

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN THE MATTER OF CARY TOWN COUNCIL  
CANDIDATES, JULIE ROBISON AND JACK SMITH

**ORDER**

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS on June 25, 2002, as to alleged violations of GS 163-278.13, which limits campaign contributions. After reviewing documentation and briefs presented in this matter and argument of counsel, the North Carolina State Board of Elections finds as follows:

**FINDINGS OF FACT**

1. On December 14, 2000, the Town of Cary passed Ordinance 00-028, which allowed candidates for Cary Municipal Office to apply for reimbursement of campaign expenses incurred in running for office. This reimbursement would be allowed only to those candidates that agreed to limit campaign spending, raise certain minimum contribution totals from public contributions, and finish high enough in the primary to proceed to the runoff stage of the election. The ordinance was amended June 14, 2001, changing certain reporting requirements and other procedures.
2. This campaign reimbursement program was brought to the attention of the Wake County Board of Elections in May of 2001, who referred it to the staff of the State Board of Elections for review. As a result of review, State Board Executive Director Gary Bartlett informed the Wake County Board of Elections, by letter of July 17, 2001, that the Cary ordinance might violate the \$4,000 contribution limit set out in GS 163-278.13 if actual reimbursements were made by the plan. In addition, the letter stated the issue as to whether the Town of Cary had the authority to pass this particular ordinance was deemed not to be within the jurisdiction of the State Board of Elections.
3. The July 17, 2001 letter was copied to Attorney Michael Crowell who was representing the Town of Cary on this issue. Mr. Crowell had been presented a draft of the letter prior to July 17, 2001 and there had been several discussions between Board staff and Mr. Crowell prior to July 17, 2001 about the issue. Because of this direct dealing with the attorney for the Town of Cary there was no direct communication, or need for the same, between the Board's staff and the Cary Town Council or candidates for the Council. As early as July 2001, legal staff of the Town

of Cary had informed the Cary Town Council that there might a legal challenge to the ordinance.

4. After audit of campaign finance reports, the Wake County Board of Elections informed the State Board, by letter dated April 12, 2002, that it appeared that the Town of Cary had reimbursed two Cary candidates sums in excess of \$4,000 for the 2001 Cary municipal election. Based upon reports filed with the Wake County Board of Elections, Julie Robison, successful candidate for an at-large council seat, received on December 22, 2001 the sum of \$16,910.40 from the Town of Cary pursuant to Ordinance 00-028. On January 18, 2002, Jack Smith, successful candidate for reelection to a District seat on the Cary Town Council, received the sum of \$6981.09 from the Town of Cary pursuant to Ordinance 00-028.
5. On April 17, 2002, the Executive Director of the State Board wrote Julie Robison, and requested that she return the sum of \$12, 910.40 to the Town of Cary as being that amount of the December 22, 2001 payment in excess of the \$4,000 contribution limitation set out in GS 163-278.13(b). Ms. Robison declined to return the money and requested that the State Board of Elections review the action of the Executive Director as to requesting the repayment.
6. On April 17, 2002, the Executive Director of the State Board wrote Jack Smith, and requested that he return the sum of \$2,981.09 to the Town of Cary as being that amount of the January 18, 2002 payment in excess of the \$4,000 contribution limitation set out in GS 163-278.13(b). Mr. Smith declined to return the money and requested that the State Board of Elections review the action of the Executive Director as to requesting the repayment.
7. The term "contribution" is defined by GS 163-278.6(6) and defines the term, among other definitions, as "transfer of funds, "payment" and "anything of value". The tender and acceptance of Town of Cary funds, as set out above, by both candidates in this matter are contributions within the meaning of the election laws of this state.
8. GS 163-278.13(b) prohibits any candidate from receiving contributions from an entity in excess of \$4,000 for an election. The Town of Cary, at all times referred to in this order, was and is an entity within the intent of this statute. The term "candidate" for election law purposes is defined in GS 163-278.6(4). At all times referred to in this order, both Julie Robison and Jack Smith were candidates and came within the limitations set out in GS 163-278.13(b).
9. At the time that Julie Robison and Jack Smith accepted Town of Cary funds in excess of the limitations set out in GS 163-278,13, they did so without criminal intent to violate the election laws of this state. That there is no apparent violation of election law that would rise to the level of intentional criminal conduct upon the part of the two candidates.

10. The acceptance of the Town of Cary funds, in excess of \$4,000, should be remedied by the return of such funds by the candidates to the Town of Cary.
11. The Board has concerns that the Town of Cary, a municipal corporation, may be prohibited from making any contributions, in any amount, in that GS 163-278.15 and GS 163-278.19 prohibit any political contributions by any corporation. However, the Board chooses not to address the corporate status of the Town of Cary in the context of election law at this time based upon the fact that that specific legal issue was not placed on the agenda of the June 25, 2002 Board meeting.
12. The Board has concerns as to the whether the Town of Cary, or any other North Carolina municipality, has the power to establish a plan of public financing of election without enabling legislation from the North Carolina General Assembly.

Based Upon the Forgoing Findings of Fact, the Board Concludes as Follows:

#### CONCLUSIONS OF LAW

1. The acceptance of the Town of Cary funds pursuant to Cary Ordinance 00-028 by Julie Robison and Jack Smith was unlawful to the extent that such funds exceeded the limitations set out in GS 163-278.13(b).
2. That the acceptance of these funds by Julie Robison and Jack Smith occurred with no criminal intent.
3. That Julie Robison and Jack Smith should return the unlawful contributions to the Town of Cary.

Therefore, it is Ordered, Adjudged, and Decreed as Follows:

#### ORDER

1. That Julie Robison return to the Town of Cary the sum of \$12, 910.40. That such return be made by the end of the 2002.
2. That Jack Smith return to the Town of Cary the sum of \$2, 981.09. That such return be made by the end of the 2002.

This the 13 day of July 2002.

/s/  
Larry Leake, Chairman of the North Carolina  
State Board of Elections