



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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November 28, 1989

Steven Rogers
9 Jeremy Court
Dayton, NJ 08810

ADVISORY OPINION 26-1989

Dear Mr. Rogers:

The Commission has directed me to issue the following response to your request for an advisory opinion, which was received on October 18, 1989. You have asked whether the costs of several newspaper advertisements which you neither authorized nor paid for must be reported by you as a campaign contribution to your 1989 general election candidacy for South Brunswick Township Committee. Under the facts that you have presented in this inquiry, for the reasons stated below, the Commission finds that you are not required under the provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., (hereafter, "the Act"), to report the costs of the advertisements that are the subject of your inquiry.

You write that you were the Republican Party candidate for South Brunswick Township Committee in the 1989 general election. Other Republican members of the township committee include Mayor Howard Bellizio and Committeeman Warren Monroe, neither of whom were running in the 1989 election.

You further write that beginning in early September, a series of advertisements concerning the upcoming municipal election appeared in the local newspaper, The Central Post, and you have submitted copies of five separate advertisements which are hereby incorporated by reference in this response. You note that the substance of the advertisements is critical of the two Republican members of the Committee named above. However, the advertisements also contain complimentary commentary regarding your candidacy as a Republican. For example, the advertisement appearing on October 12, 1989 directs an open letter to your 1989 general election opponent, Democrat Committeeman Ted Cherry, and indicates that the writer will vote for you notwithstanding his criticism of the Republican members.

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All of the advertisements were apparently written by Dr. Alexander Molnar, an interested resident, and apparently were purchased by him. You write that although you personally met with Dr. Molnar after the first advertisement appeared, you saw the advertisements only after they had been submitted to the newspaper for publication. You state that you did not suggest that the advertisements be purchased, you did not authorize them, you did not coordinate their publication with your campaign, and at no time did you accept them as part of your campaign. You suggest that the advertisements were purchased by this individual to express his personal feeling about certain issues and personalities, but the advertisements do not address issues that have been raised as part of your candidacy. Furthermore, you note that you have not been provided with any written notice pursuant to N.J.S.A. 19:44A-8(a)(2) of the cost of these advertisements.

The facts you have submitted in this inquiry appear substantially similar to those presented to the Commission in Advisory Opinion No. 9-1985 (copy enclosed). In that opinion, a municipal candidate specifically disavowed any knowledge or acceptance of a flier mailed to residents which endorsed his candidacy but made critical remarks about another candidate on the ballot. In that opinion, the Commission concurred that under such circumstances, a candidate has "a fundamental right" to reject any contribution, including one that is an independent expenditure. An "independent expenditure" is one that is undertaken without the cooperation or consent of a candidate; see Commission Regulations N.J.A.C. 19:25-12.7 and 19:25-12.8 (copies enclosed).

New Jersey Courts have held that the cost of producing and circulating literature to voters that aids or promotes a candidate in an election, even in the absence of a specific exhortation to vote for that candidate, can give rise to a reportable campaign contribution to that candidate; see In re Dawes, 156 N.J. Super. 195, (App. Div. 1978); ELEC v. Brown, 206 N.J. Super. 206, (App. Div. 1985). However, an essential element in imposing reporting requirements on a candidate under such circumstances is that the candidate exercised some degree of control over, or at least acquiesced in, the production or circulation of the literature.

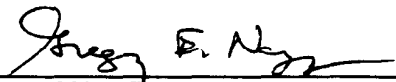
Under the facts you have presented, you state that not only did you lack any control over the content or timing of the newspaper advertisements, but also that you never even approved or otherwise acquiesced in their content. Based on these facts, the Commission concludes that the expenditures were undertaken independently of your campaign and therefore you cannot be required to report the costs of these advertisements as a contribution to your candidacy. However, the Commission does not intend that any statement contained in this advisory opinion be construed to excuse from campaign reporting requirements any persons who paid for, prepared or otherwise circulated these advertisements; see N.J.A.C. 19:25-12.7 and 19:25-12.8 setting forth requirements for independent expenditures. Please note that if your campaign had received written notice of these expenditures, your campaign would be required to file a notice of rejection pursuant to N.J.A.C. 19:25-9.6(b)(2) (copy enclosed).

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Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY F. NAGY
Legal Director

GEN/jah
Attachment

ATTACHMENT TO
A.O. 26-1989

19:25-12.7 Independent expenditures

(a) Independent expenditures shall be subject to all of the reporting and disclosure requirements of the act. Every person or political committee making an independent expenditure and required to report under the act shall include in the reports required under the act a sworn statement on a form provided by the commission that such independent expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, the candidate or any person or committee acting on behalf of the candidate.

(b) Any advertisement which is an independent expenditure shall include a clear and conspicuous statement that the advertisement is not authorized by any candidate and shall state the name and address of the person or organization making the expenditure.

As amended, R.1980 d.348, effective August 6, 1980.

See: 12 N.J.R. 439(b), 12 N.J.R. 557(a).

As amended, R.1984 d.324, effective August 6, 1984.

See: 16 N.J.R. 1044(a), 16 N.J.R. 2154(a).

Recodified from 19:25-12.4

ATTACHMENT TO
A.O. 26-1989

19:25-12.8 Reporting of independent expenditures

(a) Any person, not acting in concert with any other person or committee, who expends personally from his own funds without being reimbursed more than \$1,000 to support or defeat a candidate or more than \$2,500 to aid the passage or defeat of a public question shall be required to report all such expenditures in accordance with (b) below.

(b) Expenditures required to be reported pursuant to (a) above shall be reported either:

1. To the campaign treasurer of the candidate or political committee, or organizational treasurer for a continuing political committee, on whose behalf such expenditure or contribution was made, or to his or her deputy, who shall cause the same to be included in his or her report to the commission subject to the provisions of sections 8 and 16 of the act; or

2. Directly to the commission at the same time and in the same manner as a political committee subject to the provisions of section 8 of the act.

As amended, R.1980 d.348, effective August 6, 1980.

See: 12 N.J.R. 439(b), 12 N.J.R. 557(a).

As amended, R.1984 d.324, effective August 6, 1984.

See: 16 N.J.R. 1044(a), 16 N.J.R. 2154(a).

Recodified from 19:25-12.5.

ATTACHMENT TO:
A.O. 26-1989

19:25-9.6 Expenditures on behalf of a candidate

(a) When a political committee, or an individual seeking party office, makes or authorizes an expenditure on behalf of a candidate, the committee or individual shall provide within 48 hours of the expenditure written notice to the candidate containing the name and address of the committee or individual, the amount of the expenditure, the date the expenditure was made or authorized and the nature and purpose of the expenditure.

(b) In the event a candidate receives a written notice pursuant to (a) above of an expenditure exceeding \$100.00, the candidate must:

1. Report pursuant to (c) below the receipt of an in-kind contribution from the contributor identified in the written notice; or

2. File the written notice with the Commission within 48 hours of receipt with a statement indicating that the candidate rejects the expenditure as part of the candidate's campaign.

(c) A candidate receiving written notice of an expenditure on behalf of his or her candidacy and accepting the expenditure as promoting his or her candidacy must report such an expenditure as an in-kind contribution made by the contributor identified in the written notice.

1. If the candidate is spending more than \$2,000 and therefore filing reports (Form R-1) pursuant to N.J.A.C. 19:25-9.4, Reporting dates and periods covered, the in-kind contribution should be reported in the pertinent report period, that is, 29-day preelection, 11-day preelection, 20-day postelection; or

2. If the candidate is spending \$2,000 or less and therefore filing a sworn statement (Form A-1), the contribution must be reported on Form C-1 pursuant to N.J.A.C. 19:25-9.9(c).

R.1984 d.324, effective August 6, 1984.

See: 16 N.J.R. 1044(a), 16 N.J.R. 2154(a).

Amended by R.1989 d.100, effective February 21, 1989.

See: 20 N.J.R. 3009(a), 21 N.J.R. 459(a).

Added text to (a) "within 48 hours of the expenditure"; deleted text from (b) and (c) and substituted new.