



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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July 16, 1984

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ADVISORY OPINION NO. 15-1984

Dear Mr. McGlynn:

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 whether anticipated expenditures by a citizen group to broadcast radio and television commercials which will feature Governor Thomas R. Kean would be subject to the reporting and public financing requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act).

You write that the "New Jersey Citizens for Better Schools" is an organization which is in the process of being formed for the purpose of achieving excellence in the public schools in this State. This organization will endeavor to inform the public of the needs, problems and proposed answers relevant to public schools, and to demonstrate to the public and to the Legislature public concern over these issues. The organization is planning on broadcasting radio and television advertisements in which Governor Kean will appear. These commercials will not contain any reference to Governor Kean as a possible gubernatorial candidate in 1985, but are intended to reflect his function as present Governor of the State. Neither the organization, nor the commercials, will explicitly or implicitly engage in the endorsement of the Governor's potential candidacy for reelection. You write that the organization will support positions and reforms regarding New Jersey education which have been espoused by Governor Kean and, although not having as its purpose the endorsement of Governor Kean as an individual, does endorse his educational policies. The organization will be identified as non-partisan in nature and its membership will be open to persons without regard to political affiliation.

The issue presented by this inquiry is whether the cost to be incurred by this organization for the advertisements constitutes a reportable campaign expenditure " . . . in furtherance of the nomination, election or defeat of any candidate ; . ." N.J.S.A. 19:44A-8(a). The Commission on a prior occasion was asked to consider whether advertisements paid for by a State political party committee would constitute a campaign expenditure where the advertisements consisted of a video featuring the Governor, who was a member of that political party. In that inquiry, the advertisements were being used by the State political party committee to promote legislative candidates of that political party in the 1983 general election. The Commission concluded that none of the cost of the advertisement would be allocable to a future candidacy of the Governor. Advisory Opinion No. 12-1983 (a copy of which is enclosed). The Commission listed several factors that were relevant to its determination: "The timing of the advertisement in relation to a gubernatorial election; whether the advertisement can be said to contain an unambiguous reference to the Governor as a candidate or potential candidate for the office of Governor; the individual or organization which is sponsoring or underwriting the cost of the advertisement; whether the advertisement arises in the context of an election in which the individual in question can be expected to play a role independent of a potential gubernatorial candidacy; . . . whether the thrust of the advertisement is to promote the institutional interest of a state political party committee or, in contrast, the personal views of a candidate or potential candidate for the office of Governor."

In this inquiry, the Commission is satisfied that the contemplated advertisements can not be construed as in furtherance of a possible 1985 gubernatorial primary election candidacy of Governor Kean because of the timing of the advertisement and the purpose for which they are being aired. Under the facts you have submitted, more than eight months will elapse from the date of the last broadcast of the advertisements to the date of the June 11, 1985 primary election. The Commission believes that this period of time is too far removed from active campaigning for the 1985 primary election to justify the application of reporting and public financing requirements of the Act. Furthermore, the thrust of the advertisements is to promote the bona fide institutional interests of a citizen group that, under the facts you have submitted, is independent of any political affiliation with Governor Kean. The motivation of the advertisement is not to promote an active or possible candidacy of Governor Kean, but rather to further the organizational aims of the entity by utilizing the appearance and participation of Governor Kean.

There is no way to escape the fact that incumbent officeholders or other public figure obtain collateral benefits to a potential candidate when they engage in activities directly related to their public responsibilities. Those collateral benefits, however, do not justify the

conclusion that the activities are in furtherance of a candidacy. It is only when the timing, context and other circumstances of the expenditures can be reasonably said to have been made on behalf of a candidate, or as part of an assessment of a potential candidacy, that the expenditures must be reported as a campaign contribution to the candidate, and allocated to the candidacy for public financing purposes of the Act.

This opinion is based solely upon the information contained in your letter of inquiry. The Commission has not reviewed the proposed text of the advertisements, and the ultimate application of this opinion is therefore dependent on the text conforming to the description and understandings expressed herein.

ELECTION LAW ENFORCEMENT COMMISSION

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

GEN/ck
Enclosure