

**R. I. STATE BOARD OF ELECTIONS**  
**MINUTES OF MEETING**  
**August 4, 2014**

The Rhode Island State Board of Elections convened at 3:38 PM at the Rhode Island Board of Elections, a quorum included, Chairman Richard Pierce, Vice-Chairman William West, and Commissioners Frank Rego, Martin Joyce, Stephen Erickson, Richard DuBois and Rhoda Perry were present. Executive Director Robert Kando and Board legal counsel Raymond Marcaccio were also in attendance.

The meeting was called to order by Chairman Pierce.

First order of business: Commissioner Rego moved to approve the minutes for Board of Elections meeting dated 7/9/14, seconded by Commissioner Perry. Chairman Richard Pierce, Vice-Chairman William West, Commissioners Frank Rego, Martin Joyce, Rhoda Perry, Richard DuBois and Stephen Erickson voting in the affirmative, no dissenting votes, and motion passed. Since the minutes of the meeting of 7/21/14 were not ready, the agenda item was passed.

Next order of business: The Board heard a request from candidate for Lt. Governor, Daniel McKee, pertaining to his request to qualify for matching public funds under R.I.G.L. 17-25, including the statutory interpretation and application of the Board of Elections matching public funds regulation relating to segregation of campaign funds. Attorney Paul Sullivan representing Daniel McKee submitted a memorandum detailing the McKee position (attached). Attorney Sullivan stated that the regulation unintentionally further limits the Public Financing statute; yet can be easily remedied by simply giving General Officer candidates the option of choosing to use the statute's referenced four-year cycle which would look back to 1-1-2011; or the regulation's current two-year cycle which would allow the McKee campaign to choose the full four year cycle. Dawn Euer, treasurer for the Frank Ferri for Lt. Gov. Campaign read a letter (attached) from the campaign in opposition to the McKee request. After a brief discussion Vice Chairman West motioned to deny the request seconded by Commissioner DuBois. Chairman Richard Pierce, Vice-Chairman William West, Commissioners Frank Rego, Martin Joyce, Rhoda Perry, Richard DuBois and Stephen Erickson voting in the affirmative, no dissenting votes, and motion passed.

The next order of business: A request by candidate for Senate District 34, Cameron Ennis was dismissed due to his absence on a motion by Commissioner Joyce, seconded by Commissioner Rego. Chairman Richard Pierce, Vice-Chairman William West, Commissioners Frank Rego, Martin Joyce, Rhoda Perry Richard DuBois and Stephen Erickson all voted in the affirmative, no dissenting votes.

Next order of business: Appeal of campaign finance fines by Raymond J. Trinque. Mr. Trinque stated that he had encountered several personal problems that impacted his filing the required campaign finance reports, and that although he raised an spent nominal sums, that he was completely at fault for failing to file the reports. After some discussion,

Commissioner Rego moved to reduce his fines to \$532 with a payment plan, seconded by Commissioner Joyce. Chairman Richard Pierce, Commissioners Frank Rego, Martin Joyce, Rhoda Perry and Stephen Erickson, Richard DuBois voting in the affirmative, Vice-Chairman West dissenting, motion passed on a 6 to 1 vote.

Next order of business: Vice Chairman West moved to go into executive session pursuant to 42-46-5(a)(2) to discuss pending litigation in the Providence Superior Court related to Barbara A. Szeptowski and Richardo Patino and pursuant to 42-46-5(a)(2) and (4) related to possible litigation and civil investigation, seconded by Commissioner Joyce. Chairman Richard Pierce, Vice-Chairman William West, Commissioners Frank Rego, Martin Joyce, Rhoda Perry Richard DuBois and Stephen Erickson voting in the affirmative, no dissenting votes, and motion passed.

In the executive session the Board voted to accept settlement offers pending in Providence Superior Court related to Barbara A. Szeptowski and Richardo Patino.

At 5:15 PM, Vice Chairman West moved to adjourn, seconded by Commissioner Rego. Chairman Richard Pierce, Vice-Chairman William West, Commissioners Frank Rego, Martin Joyce, Rhoda Perry, and Stephen Erickson voting in the affirmative, no dissenting votes, and motion passed.

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RHODE ISLAND  
BOARD OF ELECTIONS

2014 JUL 25 A 11: 33

July 25, 2014

Robert Kando, Executive Director  
Rhode Island Board of Elections  
50 Branch Avenue  
Providence, RI 02904

**RE: McKEE FOR LT. GOVERNOR CAMPAIGN / MATCHING FUNDS**

Dear Mr. Kando:

Thank you for meeting with Mayor McKee and me on Tuesday, July 22, 2014.

As a result of your explanation concerning our request to qualify for matching campaign funds, today at Navigant Credit Union I segregated into a separate account the amount of funds in Dan McKee's campaign-account as of December 31, 2012. The account is entitled Friends of Daniel McKee for Mayor and contains \$63,030.21.

As we discussed with your office, we are in the process of offering to return donations received during the January 1, 2011 to December 31, 2012 time period in exchange for new donations of the same amount (not to exceed the annual maximum amount allowed by law).

I will periodically update you regarding those exchanges.

While we appreciate the cooperation and courtesy extended by your office, the McKee for Lt. Governor campaign does not agree with the statutory interpretation, application, or the principle of the regulation.

Consequently, on behalf of the campaign, I respectfully request a hearing before the Board of Elections regarding this regulation and/or its interpretation and application. The Board of Election's regulation, at the very least, creates an uneven, unfair, and discriminatory set of rules regarding candidates for the same office.

I, or someone on my behalf, will be contacting you Monday, July 28, 2014 to discuss this issue and request a hearing.

RHODE ISLAND  
BOARD OF ELECTIONS

We sincerely appreciate your assistance.

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Respectfully,



E. Craig Dwyer, Treasurer  
McKee for Lt. Governor

**Via hand delivery**

## **Contributions.**

**a) Incumbent general officeholders & persons who were not candidates for any other public office during the first two years of a four-year election cycle as defined in §17-25-3(5).**

All contributions received by incumbent general officeholders and persons who were not candidates for any other public office during the first two years of a four-year election cycle, which otherwise qualify to be matched with public funds pursuant to the provisions of §17-25, shall be eligible to be matched with public funds.

**b) Persons who were candidates for public office during the first two years of a four-year election cycle as defined in §17-25-3(5).**

All contributions received during the last two years of a four-year election cycle, which otherwise qualify to be matched with public funds pursuant to the provisions of §17-25, shall be eligible to be matched with public funds. Further, the balance of funds remaining in a campaign account or accounts, as reported to the Board of Elections, as of December 31<sup>st</sup> in the even-numbered year between elections for general officers and carried forward shall be treated as a contribution by the candidate to his/her own campaign for general office and counted toward the contribution limits for that office; provided, however, that no candidate shall be permitted to carry forward in excess of five percent (5%) of the total amount which a candidate is permitted to expend in a primary and general election campaign for the general office sought pursuant to §17-25-19 and §17-25-21 and that only \$1,000 of such amount shall be eligible for matching public funds.

The campaign fund balance beyond the five percent (5%) permitted to be carried forward shall not be permitted to be expended and shall be placed in a separate campaign account which shall be inactive for the period commencing on the day the person becomes a declared candidate for general office pursuant to §17-14-1 and concluding with the final audit of the campaign by the Board.

**§ 17-25-3 Definitions.** – As used in this chapter, unless a different meaning clearly appears from the context:

(5) "Election cycle" means the twenty-four (24) month period commencing on January 1 of odd number years and ending on December 31 of even number years; provided, with respect to the public financing of election campaigns of general officers under §§ 17-25-19, 17-25-20, and 17-25-25, "election cycle" means the forty-eight (48) month period commencing on January 1 of odd numbered years and ending December 31 of even numbered years.

**Matching Public Funds**

Spending Limit for Lt. Gov. (exclusive of primary): \$563,000

Personal loans and funds brought forward previous to spending cycle: 5% or \$28,150

**Candidate McKee**

2 Year Cycle            \$28,150

4 Year Cycle            \$28,150 Plus \$36,907\* Total: \$65,057

\*net of contributions (\$52,997) and expenditures (\$16,090) from 1/1/11 to 12/31/13 of \$36,907

From: Paul Sullivan, Esq.  
Counsel for Candidate for Lt. Governor, Daniel McKee

To: Board of Elections

Re: 8/4/14 Meeting as to Following Agenda Item:

- The Board will hear a request from candidate for Lt. Governor, Daniel McKee, pertaining to his request to qualify for matching public funds under R.I.G.L. 17-25, including the statutory interpretation and application of the Board of Elections matching public funds regulation relating to segregation of campaign funds.

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Issue: The Board's Regulations, MPF#01-01, improperly and unfairly treats candidates for the same office differently. The regulation imposes a two-year election cycle for purposes of matching funds on candidates such as Mayor McKee, when the actual Public Financing Statute makes no such distinction, and explicitly defines and uses a "four-year election cycle" for all General Officer candidates.

Remedy: Simple - General Officer candidates can choose to use the Public Financing statute's stated four-year election cycle (as allowed in MPF#01-01(1)(a)), or alternatively, use the method described in MPF#01-01(1)(b) (a two-year look back). Both of these methods are already in the regulation; currently, however, the candidate is not allowed to choose which look-back period will be used.

Statutes: **Note: Statute explicitly defines "election cycle" as four years, and nowhere in the statute is there mentioned a separate two-year period for General Officer candidates**

§17-25-3(5) – Election cycle defined – “with respect to the public financing of election campaigns of general officers under §§17-25-19, 17-25-20 and 17-25-25, ‘election cycle’ means the forty-eight (48) month period commencing on January 1 of odd numbered years and ending December 31 of even numbered years”

- Here,- 1/1/2011 to 12/31/14

§ 17-25 -18 – General Purpose – public financing of Election Campaigns – stating the importance of public financing to our democratic system

§ 17-25-19 – Outlines public financing, speaks to how matching funds are computed, references “election cycle”

§ 17-25-20 - Eligibility criteria for public matching funds , references “election cycle”; speaks to amounts that candidate will receive or expend in an election cycle, and how calculated

§17-25-25 -Surplus campaign funds, again references “election cycle”

**The Regulation:** MPF#01-01 Eligibility for Public Matching Funds for Candidates for General Office – regulation is not consistent with the actual statute

- a. Section (1)(b) addresses contributions to candidates for public office during the first two years of a four-year election cycle as defined in §17-25-3(5), yet:
  1. Statute does not mention treating candidates for same office differently;
  2. Statute does not mention a two year cycle for some candidates; and in fact has specific definition of four-year election cycle for General Officers;
  3. This section of regulation directly contradicts and does not follow the statute it’s supposed to interpret, as §17-25-20, titled “Eligibility criteria for matching funds,” uses a four-year cycle;
  4. Regulation does not interpret the statute, but instead improperly exceeds regulatory authority in re-writing the statute by further limiting the statute; and,
  5. Finally, this regulation does not effectuate purpose of public financing law, and actually serves to work against that purpose.

**Summary:** The regulation unintentionally further limits the Public Financing statute; yet can be easily remedied by simply giving General Officer candidates the option of choosing to use the **statute’s** referenced four-year cycle (look back to 1-1-2011); or the **regulations** referenced two-year cycle. Here, we are requesting to follow the Statute’s referenced four-year cycle, looking back to 1-1-2011.

## R.I. Gen. Laws § 17-25-20

Current through the January 2013 Session Annotations current through May 16, 2014

### General Laws of Rhode Island > TITLE 17. ELECTIONS > CHAPTER 25. RHODE ISLAND CAMPAIGN CONTRIBUTIONS AND EXPENDITURES REPORTING

#### § 17-25-20. Eligibility criteria for matching public funds

In order to receive matching public funds under § 17-25-19, a qualifying candidate must comply with the following requirements:

- (1) The candidate must sign a statement under oath, as provided for in § 17-25-19, pledging to comply with the limitations on contributions and expenditures for election purposes and with all the terms and conditions set forth in this chapter. Upon the filing of the statement, a candidate for general office shall be bound to abide by the limitations on contributions and expenditures set forth in this chapter and may not withdraw from his or her obligation to abide by these restrictions.
- (2)
  - (i) Subject to the provisions of paragraph (ii) of this subdivision, no participating candidate shall either receive or expend for election purposes more than a total of public and private funds in the sum of one million five hundred thousand dollars (\$ 1,500,000) in an election cycle. No participating candidate for general office other than governor shall receive or expend for election purposes more than a total of public and private funds in the sum of three hundred seventy-five thousand dollars (\$ 375,000) in an election cycle.
  - (ii) The limitations on contributions received from private sources, matching funds available from the state, and total permitted expenditures shall apply in the 1994 general election and, subject to appropriations by the general assembly, shall increase by a percentage to be determined by the board of elections in January of each year in which a general election involving general offices is held, beginning in 1998. In no case shall the increase exceed the total increase in the consumer price index since the month in which the previous general election involving general was held.
- (3)
  - (i) Only the first two thousand dollars (\$ 2,000) of the aggregate private monetary contributions from a single private source within an election cycle shall be eligible for matching public funds for candidates for governor; provided, that the entire amount contributed shall be considered toward the dollar limits provided in subdivision (2) of this section.
  - (ii) Only the first one thousand dollars (\$ 1,000) of the aggregate private monetary contributions from a single private source within an election cycle shall be eligible for matching public funds for candidates for lieutenant governor, secretary of state, attorney general, and general treasurer; provided, that the entire amount contributed shall be considered toward the dollar limits provided for in subdivision (2) of this section.
  - (iii) Any private funds lawfully contributed during the current election cycle shall be eligible for matching public funds subject to the terms and conditions of this section, and private funds donated during a preceding election cycle shall not be eligible for matching public funds.
- (4) The direct costs incurred in connection with raising campaign funds on behalf of a candidate shall not be deemed to be expenditures for the purposes of the limitations on expenditures set forth in subdivision (2) of this section. Direct costs shall include costs of printing and mailing invitations to fundraising events, solicitations for contributions, costs of hosting fundraising events, and travel to those events, but shall not include any portion of the salary or wages of campaign employees, nor the cost of any radio, television, computer/Internet/electronic device, or printed advertisement. The cost of a fundraising event must be less than the amount of money realized from the gross proceeds generated by the fundraising event in order to qualify for this exclusion.
- (5) If a candidate who has accepted public funds makes expenditures in excess of the permitted amounts, the candidate shall be liable for a civil assessment payable to the state in an amount equal to three (3) times the amount of excess funds expended. In addition, the candidate shall be ineligible for further participation in the public financing program during the same election cycle.

- (6) In order to receive payments under this section, any candidate for general office shall first meet the following additional minimum requirements:
- (i) Raise an amount in qualified private contributions equal to twenty percent (20%) of the total amount eligible to be matched for election as to the office sought;
  - (ii) Receive private contributions from a minimum of two hundred fifty (250) individuals contributing at least twenty-five dollars (\$ 25.00) each for candidates for governor and receive private contributions from a minimum of one hundred (100) individuals contributing at least twenty-five dollars (\$ 25.00) each, for candidates for lieutenant governor, secretary of state, attorney general and general treasurer; and
  - (iii) Comply with any and all applicable nomination provisions in this title and qualify for the general election ballot pursuant to the process set forth in this title.
- (7) No public funds received by any candidate pursuant to §§ 17-25-19 -- 17-25-27 of this chapter and no private funds used to qualify for the public funds shall be expended by the candidate for any purpose except to pay reasonable and necessary expenses directly related to the candidate's campaign.
- (8) No public funds shall be expended by the candidate, except for one or more of the following uses directly related to the campaign of the candidate:
- (i) Purchase of time on radio or television stations; provided, however, the content of all television time shall include captioning for the deaf and hard of hearing and the content of all radio time must be available in a written or text format at the time of request;
  - (ii) Purchase of rental space on outdoor signs or billboards;
  - (iii) Purchase of advertising space on the computer/Internet/electronic device and in newspapers and regularly published magazines and periodicals;
  - (iv) Payment of the cost of producing the material aired or displayed on radio, television, outdoor signs or billboards, and computer/Internet/electronic device and in newspapers, regularly published magazines, and periodicals;
  - (v) Payment of the cost of printing and mailing campaign literature and brochures;
  - (vi) Purchase of signs, bumper stickers, campaign buttons, and other campaign paraphernalia;
  - (vii) Payment of the cost of legal and accounting expenses incurred in complying with the public financing law and regulations as required by this chapter;
  - (viii) Payment of the cost of telephone deposits, installation charges, and monthly billings in excess of deposits;
  - (ix) Payment of the costs of public opinion polls and surveys; and
  - (x) Payment of rent, utilities and associated expenses connected with the operation of an election headquarters or satellite election offices.
- (9) Contributions received and expended by any candidate for the purpose of defraying any expense or satisfying any loan obligations incurred prior to January 1, 1991, by the candidate in furtherance of his or her candidacy in a previous election cycle, as defined in subdivision 17-25-3(5), shall not be counted toward any contribution or expenditure limitation in §§ 17-25-18 -- 17-25-27.
- (10) No candidate who has elected to receive public funds shall contribute to or loan to his or her own campaign a sum in excess of five percent (5%) of the total amount that a candidate is permitted to expend in a campaign for the office pursuant to §§ 17-25-19 and 17-25-21.

#### History

P.L. 1988, ch. 420, § 1; P.L. 1989, ch. 345, § 1; P.L. 1992, ch. 21, § 1; P.L. 1992, ch. 21, § 3; P.L. 1992, ch. 203, § 1; P.L. 1994, ch. 78, § 2; P.L. 1998, ch. 31, art. 32, § 1; P.L. 2007, ch. 223, § 1; P.L. 2007, ch. 235, § 1; P.L. 2011, ch. 229, § 1; P.L. 2011, ch. 230, § 1.

# FERRI

## LT GOVERNOR

[www.FrankFerri.org](http://www.FrankFerri.org)

August 4, 2014

Rhode Island Board of Elections  
50 Branch Avenue  
Providence, RI 02904

Dear Board of Election Commissioners,  
Thank you for the opportunity to be heard on the "Election Cycle" Campaign Finance matter raised by Mayor McKee's Treasurer, E. Craig Dwyer.

The Board of Election's election cycle regulation was in place when all candidates for Lt. Governor were considering their candidacy this year, when they filed for office, and when they applied for matching fund status. The interpretation of the statute applies to Representative Frank Ferri's campaign for Lt. Governor in the same way that it applies to Mayor McKee's campaign.

Our position is this: Representative Ferri came into this election prepared to abide by the existing rules, and he believes that it is important for candidates to not go back on their word. Further, we feel it is inappropriate to approach the Board of Elections 36 days prior to an election seeking special exemptions to a rule under which the candidates are already operating. Thus, we urge the Board not to grant Mayor McKee's request to seek such a special exemption to change the rules in the middle of the game. Representative Ferri and Mayor McKee both signed statements on June 25 and June 24 respectively declaring that they would abide by all of the rules and limitations on campaign contributions and expenditures in the law. Representative Ferri intends to follow all of those rules that were in place when he signed that statement. In pursuing this change today, Mayor McKee is advocating for a rules change that would allow him an undue financial advantage. That he may not have completely understood those rules when he signed the document cannot and should not be a basis for the Board to change them, especially so close to the election.

If changes to the law or rules and regulations are warranted, then those changes should be proposed and properly vetted by the General Assembly or the Board of Elections during a time period significantly before an election, and certainly not during the time where candidate are participating in the matching funds program under the existing regulations.

Therefore, we respectfully ask the Board of Elections to deny Mr. Dwyer's request to change the campaign finance rules as a whole or as applied to any candidate just 36 days prior to the primary election day.

Sincerely,



Ed Bonetti  
Campaign Treasurer  
Frank Ferri for Lt. Governor