

# David Yassky

for New York City Comptroller

October 28, 2008

BY HAND DELIVERY

Sue Ellen Dodell, General Counsel  
New York City Campaign Finance Board  
40 Rector Street, 7<sup>th</sup> Floor  
New York, NY 10006

Re: Comments on Draft Guidelines

Dear Ms. Dodell:

The Campaign Finance Board has issued guidelines to provide guidance for candidates now that Int. No. 845-A has been passed by the City Council, extending term limits. You have requested comments from interested parties in advance of issuing a formal advisory opinion. In that connection, I am sending this letter with our comments.

Group 1 in the guidelines pertains to previously term-limited candidates who anticipated running for higher office but decide to seek re-election to their current office in 2009. Under Option A, they may start a new committee for the 2009 election and “freeze” the old committee until 2013. The following should be considered:

**I. Deadline for choice of Option A:** You have proposed the deadline for choosing Option A be set as January 11, 2009, the end of the current disclosure period. While this may be orderly for the CFB, it may not give candidates the time they will need to determine (1) what the final outcome may be for any challenges to the extension of term limits, in the courts or otherwise; and (2) what the previously-term limited incumbent in the office the candidate was seeking will choose to do. The ordinary deadline for declaration of intention to run for office in 2009 is June 10, 2009. Thus, for example,

William Thompson, the current Comptroller, does not have to decide which office he will be running for until June 10, 2009. It seems wrong then to require that we make this decision by January 11, 2009.

I would suggest that the deadline for making the choice for all candidates be delayed until June 10, 2009. That would give everyone enough time to create a new committee, file all necessary papers with the CFB, and file all financial disclosures with respect to periods ending June 10, 2009.

### **II. Treatment of Expenditures in the Current Committee:**

You have proposed that amounts spent in the current committee will not count against spending limits for the 2013 campaign, except that a 15% fundraising allocation will be made against funds in the current committee as of January 11, 2009, and will be counted against the candidate's out-year spending limit for the 2013 race. If the candidate has spent less than the 15% allocation, the actual expended amount will be used instead of the 15% allocation. This approach would benefit any candidates who expended in excess of the amount allowable for out-year expenditures for the current 2009 race, by eliminating any consequences of excess spending as set forth in your current regulations, and unfairly impacting any lower spending candidates.

For example, if a candidate is running for NYC Comptroller, the amount which the candidate can spend prior to 2009 without penalty is \$290,000. Any amounts spent in excess of \$290,000 reduce permissible spending in 2009. Some candidates have spent well below \$290,000, preferring to preserve the opportunity to spend the maximum allowable during the election year. Some candidates have spent well in excess of \$290,000. Under your proposed rules, the slate will be "wiped clean" for the higher spending candidates (with the exception of the 15% fundraising allocation) and they will be able to spend the maximum allowable in 2013, removing any advantage now available to the more frugal candidates. Further, the higher spending candidates have presumably received value for the amounts spent, whether in public recognition, good will of community leaders, hard assets, etc. The lower spending candidates have not received such value, but are now limited to spending the same amount in 2013 as the higher spending candidates. This does not seem an even-handed guideline.

You have proposed that transfers from the current committee to a new committee be permitted, but will be deemed to consist entirely of matching claims and can reduce the amount of public funding available in 2013. In addition, you would seek to charge a 15% fundraising allocation to those amounts, thereby reducing the amount of permissible spending in the new 2009 race. There would be certain circumstances in which this ruling would result in a detriment to some candidates more than others.

I would suggest the following approach:

(a) If the candidate creates a new committee for the 2009 race, and does not make any transfers from the current committee, then any expenditures in the current committee in excess of the amount allowable in the out-year should reduce the amount allowed to be spent in the 2013 race, or any race for which that committee is used hereafter. This has the effect of truly “freezing” the current committee and the spending limits as they currently exist. Each candidate has made a choice of how to conduct the expenditures in his or her current committee, and should not be relieved of the consequences of such choice.

(b) If the candidate creates a new committee for a new 2009 race, and makes a transfer from the current committee into the new committee, that transfer should be treated like any other transfer under CFB guidelines; i.e., the transfer is treated on a “last in, first out” approach, including any matching claims included in the transfer. If the transfer includes contributions above the limit for the new race, perhaps the excess can remain in the current committee. Notwithstanding the foregoing:

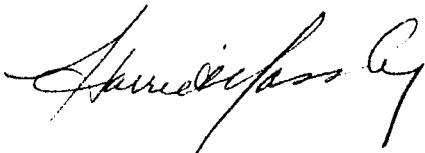
- (i) if a candidate has previously transferred funds into the current committee from a previous committee which was created for a race for the same office he will now run for in 2009, those funds transferred in should be allowed to be re-transferred to a new committee with no effect on the candidate’s current committee or the expenditures allowable in the future. Matching claims should be paid with respect to such re-transferred amounts (if eligible) for the new 2009 race, in the event no matching funds have been received for these contributions prior to the original transfer into the current committee. No matching amounts should reduce any spending amounts in the new race or in the 2013 race, as these contributions were made prior to the current race. Further, no amount should be allocated for fundraising expenditures in respect of this transfer, or counted against the allowable expenditure for the new 2009 race, or the 2013 race.

### **III. Pre-existing Obligations**

Candidates should be able to continue to make ordinary campaign related expenditures until a decision is made as to which office they are seeking, and whether they are opening a new committee or not. It is not realistic to expect that any campaign be asked to immediately cease any expenditures as of the issuance of the advisory opinion. For one thing, most campaigns have existing and ongoing obligations like rent, telephone, etc. It would be disruptive, and unduly harsh, to require that the campaign default on such obligations. It makes sense to allow the campaign to make reasonable expenditures until the deadline for making the choice described in Section I above.

I think it would be useful to discuss these comments and any logistics resulting from the proposed rules and these suggestions, prior to your issuing a formal advisory opinion. Please let me know when we can arrange such a discussion.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Harriet Yassky".

Harriet Yassky, Treasurer