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May 20, 2013

VIA ELECTRONIC MAIL

Amy M. Loprest
Executive Director
New York City Campaign Finance Board
40 Rector Street
New York, NY 10006

Re: Advisory Opinion Request

Dear Ms. Loprest:

This firm represents New Yorkers for de Blasio. We write to request an advisory opinion on how the Campaign Finance Board intends to interpret and implement the New York City Campaign Finance Act (the "Act") in relation to third party expenditures authorized and cooperated in by a participating candidate and that candidate's campaign team. In the past the Board has treated such requests as "extremely important" and made clear its goal of "ensuring that the law with respect to non-independent expenditures is enforced vigorously and consistently." CFB Advisory Opinion No. 2009-7 (Aug. 6, 2009).

Specifically, we ask the Board to address application of the Act and CFB rules to the upcoming book tour scheduled to promote Council Speaker Quinn's soon-to-be-released autobiography. As you know, Ms. Quinn is a candidate for mayor seeking the Democratic party nomination and is, or will likely be, participating in the Campaign Finance Program. Recent press coverage has made two facts clear about this book tour: (1) the corporate

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publisher will be spending significant sums to promote Ms. Quinn and her autobiography; and (2) Ms. Quinn's mayoral campaign and staff are significantly involved in coordinating this activity. These facts are a matter of public record. Among the most significant facts demonstrating that the book tour is non-independent campaign-related activity:

- Last week, Ms. Quinn began her “non-political” promotion of her book with an interview with the New York Times, and a forum at Barnard College in which she discussed past personal struggles. According to the New York Times: “Ms. Quinn, 46, contacted the New York Times to tell her story, as her aides try to soften her often rough-edged political image and build a campaign that draws heavily on her personal appeal to women.”¹ Further, in the coverage of Ms. Quinn’s event at Barnard, NBC 4’s Government Affairs Reporter, Melissa Russo noted, “It’s almost impossible to separate politics from Ms. Quinn’s personal revelation, which, in no coincidence was timed during the height of a bruising Democratic Primary.”²
- Ms. Quinn’s campaign team arranged for the book deal and book tour to begin with. Josh Isay, Ms. Quinn’s lead political strategist for her campaign arranged for Ms. Quinn to meet with David Black, who became her book agent. Black is the literary agent for Mr. Isay’s brother and sister-in-law, and is a friend of Mr. Isay’s mother, who is a retired editor.³
- While this book will not be officially released for at least another month, the rollout around it has already been started. To date, the Quinn campaign team has been very much involved. The advisory for the “non-political” event at Barnard went out to the entire New York political press corps from Ms. Quinn’s Mayoral campaign,⁴ and her campaign spokesman and Josh Isay were both in attendance. Her spokesman was characterized as “calling the shots”.⁵

¹ http://www.nytimes.com/2013/05/14/nyregion/council-speaker-opens-up-about-her-struggles-against-bulimia-and-alcoholism.html?pagewanted=1&_r=1&hp

² <http://www.nbcnewyork.com/news/local/Christine-Quinn-Mayor-Candidate-Bulimia-Eating-Disorder-Struggle-Alcoholism-207343761.html>

³ <http://www.capitalnewyork.com/article/politics/2012/05/6006972/christine-quinns-memoir-will-be-personal-even-if-her-political-cons>

⁴ <http://www.crainsnewyork.com/article/20130514/BLOGS04/130519949>

⁵ <http://www.nbcnewyork.com/news/local/Christine-Quinn-Mayor-Candidate-Bulimia-Eating-Disorder-Struggle-Alcoholism-207343761.html>

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- Finally, the press release announcing the book's publication, issued by William Morrow (an imprint of HarperCollins) stated, "Public opinion polls show Quinn as a frontrunner to succeed Mike Bloomberg as Mayor of New York City."⁶

These facts demonstrate that any funds spent by the corporate publisher to promote the book are non-independent campaign-related activity. Even if the book itself is non-political – and given the above that seems unlikely – the book tour clearly is not. Thus, we maintain, the entire cost of this effort to promote Ms. Quinn and her biographic credentials in the weeks that remain prior to the September 10, 2013 Democratic primary election are reportable as in-kind contributions to her mayoral campaign, subject to the contribution limits and source prohibitions of the Act and the expenditure limit which applies to all participating candidates in that primary election (if indeed Ms. Quinn becomes a participating candidate).

In brief, the Act treats third party payments in connection with a candidate's nomination as in-kind contributions. See NYC Administrative Code §3-702(8). Expenditures in furtherance of a political campaign are campaign-related. See Admin. Code §3-702(21)(a). The Board has found third party expenditures referencing a candidate to be campaign-related. See, e.g., Advisory Opinion No. 2012-1 (June 21, 2012) (cost of a flyer to build support for a union cause; cost of a union rally). Among the factors the Board has identified in determining whether the purpose of a third party expenditure is to promote or facilitate the candidate's campaign, the following are particularly pertinent to the publisher's planned promotion of Ms. Quinn's book:

- "whether the materials or communications contain language that mentions the candidate's accomplishments [or] attests to the candidate's high character..."
- the temporal proximity of the expenditure to the election...."

See id.

Similarly, the Board has recognized that congratulatory, seasonal, or commemorative advertisements and journal advertisements ordered for placement, even years before an election, are "campaign-related expenditures that promote a candidate and therefore further the candidate's nomination or election." Advisory Opinion No. 2007-6 (Dec. 21, 2007). The Board stressed:

⁶ <http://www.harpercollins.com/footer/release.aspx?id=999&b=&year=2012>

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“[o]ther ads which may be construed as self-promotional may also be construed as campaign-related and therefore are subject to regulation under the Act.”

See id.

In addressing the primary election expenditure limit, the Board has made clear its disinclination to find exceptions. Because “expenditures involving public promotion of the candidate” “would surely benefit the candidate in the primary election period”, the Board has repeatedly declined requests for exceptions. Advisory Opinion No. 2005-1 (Apr. 29, 2005); see also Advisory Opinion No. 2009-4 (Apr. 14, 2009). As it has in the past, the Board should decline to create exceptions to the primary election expenditure limit that “could exacerbate disparities among participants in the same election vis-a-vis each other” and thereby “undermine the Program’s goal of promoting fair competition among candidates competing in the same election.” Id.

The Board expressed these same concerns in a heightened and comprehensive manner in addressing non-independent expenditures:

“[n]on-independent expenditures pose a serious threat to New York City’s Campaign Finance Program. A campaign’s failure to account for and report non-independent activity undermines the Program in several ways: the activity of a potentially major campaign contributor remains undisclosed; over-the-limit in-kind contributions can go undetected; and non-independent activity that is unaccounted for may constitute violations of the expenditure limit. Further, non-independent activity creates an un-level playing field: a candidate who is able to derive non-independent expenditures from a third party is at a significant advantage over an opponent who complies with the Act’s contribution and expenditure limits (and may not have the backing of a powerful third party contributor).”

Advisory Opinion No. 2009-7, supra.

In sum, Ms. Quinn’s proposed book tour is clearly political, non-independent activity coordinated with her campaign, timed to coincide with the peak of the campaign and it promotes the candidate in a way that will provide enormous benefit to her campaign. As such, it is our view that funds spent on the book tour, including the salaries of publisher’s employees doing the work, must count as in-kind contributions and expenditures toward her campaign’s cap.

We write this letter now, so that an opinion may be rendered in advance of the book tour, thus allowing Ms. Quinn to delay publication and the book tour until after the election if she would prefer not to have campaign funds spent on this endeavor. The Board’s guidance is

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needed here to protect against what is potentially a very serious violation of the Act. See id. at fn. 21. Obviously, if the Board determines that a candidate may publish an autobiography in the closing weeks of an election campaign and then have his or her corporate publisher spend unlimited funds promoting the book in coordination with the campaign that too should be made clear now so that all candidates may avail themselves of the opportunity.

We would appreciate your earliest possible response and, in fairness to Ms. Quinn, believe that the Board's opinion should be issued before the book tour begins. Thank you for your consideration.

Very truly yours,

GENOVA BURNS GIANTOMASI WEBSTER LLC



LAURENCE D. LAUFER

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