



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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October 5, 1981

Mr. James R. Decker
Recall Committee Member
11 Whipple Road
Pompton Plains, NJ 07444

ADVISORY OPINION No. 41-1981

Dear Mr. Decker:

Your letter received September 24, 1981 requesting an advisory opinion from the Election Law Enforcement Commission has been considered by the Commission and I have been directed to issue this response. You have asked whether a citizen committee formed to seek the recall of a municipal councilman, i.e. the "Recall Committee," must file with the Commission pursuant to the Campaign Contributions and Expenditures Reporting Act, hereinafter "Reporting Act," (N.J.S.A. 19:44A-1 et seq.), a disclosure report of funds raised and expended for the employment of an attorney to defend the legal sufficiency of the recall petitions filed by the Committee. For the reasons stated herein, the Commission cannot determine if the Recall Committee must file campaign reports for the recall election because no information has been submitted if its aggregate expenditures are anticipated or do exceed the threshold figure of \$1,000. However, if that threshold is exceeded, you are advised that the Recall Committee must file campaign reports pursuant to N.J.S.A. 19:44A-8, and the attorney fees described must be included.

You have informed the Commission that a group of citizens formed a bi-partisan committee to seek the recall of a councilman. Upon the submission of the recall petitions to the township clerk, that councilman instituted a law suit alleging deficiencies in the recall petitions and an injunction was issued prohibiting the township clerk from setting an election date. Members of the Recall Committee contributed funds for engaging legal counsel, and the injunction has subsequently been lifted and an election date set. The Recall Committee did not solicit or accept contributions during the circulation of the recall petitions, nor does the Committee anticipate that any funds will be received or expended in an attempt to influence the election.

Your letter does not specify which community is engaged in the recall election. However, the Commission presumes that you are referring to a recall question that will be placed on the ballot in the

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approaching general election in the Township of Pequannock, Morris County. The township clerk has advised the Commission that the recall petitions were filed pursuant to the provisions of N.J.S.A. 40:69A-168 et seq., the "Optional Municipal Charter." The Optional Municipal Charter Act expressly provides that Title 19 of the Revised Statutes (Elections) applies to recall elections. N.J.S.A. 40:69A-175. Title 19 includes the Reporting Act which itself provides that the provisions of the Reporting Act shall apply in any election at which a public question is to be voted upon by the voters of any political subdivision of the State, or in any municipal election for any public office of any political subdivision. N.J.S.A. 19:44A-4(c) and (d).

The term "political committee" is defined in the Reporting Act to mean any two or more persons acting jointly, or any other incorporated or unincorporated association which is organized to, or does, aid or promote the nomination, election or defeat of any candidate for public office. N.J.S.A. 19:44A-3(i). Such a "political committee," if making expenditures over a threshold amount, is required to file full reports of contributions and expenditures with the Commission, the first being due 25-days prior to the election in which it is participating. N.J.S.A. 19:44A-8 and 16. The Commission concludes on the facts presented to it that the Recall Committee is a "political committee" because its stated purpose is to promote the defeat of a candidate for public office.

The employment of an attorney for the express purpose of defending the legal sufficiency of the recall petitions was, in the view of the Commission, an activity related to the promoting of the ultimate purpose of the "political committee," that is the defeat of the candidate in an election. Therefore, the funds collected for the purpose of engaging legal counsel were "contributions" within the meaning of that term as it is defined in the Reporting Act, and the payment to the attorney of a fee for his legal representation was an "expenditure" within the meaning of that term as it is similarly defined in the Reporting Act. See N.J.S.A. 19:44A-3(d). Since the Recall Committee received contributions and made an expenditure in furtherance of the defeat of a candidate, the contributions and expenditure are subject to disclosure pursuant to N.J.S.A. 19:44A-8.

The Commission is unable to determine the ultimate question of whether the Recall Committee has any obligation to file campaign reports. The fact record submitted suggests that the Recall Committee is not acting in concert with any candidate, or with any other political committee which is in support or defeat of a candidate, and therefore qualifies under Commission Regulation N.J.A.C. 19:25-12.5(a) as making an independent expenditure. Reporting obligations are imposed upon political committees making independent expenditures only if their aggregate expenditures in relation to a candidate is more than \$1,000.00.

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If expenditures to promote the defeat of a candidate did exceed the figure of \$1,000.00, or if the Recall Committee is in fact acting in concert with a candidate or any other political committee in support or defeat of a candidate, it must file with the Commission a 25-day pre-election report on or before October 9, 1981, a 7-day pre-election report on or before October 27, 1981, and a 15-day post-election report on or before November 18, 1981. These reports must include the contributions and expenditure for attorney fees discussed herein.

Please do not hesitate to call upon the Commission or its staff should you have any question concerning compliance with this Advisory Opinion or any other matter.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: Gregory E. Nagy
GREGORY E. NAGY, Staff Counsel

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