

Leroy G. Comrie, CD #27 (2009)

1. Accepting contributions from unregistered political committees \$600

Campaigns may not accept a contribution from a political committee unless the committee is registered with the CFB within ten days of receipt of the contribution. *See* Admin. Code §§ 3-703(1)(k) and 3-707, and Board Rule 1-04(d). The Campaign accepted contributions from two unregistered political committees: a contribution of \$65 from Friends of Bill Scarborough, which was not refunded promptly following notification from the CFB; and a contribution of \$100 from Shirley Hunter [*sic*] for State Senate, which was not refunded.

The Board assessed a penalty of \$600 for these violations.

2. Accepting over-the-limit contributions \$375

Campaigns may not accept contributions from a single source in excess of the applicable contribution limit for the entire election cycle. *See* Admin. Code §§ 3-702(8), 3-703(1)(f), (11), (12); Board Rules 1-04(c)(1), 1-04(h), 1-07(c).

The Campaign accepted three over-the-limit contributions:

- The Campaign accepted aggregate contributions totaling \$5,000 from DCC2, LLC. The Campaign refunded a portion of the overage (\$1,100) promptly after CFB staff notified the Campaign of the overage.
- The Campaign accepted aggregate contributions totaling \$3,000 from IUOE Local 14-14B. The Campaign refunded the overage (\$250) promptly after CFB staff notified the Campaign of the overage.
- The Campaign accepted aggregate contributions totaling \$3,500 from New York State Laborers' PAC. The Campaign refunded the overage promptly after CFB staff notified the Campaign of the overage.

The Board assessed a penalty of \$375 for these violations.

3. Accepting an over-the-limit Doing Business contribution \$125

Campaigns may not accept contributions from individuals or entities that have business dealings with New York City government in excess of the applicable Doing Business contribution limit for the entire election cycle. *See* Admin. Code §§ 3-702(18), 3-703(1-a); Board Rule 1-04(c)(1). For City Council candidates in the 2009 election, this limit was \$250. When a candidate receives a contribution in excess of the limit from contributors who have business

dealings with the City, the candidate must return the excess portion to the contributor within twenty days of being notified by the Board. *See* Board Rule 1-04(c)(1).

The Campaign accepted a contribution from Andrew Manshel which exceeded the Doing Business limit by \$150. CFB staff notified the Campaign of the over-the-limit contribution on April 1, 2009, and the Campaign returned the excess portion to the contributor on August 7, 2009.

The Board assessed a penalty of \$125 for this violation.

4. Failing to report intermediaries \$100

Campaigns are required to report and respond to questions about intermediaries. *See* Admin. Code §§ 3-702(12), 3-703(1)(d), (g), (6); Board Rules 3-03(c)(7), 4-01(b)(5). The Campaign failed to report four suspected intermediaries.

The Board assessed a penalty of \$100 for this violation.

5. Failing to provide intermediary statements \$100

Campaigns are required to provide signed statements from intermediaries affirming that the contributors were not reimbursed for their contributions and that none of the contributions was a loan. *See* Admin. Code §§ 3-702(12), 3-703(1)(d), (g), (6); Board Rules 3-03(c)(7), 4-01(b)(5). The Campaign failed to submit 15 requested intermediary statements.

The Board assessed a penalty of \$100 for these violations.

6. Exceeding the expenditure limit \$11,172

Candidates who participate in the Campaign Finance Program must abide by limits on the amount of money they can spend on their campaigns. *See* Admin. Code §§ 3-703(1)(i), 3-706, 3-711(2)(a); Board Rules 1-08(d), (l). The expenditure limit for candidates running for City Council in the 2009 general election was \$161,000. The Campaign exceeded the expenditure limit by \$33,516.37 (20.8%).

The Candidate stated that he intended to run for Queens Borough President until changes to the term limits law became effective in November 2008. The Campaign argued that expenditures totaling \$56,179 should be removed from its expenditure limit calculation because they were made in connection with the Candidate's aborted run for Queens Borough President.

However, as the Campaign concedes, "although required by [CFB Advisory Opinion ("A.O.") 2008-7 (Nov. 3, 2008)] to do so, the [Campaign] failed to submit a written statement to

the Board by January 15, 2009 demonstrating that Mr. Comrie was seeking higher office . . .”¹ In addition to A.O. 2008-7, the Board notified all candidates of this “higher office proof” requirement in a press release dated October 17, 2008, an email dated November 13, 2008, and a plain language guide to A.O. 2008-7 distributed on November 13, 2008.²

The Campaign’s failure to submit higher office proof frustrates the purpose of the Board’s advisory opinion. *See* A.O. 2008-7, at 1 (purpose of A.O. 2008-7 is “to make it practical for all candidates who wish to join the Program to do so, to treat both incumbents and potential challengers in 2009 and 2013 fairly, and to encourage competitive races for all officers covered by the Program.”).

A.O. No. 2008-7 gave candidates in Mr. Comrie’s situation two options. The Campaign availed itself of neither. Option A required candidates to freeze their 2009 campaign committees for use in 2013. Because those campaigns will receive the benefit of those “frozen” funds in 2013, the cost of raising the funds will be applied to the candidates’ 2013 expenditure limit using an allocation method. Option B, which allowed campaigns to continue to use all the funds previously raised in 2009 for the 2009 election, applied an allocation of expenditures based on a methodology described in A.O. No. 1997-6. For those campaigns, fundraising costs were considered to be for the current election and not the aborted run for higher office. The Campaign stated in its response to the Penalty Notice that functionally, it wanted to proceed under Option B, but failed to recognize that A.O. No. 2008-7 provides that Option B candidates must allocate all fundraising costs to the 2009 election, because the funds raised were used in the 2009 election, and the Campaign received the benefit of the contributions in the 2009 election.

The Board assessed a penalty of \$11,172 for this violation.

7. Making cash payments greater than \$100 \$50

Campaigns may not make cash expenditures in excess of \$100 per transaction or purchase. Board Rules 1-08(i), 4-01(e)(2). The Campaign made a cash payment of \$175 to Mona Lisa the Art of Photography on August 6, 2009.

The Board assessed a penalty of \$50 for this violation.

¹ A.O. 2008-7 instructed candidates who had previously intended to run for higher office before changes to the term limits law that if they wished to run again for their lower, incumbent offices (subject to the lower expenditure limits applicable to lower office), they were required to submit a Higher Office Proof Form by January 15, 2009.

² The November 13, 2008 email contained a link to the higher office proof form, and provided: “If you are a candidate who was running for a higher office but now will be running for re-election to your current office, you will have to submit the Higher Office Proof form before January 15, 2009 to take advantage of the options in the Advisory Opinion.” The plain language guide, “Term Limits Extension and the Campaign Finance Board: Candidate Guidance Document on Advisory Opinion No. 2008-7,” enclosed a copy of the higher office proof form.

8. Cooperating in alleged independent expenditures

\$3,750

Campaigns must account for and report non-independent activity conducted on the campaign's behalf. *See* CFB Advisory Op. 2009-7 (Aug. 6, 2009) ("A.O. 2009-7").³ The Board considers various types of evidence in evaluating whether a Campaign has cooperated in third party activity, including, in relevant part, whether a Campaign shares office space with the third party, and whether the third party has financed a Campaign's written, graphic, or other campaign materials. *See* A.O. 2009-7. In all events, "*each campaign bears the burden* of demonstrating that any third party activity conducted on the campaign's behalf is indeed independent." *Id.* (emphasis added).

CFB staff visited the offices of the Guy R. Brewer Democratic Club ("GRBDC") on September 14 and 15, 2009 (the day before and the day of the primary election). The Campaign described GRBDC as its campaign headquarters. Among other apparent non-independent activity, CFB staff observed coordinated get-out-the-vote activities among union groups and Campaign staff, including distribution of pro-Candidate literature and phone banking. The Campaign reported neither expenditures nor in-kind contributions for these activities.

A.O. 2009-7 provides that "*each campaign bears the burden* of demonstrating that any third party activity conducted on the campaign's behalf is indeed independent" (emphasis added). The Board's regulations place the "burden of demonstrating" the independence of third-party activity on campaigns because "the information about whether campaign-related activity has been discussed or otherwise coordinated between a campaign and a third party is uniquely within the campaign's possession."

The Board assessed a penalty of \$3,750 for this violation.

³ *See* also Admin. Code §3-702(8) (providing that "independent" means "the candidate or his or her agents or political committees so authorized by such candidate did not authorize, request, suggest, foster or cooperate in any such activity."); and Board Rule 1-08 (f)(1) (setting forth non-exhaustive factors for determining whether activity is independent).