

# PHILADELPHIA BOARD OF ETHICS

## **Advisory Opinion 2006-003: Response to Candidate Inquiry Regarding “Excess Pre-Candidacy Contributions”; the Single Political Committee and Account Rule; and Training for Candidates and their Treasurers**

At the December 4, 2006 Ethics Board meeting, former City Council Member Michael A. Nutter delivered a letter dated December 4, 2006, containing a list of seven questions concerning Philadelphia’s campaign finance law. Mr. Nutter declared his candidacy for the City elective office of Mayor on July 22, 2006, and is therefore subject to the City’s campaign finance law.

Chapter 20-1000 of the Philadelphia Code contains the City’s campaign finance law. The provisions of that Chapter are subject to the jurisdiction of the Board of Ethics, which was installed on November 27, 2006. The authority to provide guidance and render advisory opinions on the City’s political contribution rules is within the Ethics Board’s jurisdiction.

The questions contained in Mr. Nutter’s December 4, 2006 letter are quoted in full below. The Ethics Board’s response to the questions appears below each question.

**Question 1: “How should ‘excess pre-candidacy contributions’ be kept separate from the ‘non-excess pre-candidacy contributions’ in order to prevent spending of these funds in violation of Section 20-1002(4)? Should they be transferred to a separate escrow account for safekeeping or be returned to the respective donors?”**

**Response:** The City’s political contribution limits apply to declared candidates<sup>1</sup> for a City elective office<sup>2</sup>.

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<sup>1</sup> “Candidate” is defined as an individual who files nomination papers or petitions for a City elective office, or who publicly announces his or her candidacy for a City elective office. Section 20-1001(1).

The political contribution limits also affect contributions that were made to candidates *before* they declare their candidacy, because candidates are prohibited from spending any “pre-candidacy” contributions in excess of those limits “for the purpose of influencing the outcome of a covered election in which he or she is a candidate.” Section 20-1002(4)<sup>3</sup>. This spending restriction on excess pre-candidacy contributions applies as soon as a person becomes a candidate for a City elective office.

The City’s campaign finance law does not indicate how candidates and their candidate political committees are to comply with the restriction on spending excess pre-candidacy contributions. However, *the burden to comply with the spending restriction on excess pre-candidacy contributions is on the candidate and his or her candidate political committee.*

The Ethics Board may approve regulations in the future (pursuant to the process set forth in Chapter 8-407 of the City Charter), that would specify what should be done with excess pre-candidacy contributions, but it will take a minimum of 30 days for any such regulations to become effective under the City Charter. Currently, the Board recommends that candidates with excess pre-candidacy contributions should immediately place an amount equal to the amount of a pre-candidacy contribution that is in excess of the limits set forth in Section 20-1002(2) (or the doubled limits for the current campaign for Mayor, as explained in Advisory Opinion 2006-001), into a separate account that is not used for their campaign.

The Board further recommends that any candidate who establishes a “segregated pre-candidacy excess contribution account” (“SPEC Account”), provide notification of the account to the Ethics Board regarding the SPEC Account as soon as it is established. The notification should include the name of the account; the name and address of the Bank; the names and addresses of the individuals who have control over the account; and a summary of the excess contributions, including (for each excess pre-candidacy contribution), the names of the contributors, the date of

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<sup>2</sup> “City elective office” includes the offices of Mayor, District Attorney, City Controller, Register of Wills, Sheriff, Clerk of Quarter Sessions, City Commissioner or City Council. Section 20-1001(3).

<sup>3</sup> Section 20-1002(4) also prohibits candidate political committees from spending any excess pre-candidacy contributions to pay for any expenses incurred by the candidate political committee.

contribution and the dollar amount of the contribution transferred or deposited into the SPEC Account. The notification should be signed by the candidate and the treasurer of the candidate political committee.

SPEC Accounts would not violate the single account rule contained in Section 20-1003, because that Section permits candidates to maintain “other political and non-political accounts” for which contributions are solicited, *provided that the funds in those other accounts are not used for the purpose of influencing the outcome of a covered election.*

As an alternative to placing excess pre-candidacy contributions into a SPEC Account, candidates may choose to return the excess portion of the contribution to the contributor.

**Question 2: “Will the Board require separate disclosures of excess pre-candidacy contributions, proof of a separate escrow account for such funds or proof of return of such funds to donors?”**

**Response:** As stated in the response to Question 1, the Board may approve regulations in the future that would specify what should be done with excess pre-candidacy contributions. Until it does so, however, the Board recommends that candidates with excess pre-candidacy contributions place the excess amount into a SPEC Account, as explained in detail in the response to Question 1.

**Question 3: “How should candidates account for excess pre-candidacy contributions in their political committee reports for the calendar year 2006, which are due on January 31, 2007? Specifically, will the Board allow excess pre-candidacy contributions to be counted in the ‘total receipts’ of a political committee (even though such funds cannot be spent) or will the Board require such contributions to be deducted from the ‘total receipts’ of the political committee?”**

**Response:** Section 20-1006(1) requires candidates, treasurers of political committees and any other person who is *required by State law* to file a report of receipts and expenditures with the City Commissioners or the Secretary of the Commonwealth, to simultaneously file the same

information with the Ethics Board.<sup>4</sup> State law<sup>5</sup> prescribes both the *form and content* of the reports filed with the City Commissioners and Secretary of the Commonwealth.

The Ethics Board lacks jurisdiction to specify or regulate the manner in which the financial information is accounted for in those campaign finance reports. Therefore, because the Ethics Board lacks the authority over the content of the State-regulated campaign finance reports, it will not direct candidate political committees how to report “total receipts” on their State-regulated finance reports. Candidate political committees should comply with State law when completing their campaign finance reports required by the Pennsylvania Election Code.

**Question 4: “How will the Board ensure compliance with Section 20-1003, which requires each candidate to have only one political committee and one checking account for the city office being sought?”**

**Response:** *The burden to comply with the single political committee and single checking account requirement is on the candidate and his or her candidate political committee.* The Ethics Board may approve regulations in the future (pursuant to the process set forth in Chapter 8-407 of the City Charter), that would require candidates to identify and certify their single candidate political committee and checking account, but until it approves such regulations, the Board will issue written requests to candidates for City elective offices to identify their committee and account.

**Question 5: “How will the Board ensure that Section 20-1002(4), which prohibits the spending of excess pre-candidacy contributions, cannot be evaded by a simple transfer of funds from a ‘Friends of’ or ‘Exploratory’ committee to an independent expenditure committee prior to or after the candidate’s announcement of candidacy? Alternatively, when an unannounced candidate who already has a ‘Friends of’ or ‘Exploratory’ or a state or federal committee declares candidacy and creates a new candidate political committee, will the former committee be deemed an independent expenditure committee if**

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<sup>4</sup> This function is currently being performed by the City’s Records Department. Candidates and political committees should continue to submit the same information contained in financial reports filed with the City Commissioners or Secretary of the Commonwealth to the Records Department.

<sup>5</sup> Article XVI of the Pennsylvania Election Code, 25 P. S. §3241 et seq.

**it does not transfer its funds to the new candidate political committee or make the funds available for expenditure by the candidate? How will the Board monitor the activities of or determine the relationship(s) of independent expenditure committees to a particular candidate, if any?**

**Response:** Section 20-1001(11) defines pre-candidacy contribution as “[a] contribution made to a political committee that: (a) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (b) was made before such candidate became a candidate.”

Contributions to “friends of;” “exploratory;” or state or federal political committees controlled by a person who later becomes a candidate for a City elective office are pre-candidacy contributions. Candidates are prohibited from spending any “pre-candidacy” contributions in excess of the limits “for the purpose of influencing the outcome of a covered election in which he or she is a candidate.” Section 20-1002(4).<sup>6</sup>

Evading the spending prohibition on excess pre-candidacy contributions by manipulating political committee accounts would violate the City’s campaign finance law. If a candidate were to attempt to do so and subsequently violates the prohibition on spending excess pre-candidacy contributions, he or she would risk an enforcement action by the Ethics Board.

The Ethics Board will routinely review and analyze the campaign finance reports filed by all political committees and conduct such other inquiries, investigations, reviews and analyses as necessary, to monitor whether candidates for City elective offices are complying with the City’s campaign finance law and determine whether enforcement action is necessary.

**Question 6: Will the Board provide training for candidates and the treasurer of a political committee regarding the various provisions in the Philadelphia Code related to campaign finance, contribution limits, ethics and penalties for violations?”**

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<sup>6</sup> Section 20-1002(4) also prohibits candidate political committees from spending any excess pre-candidacy contributions to pay for any expenses incurred by the candidate political committee.

**Response:** Yes, the Ethics Board will offer training on the City’s campaign finance law to candidates for City elective offices and their treasurers. The content of that training is currently being developed. The Board will offer the training as soon as possible.

**Question 7: “Will such training be Mandatory? The Los Angeles City Ethics Commission, for example requires candidates and the treasurers of their political committees to attend training sessions.”**

**Response:** To make campaign finance law training mandatory for candidates and the treasurers of political committees, the Board would first have to approve regulations, pursuant to the process set forth in Chapter 8-407 of the City Charter, any such regulations would not become effective for at least 30 days. However, the need for training is immediate. Therefore, the Board will offer training as soon as possible. Needless to say, it would be in the best interests of candidates and their treasurers to take advantage of the training opportunity when it is offered.

By the Board<sup>7</sup>:

Richard Negrin, Esq., Vice-Chair  
Pauline Abernathy, Member  
Stella M. Tsai, Esq., Member  
Rev. Dr. Alyn E. Waller, Member

Issued December 18, 2006

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<sup>7</sup> Richard Glazer, Esq., Chair of the Ethics Board, participated in the discussions throughout the preparation of Advisory Opinion 2006-003, but was not present during the Board’s vote to approve it.