



State of New Jersey

COMMISSIONERS

ELECTION LAW ENFORCEMENT COMMISSION

ANDREW C. AETELL  
CHAIRMAN  
ALEXANDER P. WALSH, JR.  
VICE-CHAIRMAN  
MAYOR PROCTOR  
OWEN V. MC NARY

NATIONAL STATE BANK BLDG., SUITE 1218  
28 W. STATE STREET, CN-188  
TRENTON, NEW JERSEY 08606  
(609) 292-8700

FREDERICK M. HERBMAN  
EXECUTIVE DIRECTOR

EDWARD J. FARRELL  
COUNSEL

April 16, 1985

Hart Erbach, Legislative Aide  
District Office of Senator Thomas F. Cowan  
122 Highland Ave.  
Jersey City, New Jersey 07306

ADVISORY OPINION NO. 04-1985

Dear Mr. Erbach:

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 pursuant to "The New Jersey Campaign Contributions and Expenditures Reporting Act," (hereafter, the Act) a proposed method for reporting expenditures that you anticipate making to pay for a newsletter that will be published by three State legislators, two of whom may be candidates in the 1985 primary election.

You have written that Senator Thomas F. Cowan, Assemblyman Paul Cuprowski and Assemblyman Anthony P. Vainieri, all representing the 12nd Legislative District (Hudson County), contemplate publishing twice annually a newsletter which will be circulated to constituents in their district. In order to pay the cost of this anticipated newsletter, Senator Cowan has transferred surplus campaign funds from his 1983 general election campaign to an entity named the "Thomas F. Cowan Association." Senator Cowan's final 1983 general election report, filed on January 25, 1984, reports a disbursement of \$8,673 to this Association. You propose to designate this Association as a "continuing political committee" as defined in N.J.S.A. 19:44A-3(n). The Association will pay for the expenses of the newsletter and Assemblymen Cuprowski and Vainieri each will reimburse the Association for one third of the expenditures made by the Association for the newsletter. You anticipate that as a "continuing political committee" the Association will be filing quarterly reports pursuant to N.J.S.A. 19:44A-8(b). You write that the publication will be "...strictly a public service to our constituents and will not even breathe a hint of anything related to election".

Although you have not specifically so stated, the Commission infers from your inquiry that Assemblymen Cuprowski and Vainieri are or will be candidates for reelection to the State Assembly in the June 4, 1985 primary election. Senator Cowan is not currently a candidate. You have not submitted the text of the newsletter you anticipate publishing, nor have you specifically indicated the date on which the first issue will be distributed.

Bert Erbach, Legislative Aide  
Advisory Opinion No. 04-1985  
April 16, 1985  
page 2

The Commission has on prior occasions considered the question of whether the expenses of communications by public office holders to their constituents constituted reportable campaign expenditures under the provisions of the Act. In Advisory Opinion No. 01-1985, the Commission decided that a candidate for school board who was publishing an "informational" newsletter containing no specific reference to an election was required to report the newsletter expense because the newsletter was circulated to the electorate in the jurisdiction in which he was seeking election and provided a platform for the expression of views that could be relevant to his candidacy. Similarly, in Advisory Opinion No. 06-1984, the Commission found that a "newspaper" published and distributed by a school board candidate to prospective voters on a date in proximity to the school election would constitute an expense on behalf of his campaign. In Advisory Opinion No. 10-1983, the Commission was asked to consider whether the costs of a letter from a member of the State Senate to retailers within the Senator's legislative district could be deemed reportable. Among the factors considered by the Commission in making its determination was whether the mailing would be undertaken during the active portion of the campaign. Common to these advisory opinions is the understanding that when a candidate controls a publication expressing his views on matters relevant to his candidacy, and when that publication will be distributed to voters in a time period in reasonable proximity to the election in which he is a candidate, the costs incurred in producing and distributing the publication are reportable campaign expenditures. Copies of these advisory opinions are enclosed for your information.

Assuming a publication date prior to the date of the 1985 primary election, under the facts that you have submitted the Commission concludes that the costs associated with the production and distribution of the newsletter must be regarded as campaign "expenditures" within the meaning of the Act, and therefore are subject to campaign reporting in the 1985 primary election. This result is compelled by the fact that the candidates will exercise control over the contents of the newsletter, and its production and distribution will be done at their behest. Even assuming that the newsletter contains no reference to the 1985 primary election, the newsletter will have the effect of placing the names of the candidates and their views before the electorate in a timeframe pertinent to the 1985 primary election. The newsletter will provide a platform for the candidates to express their views to the electorate concerning issues that presumably will be relevant to their candidacies in the approaching primary election.

Continuing under the assumption that the newsletter is published and distributed prior to the 1985 primary election, reporting requirements arise for both Assemblymen Cuprowski and Vainieri, and for the Association. In regard to the reporting requirements of the incumbent Assemblyman seeking reelection, their respective candidacies will receive an in-kind contribution from the Association by virtue of the fact that the Association is paying for a newsletter that promotes their election interest. The Act defines the term "contributions" to include "... all loans and transfers of money or other thing of value to or by any candidate, political committee, or continuing political committee..." N.J.S.A. 19:44A-3(d). Therefore, the payment by the Association of the cost of the newsletter constitutes "a thing of value" contributed to the

Bart Erbach, Legislative Aide  
Advisory Opinion No. 04-1985  
April 16, 1985  
page 3

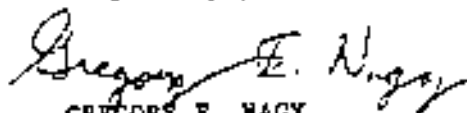
candidates, and the Association must give the candidates immediate written notice pursuant to N.J.S.A. 19:44A-8(a)(2) or 19:44A-8(b) of the in-kind contribution. The candidates are accordingly required to report the in-kind contribution by the Association on the campaign reports they must file pursuant to N.J.S.A. 19:44A-16. The value of that in-kind contribution will depend on the fair market value of publishing and distributing the newsletter. Assuming that the newsletter benefits each of the two candidates equally, each candidate must report one half of the fair market value of the newsletter as the value of the in-kind contribution; see Commission Regulation N.J.A.C. 19:25-11.5.

In regard to the reporting requirements of the Association, you propose to qualify the Association as a "continuing political committee" that will file quarterly reports pursuant to N.J.S.A. 19:44A-8(b). The Commission assumes that the Association will meet the definitional requirements of a "continuing political committee" set forth in N.J.S.A. 19:44A-3(n). Specifically, in order to qualify the Association must expect to make expenditures of at least \$2,500 for candidates, and must expect to make campaign related expenditures in more than one election. The Association must file a Statement of Organization (Form CPC-1) pursuant to the requirements of the Commission Regulation N.J.A.C. 19:25-4.6, a copy of which is enclosed for your convenience.

In the event that the Association does not qualify as a "continuing political committee," but expects to spend more than \$1,000 for candidates in the 1985 primary election, it will meet the definition of a "political committee" as set forth in N.J.S.A. 19:44A-3(1). As a "political committee" it cannot file quarterly reports, but it will be required to file campaign preelection and postelection reports pursuant to N.J.S.A. 19:44A-8(a).

The Commission does not express any view regarding editions of the newsletter published after the 1985 primary election, except in regard to any edition published prior to the 1985 general election that may be relevant to the possible 1985 general election candidacies of the Assemblymen. If the Assemblymen stand as candidates in the 1985 general election, any edition published in reasonable proximity to the date of the 1985 general election would be subject to the same principals articulated in this advisory opinion.

Very truly yours,

  
GREGORY E. NAGY  
Staff Counsel

GEN/dls