n (defining continuing political committee). Also see N.J.A.C. 19:25-1.7, which establishes the current reporting threshold for applicable to a political committee (\$1,800 in an election) and continuing political committee (\$4,300 in a calendar year). The Commission similarly cautions you that use of the proceeds of the joint fundraising event for contributions to a candidate or other committee regulated by the Act would alter this response.

The Commission also finds that Mayor-Elect Booker’s involvement in one of the three charities, Newark Now, Inc., does not affect its conclusion above. Mayor-Elect Booker and his running mates are “candidates,” as that term is defined in the Act and Commission regulations, because each sought election to a public office of a New Jersey municipality; see N.J.S.A. 19:44A-3c and N.J.A.C. 19:25-1.7. The Act and regulations prohibit the participation of a candidate in a continuing political committee (CPC) or a political committee; see N.J.S.A. 19:44A-9h and N.J.A.C. 19:25-4.1(d). However, based upon your description of Newark Now, Inc., the Commission finds that the charity is not a CPC or a political committee, and therefore that Mayor-Elect Booker’s participation in the charity is permissible under the Act. As you noted in your request, the Commission reached a similar conclusion in Advisory Opinion 08-1994 when it advised a candidate that he was permitted to establish and participate in a charitable neighborhood association whose funds would not be used for any political contribution activity. The

Commission found that, “in the absence of [political] contribution activity it [the neighborhood fund] does not fall under the statutory definitions of a political committee, or a CPC.”

#### *Fundraising Solicitations*

You have stated that the charities expect to feature Mayor-Elect Booker in the solicitation materials for the joint fundraising event. The Commission concludes that, based upon the facts supplied in your request, references to Mayor-Elect Booker or his running mates in the solicitations for the charitable joint fundraising event are not reportable political communications and do not subject the charities to the provisions of the Act and Commission regulations. A printed statement, such as a fundraising solicitation, that is made with the cooperation or consent of a candidate may trigger reporting requirements as a political communication if certain criteria are met; see N.J.A.C. 19:25-10.10 and 19:25-10.11. However, as you have noted, the fundraising materials will be circulated after the date of the 2006 municipal election. To be deemed a reportable political communication pursuant to the rules, a solicitation would not only have to be coordinated with a candidate, make reference to the candidate’s governmental or political objectives, and be circulated to an audience “substantially comprised of persons eligible to vote for the candidate,” but would also have to be circulated within 90 days before the election. Because the fundraising solicitations will be circulated after the 2006 municipal election, the Commission finds that the solicitations do not meet the regulatory criteria for reporting as a political communication.

#### *Appearances by Candidates*

The Commission also finds that if Candidate Booker or his running mates participate in and appear at the joint fundraising event, the nature of the event does not necessarily change from a charitable event to a political one, requiring reporting pursuant to the Act. In Advisory Opinion 08-1994, discussed above, the Commission considered a similar issue and examined the circumstances under which an event conducted by a neighborhood association might become a reportable contribution under the Act. The Commission relied upon the decision in Orloski v. Federal Election Commission, 795 F.2d 156 (2d Cir., 1986), where the Court of Appeals upheld a two-prong test used by the Federal Election Commission (FEC) to determine whether or not a picnic, at which a congressional candidate spoke to constituents, was subject to reporting pursuant to the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*

In your request, you acknowledged the Commission’s restatement of the test:

1. Was there any communication expressly advocating the election of the appearing candidate, or the defeat of any other candidate; or 2. was there any solicitation, making or acceptance of a campaign contribution for the candidate in connection with the event? . . . Notwithstanding the connections between the candidate and the association [organized by the congressional candidate], since there was no evidence that the candidate made any express appeal for votes, or for voting against an opponent, and there was no allegation of solicitation of campaign contributions, the FEC concluded, and the court sustained, that the picnic was not a political event.

The Commission concludes that the same analysis is applicable to the appearance by Mayor-Elect Booker and his running mates at the charitable event. Because the event is being conducted in a postelection setting, and there will therefore be no advocacy for or against the election of a candidate or candidates, and because, as you have described, there will be no solicitation of campaign contributions, the participation and appearance of the candidates does not give rise to any reporting obligation under the Act or Commission regulations.

### Question 3

In your inquiry, you described two different types of assistance that the Booker Team joint candidates committee may provide to the three charities, technical or staff assistance and financial assistance. Based upon the note in your Advisory Opinion request, the Commission understands that by “financial assistance” you mean that the Booker Team may donate money from one of its joint candidates committee depository accounts to the charitable event account to provide start-up funds for event expenses “before donations are received.”

The Act specifically permits a joint candidates committee to use its funds for the purpose of making donations to “any charitable organization described in section 170(c) of the Internal Revenue Code of 1954, as amended or modified, or non-profit organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954.” See N.J.S.A. 19:44A-11.2a(2). Also see N.J.A.C. 19:25-6.5(a)2. The Commission therefore finds that it is permissible for the Booker Team either to make its staff available to the charities organizing the joint fundraising event or to make a monetary contribution to the charities. If Booker Team staff members provide assistance in the form of “in-kind” contributions of staff time, or if a monetary donation is made to the event by the Booker Team, the joint candidates committee is required to report the contribution or contributions on the Report of Contributions and Expenditures (Form R-1). Please contact the Commission’s Compliance Division for specific reporting instructions for any “in-kind” or monetary contributions made to the joint fundraising event.

This result is consistent with the result in Advisory Opinion 10-1993, in which the Commission was asked whether or not the 1994 gubernatorial inaugural event committee could assist in arranging and financing an event whose entire proceeds would be paid directly to a charity. The Commission advised the inaugural event committee that nothing in the Act or regulations “limits the involvement that an inaugural event may undertake in assisting a charitable organization in conducting a fund-raising event in which all the proceeds are paid directly to that charitable organization.” While a gubernatorial inaugural event committee, established pursuant to N.J.S.A. 19:44A-18.1, is an entity distinct from a joint candidates committee, the Commission can find no provision in the Act that would limit the assistance that a joint candidates committee is permitted to provide to the joint fundraising event you have described in your request.

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.

# HILLWALLACK

## ATTORNEYS AT LAW

202 Carnegie Center  
CN 5226  
Princeton, New Jersey 08543-5226  
Telephone: (609) 924-0808  
Fax: (609) 452-1888  
www.hillwallack.com

*Doylestown Location:*  
111 East Court Street  
Doylestown, PA 18901  
Telephone: (215) 340-0400  
Fax: (215) 340-9605

(609) 734-6319

May 25, 2006

Legal Director Nedda Masser  
N.J. Election Law Enforcement Commission  
P.O. Box 185  
Trenton, NJ 08625

ELEC RECEIVED

MAY 25 2006

Re: Advisory Opinion Request 2006-\_\_\_\_

Dear Ms. Nasser:

The undersigned, a New Jersey attorney, requests an advisory opinion on behalf of Newark Now, Inc., a New Jersey nonprofit corporation ("Newark Now"), FOCUS Hispanic Center for Community Development, Inc. ("Focus"), and Lancelot H. Owens Scholarship Foundation Inc. ("LHOSF"), all bona fide charitable organizations organized pursuant to Section 501(c)(3) of the Internal Revenue Code (collectively, the "charities"), and Booker Team for Newark, Inc. ("Booker Team"), the joint candidates committee of Newark Mayor-Elect Cory Booker and affiliated candidates for Newark City Council.<sup>1</sup>

Filing Status. Booker Team currently files reports with the Commission as a joint candidates committee. The remaining requestors do not presently file reports with the Commission. They seek this opinion to ascertain whether the contemplated activities would create registration or reporting obligations pursuant to the laws over which the Commission enjoys jurisdiction.

### Cognizable Questions of Law.

1. If the charities organize a joint fundraising event on or about July 1, 2006, the net proceeds of which will be paid solely to the charities according to an agreed upon formula, and that event features Mayor-Elect Booker as a prominent participant in the event and solicitation materials, will the charities be deemed "political committees," "inaugural committees," or otherwise incur any registration and/or reporting obligations under the Act?

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<sup>1</sup> Contact information: Newark Now: 60 Park Place, 21<sup>st</sup> Floor, Newark, NJ 07102, 973-733-3460, [www.newarknow.org](http://www.newarknow.org); FOCUS: 441-443 Broad St., Newark, NJ 07102, 973-624-2528, [www.focus411.org](http://www.focus411.org); LHOSF: 155 Morgan Street, Jersey City, NJ, 07305, 973-305-1533, [www.lhosf.org](http://www.lhosf.org).

2. If the charities organize the aforementioned event, are donors to the event subject to the limits and prohibitions of the Act?

3. Pursuant to N.J.A.C. 19:25-6.5(a)2 authorizing joint candidate committees to make donations to any charitable organization or non profit organization exempt from taxation under Section 501(c), may Booker Team provide technical, staff and financial assistance to the charities in organizing and staging such a charitable fundraising event provided it reports such expenditures in its Form R-3?

#### Statement of Facts and Contemplated Activities

The requesters contemplate organizing a joint fundraising event to be held on or about July 1, 2006, at which Newark Mayor-Elect Cory Booker will be a prominent participant. The goal of this event is twofold: to raise funds for the use of the charities in carrying out their respective organizational goals in Newark and other municipalities, and to celebrate and honor the swearing-in of Mayor-Elect Booker and his running mates on July 1, 2006.

Focus is a Newark-based 501(c)(3) charity founded in 1967 to sponsor educational and developmental programs that advance the quest of Hispanics towards self-sufficiency, growth, empowerment and a better quality of life. Focus sponsors educational, employment and training programs, programs for seniors and youths, and health and social services programs in and around Newark.

LHOSF is a Jersey City-based 501(c)3 charity established in 1992 as a vehicle to perpetuate the memory of Lancelot H. Owens, his achievements and commitment to supporting community, civic and social issues. Principally targeting minority high school students, the foundation provides educational and leadership development opportunities to youth with strong, capable and promising futures but who have limited financial resources to further their expressed field of educational development at the college level. LHOSF is co-chaired by Newark native Dana Elaine Owens, an entertainment icon more popularly known as Queen Latifah.

Newark Now is a Newark-based 501(c)(3) charity established in 2002 as a citywide civic leadership organization that provides Newark residents with the skills, tools and support to transform their neighborhoods and communities through neighborhood-based associations and tenant organizations. Newark Now was founded by Mayor-Elect Booker and he has served as chairman of its board and chief executive officer. For purposes of this opinion request only, the Commission may assume that Mayor-Elect Booker and/or his agents are actively involved in the management and affairs of Newark Now.

All proceeds of the charitable fundraising event, net of expenses, will be distributed among the three charitable organizations pursuant to an allocation agreement among them. None of the net proceeds of the event would go to Booker Team, or be used by any of the requesters for purposes of making political contributions, paying for political communications, or for other electoral purposes.<sup>2</sup> It is contemplated that such an allocation agreement would establish the

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<sup>2</sup> In the event Booker Team advances money to the joint fundraising account to fund event activities before donations are received, it is contemplated that such advances may be either (i) repaid by the joint fundraising account, or (ii) converted by Booker Team to donations to the account.

respective roles and responsibilities of the requesters in organizing and staging the event, including the solicitation of ticket sales, donations, and corporate sponsors. The requesters contemplate establishing a segregated bank account for the sole purpose of depositing and expending funds in connection with the joint fundraising event.

Solicitation materials for the charitable fundraiser would comply with Internal Revenue Service rules and policies, advise donors of the extent to which donations to the event are tax-deductible, and the allocation of net proceeds among the three charities. Each of the charities would retain independent responsibility for reporting such fundraising and expenditure activities as required by the Internal Revenue Service and local taxing and charitable authorities.

The contemplated activities described above have not already been undertaken by the requesters, each of whom has standing to seek this opinion in that the Commission's opinion will determine their reporting obligations, if any, under the Act.

#### Proposed Result and Statement of Reasoning

Because the event is intended to raise charitable contributions and not political "contributions" as contemplated by the Act, and because none of the proceeds of the event will be used to make "expenditures" as defined by the Act, the requesters respectfully submit that the Commission find that the joint charitable fundraising event described above is not subject to the Act's registration and reporting requirements or contribution prohibition and limits. See AO 08-1994 ("the representation that [a candidate-controlled association] will not make political contributions, if correct, removes the [association] from the jurisdictional scope of the Act.")

In that Opinion, the Commission endorsed the Federal Election Commission's two-part test for determining whether an event is a political event that was affirmed by the Second Circuit in Orloski v. Federal Election Commission, 795 F.2d 156 (2d Cir. 1986):

1. Was there any communication expressly advocating the election of the appearing candidates, or the defeat of any other candidate, or
2. Was there any solicitation, making or acceptance of campaign contribution for the candidate in connection with the event?

In Orloski, a federal candidate had been 'instrumental' in organizing an association interested in senior citizen issues, and the association sponsored a picnic held 38 days *before* the congressional election. The candidate appeared at the picnic and spoke on senior citizens issues to attendees who were provided free transportation to the event and food sponsored by corporations, which are otherwise prohibited from contributing to federal candidates. This Commission noted that "[n]otwithstanding the connections between the candidate and association, since there was no evidence that the candidate made an express appeal for votes, or for voting against an opponent, and there was no allegation of solicitation of campaign contributions, the FEC concluded, and the court sustained, that the picnic was not a political event."



In the instant situation, the event will be held several weeks *after* the election of Mayor-Elect Booker. Thus there can be no express appeal for votes at the event. Indeed, the event will occur outside the political communication window of 90 days before the date of an election, see N.J.A.C. 19:25-10.10. Thus, any comments of speakers at a *post-election* event praising Mayor-Elect Booker, his running mates and their respective governmental or political objectives or achievements cannot be deemed political communications. Thus these comments, and the events at which they may be communicated, would not be political communications or events within the purview of the Act. And as noted above, there will be no solicitation, making or acceptance of campaign contributions in connection with the event, as all net proceeds will benefit the three charities, and not any candidate or candidate committee.

Accordingly, it is proposed that the charities should incur no registration or reporting obligations under the Act, and that donations towards the event are not subject to or limited by the Act.

As to the third and final question, the Commission's regulations have long allowed candidates and joint candidate committees to use funds collected as political contributions to be donated to charitable and other non-profit associations. Thus, Booker Team should be free to expend its existing funds, or to donate staff time as an in-kind contribution, towards the charitable fundraising event, provided that Booker Team appropriately reports such expenditures in its future filings with the Commission.

No Consent to Extension.

Because of the intent to conduct the contemplated event on or about July 1, 2006, it is necessary that the requesters receive the Commission's determination no later than the 10-day response period allowed by law to allow sufficient time to organize the event. Accordingly, the requesters are unable to consent to the traditional 30-day extension period.

Conclusion.

For the foregoing reasons, the requesters seek an opinion permitting them to engage in the aforementioned charitable fundraising activity. Should the Commission or staff have further questions or require additional information, please do not hesitate to call the undersigned as soon as possible given the limited time available. We thank the Commission and staff for their always courteous and prompt attention.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul P. Josephson", written in a cursive style.

Paul P. Josephson