



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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November 28, 1989

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Brian W. Fahey, Chairman  
BOARD OF CHOSEN FREEHOLDERS  
655 Lawnside Place  
Westfield, NJ 07090

Advisory Opinion No. 25-1989

Dear Mr. Fahey:

The Commission has directed me to issue the following response to your request for an advisory opinion, which was received on October 16, 1989. You have asked whether an article appearing in the Summer, 1989 edition of the Union County Freeholder Bulletin must be construed as a "political communication" aiding or promoting your 1989 general election for State Assembly in the 21st district. If so, the costs paid by Union County for the production and circulation of the article are subject to the disclosure requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, "the Act").

You have submitted for the Commission's consideration a four-page pamphlet entitled, Freeholder Bulletin, which indicates on its masthead that it is the "Union County Freeholder Newsletter," Summer, 1989. (The contents of the newsletter is hereby incorporated by reference in this opinion.) The front page of the Freeholder Bulletin contains an article under the heading, "Fahey, Cohen Seek to Curb Auto Insurance Costs," beneath which appears a photograph of yourself and Freeholder Neil Cohen, and a ten-paragraph article beginning with the statement that Freeholder Cohen and you, with the support of the other freeholders, have agreed to place a non-binding referendum on the November ballot ". . . to allow the public to voice their opinion regarding persistently escalating car insurance costs which have escaped substantial reforms for many years." The article describes the role of yourself and Freeholder Cohen in proposing and adopting a resolution which was adopted on April 27, 1989 by the Union County Board of Chosen Freeholders to place the auto insurance referendum on the ballot, and generally promotes favorable voter consideration of the referendum. After publication of this article, the New Jersey Supreme Court ruled that the non-binding referendum question was illegal and ordered its removal from the general election ballot; see Board of Chosen Freeholders of Mercer County v. Szaferman, 117 N.J. 94 (1989).

The article you have submitted does not explicitly refer to your 1989 general election Assembly candidacy. Nevertheless, New Jersey case law precedent has held that the cost of a communication paid for at public expense can be deemed subject to campaign reporting requirements even in the absence of a specific reference to a candidacy or election. For example, a communication circulated and paid for by a local public utility which contained laudatory statements about its chairman, who was at the time also a legislative candidate, was held to be reportable as a campaign contribution by that authority even though it made no explicit reference to the candidacy; In re Daves, 156 N.J. Super. 195 (App. Div. 1978). Also, the cost of a newsletter containing favorable biographical information about three school board candidates, which newsletter was circulated prior to a school board election in a publication paid for and distributed by the school board, were held to constitute a reportable campaign contribution notwithstanding the absence of an explicit reference to the approaching school election or their candidacies; ELEG v Brown, 206 N.J. Super. 206, (App. Div. 1985).

In order to provide guidance to incumbent officeholders, to opposing candidates and to public bodies which circulate literature to constituents, the Commission recently promulgated a regulation (see 21 N.J.R. 703(b) and 21 N.J.R. 1379(a)) which attempts to balance the interests of campaign disclosure with the legitimate needs of officeholders to communicate with their constituents; see N.J.A.C. 19:25-11.10 (copy enclosed). Of particular relevance are subsection (b), which sets forth the criteria for determining the circumstances under which a communication will be deemed "political" even in the absence of a reference to a candidacy, and subsection (c) which exempts from the criteria in (b) a communication concerning a government event or development requiring constituent action.

After examining the article and the facts submitted herein, the Commission is satisfied that the subject article comes within the intent of subsection (c), if not its precise language, and therefore the article is not a reportable campaign communication.

The text of subsection (c) provides as follows:

(c) Nothing contained in (b) above shall be construed to require reporting of a communication by an incumbent officeholder seeking reelection which communication is circulated to constituents for the sole and limited purpose of communicating governmental events requiring those constituents to make applications or take other actions within a specified time period, or for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

The purpose of the article you have submitted is notification to your constituents that you have co-sponsored a referendum question that you inferentially urge them to approve at the forthcoming election. The placement of a referendum question on the ballot is a significant

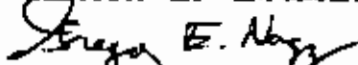
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"governmental event" which, but for subsequently being struck down by the Supreme Court, would have required action by your constituents, i.e., voting to approve or disapprove the referendum. Since the article was intended and had the effect of notifying county residents of the existence of the referendum question, the article comes within the exemption set forth in subsection (c) of the regulation.

The Commission is aware that as a county freeholder running for State Assembly you are not strictly ". . . an incumbent officeholder seeking reelection. . ." as provided in subsection (c). However, the intent was to provide any officeholder undergoing an election contest a reasonable opportunity to communicate to constituents the development of a substantive governmental event requiring constituent action, without creating campaign reporting repercussions. Typically, the exemption is applied in the setting of an incumbent seeking reelection, but as your case demonstrates, it must be applicable to any elected officeholder seeking any other elective office if it is to serve its intended purpose.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

  
GREGORY E. NAGY

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