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By Certified Mail

Ms. Barbara Netchert
County Clerk, Hudson County
Hudson County Administrative Building
595 Newark Avenue
Jersey City NJ 07306

Attorney General Christopher S. Porrino
Office of the Attorney General, State of New Jersey
Richard A. Hughes Justice Complex
P.O. Box 112
Trenton NJ 08625-0112

Re: **Reporting Impending Dual Candidacies At 2017 General Election For
Freeholder, Hudson County and Mayor, Hoboken City**

Ladies and Gentlemen:

This letter is on behalf of a client, a resident of Hudson County who is not a candidate for any public office and who wishes not to be identified at this time. My client requests your office immediately examine and rule on the legality of the candidacy of a current county freeholder candidate, already nominated by primary to appear on this November's general election ballot, for a second elected office (Hoboken mayor) the candidate is reportedly seeking (and whose filing of petitions is believed imminent).

It is my view that this candidate is not merely prohibited from holding two elected offices, but also prohibited from being a candidate for two elected offices in the same election. In addition, the adverse consequences of this dual candidacy will be severe to residents of the jurisdictions in which the candidate seeks these two offices; if he wins both contests, residents -- his *constituents* -- would be deprived of all representation for one full year in the one office the candidate would be prevented from accepting. That is because the law would deem a vacancy to exist in the one office he declines, and the law states such a vacancy would not be filled until a special election held at the next general election in November 2018.

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State Law Prohibits Simultaneous Candidacies For Two Offices To Be Voted Upon At The Same Election. State election law prohibits a candidate from being nominated by petition to two separate offices, as follows.

“No person may accept a nomination by petition in the manner provided by R.S. 19:13-8 or consent to the acceptance of a nomination in a petition for a primary election in the manner provided by R.S. 19:23-7 for more than one office to be filled at the same general election, the *simultaneous holding* of which would be prohibited by the Constitution of the State of New Jersey or R.S. 19:3-5.” NJ Rev Stat § 19:3-5.1 (2016)(emphasis added).

This dual-candidacy prohibition is based on the prohibition of "simultaneous holding" of two public offices, unless the candidate held multiple offices when the statute took effect in 2007 and would be eligible for the "safe harbor" or "grandfather" clause exemption. See NJ Rev Stat § 19:3-5 (2016). However, this candidate in question did not hold both offices when the statute took effect. Therefore, he cannot accept a nomination by petition for Hoboken mayor (or any other public office), having previously been nominated by petition for the Democratic Party primary (which he won) for freeholder.

The Candidate Cannot Lawfully File Petitions For A Second Office. State law provides that “[a] candidate nominated for an office in a petition shall manifest his acceptance of such nomination by a written acceptance thereof, signed by his hand, upon or annexed to such petition . . .” NJ Rev Stat § 19:13-8 (2016).

However, in the instant matter, this candidate cannot be “qualified” to be a candidate for both offices. State law provides as follows:

“At every election the person or persons, to the number to be elected therein, who *shall by law be qualified* for the office or offices to be filled at such election, and for whom the greatest number of votes shall have been given therein for such office or offices, shall be deemed and taken to be elected to such office or offices.”

(Emphasis added.) NJ Rev Stat § 19:3-4 (2016)

A candidate cannot lawfully accept a nomination by petition for a second public office when he knows the dual candidacy is unlawful to begin with. From this it logically follows that the candidate’s “written acceptance” (required by statute) of his nomination by petition would constitute a “false statement” which would nullify and void any such nomination. Again, state election law is instructive, as follows:

“If any candidate for nomination for or election to any public office or party position, or his campaign manager, shall fail to file any statement or oath required by this Title to be filed, at the time, place and in the manner required by this Title, and duly verified as herein required, *or shall file any false statement, the nomination or election of such candidate, if nominated or elected at the primary*

or other election concerning which such statement shall have been filed, shall be null and void.” (Emphasis added.) NJ Rev Stat § 19:3-7 (2016)

Residents Would Go Unrepresented For One Year If The Candidate Wins Both Contests, Because The Law Restricts Him To Accepting Only One Office. State law is clear that when a candidate is elected to two offices at the same time, he can only accept the oath for one office. The law provides:

“When a person shall, at an election, be elected to two or more of such offices, he shall accept but one of the same, and the other or others shall be deemed vacant.” NJ Rev Stat § 19:3-25 (2016).

The deemed vacancy would be filled at the next general election, in November 2018. This deprives residents of one jurisdiction of representation for one full year.¹

Lieutenant Governor Candidate’s Dual Candidacy For Assembly Distinguished. The instant matter differs from that of the current Lieutenant Governor candidate, Sheila Oliver, who will also appear on the November general election ballot for Assembly Member. She was nominated by petition for only one office, the Assembly. She was appointed, not nominated by petition, as the Democratic Party candidate for Lieutenant Governor. As such, she would not violate state law providing that:

“No person may accept a *nomination by petition* in the manner provided by R.S. 19:13-8 or consent to the acceptance of a *nomination in a petition* for a primary election in the manner provided by R.S. 19:23-7 for more than one office to be filled at the same general election, the simultaneous holding of which would be prohibited by the Constitution of the State of New Jersey or R.S. 19:3-5.” NJ Rev Stat § 19:3-5.1 (2016)(emphasis added).

Conclusion. The candidate has two lawful options: ending his candidacy for freeholder, or refraining from filing a petition for Hoboken municipal office in this general election. Alternatively, the County Clerk or Attorney General’s Office can declare his nominating petition for Hoboken municipal office *void ab initio* unless he withdraws as a freeholder candidate in this November’s general election.

Sincerely



Eric Dixon

¹ See NJ Rev Stat 19:3-29, stating that “A vacancy happening in a public office other than that of United States Senator, Member of Congress, State Senator, or member of the House of Assembly, shall be filled at the general election next succeeding the happening thereof, unless such vacancy shall happen within 70 days next preceding such election, in which case it shall be filled at the second succeeding general election.”