



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

ADVISORY OPINION 2018-01:

CEP Candidates in Primaries Applying only for General Election Grant Funds

At a regular meeting on August 22, 2018, the State Elections Enforcement Commission (the “Commission”) voted to issue this Advisory Opinion to provide clarification regarding the conditions under which a primary candidate participating in the Citizens’ Election Program (“CEP” or the “Program”) who did not apply for primary grant funds may apply for general election grant funds if successful in the primary.

The CEP provides for qualified candidates to receive public grants for primaries, if applicable, and general elections. In the ten-year history of the Program, which includes five regular election cycles, many CEP candidates facing a primary and seeking public funds have applied for primary campaign grants.¹ For the first time, however, several candidates facing primaries in this election cycle have asked whether they may forgo applying for primary grants and apply for a general election grant if successful in the primary.

The law does not squarely address this situation, but does not expressly preclude a candidate facing a primary from joining the CEP before the primary campaign deadline and only applying for a general elections grant.

Section 9-703 of the General Statutes establishes the deadlines for candidates to opt in or out of the Program by filing an affidavit of intent to abide by the CEP expenditure limits (SEEC Form CEP 10) or an affidavit of intent not to abide (SEEC Form CEP 11). General Statutes § 9-703 (a). If a candidate is in a primary, the deadline to join the Program is twenty-five days before the primary.² For candidates not involved in a primary, the deadline to join the Program is forty days before the general election. A candidate who does not join the CEP by filing an affidavit of intent to abide for the primary campaign deadline is *not* eligible to later join the CEP and apply for a general election grant. A candidate who has joined the Program may withdraw at any time before filing a grant application. General Statutes § 9-703 (b).

Section 9-702 of the General Statutes sets forth the general requirements for CEP grant eligibility, and subsection (a) of that section provides as follows:

- (1) [T]he candidate committee of a major party candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State

¹ There are also candidates who join the CEP who never intend to apply for a grant but choose to follow the CEP rules, including only accepting small-dollar contributions from individuals and abiding by the voluntary spending limits.

² Candidates must declare their party status on the SEEC Form CEP 10 and a candidate who changes his or her party status or becomes a candidate for a different party or a petitioning candidate after filing this form will not be eligible to apply for a Program grant. General Statutes § 9-706 (a) (4).

Treasurer in 2010, or thereafter, *may receive a grant from the Citizens' Election Fund for the candidate's primary campaign* for said nomination, and (2) the candidate committee of a candidate nominated by a major party, or the candidate committee of an eligible minor party candidate or an eligible petitioning party candidate, for election to the office of state senator or state representative at a special election held on or after December 31, 2006, or at a regular election held in 2008, or thereafter, or for election to the office of Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, *may receive a grant from the fund for the candidate's general election campaign for said office.*

(Emphasis added.)

Section 9-706 (g) (1) provides for separate deadlines for candidates seeking nomination in a primary or election in a general election, and does not foreclose a candidate in a primary from forgoing a primary campaign grant and later applying for a general election grant:

Any application submitted pursuant to this section for a primary or general election shall be submitted in accordance with the following schedule: (A) By five o'clock p.m. on the third Wednesday in May of the year that the primary or election will be held at which such participating candidate will seek nomination or election, or (B) by five o'clock p.m. on any subsequent Wednesday of such year, provided no application shall be accepted by the commission after five o'clock p.m. on or after the fourth to last Friday prior to the primary or election at which such participating candidate will seek nomination or election.

Section 9-702 (b) sets forth five general criteria for grant eligibility and provides that:

- (b) *Any such candidate committee is eligible to receive such grants for a primary campaign, if applicable, and a general election campaign if*
- (1) the candidate certifies as a participating candidate under section 9-703,
 - (2) the candidate's candidate committee receives the required amount of qualifying contributions under section 9-704,
 - (3) the candidate's candidate committee returns all contributions that do not meet the criteria for qualifying contributions under section 9-704,
 - (4) the candidate agrees to limit the campaign expenditures of the candidate's candidate committee in accordance with the provisions of subsection (c) of this section, and
 - (5) the candidate submits an application and the commission approves the application in accordance with the provisions of section 9-706.

(Emphasis added.)

Subsection (c) sets forth the spending limits, as follows, in relevant part:

A candidate participating in the Citizens' Election Program shall limit the expenditures of the candidate's candidate committee

(A) before a primary campaign and a general election campaign, to the amount of qualifying contributions permitted in section 9-704 and any personal funds provided by the candidate under subsection (c) of section 9-710,

(B) *for a primary campaign,³ to the sum of (i) the amount of such qualifying contributions and personal funds that have not been spent before the primary campaign, and (ii) the amount of the grant for the primary campaign authorized under section 9-705, and*

(C) for a general election campaign,⁴ to the sum of (i) the amount of such qualifying contributions and personal funds that have not been spent before the general election campaign, (ii) any unexpended funds from any grant for a primary campaign authorized under section 9-705, and (iii) the amount of the grant for the general election campaign authorized under section 9-705....

General Statutes § 9-702 (c) (emphasis added).

Generally, CEP candidates in a primary and intending to apply for a primary campaign grant may incur up to the primary campaign expenditure limit during the primary campaign period, and, upon receipt of the primary campaign grant, pay off the incurred primary campaign expenditures. However, a CEP candidate who does not apply for and receive a primary

³ The "primary campaign" period is defined as follows:

"Primary campaign" means the period beginning on the day following the close of (A) a convention held pursuant to section 9-382 for the purpose of endorsing a candidate for nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, or (B) a caucus, convention or town committee meeting held pursuant to section 9-390 for the purpose of endorsing a candidate for the municipal office of state senator or state representative, whichever is applicable, and ending on the day of a primary held for the purpose of nominating a candidate for such office.

General Statutes § 9-700 (11).

⁴ "General election campaign" is defined as follows:

"General election campaign" means (A) in the case of a candidate nominated at a primary, the period beginning on the day following the primary and ending on the date the treasurer files the final statement for such campaign pursuant to section 9-608, or (B) in the case of a candidate nominated without a primary, the period beginning on the day following the day on which the candidate is nominated and ending on the date the treasurer files the final statement for such campaign pursuant to section 9-608.

General Statutes § 9-700 (7).

campaign grant is in a different situation because that campaign will not be able to pay off any incurred primary campaign expenditures that exceed the required threshold amount of qualifying contributions, plus any personal funds provided within the personal funds provision,⁵ since such campaign will not receive primary campaign funds.

The law provides that primary campaign grant funds are to be spent for primary campaign expenditures, and general election grant funds are to be spent for general election campaign expenditures. If a CEP candidate receives a primary campaign grant and does not expend the entire grant amount on primary campaign expenditures, “the amount of the grant for the general election campaign shall be reduced by the total amount of any such unexpended primary campaign grant and moneys....” General Statutes § 9-705 (i) (2). In other words, a CEP candidate in a primary is not permitted to stockpile a war chest of unspent primary campaign grant funds to have additional monies to spend during the general election campaign period. Conversely, a CEP candidate in a primary is not permitted to prepay for general election campaign expenditures with primary campaign funds and then receive the full general election campaign grant amount. *See* Regs. Conn. State Agencies § 9-702-1. Although a CEP candidate whose committee received a primary campaign grant does not need to reapply for a general election campaign grant, the committee is required to file a disclosure statement and submit a primary-to-general election “carry forward form” in which the committee identifies campaign goods or services purchased or pre-paid during the primary campaign period that will be used for the general election. *See* General Statutes §§ 9-705 (i) (2) & 9-708; Regs. Conn. State Agencies § 9-702-1.

It follows that a participating candidate in a primary who does not reach the thresholds to apply for a primary campaign grant may only spend or incur during the primary campaign period an aggregate amount not to exceed the required threshold amount of qualifying contributions, plus any personal funds by the candidate within the prescribed limits. If a committee exceeds these thresholds it may be ineligible to receive a general election campaign grant.

In addition, a grant application must include a certification that the committee has transmitted to the CEF contributions that exceed the required qualifying contribution amount (these excess contributions are also referred as the “buffer” amount), and release of any grant funds requires submission of such buffer. General Statutes § 9-706 (b) (4). Accordingly, a committee will not be eligible to receive a grant if it does not have enough funds in its bank account to write the “buffer” check.

With these considerations in mind, the Commission concludes that a candidate in a primary who joins the CEP on or before the primary deadline to join, and who does not apply for a primary

⁵ General Statutes § 9-710 (c) provides that:

A candidate who intends to participate in the Citizens’ Election Program may provide personal funds for such candidate’s campaign for nomination or election in an amount not exceeding: (1) For a candidate for the office of Governor, twenty thousand dollars; (2) for a candidate for the office of Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, ten thousand dollars; (3) for a candidate for the office of state senator, two thousand dollars; or (4) for a candidate for the office of state representative, one thousand dollars. Such personal funds shall not constitute a qualifying contribution under section 9-704.

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campaign grant and spends only the amount of qualifying contributions permitted in section 9-704 and any personal funds provided by the candidate under subsection (c) of section 9-710, may apply for a general election campaign grant.

This constitutes an Advisory Opinion pursuant to General Statutes § 9-7b (a) (14). This Advisory Opinion is only meant to provide general guidance and addresses only the issues raised.

Adopted this 22nd day of August, 2018 at Hartford, Connecticut by a vote of the Commission.



Anthony J. Castagno, Chair