

October 28, 2008

Dear Ms. Dodell:

In connection with the Board's anticipated issuance of advisory opinions related to the imminent extension of term limitations, I wish to submit the following questions for consideration:

Scenario:

A candidate ("Candidate") falls under Group 1, **except** that instead of anticipating a 2009 race for a higher municipal office, Candidate anticipated a later race for state legislative office. Candidate established and maintained a committee which disclosed activity to the New York State Board of Elections.

Questions:

1. May Candidate utilize Option A?
2. May Candidate elect to transfer from the frozen committee to a new 2009 committee?
3. Must the transfer(s) occur by a specified time? Specifically, in this instance, a substantial amount of funds in the existing committee are in a time-deposit account which does not mature until late January 2009. May Candidate choose Option A by January 11, 2009, but not make the appropriate transfers until later?
4. If transferring under a last in, first out method results in zeroing out the frozen committee, may Candidate simply convert that committee to a 2009 committee and begin using C-SMART from such point forward? Or, under these circumstances, must a new 2009 committee be created in any event?
In this case, Option B would be used; however, under last in, first out, the committee could potentially be zeroed out without using any restricted funds. Would Candidate still be required to return over-the-limit or prohibited contributions (even going back as far of the first contribution), if there are sufficient last in, first out contributions to zero out the existing committee?

General questions not specifically related to this scenario:

1. Will transfers made under Option A be subject to the requirements of 52 RCNY §§ 3-03(c)(2), 4-01(b)(8)?
2. If transfers from a frozen committee made under Option A do not result in the frozen committee being zeroed out, the frozen committee would be required to continue making disclosure throughout 2009. Thus, the frozen committee would presumably have some minimal costs associated with these activities. The draft guidelines modify "costs of maintaining the account" with "like bank fees." Is this modification the only exception, or merely an example? Under these circumstances, would minimal payments for

bookkeeping services and preparation of applicable disclosure statements fall under “costs of maintaining the account?”

If, under Option A, such costs may not properly be paid from the frozen committee, may such costs be paid from the 2009 committee? And if so, would such costs be exempted from the 2009 spending limit? And if not, how may such costs be paid in a lawful manner, without resulting in potential in-kind contributions to the frozen committee?

3. Does “no activity” include fundraising? Specifically, is a frozen committee precluded from accepting contributions, and, if so, from what date and until what date? If so, does this include unsolicited contributions (such as a random contribution received in the mail)? Must candidates turn off internet contribution software?
4. May a candidate who chooses Option A and who then loses a primary or general election in 2009 immediately reactivate the frozen committee for a 2013 race, or must the candidate nonetheless wait until January 12, 2010?
5. Since, under Option A, the frozen committee may make in-kind contributions of durable goods to the 2009 committee, may the frozen committee also contribute financially to the 2009 committee up to the contribution limit? If not, under what basis in law is this differentiation made?
6. With respect to the choice that must be made by January 11, 2009, can you address a scenario in which seats might appear to have no incumbent candidate on that date, but where later decisions by incumbents cause ripple effects throughout lower offices? For example, Comptroller Thompson has recently said he intends to continue his campaign for mayor, notwithstanding the new legislation; however, if the Comptroller decides after January to run for reelection, numerous other candidates may decide to drop back to their current offices, thus resulting in even further drop backs. What would happen if circumstances change in particular offices after January 11, 2009?
7. If a candidate chooses Option A and freezes a current committee for use in 2013, may the frozen committee loan funds briefly to the new 2009 committee as “seed money?” The rationale for this would be that in choosing Option A, a candidate must immediately freeze spending; however the candidate would presumably have ongoing expenses which must be paid, and might not yet have raised sufficient funds in the 2009 committee to do so (particularly in the earliest days of creating the new committee). Option A anticipates allowing spending from the frozen committee “between the date of the advisory opinion and the date the new committee is opened (no later than January 11, 2009)” which would be charged “against the 2009 spending limit.” However, such spending would properly be reported by the 2013 committee and would be less transparent than a loan to the 2009 committee which would permit spending from the 2009 committee. Under what circumstances may such a loan occur without penalizing either the 2009 committee or the frozen committee (or both)?

A basis for permitting such a brief loan is provided in Advisory Opinion No. 1998-1, where the Board allowed a candidate’s earlier committee to borrow from

a later committee; the only difference being that AO 1998-1 addressed borrowing to pay debt, whereas this suggested scenario would involve borrowing for anticipated expenses. However, the result would be the same, in that the frozen committee would ultimately be made whole far in advance of the 2009 elections. The suggested scenario would be more transparent than allowing 2009 spending to be made from the 2013 committee, as the result would be that each committee's spending would be reported by the proper committee.

I am not writing for purposes of including comments in the public record; rather, in the hopes that you will use my letter to assist the Board in forming advisory opinions to address some issues which the draft guidelines do not appear to address, so as to obviate the need for candidates to seek additional advisory opinions later.

Sincerely,

KALMAN YEGER