



CITY OF PHILADELPHIA

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**Since issuing this opinion, the Board, in Regulation 1 at Subpart I, has provided more detailed guidance on the handling of excess pre-candidacy contributions.**

**Philadelphia Board of Ethics  
Nonpublic Formal Opinion No. 2011-001**

February 23, 2011

**Re: Expenditure of Excess Pre-Candidacy Contributions**

The treasurer of a political committee requested a nonpublic advisory providing guidance as to the committee's expenditure of excess pre-candidacy contributions, prior to the subject individual becoming a candidate for City elective office. The requestor advised that the committee expects to spend any excess pre-candidacy contributions that are on hand for permissible expenditures early in 2011, apparently prior to the subject individual becoming a candidate for any City elective office, should he do so. We were also advised that when the person becomes a candidate, the committee will set up a segregated pre-candidacy excess contribution account ("SPEC" account) and segregate any unspent excess pre-candidacy contributions.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, this Opinion is predicated on the facts that the requestor provided. 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 Opinion states general principles, and there are particular fact situations that he may be concerned about, he was encouraged to contact us for specific advice on the application of the ethics laws to those particular facts.

### **Limitations on the Scope of this Opinion**

In view of the fact that the request letter mentions past contributions, past expenditures, and past filing of campaign finance reports, this Board would like to emphasize that we can issue advice only as to proposed future conduct, not past conduct. This concept is recognized in Code Section 20-606(1)(d)(ii) and in Paragraph 4.1(d) of Regulation No. 4 of the Board of Ethics. There is an exception in Paragraph 4.1(e) for advice that may include remedial action.

Additionally, it should be noted that this Board has no jurisdiction to interpret the State Election Code, Title 25 of the Pennsylvania Statutes. *See* Nonpublic Formal Opinion No. 2009-004 at 2; Nonpublic Advice of Counsel No. GC-2010-521 at 2. Accordingly, for guidance on filings that are required by the Election Code, documentation required, and expenses allowed under the Election Code, readers are advised to consult the Bureau of Commissions, Election and Legislation of the Commonwealth's Secretary of State or the City Commissioners.

### **Philadelphia Code Section 20-1002(6)**

The principal statutory provisions implicated by this request are Code Sections 20-1002(6)-(7), which provide as follows:

(6) No candidate or candidate political committee may spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.

(7) No candidate or candidate political committee may spend any excess pre-candidacy contributions or excess post-candidacy contributions for the purposes of:

- (a) transition or inauguration expenses; or
- (b) retiring debt that was incurred to (i) influence the outcome of an already completed covered election; or (ii) cover transition or inauguration expenses related to an already completed covered election.

*See also* Board of Ethics Regulation No. 1, at Paragraphs 1.12 through 1.18.

This Board has recognized that, prior to an individual becoming a candidate, a committee may exist, and raise and expend money. Whether a particular expenditure is made to influence the outcome of a covered election is, to a large degree, a question of

fact. The requestor did not identify specific expenditures that the committee intends to make using excess pre-candidacy contributions in 2011. However, the requestor did identify expenditures the committee made in 2010 using excess pre-candidacy contributions and stated that the committee intends to make similar expenditures in 2011.

Opinions of this Board must be based on the facts presented in the request. *See* Code Section 20-606(1)(d)(i) and Regulation No. 4, Paragraph 4.1(a)(definition of “Advisory Opinion”). Therefore, this guidance is limited to whether the committee may, in 2011, use excess pre-candidacy contributions to make expenditures that are the same as those the requestor identified from 2010. Clearly, however, any such expenditures of excess pre-candidacy contributions must be in support only of non-campaign activity, and not merely a device to “frontload” campaign expenses in a committee that is not, at the time, subject to the campaign finance limits.

a. Committee overhead costs (rent, telephone, and utility costs). Generally, rent, telephone usage, and utility costs such as gas and electric are billed on a monthly basis, based on actual use. In that regard, such costs that are incurred by the committee’s office or committee staff prior to the subject individual becoming a candidate could be paid out of excess pre-candidacy contributions without violating Code Section 20-1002(6). However, it would not be permissible to pre-pay any such overhead costs to cover any period of time subsequent to the subject individual’s becoming a candidate.

b. Fees for attending conferences. Similar to the discussion of overhead costs, payment of the attendance fee for conference attendance by a committee staffer or by the subject individual, where the conference occurs prior to the subject individual becoming a candidate would not be activity intended to influence the outcome of a covered election. Thus, such fees may permissibly be paid out of excess pre-candidacy contributions.

c. Condolence cards and flowers. Purchases made and orders for deliveries to occur prior to the subject individual becoming a candidate may be paid out of excess pre-candidacy contributions.

d. Transportation. Generally, this is the type of expenditure that is paid at the time the ticket is purchased. In that regard, such costs that are incurred by the committee or its staff prior to the subject individual becoming a candidate would not be activity intended to influence the outcome of a covered election. Therefore, such expenditures may be made using excess pre-candidacy contributions without violating Code Section 20-1002(6). However, it would not be permissible to pre-pay any such transportation costs that would arise when the subject individual is a candidate.

e. Staff salaries. As with utilities, salaries can presumably be paid on a monthly or weekly basis. Salaries paid for services provided by committee staff prior to the subject individual becoming a candidate may be paid out of excess pre-candidacy contributions without violating Code Section 20-1002(6). However, it would not be permissible to pre-pay any such salary costs to cover service for any period of time subsequent to the subject individual's becoming a candidate.

f. Advertising that does not advocate the support of a candidate for elective office. Purchases made and orders for advertisements to occur prior to the subject individual becoming a candidate may be paid out of excess pre-candidacy contributions, so long as the advertising does not advocate the support of a candidate for elective office.

Again, this opinion is limited to the specific expenditures described above. If the committee intends to make expenditures other than those described above, using excess pre-candidacy contributions, you should request additional advice.

Additionally, the request letter requests that the Board "clarify what specific documentation, if any, the Ethics Board requests political committees to maintain regarding such expenditures." The essential filing requirement is stated in Paragraph 1.43 of Board Regulation No. 1, regarding the filing of a copy with the Board of any campaign finance report that a political committee files with the City Commissioners or the Secretary of State. For the requirement of what must be filed with those bodies, the requestor was referred to the State Election Code, as noted above. We note, parenthetically, that section 1626(c) of the State Election Code (25 P.S. Sec. 3246(c)) requires treasurers of political committees to retain "vouchers" for all expenditures over \$25 and to make them available for public inspection upon the request of any individual. The Board of Ethics requires no additional record-keeping of such expenditures.

Finally, if the subject individual becomes a candidate, but has not spent all of the excess pre-candidacy contributions, within 10 days after that announcement the committee must exclude the remaining excess pre-candidacy contributions by either:

- a. Transferring excess pre-candidacy contributions to a segregated pre/post-candidacy excess contribution account ("SPEC" account); or
- b. Returning excess pre-candidacy contributions to the contributors who made those contributions.

Regulation No. 1, ¶1.15.

If the subject individual establishes a SPEC account, he must so notify the Board pursuant to Regulation No. 1, ¶ 1.18. Because of the facts provided in the request letter, this Opinion does not address permissible uses of excess pre-candidacy funds held in a candidate's SPEC account.

### **Conclusions**

The treasurer of a political committee requested a nonpublic advisory providing guidance as to the committee's expenditure of excess pre-candidacy contributions, prior to the subject individual becoming a candidate for City elective office.

Based on the facts that were provided, the requestor was advised as follows:

1. Generally, we do not address past conduct, so this Opinion is addressed to future proposed conduct only.
2. The Board of Ethics has no jurisdiction to interpret or enforce the State Election Code, and accordingly, nothing in this Opinion is official advice on application of that State law.
3. The committee may make expenditures of excess pre-candidacy contributions in support of non-campaign activity.
4. The committee may not "frontload" campaign expenses in a committee that is not, at the time, subject to the campaign finance limits.
5. Under the facts you have provided, the committee may use excess pre-candidacy contributions to make the following expenditures prior to the subject individual becoming a candidate: overhead utilities and rent, conference fees, condolence expressions, transportation, staff salaries, and advertising that does not advocate the support of a candidate for elective office.
6. As to maintaining documentation of expenditures, the Board of Ethics has no additional requirements beyond those in the State Election Code.

As noted above, the requestor was advised that, if he has any additional facts to provide, we will be happy to consider if they change any of the conclusions in this Opinion.

Since 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).

By the Board:

Richard Glazer, Esq., Chair  
Rev. Damone B. Jones, Sr., Member  
William H. Brown III, Esq., Member  
Sanjuanita González, Esq., Member

Sister Mary Scullion did not participate in the consideration or adoption of this Opinion.