



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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May 21, 1984

C. Derek Fields  
Deputy Treasurer  
Builders Political Action  
Committee of New Jersey  
1000 Route 9  
Woodbridge, New Jersey 07095

#### Advisory Opinion No. 11-1984

Dear Mr. Fields:

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 the Commission to approve of payments you have made, and further payments you anticipate making, for the return of funds which the Builders Political Action Committee of New Jersey (hereafter, BPAC) originally reported to the Commission as contributions, but which you now indicate were received as loan proceeds.

You state that on October 18, 1983 some 20 members of BPAC offered to make loans to BPAC. The loans were made without interest, and were subject to repayment within two years. The proceeds of these loans were received by BPAC on November 10, 1983. BPAC filed with the Commission a 15-day post-election report for the 1983 general election on November 23, 1983 and that report disclosed receipts to BPAC in the amount of \$66,532.59. All of the receipts were reported as contributions, and there was no indication of any loan received or any existing outstanding obligation.

In your letter, you state that several of the lender-members have agreed to forgive their loans and have released BPAC from repayment, however you do not identify the members to which you are referring. The following lenders have asked for repayment:

- Pouliot, Inc., repayment of a loan of \$3,000;
- Lucarelli Construction, repayment of a loan of \$3,000;
- Greenway Construction, \$2,000 repayment requested and \$1,000 forgiven for loan of \$3,000;

- Frieland Construction, \$2,000 repayment requested and \$1,000 forgiven for loan of \$3,000; and
- South Jersey BPAC, \$11,000 repayment requested and \$4,000 forgiven for loan of \$15,000. \*

Of the loans listed above, on March 5, 1984 the loans from Pouliot, Inc. and Lucarelli Construction were repaid by BPAC and on March 13, 1984 the loan of South Jersey BPAC was repaid.

In your inquiry you stated that you intended to report the repayment items described above in a report due for filing on May 15, 1984. In response to that representation, the Commission's Director of Compliance and Review, Ms. Juana Schultz, by telephone instructed you to report these repayments on Schedule C - Operating Expenditures, and to indicate the repayments as a return of contributions. Ms. Schultz specifically stated that BPAC should not attempt to use Schedule B - Loans Received, and Schedule F - Debts and Obligations, because BPAC has not submitted any evidence that in fact these items are loans. To the contrary, BPAC reported, and certified as correct, all of these transactions as contributions. They were reported as contributions not only in the 15-day post-election report for the 1983 general election filed on November 23, 1983, but also subsequent 60-day post-election reports gave no indication that these transactions were anything other than contributions. You indicated to Ms. Schultz that no written instruments exist to document these transactions as loans, however there are entries in a receipt journal indicating that the transactions were received as a loan and minutes of meetings of BPAC in which the solicitations of the loans and their repayments were discussed. To date, you have not provided the Commission with certified copies of any of these documents.

The Campaign Contributions and Expenditures Reporting Act (hereafter, the Act) requires that a reporting political committee ". . . shall make a full report, upon a form prescribed by the Election Law Enforcement Commission of all moneys, loans, paid personal services, or other things of value contributed to it . . ." N.J.S.A. 19:44A-8, (emphasis added). Similar language is used to set forth the reporting requirements for candidates. N.J.S.A. 19:44A-16(a). The Commission believes that the statutory language mandates that reporting entities distinguish loans from other categories of receipts, and clearly identify lenders and loans proceeds separately from campaign donations.

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\* The Commission notes that South Jersey BPAC, in a report filed with the Commission for the 1983 general election, reported a \$15,000 contribution to BPAC, but did not report any loan. South Jersey BPAC has not made any application to the Commission to change its report.

In Advisory Opinion No. 25-1978, the Commission was asked by a candidate, who had reported giving his campaign a contribution of \$1,500, for permission to reimburse himself for that amount. The reimbursement was to be made from excess funds remaining at the end of his candidacy. The candidate contended that the \$1,500 donation was intended as a loan, and submitted to the Commission documentation of a personal loan to himself from a banking institution. The Commission was unable to agree with the candidate that the contribution of approximately \$1,500 was in fact a loan. Also, in Advisory Opinion No. 27-1978, the Commission considered whether Leanna Brown, a candidate for freeholder, could use excess remaining campaign funds to reimburse herself and her husband for contributions made to the county political committee. The Commission was unable to extend an opinion that the proposed transfer and repayment would have been a proper transaction. (Copies of Advisory Opinions 25-1978 and 27-1978 are enclosed for your convenience.)

The Commission has adopted a policy, as reflected in Advisory Opinions 25-1978 and 27-1978, against permitting selective return of contributions by a candidate or political committee. The decision of an individual contributor to make a contribution may well be grounded on the belief that the candidate himself or some other person or entity is making a true contribution to the candidate or committee. Under those circumstances, the Commission believes that it would be inequitable to permit a candidate or committee to select a few contributors to receive the benefit of return contributions. Therefore, where a candidate or committee attempts to recast a previously reported contribution as loan proceeds, the Commission has insisted upon receiving proper documentation of the fact that the parties intended to make a loan rather than a contribution. To date, BPAC has not provided such documentation, and therefore, the Commission is unable to express any opinion as to whether the transactions in question were intended to be loans and were incorrectly reported. However, upon the receipt of properly certified evidence satisfactory to the Commission that the transactions were in fact loans, the Commission would permit BPAC to amend its prior campaign reports.

Nothing contained in this Advisory Opinion should be construed as precluding the Commission from undertaking Complaint proceedings against BPAC pursuant to N.J.S.A. 19:44A-22 for filing false or incorrect contribution information in its campaign report.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: Gregory E. Nagy  
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