

ADVISORY OPINION 06-01

June 19, 2006

Jack Robson, Chief, City of College Park Board of Election Supervisors, has asked the Ethics Commission for an advisory opinion regarding the application of Chapter 34, Elections, of the College Park Code, to campaign assets remaining after a completed election. Mr. Robson presented three hypothetical fact patterns, which we shall set forth in their entirety and discuss below.

1. A candidate has generated signs for the City race such as "Elect Robson For Council." The sign has no real value after the election, whether or not the candidate won or lost. It will only have value if the person decides to run again in the next City election. Only the candidate knows when the decision to run again is actually made. For practical purposes, the candidate becomes a candidate when that candidate advises another of that decision. Should we require that non-monetary residuals be reported in the post-election report? If yes, then they would also be required to be reported in the subsequent July report. If no, and the person subsequently decided to become a candidate in a subsequent City election, should they report the value of the signs as entered in a previous report, or show the value as zero with a note explaining they were residual from a previous campaign?

The Commission finds that the College Park Code does not require the reporting of residual tangible assets on post election final reports and finds that candidates for elective office in College Park using residual assets from their previous College Park campaigns must report such assets as contributions on their initial campaign report for the upcoming election.

Section 34-15 (A)(1)(a) requires that candidates file an initial report between 30 and 14 days preceding an election, which must identify "all contributions received and expenditures made since the last preceding election." Section 34-15 (A)(1)(b) requires that candidates file a final report between 14 and 30 days after the election that includes "all contributions received and expenditures made since the [initial] report was filed." If a campaign has a cash balance at the time of the filing of the final report or receives additional contributions following the filing of the final report, it must continue to file annual reports until the cash balance is eliminated and the elimination is reported.

Because the Code does not require the reporting of tangible assets (except when received as in kind contributions), the City does not have the authority to require that campaigns report residual tangible assets on final reports. Moreover, we agree with Mr. Robson that political matter has no value unless the individual becomes a candidate in an upcoming election. At the time that the individual becomes a candidate again, the political matter has value because the candidate has a use for the political matter and would have to pay for the matter if it were not available from the previous campaign. Therefore, it is the opinion of the Ethics Commission that

residual political matter should be reported as a contribution by the candidate to his or her campaign¹ on the pre election report. The reported value of the residual matter should be the actual cost of the matter or a reasonable estimate of the cost of the matter, because there is no market for the matter. The value, however, has little significance as the Code does not limit a candidate's contribution to his or her own campaign. § 34-14(D)(2). Because the residual tangible assets at issue in this inquiry were owned by the candidate's previous College Park campaign, the funds used to purchase the assets or, in the case of in kind contributions, the actual assets, remain subject to the limitations upon the source and amount of campaign contributions imposed by section 34-14. Therefore, allowing the use of such assets would not enable candidates or donors to circumvent the limitations of section 34-14.

In addition to the fact that the reporting of tangible assets is not required under the current Code, the Commission notes that requiring the ongoing reporting of residual tangible assets would impose an administrative burden on candidates and the Board of Elections that is incongruous with the minimal effect it would have upon the provision of fair elections.

2. A candidate runs for County Council or State Delegate and produces a sign or simple flyer, such as "Elect Robson For Council" or "Elect Robson." Assume the material is purchased or donated with other than the candidate's personal funds. Such items are obtained outside the City's purview and may make use of funds or sources prohibited by our City election rules. Assume that the candidate does not succeed in the non-City election and subsequently runs in a City election or succeeds, but, at some time in the future, returns as a candidate in a City election. Can such campaign material be used in the City elections? To further complicate the matter, assume that the candidate obtained the material in a manner that satisfied City requirements, i.e., all donations used for the material were from private individuals and within monetary limits. How is it to be valued? If valued at zero, would a donor who has contributed to the non-City campaign at a level above the City limit be permitted to contribute to the candidate's City campaign?

The Commission finds that the Elections Chapter prohibits candidates for elective office in College Park from accepting contributions of residual political matter from their non College Park campaigns, regardless of the original source of the matter, and finds that an individual's contributions to non College Park campaigns do not reduce the amount that the individual may contribute to the candidate's College Park campaign.

A political campaign constitutes a "business entity" as that term is defined in the Elections Chapter. See § 34-3 (defining "business entity" as "[a]ny corporation, limited liability company, general or limited partnership, sole proprietorship (including a private consulting operation), joint venture, unincorporated association or firm, institution, trust, foundation or other organization, whether organized for profit or not."). Therefore, contributions from the non

¹ For the purposes of the Elections Chapter, "candidate" mean "[a]ny person who seeks election to the office of Mayor or Councilperson of the City of College Park." The "candidate" is deemed to be the recipient of campaign contributions, see § 34-14(B), (C), (D)(2), and the owner of campaign assets, see §34-15(A)(3).

College Park campaign to the College Park campaign would constitute a contribution from a business entity, which is prohibited under section 34-14(C). Even if one deems the College Park candidate, in his or her individual capacity, to be the source of the in kind contribution to his or her College Park campaign, the contribution would constitute an indirect contribution by a business entity to the College Park campaign, which section 34-14(C) also prohibits, because the individual would merely be a conduit for the contribution.

Because the Commission finds that contributions from a non College Park campaign to a College Park campaign constitute prohibited business entity contributions, whether the non College Park campaign obtained the matter in a manner consistent with the campaign contribution limitations of the Elections Chapter is irrelevant.

At first glance, it may seem that prohibiting non College Park campaigns from contributing residual assets to the College Park campaign of the same individual is unnecessary because the contributions clearly will not influence the candidate. However, prohibiting candidates from using such assets prevents candidates and contributors from circumventing the limitations on the source and amount of campaign contributions of section 34-14, because the assets from the non College Park campaign may have been, or may have been purchased with contributions prohibited by section 34-14. For example, if individual X contributed \$1,000.00 to candidate Y's campaign for the Maryland State Senate, which candidate Y used to purchase campaign signs that read "Elect Candidate Y," and then candidate Y used those signs in her College park election campaign, her College Park campaign would have the benefit of a \$1,000.00 contribution from individual X when section 34-14 limits individual campaign contributions to \$250.00.

The Commission finds that a candidate who wishes to reuse residual political matter from a non College Park campaign may do so, however, if he or she purchases the matter from the non College Park campaign. If the candidate pays the non College Park campaign for the actual cost of the residual matter, then he or she would not be receiving a contribution from the campaign.^{2 3} The candidate would then report the purchase of the residual political matters as a disbursement on his or her campaign finance reports. Any political matter purchased from a non College Park campaign may have to be modified to state that the candidate or the candidate's treasurer is responsible for the publication or distribution of the matter as required by section 34-17.

A person's contribution to a candidate's non College Park Campaign is not counted as a contribution to the College Park campaign for purposes of determining whether the contributor has exceeded the maximum contribution prescribed by section 34-14(D) because the College Park campaign has to pay for any assets it receives from the non College Park campaign.

3. A candidate runs for City Council or State Delegate and has a tee shirt made such as "Elect Robson For Council" or "Elect Robson." Assume the

² The money received by the non College Park campaign would then be subject to the campaign finance regulations applicable to that campaign.

³ If the political matter was an in kind contribution to the previous campaign, then the purchase price for the matter should be equal to a reasonable approximation of the cost of the matter if the candidate were to purchase the matter.

shirt is purchased or donated with other than the candidate's personal funds. Such items are obtained outside the City's purview and may make use of funds or sources prohibited by our City election rules. Assume that the candidate does not succeed in the non-City election and subsequently runs in a City election or succeeds, but, at some time in the future, returns as a candidate in a City election. Can such campaign material, which has real value, be used in City elections? To further complicate the matter, assume that the candidate obtained the material in a manner that satisfied City requirements, i.e., all donations used for the material were from private individuals and within monetary limits. How is it to be valued? Current value or purchased value? Would a donor who had contributed to the non-City campaign at a level above the City limit be permitted to contribute to the candidate's City campaign with the limit to include the residual value of the other election contribution?

As discussed above, the Commission finds that the Elections Chapter prohibits candidates for elective office in College Park from accepting contributions of residual political matter from their non College Park campaigns. Articles of clothing imprinted with political messages constitute political matter and, therefore, may only be used by a College Park candidate if the candidate purchases the clothing from the non College Park campaign at cost.

Supervisor Robson distinguishes articles of clothing imprinted with political messages from political matter such as signs and flyers on the basis that such clothing has value independent of its usefulness for campaign purposes. We disagree with this distinction for two reasons. First, we believe that clothing imprinted with a political message that pertains to a completed election has only *de minimus* value as clothing, as there is no market for such clothing. Second, as discussed in our response to the first inquiry, we believe that any political matter has value when a candidate can use the matter to campaign for an upcoming election and would have to purchase the matter if it were not available from the previous campaign. Therefore, we believe that the value of the political clothing is the cost of the clothing to the previous campaign, or if the clothing was an in kind contribution to the previous campaign, a reasonable approximation of the cost if the candidate were to purchase such clothing. This amount must be paid to the previous campaign so that the clothing does not constitute a contribution from the previous campaign.

As we discussed in the previous analysis, the source of the contributions to the non College Park campaign is irrelevant to our analysis, and such contributions do not affect the amount that the contributor may give to the current campaign.

The Code need not be amended to address the issues raised by Supervisor Robson.

Commissioner Robson also inquired whether the Mayor and Council must amend the College Park Code to address the issue of tangible residuary campaign assets. The Commission believes that the Code provides a sufficient framework for the foregoing opinion and that no changes to the Code are necessary to prevent candidates and contributors from circumventing the purposes of the Elections Chapter.

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