



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.
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EVELYN FORD
Compliance Director

JAMES P. WYSE
Legal Counsel

June 19, 2007

Gregory E. Nagy, Esq.
Genova, Burns, & Vernoia
Trinity Centre
115 Broadway, 15th 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 13th. 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
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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



Advisory Opinion Request For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P.O. Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Web site: <http://www.elec.state.nj.us/>

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N.J. ELECTION
LAW ENFORCEMENT
COMMISSION

PLEASE PROVIDE THE INFORMATION REQUESTED BELOW

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full name of Person, Committee, or Entity:

New Jersey Organization for a Better State ("NEW JOBS")

Mailing Address:

P.O. Box 1600

*Day Telephone Number:
609-503-9111

Trenton, NJ 08607

*Evening Telephone Number:
609-503-9111

2. Indicate if the above named person, committee, or entity currently files reports with the Commission:

Yes

No

a. If yes, indicate in what capacity it is filing:

Candidate committee

Joint candidates committee

Political committee

Continuing political committee

Political party committee

Legislative leadership committee

Recall committee

Recall defense committee

Personal financial disclosure statement

Other (please describe): _____

b. If no, indicate if the above named person, committee, or entity has in the past filed reports with the Commission, giving elections (i.e., 2005 general election) or calendar years, and identify filing capacity:

c. If reports are or were filed under a different name than that appearing in Question #1 above, provide that name:

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

Does N.J.A.C. 19:25-26.6 require each "business entity" that participated in 2006 as an organizer of, participated in decision-making, or participated in formation of the policies of NEW JOBS, an ELEC-certified continuing political committee ("CPC") representing a diversity of businesses throughout New Jersey, 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?

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee, or entity requesting the opinion, and that the person, committee, or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. Attach additional sheets if necessary.

Statement of Facts:

NEW JOBS, at all times relevant to 2006, was certified by ELEC as a continuing political committee ("CPC").

For decades, it has been filing full disclosure reports with ELEC as a CPC. Further, NEW JOBS is organized under section 527 of the Internal Revenue Code. Reports on file with the Commission and accessible on its website disclose:

- NEW JOBS is 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. (See Form D-4, question 8, filed April 26, 2006.)

- It has described itself as in the general organizational categories that have been established by the Commission as a "business" or "ideological group" CPC. (See Forms D-4, question 8, filed April 26, 2006, and September 14, 2006.)

- It 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. (See Form D-4, questions 4 and 6, filed April 26, 2006.)

- It received contributions from scores of businesses and persons, and made contributions to legislative candidates as reported on its Quarterly Reports. (See NEW JOBS Quarterly Reports, Forms R-3.)

NEW JOBS is an independent political action committee which holds a variety of events and activities 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. (See www.newjobspac.com.)

NEW JOBS is, in short, an associational entity not under the "control" of any single contributor, participant or "business entity."

During 2006, NEW JOBS did not hold or seek public contracts in New Jersey. However, on information and belief, an undetermined number of its business contributors, and/or of the businesses represented on its Board of Trustees, held \$50,000 or more of such public contracts in the aggregate in 2006, and thus are "business entities" within the meaning of N.J.A.C. 19:25-26.1 and subject to the annual disclosure requirement of N.J.A.C. 19:25-26.5.

ADDITIONAL PAGE ATTACHED.

Section 4 – Additional Page

NEW JOBS has standing to seek an advisory opinion because a substantial number of its contributors are business entities and, as the recipient in 2006 of contributions from those business entities, NEW JOBS has a responsibility to advise those business entities of all reportable contributions made by NEW JOBS in 2006 so that they can each comply with the reporting requirements of *N.J.A.C. 19:25-26.6*. Because those businesses will be required to report contributions made by NEW JOBS as if all 2006 NEW JOBS' contributions had been made by each of them, there will be inflated and repetitious reporting of 2006 NEW JOBS contributions. Further, because of the injustice in requiring a business entity to report all 2006 contributions made by NEW JOBS as if those contributions had been made by the business entity itself, some or all business entities are likely to consider withholding all or making fewer future contributions to NEW JOBS, a patently chilling effect on participation in political associational rights.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result:

See attached pages.

6. Person who is submitting this advisory opinion request on behalf of the committee or entity listed in Question #1:

Full Name:

Douglas K. Troast

Mailing Address:

c/o New Jobs

P.O. Box 1600

Trenton, NJ 08607

*Day Telephone Number:

609-503-9111

*Evening Telephone Number:

609-503-9111

Fax Number:

609-503-9112

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee, or entity

Other (please describe): Chairman

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. ~~(CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).~~ June 22, 2007.

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

June 4, 2007

Dated:



Signature:

ELEC Advisory Opinion Request

Section 5

NEW JOBS respectfully urges ELEC to hold that *N.J.A.C. 19:25-26.6* does not require its contributions to candidates to be reported by each of its business entity participants as if those contributions were made by each participant.

NEW JOBS is a collective, political entity composed of many diverse contributors and participants. Its contributions promote the collective interests of NEW JOBS but not necessarily the particular interests of each of its participants, none of which participants are in a position to exercise sole control over NEW JOBS' contribution decisions or policies. Thus, contributions made by NEW JOBS are beyond the "control" of any single participant within the meaning of *N.J.A.C. 19:25-26.6*, or within the meaning of its supporting statute, *N.J.S.A. 19:44A-20.27*. It is therefore an egregious misrepresentation of any member's role in NEW JOBS for contributions made by NEW JOBS to be reported pursuant to *N.J.A.C. 19:25-26.4* as if such contributions had been made by each and every business entity participating in NEW JOBS.

NEW JOBS notes that ELEC, in adopting *N.J.A.C. 19:25-26.6*, recognized that there are different classifications of CPCs.¹ Thus, ELEC stated:

The Commission does not believe it was the intent of Chapter 271 to treat a trade association CPC in the same manner as a CPC that is related to a specific corporation or other business entity. Additional clarification of the test of direct or indirect control of a CPC in proposed *N.J.A.C. 19:25-26.6(d)* may be desirable to allay the concerns of commenters....The Commission will reconsider this issue in future rulemaking and will attempt to define the term 'trade association CPC' and exclude such a CPC from the reach of the rule. (emphasis added)²

Because NEW JOBS as an ideological CPC with diverse contributors and members is in precisely the same posture as are trade association CPCs that also have diverse memberships, and because of the imminence of ELEC's September 28, 2007 deadline for preparing and filing 2006 P2P reports, NEW JOBS respectfully requests that ELEC now provide the relief that is anticipated in its above-quoted statement. That relief we believe should be an unequivocal holding in this advisory opinion that contributors and participants in a CPC that is a collective enterprise of diverse contributors and participants are not required to report the CPC's contributions as their own for P2P purposes.

¹ See ELEC'S Form D-4, *CPC Registration Statement*, question 5, requiring self-classification of CPCs as "Business," "Labor Union," "Professional Association," "Ideological Group," "Civic Association," "Trade Association," etc.

² Adoption Notice, *Disclosure of Contributions by Business Entities*, response to Comment 4. The text of the Adoption Notice is available on ELEC's website at <http://elec.state.nj.us>.

ELEC Advisory Opinion Request

NEW JOBS offers the following additional observations regarding *N.J.A.C. 19:25-26.6*:

- **The statutory foundation for the rule does not support equating mere participation in a collective CPC with “control” over that CPC.** Under *N.J.S.A. 19:44A-20.27d*, a business entity is required to report only contributions made by a CPC (i.e., a political organization under section 527 of the Internal Revenue Code) that is “directly or indirectly controlled” by that business entity. Nothing in the statute suggests that mere participation in the governance of a collective CPC of diverse entities results in “control” by that participant. Where mere participation is intended by the Campaign Contributions and Expenditures Reporting Act to be the touchstone for regulatory restriction, the Act provides that specifically. See *N.J.S.A. 19:44A-9h*, prohibiting a candidate from “participating either directly or indirectly in the management or control ... [of a CPC].”
- **The rule compels unjust and misleading P2P disclosure.** A business entity that participated as an organizer of a collective CPC, such as NEW JOBS, participated in decision-making with regard to that CPC’s activities, or participated in the formation of the policies of that CPC should not be compelled to report all the CPC’s contributions as its own. For example, in regard to any specific contribution made by a collective CPC, that contribution may have been made without the knowledge, or even over the objection, of the business entity. The rule thus unjustly compels a business entity, participating in but not controlling the CPC, to report such contributions as if these were its own. That result is unjust to the business entity, and it also misleads the public to believe the business entity is a political supporter of the recipient when in fact the opposite may be the case.
- **The rule grossly inflates the number of contributions made by business entities, and thus dilutes the importance of contributions made directly to candidates and committees.** A business entity is required, appropriately, to disclose its contributions to CPCs. Thus, the P2P report of a business entity contributing to NEW JOBS will disclose that contribution. Any person wishing to know how NEW JOBS used the contributions it received will be able to determine what candidate and committees NEW JOBS supported by reviewing its reports to ELEC. However, the rule also requires the business entity to in effect re-report all the contributions made by NEW JOBS as contributions by each participating business entity. Thus, for purposes of illustration, assume that NEW JOBS has 50 business entity participants subject to P2P reporting, and NEW JOBS made some 50 contributions to candidates or committees. Each of the 50 business entities must report each of NEW JOBS’ 50 contributions. The result is that the 50 contributions of NEW JOBS means 2,500 (50 times 50) re-reported contributions for P2P purposes. Such re-reporting in our judgment grossly inflates the extent of political participation of business entities, and dilutes the importance of contributions made directly to candidates and committees. Thus, the rule will result in misleading public disclosure.
- **The rule violates federal and State constitutional rights.** If a business entity is required to disclose all contributions made by NEW JOBS as if those contributions had been made by the business entity itself, the disclosure

requirement will have a chilling effect on the business entity's participation in a collective CPC, in derogation of its associational and expression rights. Compelled misrepresentation serves no rational governmental purpose. It will discourage participation in collective CPCs, which is neither a legislative nor Constitutional objective.

- **The rule is internally inconsistent in its application of criteria testing "control" as applied to subsidiaries as opposed to CPCs.** The criteria for determining whether or not a business entity "controls" contributions made by a subsidiary is whether or not the business entity owns sufficient shares to elect a majority of the subsidiary's directors. *See subsection (c)*. In effect, ELEC recognizes that holding a minority position in collectively-controlled corporation is not tantamount to control. NEW JOBS submits that ELEC should rely on a similar standard for determining control by a business entity over a collectively-controlled CPC. However, under subsection (d) of the rule, the degree of control a business entity holds over a collectively-controlled CPC is ignored and irrelevant. Instead, the criterion is merely an act of participation in the CPC's organization, decision-making or policy formation, regardless of the business entity's actual control over that CPC to realize results from that participation.

ANGELO J. GENOVA ◊+
 JAMES M. BURNS ◊
 FRANCIS J. VERNOIA ◊
 JOHN C. PETRELLA ◊
 JAMES J. MCGOVERN III ◊
 LAURENCE D. LAUFER +
 JEFFREY R. RICH ◊+
 SANDRO POLLEDRI ◊◊
 KATHLEEN BARNETT EINHORN ◊+
 CELIA S. BOSCO ◊+
 BRIAN W. KRONICK ◊
 JAMES BUCCI ◊*
 PATRICK W. MCGOVERN ◊+
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RONALD H. DEMARIA
 (1939-2004)

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 SHIRIN SAKS ◊+
 ANDREW P. ODDO ◊+
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LISA A. JOHN ◊
 GERI ALBIN ◊
 LAUREN KOSTINAS ◊

MEMBER OF NEW JERSEY BAR ◊
 MEMBER OF NEW YORK BAR +
 MEMBER OF PENNSYLVANIA BAR *
 MEMBER OF DISTRICT OF COLUMBIA
 CERTIFIED CIVIL TRIAL ATTORNEY ◊

June 12, 2007

ELEC RECEIVED

JUN 13 2007

By FAX and Overnight Mail

Nedda G. Massar, Esq.
 Legal Director
 ELECTION LAW ENFORCEMENT COMMISSION
 P.O. Box 185
 Trenton, New Jersey 08625-0185

Re: Advisory Opinion Request of NEW JOBS

Dear Legal Director Massar:

Kindly accept this letter as our firm's notice of representation of Cooper, Levenson, April, Niedeiman, Wagenheim, P.A., Attorneys at Law, (hereafter, "Cooper Levenson" or "the firm") and NEW JOBS, Douglas Troast, Chairperson, in regard to the request for an advisory opinion submitted to the New Jersey Election Law Enforcement Commission (hereafter, "the Commission") pursuant to N.J.S.A. 19:44A-6f on or about June 5, 2007 by NEW JOBS.

Cooper Levenson respectfully requests to be joined as a requesting party in this advisory opinion request which concerns reporting of business entities pursuant to N.J.A.C. 19:25-26.4, Business entity annual disclosure statement.

In addition to the facts represented in the NEW JOBS advisory opinion request, Cooper Levenson submits the following facts relevant to 2006:

- Cooper Levenson is and was in 2006 a New Jersey professional corporation organized under the New Jersey Professional Services Corporation Act and thus permitted to make contributions to New Jersey committees in that capacity;

Nedda G. Massar, Esq.

June 12, 2007

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- 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. Calemmo on the Board of Trustees of NEW JOBS;
- Mr. Calemmo is and was the Chief Operating Officer of the firm;
- Mr. Calemmo 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. Calemmo 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:

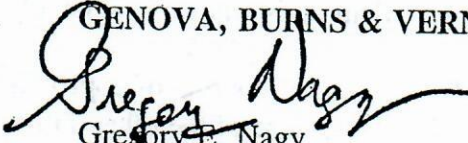
Does *N.J.A.C. 19:25-26.6* require Cooper Levenson, in its capacity as a "business entity" within the meaning of that regulation, to report for "pay-to-play" ("P2P") purposes (*i.e.*, pursuant to *N.J.A.C. 19:25-26.4* and *26.5*), each contribution over \$300 made by NEW JOBS in 2006 to New Jersey candidates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

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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

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