

11 Forest Ave.
Rockville, MD 20850
October 3, 2011

David Celeste, Chair
Rockville Board of Supervisors of Elections
111 Maryland Avenue
Rockville, MD 20850

Mr. Celeste:

I am writing to alert the Board to what appears to be a serious error in the Fair Election Practices section of the Rockville City Code. Because of this error, candidates and their spouses run the risk of inadvertently violating the law. Indeed, the law as presently written was violated during the 2009 election cycle.

It is generally believed that candidates' spouses are exempt from Rockville's \$1,000-per-campaign limit. The City Clerk's office has given such guidance in the past. A close reading of the Code, however, reveals that *this is simply not the case*. **Under current Rockville law, any contribution exceeding \$1,000 from a candidate's spouse to his or her campaign is illegal.**

Section 8-78(d) of the Rockville City Code forbids contributions totaling more than \$1,000 from any individual to any single candidate:

(d) Limit of contributions. It is unlawful for any individual, association, unincorporated association, corporation, or any other entity, either directly or indirectly, to contribute in any election cycle any money or thing of value greater than one thousand dollars (\$1,000.00) to any single candidate or campaign committee or to contribute money in excess of one hundred dollars (\$100.00) except by check, except that contributions may be made by any electronic method provided said contribution is recorded by the Treasurer and a receipt is provided to the contributor and a copy of the receipt is maintained by the Treasurer. Total contributions by a contributor to various campaign committees and candidates in any election cycle under this subsection shall not exceed two thousand dollars (\$2,000.00). (Emphasis added)

The immediately previous section, 8-77, contains an exception for a candidate and "his" [sic] spouse:

(a) Contributions and expenses. The contributions of a candidate or his spouse to the candidate's own campaign are not subject to the limitations of subsection 8-78(b), but must pass through the hands of the candidate's treasurer and be reported as required in other provisions in this

article. Personal expenses of the candidate for filing fees, telegrams, telephoning, travel, and board, shall not be considered contributions if paid for by the candidate or his spouse. (*Emphasis added*)

The problem is that this exception by its terms only applies to Section 8-78**(b)**, not **(d)**. Section 8-78(b) reads:

(b) Exception for volunteering time and personal vehicle. Nothing contained in this section shall limit or affect the right of any person to volunteer his time or personal vehicle for transportation incident to any election or to expend money for proper legal expenses in maintaining or contesting the results of any such elections.

Clearly, this is an error in the Code. Section 8-78(b) is itself an exception and contains no "limitations" from which 8-77(a) could exempt a candidate or spouse. Section 8-78(d) is the section that contains contribution limits, and is the section that would require exceptions if the City wanted to make such exceptions.

This is not a theoretical problem. During the 2009 Rockville election cycle, now-Councilmember Bridget Newton reported total campaign receipts of \$12,105.91. Of that, a total of \$4,120.50 was provided by her husband, Fred Newton, in the form of what Councilmember Newton reported as "in-kind" contributions to her campaign for items such as postage and campaign materials.

Simply put, Fred Newton's \$4,120.50 in contributions to Bridget Newton's 2009 city council campaign violated Rockville City law. Perhaps this was not *meant* to be the case, nor perhaps *should* it be the case. But as the law stands right now, it *is* the case. The violation was almost certainly inadvertent, but is a violation nonetheless.

Regardless of the state of Rockville's City Code, a candidate's contributions to his or her own campaign are not limited under the U.S. Constitution. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court held that limits on a candidate's contributions to his or her own campaign were unconstitutional. However, no such constitutional exception applies to campaign contributions from spouses of candidates.

I am making somewhat of a leap of faith here, assuming that Section 8-77(a) *should* reference 8-78(d) instead of some other section, and that the City wishes to totally exempt spouses from contribution limits. This is not the case everywhere – federal election law does not allow a candidate's spouse's assets to be considered the candidate's "personal funds" and thus exempt from contribution limits (2 U.S.C. 431.26).

If it is the case that the City wishes to exempt spousal campaign contributions from limits, the Board of Supervisors of Elections should immediately redraft 8-77(a) to reflect this desire and recommend the change to the Mayor and Council.

If it does so, I would recommend that the Board also carefully consider Section 16-61 of the Code regarding candidates' financial disclosure. The section now reads:

All elected officials or those appointed to fill the vacant office of an elected official, **all candidates for elective office**, and all applicants for appointment to the Board of Appeals, the Planning Commission, and the Historic District Commission are required to file the statements provided for in this division.

One of the major justifications for requiring candidates for elective office to submit a detailed personal financial disclosure is that because their contributions to their own campaigns are unlimited, it is especially important to know whether they have financial conflicts of interest with the City.

If the Board were to recommend that City law be changed to remove any limits from spousal contributions, this rationale would apply with equal strength to candidates' spouses' financial activities and their actual or potential conflicts of interest. Allowing unlimited campaign contributions from any source that does not have to disclose their origins – or disclose any conflicts of interest with the City – would create a gaping loophole in the Fair Election Practices laws of the City and gut their effectiveness.

For example, if I were running for City Council and my wife were working for a developer bidding on a contract to build a new city building, my wife could quite legally make a \$50,000 contribution to my campaign from her salary. The only thing that would have to be disclosed is my wife's \$50,000 contribution to my campaign; the public would be entirely in the dark as to the original source of the money and the overwhelming conflict of interest borne by my wife. This would represent a legal and complete laundering of that developer's money, and it is completely unacceptable.

It has been suggested to me that given my own status as a candidate for Rockville City Council this year, I should perhaps leave this issue for others to bring to the Board's attention. I disagree. It is I, my wife, and my fellow candidates and their spouses who are at risk until this statute is corrected. I therefore believe it is properly my role to highlight this problem with Rockville's code.

I urge the Board to act as quickly as possible on these matters.

Thank you.

A handwritten signature in black ink that reads "Tom Moore". The signature is written in a cursive style with a long horizontal stroke above the name.

Tom Moore