STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BOARD OF ELECTIONS
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August 22, 2018

Mr. Matthew Brown
P.O. Box 40386
Providence, RI 02940

Re: ***Advisory Opinion – Calculation of Spending Limit Applied Under R.I. Gen. Laws § 17-25-20(10)***

Dear Mr. Brown:

This letter is in response to your August 3, 2018 request for an advisory opinion from the Board of Elections ("Board"). Your letter indicates that you are seeking the nomination of the Democratic Party for the office of Governor in the September 12 primary election and you request an advisory opinion relating to the certain contribution and expenditure limits imposed under the state's Public Financing of Election Campaigns Act, R.I. Gen. Laws § 17-25-18 *et seq.* (the "Matching Public Funds Act," or the "Program"). Specifically, you submit the following question:

> May a gubernatorial candidate who has elected to accept public matching funds and adheres to the § 17-25-21 spending limit in the primary loan his campaign during the primary up to 5% of an amount calculated by reference to R.I.G.L. § 17-25-24, as incorporated in via § 17-25-19?

The answer to your question involves the interplay between several provisions of the Matching Public Funds Act.

First, R.I. Gen. Laws § 17-25-19 establishes the terms under which the State will match funds and sets forth the original amounts which the State will make available. Section 17-25-20(2)(ii) authorizes the Board to increase the matching public fund limits for each election cycle, by a percentage based upon the consumer price index. For 2018, a participating candidate for governor may not receive or spend more than a total of $2,354,000 in public and private funds in the election cycle. *See*, Board of Elections Campaign Finance Manual, Section II – Limitations on Contributions and Expenditures (2018) at 2.

Second, R.I. Gen. Laws § 17-25-21 allows participating candidates in primaries to "raise and spend an additional amount of private funds equal to one-third (1/3) of the maximum allowable expenditure amount for the office or equal to the total amount spent by the candidates' opponent or opponents in the primary, whichever amount is less." One-third of the maximum allowable amount for this election cycle is $784,667 for the gubernatorial race.

Third, R.I. Gen. Laws § 17-25-24 allows participating candidates running against non-participating candidates to raise private contributions and expend funds in an amount "in excess of the candidate's maximum allowable expenditure limit equal to the amount by which the expenditures of the opponent exceed the maximum allowable expenditure limit that would have applied to the opponent's expenditures [under the Program]." This means, for all intents and purposes, that a gubernatorial candidate participating in the Program may spend as much money as an opponent who is not participating in the Program.

Lastly, and of most significance, a participating candidate may loan or contribute to their own campaign an additional 5% of "the total amount that a candidate is permitted to expend in a campaign pursuant to §§ 17-25-19 and 17-25-21." R.I. Gen. Laws § 17-25-20(10)(emphasis provided). Your question is whether the 5% calculation can also be based upon the excess contributions and expenditures permitted under R.I. Gen. Laws § 17-25-24.

When the language of a statutory provision is clear and unambiguous, the Board must give the words their plain and ordinary meaning. *5750 Post Road Medical Offices, LLC v. East Greenwich Fire District*, 138 A.3d 163, 167 (R.I. 2016). It is generally presumed that the General Assembly intends every word of a statute to have a useful purpose and to have some force and effect. *Id.* (citing *Peloquin v. Haven Health Center of Greenville, LLC*, 61 A.3d 419, 425 (R.I. 2013)). In "ascertaining and effectuating the legislative intent, 'the plain statutory language itself' is the best indicator." *McCain v. Town of North Providence ex rel. Lombardi*, 41 A.3d 239, 243 (R.I. 2012), quoting *DeMarco v. Travelers Insurance Co.*, 26 A.3d 585, 616 (R.I. 2011). When the Board examines an unambiguous statute, there is no room for statutory construction and the Board must apply the statute as written.

The operative language of section 17-25-20(10) is clear and unambiguous, specifying that the 5% calculation can only be based upon the general limits established under section 17-25-19 ($2,354,000) and the one-third additional amount for primaries under section 17-25-21 ($784,667), for a total of $3,138,667. Thus, the General Assembly did not include a reference to the "Additional Expenditures" provision of section 17-25-24, but did reference sections 17-25-19 and 21.

The Board must adhere to the rule of statutory construction: the expression of one excludes the others (*expressio unius est exclusio alterius*). In circumstances where the General Assembly refers to specific parts of a statute, but not others, only the listed sections are deemed to be applicable, to the exclusion of those sections not specified. *See Ryan v. Providence*, 11 A.3d 68, 75 (R.I. 2011) (applying maxim to limit effect of Providence honorable services ordinance to only those crimes listed in ordinance); *Ret. Bd. of Employees' Ret. Sys. v. DiPrete*, 845 A. 2d 270, 287 (R.I. 2004) (applying maxim to limit effect of Public Employee Pension Reduction and Revocation Act to those pensions listed in the Act); *Orthopedic Specialists, Inc. v.*

Great A.& P. Tea Co., 388 A. 2d 352, 354 (R.I. 1978) (applying maxim to limit right to recover counsel and witness fees under R.I. Gen. Laws § 28-35-32 to those listed as receiving that right under the act). The Board simply cannot write in a reference to a provision that was not included by the General Assembly. Had the General Assembly intended to permit the 5% calculation to be based upon the additional expenditures permitted under § 17-25-24, it would have included a reference to that provision in § 17-25-20(10). It did not do so. Parenthetically, we note that the Board of Elections 2018 Campaign Finance Manual limits the 5% calculation consistent with this analysis. *See,* Campaign Finance Manual, Section II, Limitations on Contributions and Expenditures (2018), at 2.

This response constitutes the Board's opinion concerning the application of R.I. Gen. Laws § 17-25-24 to the limitations set forth in R.I. Gen. Laws § 17-25-20(10), as set forth in your request. If there are any changes in the facts, circumstances or assumptions presented, and such circumstances are material, then you may not rely upon the conclusion set forth herein. Please be further advised that this analysis and conclusions may be impacted by any change or development in the law.

Sincerely,

Stephen P. Erickson
Vice Chairman