

**ADVISORY OPINION NO. 2020-1 (January 16, 2020)**

Re: Local Law No. 128 of 2019; 2019 Sess. Law News of N.Y. Ch. 5 (A. 779); Administrative Code of the City of New York (“Admin. Code”) §§ 3-704(1), 3-705(4); Board Rule 6-04(d); Advisory Opinion No. 2016-1 (July 6, 2016); Op No. 2020-1.

The New York City Campaign Finance Board (the “Board” or “CFB”) has concluded that CFB Advisory Opinion No. 2016-1 (“A.O. 2016-1”), regarding coordinated expenditures made by non-campaign entities, should be supplemented in light of recent amendments to the New York State Election Law and the New York City Campaign Finance Act. Specifically, changes to the election and campaign finance calendars require a reassessment of the timing considerations discussed in A.O. 2016-1.

**Applicable Statutes, Board Rules, and Advisory Opinions**

Section 8-100 of the New York State Election Law, as amended January 24, 2019, provides that primary elections shall be held on the fourth Tuesday in June before each general election.

Section 3-704(1) of the Administrative Code of the City of New York (the “Administrative Code”), as amended July 14, 2019, provides that qualified expenditures for a covered election may be made beginning on December 15 in the year preceding such election.

Section 3-705(4) of the Administrative Code, as amended July 14, 2019, provides that public funds payments shall be issued to candidates in a covered election beginning on December 15 in the year preceding such election.

Board Rule 6-04(d) provides that a non-independent expenditure is considered to be made in connection with a covered election if the expenditure is made “for the purpose of furthering or facilitating the nomination or election of a candidate[.]”

A.O. 2016-1 governs coordinated expenditures made by non-campaign entities affiliated with a candidate. The Opinion states, in relevant part:

When determining whether a coordinated expenditure is made in connection with a covered election, the Board will consider the timing of the expenditure of particular importance. On or after January 1 in the year the covered election will be held, the Board will presume that such expenditures are made in connection with the election where some of the factors discussed above are present. Prior to January 1 of the election year, such expenditures often will be found not to have been made

in connection with the election. When, however, numerous or substantial factors are present such that those expenditures closely overlap with election activity, including by focusing on the candidate's past accomplishments or otherwise promoting the candidate and/or denigrating his/her opponent, the Board may consider activity occurring prior to January 1 of the election year to be in connection with a covered election, particularly if it occurs closer to the election year.

### **Analysis**

A.O. 2016-1 stated that certain expenditures would be presumed to be made in connection with an election if made on or after January 1 in the year of such election. Since that Opinion was issued, the primary election has been rescheduled from September to June and the Act has been amended to provide for public funds payments and qualified expenditures beginning in December of the year preceding the election.<sup>1</sup> In light of these changes to the election and campaign finance calendars, the January 1 cutoff date stated in A.O. 2016-1 is no longer appropriate. Accordingly, expenditures for which one or more of the factors enumerated in A.O. 2016-1 are present will be presumed to be made in connection with an election if such expenditures are made on or after July 15 in the year preceding the year of such election.

## **NEW YORK CITY CAMPAIGN FINANCE BOARD**

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<sup>1</sup> Previously, the Act provided for public funds payments beginning in June of the election year and qualified expenditures beginning on January 1 of the election year.