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September 12, 1989

Alice Van Veen, Chairman  
Butler Republican County Committee  
12 Woodland Avenue  
Butler, NJ 07405

Advisory Opinion 18-1989

Dear Ms. Van Veen:

The Commission has directed me to issue the following response to your request for an advisory opinion, received August 15, 1989. You have asked if members of the Morris County Republican Committee representing the Borough of Butler (hereafter, "Butler Republican County Committee members") may raise and expend funds to pay attorney expenses incurred for the purpose of opposing the holding of a special primary election for a Republican party nominee for a seat on the Butler Borough Municipal Council. The special primary election will be held on September 12, 1989 pursuant to a Superior Court Order declaring a tie vote in the regular municipal primary election.

You write that the Butler Republican County Committee members collectively oppose the special primary election and contend that the Morris County Republican Committee has sole statutory authority to name the party nominee. Since the receipt of your letter, John Oroho, Esq., the attorney representing the Butler Republican County Committee members, has advised the Commission that a hearing was conducted at the end of August at which the Court ruled the special primary election will proceed, but certain provisions of the order concerning which voters may declare themselves as Republicans for purposes of participating in this special primary election were changed.

The Butler Republican County Committee members intend to raise contributions to pay for the legal expenses incurred, and Mr. Oroho had advised the Commission that these funds will not be deposited into or expended from any account controlled by the Morris County Republican Committee, which currently files quarterly reports (Form R-3) with the Commission. You write that the treasurer of the Butler Borough Republican Club will be handling these funds, which will be used exclusively for the legal fees or, if any funds are remaining, be donated to the club. The Commission has no record of receiving reports from the Butler Borough Republican Club, or from the Butler Borough Republican Municipal Committee.

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You have asked whether, based on these facts, any violation of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., (hereafter, the Act), would occur.

Implicit in your inquiry is the understanding that the Butler Republican County Committee members collectively constitute the Butler Borough Republican Party Municipal Committee; see N.J.S.A. 19:5-2, which states that the elected members residing in a municipality constitute that party's municipal committee. The Act prohibits a municipal political party committee from receiving or expending funds in aid of any party candidate before the date of a primary election; see N.J.S.A. 19:44A-11.<sup>\*</sup> The issue therefore presented by this inquiry is whether funds raised or expended by a municipal political party committee to contest the holding of a special primary election are in furtherance of, or in aid of the candidacy, of all or any of the special primary election candidates and therefore prohibited under N.J.S.A. 19:44A-11.

The Commission is satisfied that raising or expending funds for the limited purpose of contesting the holding of a special primary election is not activity in furtherance of the candidacy of any candidate running in that special election, and therefore not under the statutory prohibition. The legislative purpose of the restriction was to limit the role a political party played in its own primary election, and to provide an opportunity for political party candidates to be elected without funds being expended on their behalf by the official party apparatus. However, that legislative intent should not be construed to prevent a political party from contesting in court what it perceives as defects in the primary election process itself. To interpret N.J.S.A. 19:44A-11 to mean that a municipal political party committee is prohibited from spending funds to litigate municipal primary election procedures would leave the municipal party powerless to promote its legitimate interest in the primary election process, and the statute cannot be so construed.

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\* Please note that N.J.S.A. 19:34-33 and 19:34-52 also impose restrictions on political party activities in primary elections. However, since these statutes are not part of the Reporting Act, the Commission has no jurisdiction to offer any opinion on their applicability.

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The Commission does wish to express its concern that no quarterly reports have been received from the Butler Borough Republican Municipal Committee. Please note that all political party committees are defined as "continuing political committees" (see N.J.S.A. 19:44A-3(n)), and all continuing political committees must file quarterly reports (Form R-3) with the Commission pursuant to N.J.S.A. 19:44A-8(b)(2). Failure to file timely reports can result in imposition of civil penalties pursuant to N.J.S.A. 19:44A-22, and intentional violations are subject to criminal sanctions pursuant to N.J.S.A. 19:44A-21. Therefore, the Commission wishes to take this opportunity to urge the Butler Republican County Committee members to take immediate steps to bring the Committee into compliance. The funds raised and expended for contesting the special primary election should be reflected in its quarterly reports.

Please do not hesitate to seek out the assistance of the Commission staff in meeting any of the reporting obligations under the Act.

Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY:   
GREGORY E. NAGY

GEN/cn  
cc/John Oroho, Esq.