KANTOR|DAVIDOFF

Kantor, Davidoff, Mandelker, Twomey, Gallanty & Kesten, P.C.
415 Madison Avenue, 16th Floor
New York, New York 10017
Tel: (212) 682-8383
Fax: (212) 949-5206
www.kantordavidoff.com

Connecticut Office
495 Post Road East
Westport, CT 06880
Tel: (203) 222-1100
Fax: (203) 226-7323

Laurence D. Laufer
Of Counsel
Writer's extension: 720
Writer's e-mail: laufer@kantordavidoff.com

March 14, 2016

BY EMAIL
Cameron Ferrante
Complaints & Investigations Analyst
NYC Campaign Finance Board
100 Church Street, 12 Fl.
New York, New York 10007

Re: Unverified Complaint By New York Common Cause

Dear Mr. Ferrante:

De Blasio 2017 (the "Committee") is in receipt of your letter, dated February 23, 2016, enclosing a February 22, 2016 letter from Susan Lerner of New York Common Cause ("Lerner Letter"). Your letter characterizes the Lerner Letter as a "complaint alleg[ing] that the 2017 campaign of Bill de Blasio ... violated the New York City Campaign Finance Act and/or Board rules." Your letter invites de Blasio 2017 to submit a verified answer by March 14, 2016.

Because it does not appear to be sworn to or affirmed, we note the Lerner Letter is facially deficient as a basis for initiating a proceeding pursuant to CFB Rule 7-01(a)(i). For this reason, we have chosen to respond to the Lerner Letter's allegations by this letter rather than by verified answer.

We further note that the Lerner Letter is also addressed to the Conflicts of Interest Board and raises issues concerning NYC Charter Chapter 68, which are not within the CFB's jurisdiction. We thus refrain from addressing those issues herein.

The Lerner Letter raises four issues it urges the CFB to address. We address each in turn.

1. In this age of perpetual campaigning, where public opinion polling as to the re-electability of elected officials is virtually constant, is Campaign for One New York a campaign committee that should be subject to the New York City campaign finance law?

In asking whether the Campaign for One New York, Inc. ("C41NY") "should" be treated as a campaign committee subject to the New York City campaign finance law, the Lerner Letter does not allege or present any facts that suggest C41NY is an "authorized committee" within the meaning of the New York City Campaign Finance Act. As you know, the Committee previously made an extensive submission to the CFB demonstrating that C41NY is not an authorized committee within the meaning of the New York City Campaign Finance Act. See my letter to Peri Horowitz, dated July 13, 2015 (copy enclosed).

Thus, to the extent this first issue in the Lerner Letter may be alleging a violation, the answer is No, C41NY is not a campaign committee subject to the New York City Campaign Finance Act. As for the Lerner Letter's aspirations for the future of City campaign finance law amendments, we address that issue below.

2. Do contributions to Campaign for One New York violate New York City Campaign Finance Law 3-703(1)(f)?

No. First, because C41NY is not a political committee within the meaning of City or State law, it does not receive "contributions" as that term is defined in either City or State law. See NYC Admin. Code §3-702(8), defining "contribution", (11), defining "political committee"; N.Y. Election Law §14-100(1), defining "political committee", (9) defining "contribution". Donations made to a not-for-profit corporation operating as a social welfare organization engaged in issue advocacy and/or lobbying are not contributions subject to campaign finance limitations.

Second, the limitations of Admin. Code §3-703(1)(f) apply solely to contributions accepted by a candidate or authorized committee. C41NY is neither a candidate nor an authorized committee. See CFB Rule 1-02, defining "candidate", and Admin. Code §3-702(7), defining "authorized committee."

Third, the NYC Campaign Finance Act distinguishes the act of soliciting funds from the act of accepting funds. See, e.g., Admin. Code §3-702(12) and §3-703(1)(f). The Campaign Finance Act places no limit on the amount of funds a public servant may solicit for a good cause or even for Common Cause.

Indeed, the New York City Charter's conflict of interest provisions likewise places no limit on the donation amounts that a public servant may solicit. Rather, the COIB (not the CFB) is charged with addressing the permissibility and manner of solicitations by public servants. As you know, Mayor de Blasio received clearance from the COIB before rendering any fundraising assistance to support C41NY's advocacy on behalf of New York City and its residents.

3. Do contributions to Campaign for One New York violate New York City Campaign Finance Law 3-703(1)(1-a)?

No. See response to issue 2, above.

4. If the Campaign for One New York was not a committee subject to the New York City campaign finance laws when it is founded in December 2013, did (would) it become subject to the campaign finance laws at some later date in closer chronological proximity to the Mayor's running for re-election? If so, when did (would) that occur?

This last issue does not appear to be an allegation of violation, but rather in the nature of a request for an advisory opinion. As you know, the New York City Campaign Finance Act does not set a deadline after which issue advocacy is deemed to be electioneering or advocacy organizations are deemed to be campaign committees. One would think the First Amendment would pose a rather large impediment to such treatment.

The Lerner Letter appears to acknowledge that C41NY is not an "Independent Expenditure Committee" and, in any event, none of C41NY's public communications to date has occurred within a proximity to the 2017 mayoral election that could bring such communications within the scope of the CFB's definition of "electioneering communications." See CFB Rule 13-01 ("disseminated within 30 days of a covered primary ... or within 60 days of a covered general election").

The last portion of the Lerner Letter requests the CFB to "propose amendments to clarify ... applicable law" and for the CFB to include a prohibition against entities like C41NY in the "terms and conditions" the CFB "sets" for participating candidates. We note that the Lerner Letter misperceives the scope of CFB regulatory authority. Clearly the terms and conditions of the City's matching funds program are set by local law and then administered by the CFB.

As for the prospect of legislative amendments, the Committee welcomes the opportunity to participate in that future discussion. This is a complicated subject, not least because it concerns the ability of elected officials to marshal both public and private resources in support of their public policy advocacy at the local, state, and federal levels. Restrictions applicable solely to City public servants, as opposed to State and federal officials as well as special and private interests, risk uniquely harming the ability of the City's elected officials to effectively exert their leadership on behalf of the public interest. Clearly, that should not be the goal of any campaign finance law.

Thank you for this opportunity to address the Lerner Letter.

Very truly yours,

KANTOR, DAVIDOFF, MANDELKER,
TWOMEY, GALLANTY & KESTEN, P.C.

[redacted]

LAURENCE D. LAUFER

Enclosure