
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG,
Mayor



DEPARTMENT OF LAW
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September 16, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0403- Fair Election Fund – Establishment and
Administration

Dear President and City Council Members:

The Law Department has been asked to review City Council Bill 19-0403 for form and legal sufficiency. The bill establishes the Fair Election Fund authorized by City Charter Article I, § 1, provides for public campaign financing for candidates for City elective office; regulates certain campaign finance activity of a candidate for City elective office who voluntarily accepts public campaign financing. The bill established the City Fair Election Fund Commission, provides for its powers and duties and requires that the Commission educate the citizens of Baltimore regarding the Fund and how to participate. The bill also requires that the Commission perform certain periodic reviews and that it establish certain qualifications for applicants to receive public campaign financing. It also must establish an application process. In addition, the bill authorizes the Maryland State Board of Elections to assist in the administration and enforcement of the public campaign financing system. The bill requires that the Fund distribution follow certain requirements and provides for certain penalties for violations of the public campaign financing system.

As noted in the bill, the establishment of the special fund is authorized by Art. I, Sec. 15 of the Charter. The bill must therefore comply with the authorizing language of the Charter. In addition, however, the City Council is authorized to legislate in the area of campaign financing by virtue of State law found in the Md. Ann. Code, Election Art., Sec. 13-505.

Section 13-505 provides generally for the creation of a county system of public financing for elective office. Several important requirements include that the governing body of a county shall specify the criteria that is to be used to determine whether an individual is eligible for public campaign financing. Sec 13-505(a). Furthermore, State law requires that any such local election financing system

(1) shall provide for participation of candidates in public campaign financing on a strictly voluntary basis;

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(2) may not regulate candidates who choose not to participate in public campaign financing;

(3) shall prohibit the use of public campaign financing for any campaign except a campaign for county elective office;

(4) shall require a candidate who accepts public campaign financing to:

(i) establish a campaign finance entity solely for the campaign for county elective office; and

(ii) use funds from that campaign finance entity only for the campaign for county elective office. Sec. 13-505(b)

The bill also requires that any public election fund shall be administered by the Chief Financial Officer of the county and be subject to regulation by the State Board to ensure conformity with State law and policy to the extent practicable. Sec. 13-505(b).

The Charter provision in Art. I, Sec. 15 requires that the fund be administered by the Fair Election Fund Commission. This is in violation of the State enabling legislation but can be cured by making sure the ordinance provides for the appropriate authority to vest in the Director of Finance. It is noteworthy that this bill is modeled after the Montgomery County law. That law, however, does not cast the Commission in such a prominent role. Most likely because the enabling legislation does not authorize such a delegation of authority.

There are several other areas of concern. Sec. 11-7 (B)(2) calls for the Department of Finance to provide information about the Fund to candidates and the public, Sec. 11-11, however, requires the Commission to provide similar education about the Fund. This seems duplicative. Next, Sec. 11-8 provides that the Commission shall administer the Fund. This is in conflict with the State enabling law. Section 11-12 should be in consultation with the Department of Finance. Department of Finance should review prior to submission of reviews to the City Council. Similarly, in Sec. 11-16, the Commission can recommend certification or not to the Director and the Director can make appropriate disbursements but the Commission can not "authorize the Director to do so. The same issue is present in Se. 11-17(A) and (B) and (F). Sec. 11-18 (A) and (B) should also be modified to reflect the administrative authority of the Director of Finance. In Sec. 11-18(E), the authorization to further limit use of public contributions in rules and regulations would be an unlawful delegation of legislative authority. Finally, in Sec. 11-19(B) and (D), the language should be amended to recognize the Director of Finance's authority.

Based on the foregoing, the City Council should amend the Bill as discussed above. Provided the bill is amended to address those issues., the Law Department could approve the bill for form and legal sufficiency.

Sincerely,

Elena R. DiPietro

Elena R. DiPietro
Chief Solicitor

cc: Andre M. Davis, City Solicitor
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