



## State of New Jersey

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### ELECTION LAW ENFORCEMENT COMMISSION

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December 19, 1983

Mr. Jerry Lynch  
828 Knight Street  
Toms River, NJ 08753

#### ADVISORY OPINION No. 21-1983

Dear Mr. Lynch:

Your letter to the Election Law Enforcement Commission requesting an advisory opinion has been considered by the Commission and I have been directed to issue this response. You have asked if a contemplated expenditure for a newspaper advertisement is subject to the reporting requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act).

You have written to the Commission that you and other persons intend to collect money to pay for a newspaper advertisement that will appear in local newspapers. You have submitted a copy of the proposed text, and the Commission hereby incorporates that text into the facts of this Advisory Opinion. The advertisement will appear under the heading, "Political Power Grab by the Toms River Regional School Board." The text states that the undersigned persons, who are described as Republicans, Democrats and Independents, "... deeply deplore the intrusion on the partisan political process by members of the Toms River Regional School Board and other school board officials in attempting to stack the membership of the Dover Township Republican Organization and seize control of the Republican Party in our community." The text proceeds to identify by name and criticize specific members of the school board and professional school board employees. The president of the local Republican party organization is also mentioned by name, and the text states that he has been the target of "... unwarranted and baseless personal attacks ..." from the named school board members and staff. No reference is made in the text to any candidate for the school board or for any other public elective office, and no reference is made to any election. Your inquiry does not specify when you anticipate that the newspaper advertisement will be published.

The provisions of the Act apply in any primary, general, special, school or municipal election for any public office of the State, or any political subdivision thereof. N.J.S.A. 19:44A-4(d). The Commission has learned that the next school election for the Toms River Regional School Board, of which Dover Township is a member, will be conducted on April 3, 1984. At that time three of the seats on the regional board will be voted on by the electorate, and those three seats are for Dover Township members. The Commission has been advised by the regional school board that the deadline for filing nominating

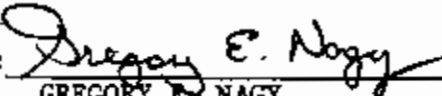
petitions for that election will be February 23, 1984. You have not stated in your inquiry whether any of the persons whose names will appear in the text or as signatories under the text are, or will be as of the date the advertisement is circulated, candidates in the school board election, or possibly some other election.

The fact that the submitted advertisement contains no specific reference to any election, and does not advocate the election or defeat of any candidate, does not necessarily compel the conclusion that the advertisement falls outside the scope of the Act. If one of the persons signing and paying for the advertisement is a candidate at the time that the advertisement is circulated, that person would acquire reporting obligations for at least a portion of the cost of the advertisement. N.J.S.A. 19:44A-16(a). Similarly, if the persons who are planning and paying for the advertisement include in the text the names of persons who are candidates at the time the advertisement is circulated and the advertisement is undertaken for the purpose of aiding or promoting persons who are, or will be candidates at the time of its circulation, the joint venture would be viewed as activities of a "political committee," as that term is defined in N.J.S.A. 19:44A-3(1). Political committees are required to file campaign reports pursuant to N.J.S.A. 19:44A-8.

While the United States Supreme Court has ruled that expenditures made independent of candidates or political committees are not reportable, that exemption is only available where the expenditures do not expressly advocate the election or defeat of a candidate. Buckley v. Valeo, 424 U.S. 1 at 78-80 (1976). Therefore, without knowing what persons may become candidates in the approaching school board election, the Commission is unable to express an opinion on whether the scope of that exemption would extend to the advertisement you have submitted.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By:   
GREGORY E. NAGY  
Staff Counsel

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