



State of New Jersey

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June 25, 1984

Arthur L. Raynes
Friends of Steve Wiley
250 Madison Avenue
Morristown, New Jersey 07960

Advisory Opinion No. 14-1984

Dear Mr. Raynes:

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 several questions pertaining to the reporting requirements under the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) where the employees of a partnership are providing services to a committee formed to explore a possible gubernatorial candidacy of one of the partners.

You have written that you are an associate attorney with the law firm of Wiley, Malehorn and Sirota. One of the partners of this firm, Stephen B. Wiley, is a person on whose behalf funds are being raised and expended by "Friends of Steve Wiley," an organization formed for the purpose of exploring the feasibility of a 1985 gubernatorial candidacy by Mr. Wiley. In addition to being an associate of the law firm, you are counsel to "Friends of Steve Wiley." As an associate attorney, you are paid a salary by the partnership. You state that you have voluntarily assumed the role of legal counsel to "Friends of Steve Wiley," and that you are not receiving any compensation for that activity. Specifically, you note that your caseload and other responsibilities in the law firm have not been diminished as a result of your involvement with the "Friends of Steve Wiley" organization. You write that most of the work you do for "Friends of Steve Wiley" is done in the evening, after working hours, but that occasionally you are required to undertake some tasks for the organization during business hours.

You have asked the Commission to concur in your conclusion that under these circumstances you can be viewed under the Act as volunteering your services to "Friends of Steve Wiley," and that "Friends of Steve Wiley" does not incur any campaign reporting obligation by virtue of the law firm's salary payments to you.

The "Friends of Steve Wiley" organization, as a "testing the waters" entity, will be required to file a campaign report disclosing all contributions received in the event that Mr. Wiley does become a candidate. Commission Regulation N.J.A.C. 19:25 -3.1. You have asked the Commission to assume that "Friends of Steve Wiley" in fact becomes a campaign committee for purposes of this Advisory Opinion.

The Act requires that candidates report contributions consisting of ". . . cash or other things of value." N.J.S.A. 19:44A-16(a). The term "other things of value" is defined to mean ". . . any item of real or personal property, tangible or intangible, but shall not be deemed to include personal services other than paid personal services." N.J.S.A. 19:44A-3(1). Therefore, unless your services as legal counsel to the "Friends of Steve Wiley" can be construed as "paid personal services," the organization does not acquire any obligation under the Act to report those services as a contribution by your law firm. The Commission believes that your services do not come under the definition of "paid personal services" as set forth in N.J.S.A. 19:44A-3(f).

The Act defines "paid personal services" to include professional services, including legal services, ". . . performed other than on a voluntary basis, the salary, cost or consideration for which is paid, borne or provided by someone other than the committee, candidate or organization for whom such services are rendered." N.J.S.A. 19:44A-3(f). You write that you are not receiving any salary, or other consideration, for your work as counsel to the "Friends of Steve Wiley" organization. As a legal associate, you do not have clearly defined working hours. You state that your work load has not been reduced or in any other way diminished to provide time for you to work for the candidate organization. Most importantly, you characterize your role as voluntary, that is that neither you nor your employer perceive it as part of your job responsibilities.

In past Advisory Opinions the Commission has held that professional legal services performed on a voluntary basis do not constitute a contribution, but services performed by employed attorneys or by other persons employed by the contributing attorney are paid personal services. Advisory Opinions No. 14-73; 45-73; 61-73. Your inquiry requires that the Commission consider extending the concept of voluntary legal services to an employed attorney of a law firm who is not a partner. The Commission agrees that an employed attorney, who is not receiving compensation for services to a political committee, may be viewed as providing those services on a voluntary basis where neither the employing law firm nor the employed attorney perceive those duties as part of the normal job responsibilities of the employed attorney. Therefore, on the facts you have submitted, the Commission concurs that your services as counsel to the "Friends of Steve Wiley" organization are not reportable contributions to that organization by your law firm.

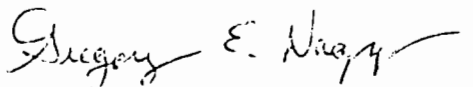
You also write that the law firm employs clerical staff whose time, at least in part, is used to provide services for "Friends of Steve Wiley." These services are not volunteered, but are compensated by the law firm. You ask whether the cost of these services, as well as the cost of ancillary office equipment, is a contribution by the law firm partnership as an entity, or a contribution by the individual partners. You urge the Commission to view these costs as contributions by individual partners, and cite Commission Regulation N.J.A.C. 19:25-16.13(c) to the effect that checks drawn on a partnership account that are donated to a gubernatorial candidate ". . . will be deemed to be the contribution of the individual whose signature appears on the check unless specific identification as to the contribution by other partners or members is contained on the check or other accompanying written instrument and the check is signed by each partner or member who is a contributor." You contend that if a check contribution to a gubernatorial candidate is attributed to the individual partner signing the check, the Commission should attribute the in-kind contribution of the services of partnership employees to individual partners rather than the partnership entity.

The Commission believes that a partnership entity can not be deemed under the Act as a contributor to a publicly financed campaign. Partnerships and unincorporated associations can make contributions only from sources controlled by the partners or members. A contributor to a publicly financed campaign can, in the aggregate, contribute no more than \$800. N.J.S.A. 19:44A-29(a). If partnerships, or unincorporated associations, were permitted to make contributions as entities separate from their partners or members, the public purpose of limiting individual contributors to contributions of no more than \$800 in publicly financed elections would be compromised. A partner could contribute in his or her own name, and could additionally contribute in the name of a partnership or partnerships under that partner's control. The regulation you have cited, N.J.A.C. 19:25-16.13(c) was specifically drafted with the intention that all contributions, whether by check or contribution of other things of value (i.e., in-kind contributions) must be attributed to individual partners and must be included in calculating compliance with the \$800 contribution limit.

Therefore, the partnership law firm must attribute all "paid personal services" undertaken by its employees, and all ancillary costs for the use of office equipment, to one or more of its partners. The costs may not be charged against the partnership generally. In attributing these costs to the partners, no single partner may exceed the \$800 contribution limit contained in N.J.S.A. 19:44A-29(a).

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: 

GREGORY E. NAGY
Staff Counsel