



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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March 7, 1989

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N.J. ELECTION
LAW ENFORCEMENT
COMMISSION

Re: Advisory Opinion No. 5-1989

Dear Mr. Edelstein:

Your letter dated February 15, 1989 to the New Jersey Election Law Enforcement Commission ("the Commission") including a request for advisory opinion has been forwarded to me for reply.

The Commission has considered the question of its jurisdiction to issue this opinion, since, as your letter notes, prohibitions against endorsement or aid by a political party committee to candidates in the primary election are contained in N.J.S.A. 19:34-33 and 19:34-52, sections of the election law which are under the jurisdiction of the Attorney General.

However, Section 11 of the Act (N.J.S.A. 19:44A-11) administered by the Commission contains a similar provision. Section 11 provides in part as follows:

Any state, county or municipal committee of any political party, after a primary election, but not prior thereto, may receive and expend funds to be spent in furtherance and in aid of the candidacy of all of the candidates of such party, or of any one or more of such candidates, in accordance with the provisions of this Act.

In addition, the Commission is charged with a responsibility of carrying out the provisions of the Act relating to public finance of the elections for nomination and election to the

office of Governor of the State of New Jersey (N.J.S.A. 19:44A-32, 38, 41). Accordingly, the Commission is satisfied that it has authority to issue this opinion.<sup>1</sup>

You have asked the opinion of the Commission with respect to certain activities planned by the State Democratic Committee, as those activities may be affected by the contribution and expenditure limitations imposed with respect to the gubernatorial primary election. Specifically, you propose to conduct:

a) issue-oriented research, targeting research, enhancement of party mailing lists, polling research and voter registration. You state that these will be non-specific as to any candidate or particular candidate thematics, and that the results of your efforts will be available to all incumbent public office holders and candidates for public office who are members of the Democratic Party; and

b) research on the legislative and administrative records of incumbent public office holders who are members of an opposition party including, but not limited to, the incumbent Governor, candidates for the Republican nomination for Governor and candidates for the Assembly. Such information will be available to all incumbent public office holders and candidates for public office who are members of the Democratic party.

The Commission recognizes that State Committees of political parties are contemplated and provided for by statute, N.J.S.A. 19:5-1, 5, and that the activities described in your letter are entirely appropriate, in the absence of limitations imposed by the legislature. In addition, the Commission is satisfied that the limitation on activities in the primary election, contained in the Act, N.J.S.A. 19:44A-11 (similar to the prohibitions cited

<sup>1</sup> The Commission is aware of the case of Eu v. San Francisco County Democratic Central Committee, \_\_\_\_\_ U.S. \_\_\_\_\_, 57 Law Week 4251 (Feb. 22, 1989), in which the United States Supreme Court affirmed the decision of the U.S. Court of Appeals, 826 F.2d 814 (9th Cir., 1987), striking down, on First Amendment grounds, a California law prohibiting the official governing bodies of political parties from endorsing or opposing candidates in primary elections.

The Commission is reviewing that decision and is seeking the opinion of the Attorney General of New Jersey as to the constitutionality of these New Jersey provisions in light of the Eu case.

This opinion is being issued by the Commission subject to reconsideration in the event the Commission concludes that the New Jersey provisions are invalid. The Commission invites comment from the Republican and Democratic State Committees and the gubernatorial candidates on this question.

in your letter) does not prohibit a State Committee of a political party from conducting activities, such as voter registration drives, which may fairly be said to benefit all of the candidates for office in the primary election of that party, so long as those activities do not benefit one or more of the candidates to the detriment of others.

Accordingly, the Commission is of the view that the receipt or acceptance by the candidates in the primary election of the benefits resulting from activities of the State Committee of the kind considered appropriate in this letter, will not be regarded by the Commission as such cooperation or consent or authorization as would raise an issue of allocation of the expenses of those activities, particularly where the activities contemplated are activities traditionally carried on by State and other committees of political parties, are activities which would in all probability have a relatively low priority in gubernatorial campaigns given the structures imposed by expenditure limits, and are activities which in general can be perceived as being a benefit to the party and to all of the candidates of that party, not only the gubernatorial candidates. The fact that some candidates might choose not to accept the resulting benefit made available to all would not itself change this view.

A word of caution must be expressed here. It is the strong view of the Commission that activities of a State or County Committee of a political party intended to benefit one or more, but not all, of the candidates of that party in a primary election would be totally improper. Proof of such intent might be found on direct evidence, or by inference to be drawn from activities which, though neutral on their face, caused a result which could reasonably only be said to show such intent.

The term "targeting research" and "polling research" are not defined in your letter. To the extent that those activities represented activities which could clearly be said, on a review of all of the facts and circumstances, to be on behalf of a clearly identified candidate in the primary election, those activities might well be allocable to the candidate if effected with the cooperation or authorization or consent of that candidate.

"Targeting research", which the Commission understands to mean efforts to identify previous voting patterns on the basis of age, ethnic, economic and other similar criteria, and the statistical and other analyses of historical voting patterns, would be considered proper, so long as that activity met the test described above of intent to benefit all of the candidates of your party. "Polling research" might or might not be appropriate. A poll which included the name of any candidate of your party, or which tested the relative strength of candidates of your party, would almost certainly be regarded as improper by the Commission. It is difficult to imagine how any such poll

could be constructed which would be perceived as fair by all of the candidates involved, and the possibilities for abuse appear substantial. Issue polls and issue research, on the other hand, would be considered proper, so long as the activity met the test described above of intent to benefit all of the candidates of your party.

It is the view of the Commission that the activities of the kind considered appropriate in this letter described in subparagraph (a) and (b) above, carried out on behalf of all the candidates of the party in the primary election, including the candidates for nomination for the office of Governor, would not be allocable to any of those candidates, including the candidate who ultimately becomes the party's nominee for Governor, and would not count against the expenditure limit of any candidate, including the candidate who may become the party's nominee for Governor.

The Commission recognizes that some benefit from these activities will necessarily accrue to the general election campaign of the candidate who wins the primary election. The Commission has concluded that activities of the State Committee of a political party of the kind considered appropriate in this letter, carried on for the benefit of all of the candidates of that party prior to the date of the primary election, will not be allocable to the candidate of that party in the general election and will not be chargeable against the expenditure limit of that candidate.


The Commission recognizes its responsibility to protect the integrity of the contribution limit and the expenditure limit. The Commission also recognizes the political reality that persons who are limited by law to a contribution not in excess of \$1500 to any candidate may give larger amounts to the State Committee of a political party in the context of the primary election. The Commission is satisfied, however, that a person making such a contribution to be used for the purposes permitted in this letter does so without assurance that the State Committee will use that contribution in ways which ultimately benefit the contributor's preferred candidate, and the person making the contribution to the State Committee does so in the face of the uncertainty of the outcome of the primary election. The Commission is satisfied that the risk to the integrity of the contribution limit by contributions to the State Committee in the primary election in excess of the \$1500 contribution limit is to a substantial extent lessened by these factors, and that the role of the State and other political party committees should not be weakened by regulations or other actions of the Commission, except to the extent that the statute requires such limitation.

Question two in your letter asks whether all State Committee activities which do not violate N.J.S.A. 19:25-16.16 are insulated from allocation to any candidate for Governor and

computation against the relative spending limit even if a candidate ultimately derives a benefit from them. The Commission feels that the question is too broad to be answered in the abstract in its present form. Activities on behalf of a clearly defined candidate, conducted with the authorization or consent or approval of the candidate are not insulated from allocation to a candidate or from inclusion in the spending limit, except where otherwise expressly permitted by statute. While the Commission is satisfied that receipt of benefits alone will not constitute consent or authorization or cooperation, activities on behalf of the candidate made with the consent, cooperation or authorization of the candidate cannot be said to be immune, particularly if the activities are beyond those routinely carried on by a State or other Committee of a political party on behalf of all of the candidates of that party.

Section 29(d) of the Act sets forth specific rules with respect to the activities of State political party committee in the general election. This differs substantially from the situation in the primary election. Accordingly, the expressions in this opinion, except to the extent that they specifically refer to the general election, are limited exclusively to the questions raised with respect to activities of the State political party committees in the primary election.

Your very truly,

  
Edward J. Farrell  
Counsel

EJF:dc

cc: Mr. Frederick M. Herrmann