

## **ADVISORY OPINION NO. 2020-2 (June 9, 2020)**

### **SUMMARY**

Candidates in the cancelled special election for Queens borough president, originally scheduled for March 24, 2020, and the primary election scheduled for June 23, 2020 may demonstrate that certain expenditures made in furtherance of the special election are not attributable to the primary election expenditure limit, provided they submit documentation related to either the intended audience of those expenditures or the natures of the goods or services purchased. Any public matching funds that candidates received for the special election will count toward the maximum amount of public funds they are eligible to receive for the primary election.

### **FULL TEXT**

Re: Administrative Code of the City of New York (“Admin. Code”) §§ 3-705(2)(b), 3-706(1)(a); Board Rule 6-01; Advisory Opinion Nos. 1997-6 (June 24, 1997), 2005-1 (April 29, 2005), 2007-4 (March 09, 2007).

### **Overview**

The New York City Campaign Finance Board (the “Board”) issues this advisory opinion (the “Opinion”) in response to a request for an advisory opinion<sup>1</sup> from Jerry H. Goldfeder, Esq. on behalf of Friends of Elizabeth Crowley (the “Campaign”), a campaign in the 2020 Democratic primary election for Queens borough president. The Campaign has requested that the Board clarify how the cancellation of the 2020 special election for Queens borough president (the “Special Election”), due to the COVID-19 pandemic, will affect the expenditure limit and maximum public funds amounts applicable to the 2020 Democratic primary election scheduled for June 23, 2020 (the “Primary Election”). Elizabeth Crowley was a candidate in both the Special Election<sup>2</sup> and the Primary Election.

The Campaign has raised a question of general concern to candidates running in both the Special Election and the Primary Election. As the Campaign’s request is the result of an unprecedented and extraordinary series of events—a global pandemic leading to the postponement and cancellation of the Special Election—this Opinion is restricted in its application to participants in those elections and neither the conclusions nor the reasoning applied herein should be deemed to apply outside of the current set of circumstances.

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<sup>1</sup> Letter from Jerry H. Goldfeder (May 7, 2020), *available at* [http://nyccfb.info/media/1551/friends\\_of\\_elizabeth\\_crowley.pdf](http://nyccfb.info/media/1551/friends_of_elizabeth_crowley.pdf).

<sup>2</sup> The candidate initially registered the Campaign for the 2021 citywide elections but converted the Campaign to a Special Election committee on January 10, 2020.

## **Background – Special Election, Cancellation, and Guidance from CFB Staff**

On January 1, 2020, then-Queens Borough President Melinda Katz vacated the office to become the Queens County District Attorney. Pursuant to the New York City Charter, vacancies in the office of borough president that occur in the first three years of a term, and more than 90 days before a primary election, are filled by non-partisan special elections. *See* N.Y.C. Charter §§ 81(e)(4), (6)(a), (7). The winner of the special election holds office until December 31 of the year of the special election. *See* N.Y.C. Charter §§ 81(e)(7). The remainder of the term is filled by the winner of the general election, with candidates nominated in a primary election. *See* N.Y.C. Charter § 81(e)(2). Candidates may thus concurrently seek election and nomination in the special and primary elections, respectively.

On January 2, 2020, Mayor Bill de Blasio proclaimed March 24, 2020 as the date for the Special Election to fill the Queens borough president vacancy for the remainder of 2020. Candidates seeking nomination for election to fill the vacancy through 2021 would do so in the Primary Election scheduled for June 23, 2020.

On March 16, 2020, due to the coronavirus outbreak in New York City, Mayor de Blasio cancelled the Special Election via executive order.<sup>3</sup> In an executive order issued on March 29, 2020, Governor Andrew Cuomo rescheduled the Special Election for June 23, 2020.<sup>4</sup> On April 24, 2020, Governor Cuomo cancelled the Special Election.<sup>56</sup>

On April 27, 2020, Campaign Finance Board staff (“CFB staff”) informed candidates running in both the Special and Primary Elections that their committees would be subject to the Primary Election contribution and expenditure limits and that, pursuant to Board Rules 5-01(a) and 6-01(h), the Board would presume

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<sup>3</sup> *See* New York City Mayor’s Executive Order No. 100 (Mar. 16, 2020), *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>.

<sup>4</sup> *See* New York State Governor’s Executive Order No. 202.13 (Mar. 29, 2020) *available at* <https://www.governor.ny.gov/news/no-20213-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>. Mayor de Blasio incorporated the Governor’s Executive Order in his Executive Order No. 105, issued on April 4, 2020. *See* New York City Mayor’s Executive Order No. 105 (Apr. 4, 2020), *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-105.pdf>.

<sup>5</sup> *See* New York State Governor’s Executive Order No. 202.23 (Apr. 24, 2020), *available at* <https://www.governor.ny.gov/news/no-20223-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

<sup>6</sup> Two candidates in the Special Election, Jim Quinn and Dao Yin, challenged Governor Cuomo’s executive order arguing that it exceeded his authority under Executive Law § 29-a. The New York State Supreme Court for Queens County denied their request for an injunction and the New York State Appellate Division, 2<sup>nd</sup> Department affirmed the lower court’s ruling.

that all contributions received and expenditures made for the Special Election are attributable to the Primary Election.<sup>7</sup>

### **Advisory Opinion Request**

The Campaign has requested clarification regarding the attribution of certain expenditures made prior to the cancellation of the Special Election to the Campaign's Primary Election expenditure limit. The Campaign has further requested clarification regarding whether public funds received during the Special Election will count against the maximum amount of public funds the Campaign is eligible to receive for the Primary Election.

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

Section 3-705(2)(b) of the Administrative Code of the City of New York (the "Administrative Code") provides that participating candidates may not receive public funds in excess of \$1,230,000 in a primary election for the office of borough president (the "Public Funds Cap").

Section 3-706(1)(a) of the Administrative Code provides that candidates seeking nomination in a primary election for the office of borough president shall not make expenditures in excess of \$1,640,000 in the year of the election prior to the date of the election (the "Expenditure Limit").

Section 3-706(1)(c) of the Administrative Code provides that expenditures made by participants in a primary election prior to the date of the primary election shall be deemed to have been made for that primary election.

Section 3-706(2) of the Administrative Code provides that, in the three calendar years prior to the year of the election, participants seeking nomination in a primary election for the office of borough president may make up to \$153,000 in expenditures that will not count against the Expenditure Limit.

Section 3-706(4) of the Administrative Code provides that participating candidates may claim that expenditures made for certain purposes are exempt from the Expenditure Limit and must provide detailed documentation in support of those claims.

Board Rule 6-01(c) provides that participating candidates have the burden of monitoring their expenditures to ensure that they do not exceed the Expenditure Limit.

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<sup>7</sup> CFB staff further instructed candidates running only in the Special Election that they must cease making expenditures using public funds.

Board Rule 6-01(d) provides that all expenditures in furtherance of a participant’s nomination or election are included in the calculation of the expenditure limit.

Board Rule 6-01(h)(i) provides that an expenditure is presumed to be made for the first covered election following the date on which it is made in which the participant is a candidate (the “Presumption”).

Board Rule 6-01(h)(v) provides that expenditures are made when goods or services are received, used, or rendered, regardless of when payment is made, and that expenditures for goods or services received, used, or rendered in more than one year shall be attributed in a reasonable manner to the expenditure limit.

Advisory Opinion No. 1997-6 (“A.O. 1997-6”) holds that certain types of expenditures made for an abandoned mayoral campaign may not be attributable to an election for borough president under specific circumstances, provided that the campaign can submit documentation sufficient to rebut the Presumption.

Advisory Opinion No. 2005-1 (“A.O. 2005-1”) holds that specifically defined expenditures made during a primary election are attributable to the general election expenditure limit, provided that campaigns overcome the presumption of Board Rule 6-01(h)(i) and demonstrate that the expenditure exclusively benefits the general election campaign.

Advisory Opinion No. 2007-4 (“A.O. 2007-4”) considers the attribution of expenditures between a candidate’s concurrent campaigns for mayor and the member of Congress. A.O 2007-4 holds that expenditures are attributable based on their underlying purpose as determined by an assessment of factors, including the subject matter of the material or activity, the geographic distribution and location of the material or activity, the timing of the material or activity and the relative benefit received or likely to be received by each campaign as a result of the material or activity.

I. Expenditure Limit Attribution

The Campaign has claimed that expenditures totaling \$290,554.23 for the following goods or services should be excluded from the Expenditure Limit:

- a. Professional field operations firms;
- b. Mailers and literature directed to non-Democratic voters;
- c. Posters that feature the March 24, 2020 date for the Special Election;
- d. Petition printing and signature gathering costs for Special Election ballot access;
- e. Get-out-the-vote (“GOTV”) texting services allocated to non-Democratic voters;
- f. Cable and digital advertisements consumed by non-Democratic voters;
- g. Salaries paid to field employees for time spent targeting non-Democratic voters;
- h. Polling of likely voters in the Special Election;

- i. Attorneys' fees related to qualifying for the Special Election ballot;
- j. Staff salaries paid prior to the cancellation of the special election; and
- k. Holiday cards mailed to non-Democratic voters.

The Campaign further asks that the Board not attribute public funds that it received prior to the cancellation of the Special Election to the Primary Election Public Funds Cap.

a. Preliminary Matters

The starting point for any discussion of expenditure attribution is Section 3-706 of the Act, which states that all expenditures made prior to the date of a primary election “shall be deemed to have been made” for that election. *See* Admin. Code § 3-706(1)(c). The Board presumes that expenditures are made for the first covered election in which a participant or non-participant is a candidate, following the date on which they are made. *See* Board Rule 6-01(h)(i). This rebuttable presumption is intended to avoid an “unduly rigid” application of the law which does not fairly account for the time between when funds are disbursed, and goods or services are received. *See* Advisory Opinion 2005-1; Board Rule 6-01(h)(v). Campaigns seeking to attribute expenditures to a different expenditure limit must rebut the Presumption by providing detailed, contemporaneous documentation of the expenditure during the post-election audit process. *See* Board Rules 6-01(h)(i), (v)(C).

The Board does not accept arguments that the value of an expenditure is less than its actual cost and will not generally consider the “impact, effectiveness, or utility” of an expenditure when attributing it to an expenditure limit. *See* A.O. 2005-1; A.O. 1997-6; Advisory Opinion 1993-7 (July 20, 1993). The Board has, in certain limited circumstances, permitted campaigns to rebut the Presumption by demonstrating that expenditures made in contemplation of one election would not have been made for, or would have no purpose or benefit for, another election.<sup>8</sup> However, when considering whether campaign expenditures are attributable to a specific election, the Board must balance a campaign’s interest in not having expenditures made for another election attributed to its expenditure limit against the interests of campaigns that do not have the ability to make such arguments, and are therefore required to abide by the expenditure limit. *See* A.O. 1997-6.

The Board is mindful of the fact that candidates who were in both the Special and Primary Election are now faced with the difficulty of having to operate within a single expenditure limit. Accordingly, it notes

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<sup>8</sup> *See* A.O. 1997-6 (“The borough president election covers a much smaller constituency... As a result, a number of campaign expenses made by [the mayoral campaign]... would not be made or have a benefit for a [borough president election].”); A.O. 2007-4 (finding that contributions to organizations outside of city limits were likely not attributable to the candidate’s mayoral campaign while the candidate’s policy website may have reached an audience in the City, causing it to be attributable) Advisory Opinion No. 1989-2 (January 3, 1989).

that, due to the consolidation of the Special Election and Primary Election, any expenditures made prior to January 1, 2020 are applicable to the Primary Election out-year expenditure limit. *See* Admin. Code § 3-706(2). Thus, up to \$153,000 in expenditures made by either campaign prior to January 1, 2020 will not be attributed to the Expenditure Limit.

In its request, the Campaign has asked that the Board not attribute various expenditures or portions of expenditures to the Expenditure Limit. In effect, the Campaign is requesting the Board to consider that some expenditures should be solely considered to be for the cancelled Special Election. Given the unique circumstances confronting candidates in the Special Election and Primary Election, and in light of the Board's prior interpretations of the Act and Board rules, the Board will determine that expenditures should not be attributed to the Primary Election expenditure limit where campaigns demonstrate that the expenditures related solely to the Special Election, based on either the intended audience of campaign expenditures or the nature of the goods or services purchased, as described in detail below. Campaigns may submit documentation necessary to rebut the Presumption in any future disclosure statement filing or during the post-election audit.<sup>9</sup> However, campaigns should be mindful that any expenditures not attributed to the Primary Election expenditure limit, and thus deemed not to be in furtherance of the Primary Election, will not be considered qualified expenditures for purposes of a campaign's final public funds calculation and any potential public funds repayment obligation. *See* Admin. Code §§ 3-702(21)(a); 3-704; 3-710(2); Board Rules 9-01, 9-02(b).

The Board generally considers the timing of expenditures when determining whether a campaign has rebutted the Presumption (*see* A.O. 2007-4) and will distinguish between campaign expenditures made before and after March 16, 2020 when determining whether they should be attributed to the Primary Election. Candidates in the Special Election could not have readily foreseen its cancellation on March 16 and, therefore, may reasonably claim that expenditures made<sup>10</sup> prior to that date were in furtherance of their Special Election campaigns. Thus, with respect to expenditures made prior to March 16, the Board will consider campaigns to have rebutted the Presumption if they demonstrate that either of the factors

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<sup>9</sup> In its request, the Campaign identified an expenditure for attorneys' fees related to Special Election ballot access. The Campaign may be able to claim that this and other expenditures are exempt from the Expenditure Limit if it submits detailed, contemporaneous documentation to demonstrate that the expenditure qualifies as exempt. *See* Admin. Code § 3-706(4); Board Rule 6-01(i)(iii). The Campaign must also amend its prior disclosure statements to claim such expenditures as exempt.

<sup>10</sup> Pursuant to Board Rule 6-01(h)(v), expenditures are "made" when the goods or services are received, used, or rendered, regardless of when payment is made. In seeking to rebut the Presumption, campaigns may wish to demonstrate that expenditures made after March 16 were actually incurred prior to that date. To do so, campaigns must submit detailed, contemporaneous documentation, such as a contract or invoice, showing the date on which it actually incurred the expenditure and provide a sworn statement indicating that the campaign was unable to cancel or obtain a refund for such expenditure prior to March 16.

discussed below applies to a given expenditure. However, after March 16, Special Election campaigns made expenditures over periods in which there was no longer a Special Election, they had not planned to conduct a Special Election campaign, or they were concurrently campaigning for the Primary Election. Given the uncertainty that existed within these periods and the complexities inherent in concurrent campaigning, there is increased potential that Special Election expenditures also benefitted candidates' Primary Election campaigns. Thus, the Board will presumptively attribute expenditures made on March 16 or later to the Primary Election. *See* Board Rule 6-01(h)(i). Campaigns are, of course, welcome to submit any explanation or documentation they desire, including evidence of the factors discussed below, to rebut the Presumption with respect to such expenditures.

As an example, the Campaign references GOTV texting expenditures in its request. Although the Campaign's description does not include dates or a time period, the Board assumes for the purposes of this example that these expenditures occurred prior to March 16. Thus, the Board would consider the Campaign to have rebutted the Presumption with respect to its GOTV expenditures where it provides detailed, contemporaneous documentation, such as invoices, timesheets, and copies of the text script, to demonstrate that it made the expenditures prior to March 16 and either the intended audience of the expenditures or nature of the goods or services received, as discussed below.<sup>11</sup> If the Campaign made the GOTV expenditures after March 16, it may attempt to rebut the Presumption by demonstrating one or both of those factors or providing any other explanations or documentation it considers relevant. However, such a demonstration would not necessarily be sufficient to rebut the Presumption.

The Campaign has not identified the dates or time periods in which it made any of the expenditures identified in its request. Thus, the Board cannot opine on the Campaign's burden for each expenditure. However, the Board has attempted to describe in this Opinion the information and documentation the Campaign would need to provide to satisfy the two factors discussed below and rebut the Presumption.

b. Intended Audience or Electorate of Campaign Expenditures

The Special Election electorate consisted of all voters registered in Queens County, while the Primary Election electorate consists only of registered Democrats. As a result, the Special Election electorate was

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<sup>11</sup> The Campaign similarly references expenditures for petitioning in its request. As the petitioning deadline for the Special election was January 14, 2020, the Board will assume that such expenditures occurred prior to March 16, 2020. Thus, the Campaign may rebut the Presumption with respect to its petitioning expenditures by providing detailed, contemporaneous documentation, such as invoices and timesheets, demonstrating the date such services were rendered and their intended audience or the nature of the goods or services received.

larger than the Primary Election electorate.<sup>12</sup> In its request, the Campaign asserts that portions of its expenditures are not attributable to the Primary Election because they were targeted at, directed to or consumed by non-Democratic voters who are not eligible to vote in the Primary Election.

The Board acknowledges that campaigns may choose to make expenditures in one election that it would not make in another, based on the electorate for the office sought, and has previously recognized that campaigns may rebut the Presumption by demonstrating that an expenditure was not directed at a relevant electorate. *See* A.O. 2007-4; A.O. 2005-1; A.O. 1997-6. In A.O. 1997-6, the Board permitted a campaign to demonstrate that expenditures should not be attributed to an election for borough president based on “their arguable relationship” to an abandoned mayoral campaign due in part to the fact that the borough president’s office covers a smaller constituency.<sup>13</sup> In A.O. 2005-1, the Board similarly permitted a campaign to rebut the Presumption where expenditures made prior to a primary election were “clearly directed to a general election audience,” among other factors. *See* A.O. 2005-1. Given the difference in size between the Special and Primary Election electorates, the Board will permit candidates who were in both the Special and Primary Elections to rebut the presumption that expenditures are attributable to the Primary Election where they can demonstrate that such expenditures (or portions thereof) specifically targeted non-Democratic voters who could vote in the Special Election but not in the Primary Election.

In determining which expenditures are attributable to the Primary Election, the Board will distinguish between the cost of development and distribution of goods and services. Development costs are those incurred in the creation of the content of campaign materials, including campaign literature, call or text scripts, or advertisements. Distribution costs are those incurred to distribute campaign materials to, reproduce materials for, or otherwise contact, voters, including postage, printing, field staff salaries, and canvassing expenditures. Campaigns may rebut the Presumption with respect to the development costs of a specific expenditure by demonstrating, through detailed, contemporaneous documentation, that all or a portion of such expenditure specifically targeted non-Democratic voters. Where an expenditure solely targeted non-Democrats, the campaign may rebut the Presumption for its entire development cost. However, where an expenditure targeted both Democrats and non-Democrats, campaigns may rebut the

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<sup>12</sup> The New York State Board of Elections data as of February 21, 2020 indicates that there are 1,297,536 registered voters in Queens County, of whom 837,162 (65%) are registered Democrats. *See* New York State Board of Elections, Enrollment by County (Feb. 21, 2020) available at <https://www.elections.ny.gov/EnrollmentCounty.html>.

<sup>13</sup> The Board distinguished its findings in Advisory Opinion No. 1993-7, in which it concluded that all expenditures related to an abandoned mayoral campaign were attributable to a subsequent election for public advocate, another citywide office. *See* Advisory Opinion No. 1993-7 (July 20, 1993). The Board found that A.O. 1993-7 was not applicable because it concerned a candidate’s campaigns for two city-wide offices with identical constituencies and examined campaign expenditures in the context of the Act’s expenditure limit relief provision, which includes expenditures that are not included in the calculation of a campaign’s expenditure limit under Sections 3-706(1) and (2) of the Act. *See* A.O. 1997-6.

Presumption only as to the development costs specifically associated with the production of physical goods, such as mailers or literature, and only in proportion to the share of such goods that it can demonstrate it distributed to identified non-Democratic voters. Campaigns may rebut the Presumption with respect to distribution costs by providing detailed, contemporaneous documentation, such as receipts for postage, of the additional costs incurred in distributing the goods or services to non-Democratic voters.

For example, in its request, the Campaign identifies significant expenditures on mailers, literature, and campaign advertisements that it asserts were targeted at or directed to non-Democratic voters. These expenditures contain a mix of development and distribution costs and the Campaign may attempt to rebut the Presumption with respect to either or both for each expenditure. For expenditures related to the creation of the content of these communications, such as design, photography, or videography, the Campaign must provide detailed, contemporaneous documentation, such as invoices, contracts, or timesheets, to demonstrate the cost of their development. The Campaign may then demonstrate, through detailed, contemporaneous documentation, that either 1) all of such cost is not attributable to the Primary Election because the communication solely targeted non-Democratic voters, or 2) a portion of the cost is not attributable to the Primary Election because the communication constituted a physical good and the proportion of the total expenditure was delivered to identified non-Democratic voters should not be attributable to the Primary Elections. For expenditures related to the distribution or reproduction of those materials, such as printing, postage, or advertisement placement, the Campaign must provide detailed, contemporaneous documentation to demonstrate the added cost of distributing generic campaign materials to non-Democratic voters or the cost of distributing materials specifically targeting non-Democratic voters.<sup>14</sup>

The Campaign's request also identifies expenditures for staff and field employees' salaries. Employee salaries raise a complex web of issues, particularly where committees share personnel or work for both committees is conducted simultaneously. The Board has permitted campaigns to rebut the presumption that all or part of an employee's salary should be attributed to an election by submitting detailed, contemporaneous documentation to demonstrate that an employee's work "was without purpose or benefit for" that election and related solely to an election for a different office (*see* A.O. 1997-6). Therefore, to rebut the presumption that these expenditures are attributable to the Primary Election, the

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<sup>14</sup> The Campaign's request references the difficulties inherent in determining whether any materials sent to a particular address may have also reached Democratic or non-Democratic voters. Where the Campaign reasonably explains its attempts to target non-Democratic voters and supports that explanation with the necessary documentation as described in this Opinion, the Board will not question whether Democratic voters living with non-Democratic voters may have also been exposed to those materials or vice versa.

Campaign must provide detailed, contemporaneous documentation, such as timesheets and contracts describing the work performed, that clearly identify the amount of time a staff member or field employee spent developing material for a non-Democratic audience or targeting non-Democratic voters, and that the employee's work was without purpose or benefit for the Primary Election.

c. Nature of Goods or Services

The Campaign's request identifies expenditures for both durable and non-durable goods or services which it asserts have no or reduced value in the context of the Primary Election, such as posters featuring the March 24, 2020 date for the Special Election. The Board will distinguish between durable and non-durable goods and services when determining whether a campaign can rebut the Presumption for specific expenditures.

The Board considers goods that may be re-used or repurposed and services that resulted in data or materials relevant to the Primary Election to be durable because they may ultimately benefit a campaign in the Primary Election. Contrarily, the Board considers goods or services that are inextricably linked to the Special Election, such as campaign materials prominently featuring the original Special Election date or services that are irrelevant in the Primary Election, to be non-durable. To rebut the presumption that expenditures are attributable to the Primary, a campaign must demonstrate through detailed, contemporaneous documentation and explanations that it made expenditures on non-durable goods or services in relation to the Special Election.

As an example, in its request, the Campaign identifies expenditures for posters containing the March 24, 2020 date of the Special Election. Because the date is prominently featured on these materials, the Board would likely consider them to be non-durable and of no benefit in the Primary Election. *See* A.O. 2005-1. As such, provided that the Campaign can document through detailed, contemporaneous documentation, such as invoices and images of the posters, the cost of the expenditure, the Board would not attribute the cost of the posters to the Primary Election. In addition, the Campaign must provide a sworn statement indicating that it did not repurpose or distribute them for the Primary Election.

The Campaign also identifies expenditures for staff salaries, which present more difficult scenarios. As previously discussed, it is difficult to demonstrate that the work of a particular employee was non-durable or conferred no benefit for the Primary Election. The Board has already noted that attributing staffing costs in concurrent elections may require more than contemporaneous time sheets documenting the time a particular employee spent working for each campaign. *See* A.O. 2007-4. However, the Board has permitted campaigns to allocate staff salaries between elections based on contemporaneous documentation, such as timesheets, that include detailed descriptions of the specific matters worked on by

each employee. *See* A.O. 2007-4. Thus, the Campaign may demonstrate that its staffing costs are non-durable by providing detailed, contemporaneous documentation, including time sheets and detailed explanations of work performed, that the work performed by such staff was solely for the purpose of furthering the Special Election campaign and did not produce any materials or strategies which might confer any benefit on the Primary Election campaign.

## II. Public Funds Limit

Pursuant to Section 3-705(2)(b), campaigns for a primary election for borough president may not receive more than \$1,230,000 in public funds (the “Public Funds Cap”). The Campaign has requested clarification regarding whether the Board will attribute public funds received during the Special Election to the Public Funds Cap in the Primary Election. While the Board is cognizant of the fact that candidates in the Special Election may have spent public funds on goods or services which are unrelated to the Primary Election and will therefore have less remaining to spend before reaching the Public Funds Cap, the Board must balance this fact against the need to ensure the equal application of the Act and Board rules to all candidates. Additionally, the Board does not have clear authority to raise the public funds cap in the event of a cancelled election. *See* Admin. Code § 3-706(b)(ii). As a result, all public funds that campaigns received in connection with the Special Election will be attributed to the Public Funds Cap in effect for the Primary Election.

**NEW YORK CITY**

**CAMPAIGN FINANCE BOARD**