



CITY OF PHILADELPHIA

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**Philadelphia Board of Ethics
Nonpublic Advice of Counsel GC-2011-504**

April 6, 2011

Re: Single Checking Account Rule / Code §20-1003(1)

The treasurer of a political committee requested a nonpublic advisory regarding the procedure for the committee to change banks for the committee's single checking account. We were advised as follows:

The committee . . . is interested in shifting its funds to a new bank. It is my understanding that Philadelphia law and Ethics Board regulations permit each candidate to only use one bank account to accept contributions and make expenditures, and we intent to fully comply with this stipulation. Our committee, however, has several recurring bills that are set on automatic payment from my current account, and it will likely take some time to switch payment over to a new bank account.

In order to switch our committee's account to a new bank in an orderly manner, I propose to switch the bulk of the committee's funds to

a new bank on a set day, while leaving less than \$5,000 in our current account and transfer any remaining funds to the new account.

We advised, as usual, that in keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, our advice is predicated on the facts that have been provided to us. We do not conduct an independent inquiry into the facts. Although previous opinions of this office that interpret statutes are guidance to how this Board will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, the requestor was advised that, to the extent that this Advice states general principles, and there are particular fact situations that she may be concerned about, she was encouraged to contact us for specific advice on the application of the ethics laws to those particular facts.

Philadelphia Code Section 20-1003(1)

The first two sentences of Code Section 20-1003 read as follows:

§ 20-1003. Candidate Political Committee Accounts.

(1) Candidate Political Committee Account. A candidate for City elective office shall have no more than one political committee and one checking account for the city office being sought, into which all contributions and post-candidacy contributions for such office shall be made, and out of which all expenditures for that office shall be made, including expenditures for retiring debt and for transition or inauguration to that office. If the candidate for office maintains other political or non-political accounts for which contributions are solicited, such funds collected in these accounts shall not be used for the purpose of influencing the outcome of a covered election, or to retire debt that was incurred to influence the outcome of covered election, or to cover transition or inauguration expenses.

This provision is reinforced with additional interpretative detail in Board of Ethics Regulation No. 1, Paragraphs 1.29 through 1.32. Like the “single committee” rule, the “single checking account” rule is a necessary component of campaign finance

regulation. Requiring all campaign contributions to be made to, and all campaign expenditures made from, a single account managed by a single committee prevents candidates from hiding the sources of contributions and expenditures and thereby circumventing the salutary reforms of the Campaign Finance Chapter. These rules also enhance the ability of the Board of Ethics enforcement staff to monitor compliance with the law, and provide assurance to the public that campaign finance reports are accurate and can easily be reviewed to identify campaign contributors and campaign spending.

Moreover, the Board of Ethics is bound by the plain language of its governing statutes. The Board does not have the power, by interpretation, to waive a statutory requirement. A recent amendment to Regulation No. 1 added a provision that a candidate may transfer funds between his committee's single checking account and a single savings account. However, this provision, Paragraph 1.31 of the Regulation, is not in conflict with the plain language of Code Section 20-1003(1), which does not mention savings accounts. Such a savings account may neither receive contributions nor make expenditures, and therefore the statutory requirement of a single checking account for all contributions and expenditures is not abrogated.

The requestor's proposal, on the other hand, would violate Section 20-1003(1). The committee proposes to maintain, simultaneously, two checking accounts: the current account, from which certain automatic payments would continue to be paid; and the new account, which would apparently make all other expenditures. There is no reasonable interpretation of Section 20-1003(1) that would permit the simultaneous existence, even for a short period of time, of two campaign checking accounts, both making expenditures, as the requestor proposed.

Conclusion

Code Section 20-1003(1) prohibits a candidate committee from having more than one checking account receiving contributions or making expenditures. If the committee wishes to switch banks, it must either close one account and open another, or, if two accounts are to be open simultaneously, ensure that only one of the accounts is receiving contributions and making expenditures, as defined in Code Section 20-1001 and Paragraph 1.1 of Regulation No. 1.

The requestor was advised that, if she has any additional facts to provide, we will be happy to consider if they change any of the conclusions in this Advice. Since

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the requestor requested nonpublic advice from the Board of Ethics, we will not make the original letter public, but we are making public this revised version, edited to conceal the requestor's identity, as required by Code Section 20-606(1)(d)(iii).

Evan Meyer
General Counsel

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director