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NATIONAL STATE BANK BLDG., SUITE 1215  
28 W. STATE STREET, CN-185  
TRENTON, NEW JERSEY 08625-0185  
(609) 292-8700

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April 18, 1989

Honorable Marion Crecco  
Assemblywoman 30th District  
1029 Broad Street  
Bloomfield, NJ 07003

Advisory Opinion No. 08-1989

Dear Assemblywoman Crecco:

The Commission has directed me to issue this response to your recent request for an advisory opinion concerning the reporting requirements of the Candidate Financial Disclosure Statement Act (hereafter, "the Act"), N.J.S.A. 19:44B-1 et seq.

You have stated that you have an ownership interest in two real estate properties which as of this date have not realized any profit. You have further orally advised the Commission that during calendar year 1988 one of these properties, a condominium, did not produce any income. You have also orally advised that the other property, a rental house, did produce income in calendar year 1988 in excess of \$1,000, but expenses associated with the rental of the house exceeded that income. Finally, you have advised that neither of these properties are located in any city in which casino gambling is authorized.

The Act defines the word "income" to mean "...any money or other thing of value received, or to be received, as a claim on future services, whether in the form of a fee, expense, allowance, forbearance, forgiveness, interest, dividends, royalty, rent, capital gain, or any other form or recompense, or any combination thereof..."; see N.J.S.A. 19:44B-1(b) (emphasis added). While the Act does not specifically state whether reportable "income" means gross income before deductions for expenses, the Commission believes that was the legislative intent because the salutary purpose of the Act is to promote disclosure. Therefore, the receipt in a calendar year of rent of more than \$1,000, or the legal creation of such a right to receive \$1,000 at a future date, results in "income" subject to disclosure under the Act. Specifically, income in the form of rents is subject to disclosure as a category of unearned income pursuant to N.J.S.A. 19:44B-4(b). Such rental "unearned income" is subject to reporting if the amount exceeds \$1,000 regardless of any expense incurred in order to generate such revenue.

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Therefore, in regard to calendar year 1988, under the facts you have presented, you are required to report the source of income for the one property that produced rents, but you are not required to undertake any reporting for the property that did not produce such revenue. As you know, although you must report the source of the income, the Act does not require reporting of the amount received.

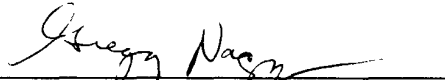
Although your inquiry does not specifically raise this question, please note that at such time as these properties may be sold by you, any capital gain you realize as a result of such a sale is included in the definition of "income" cited above, and therefore the source (i.e., purchasers) will be subject to disclosure if such capital gain exceeds \$1,000.

Thank you for your inquiry, and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY:

  
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GREGORY E. NAGY

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