



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CM 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

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COUNSEL

November 28, 1989

Arthur Silverstein, Treasurer
Stop Tax Oppression Promptly, Inc.
1138A Thornbury Lane
Lakehurst, New Jersey 08733

Advisory Opinion No. 29-1989

Dear Mr. Silverstein:

The Commission has directed me to issue the following response to your request for an advisory opinion, which was received on October 31, 1989. You have asked whether the cost of litigation expenses undertaken by the Stop Tax Oppression Promptly, Inc. (hereafter, "STOP"), an organization formed to promote the passage of a referendum to change the township form of government in Manchester Township, must be reported pursuant to the requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., (hereafter, "the Act").

You write that the STOP committee raised and expended funds to circulate petitions to put before the voters of Manchester Township a public question on whether or not the form of government should be changed pursuant to the Faulkner Act; see N.J.S.A. 40:69A-20. You further write that the STOP committee obtained the services of an attorney to challenge the legality of the adoption of an ordinance to establish a Charter Study Commission on the grounds that the adoption had violated the Open Public Meetings Act N.J.S.A. 10:4-6 et seq. If the ordinance had been adopted legally, it would have precluded the referendum question from being presented to the voters because the municipal governing body had acted on the ordinance prior to the filing of STOP's petitions. As a result of this litigation, the ordinance was overturned and the STOP committee succeeded in having its petitions certified for a special election on January 9, 1990.

You have asked whether the legal fees paid by STOP for the purpose of contesting and overturning the municipal ordinance constitute a reportable expenditure under the Act. As noted in your inquiry, a political committee aiding or promoting the passage of a public question must file campaign reports only if it expends more than \$2,500 for that purpose; see Commission Regulation N.J.A.C. 19:25-12.8(a) (copy enclosed). Therefore, if the expenditure for litigation fees is reportable, it would be included in the calculation of total expenditures to determine whether the \$2,500 threshold had been passed.

For the reasons stated below, the Commission finds that the litigation fee expenditure is reportable by STOP.

An analogous issue to the one raised by this inquiry was considered by the New Jersey Supreme Court in its opinion in ELEC v. Citizens to Make Mayor-Council Government Work, 107 N.J. 380 (1987). The facts in that case concerned a political committee that circulated petitions that resulted in the holding of a recall election of a municipal official. The committee argued unsuccessfully that the costs associated with circulating the recall petitions were not subject to reporting under the Act because the petitions themselves merely enabled the recall question to be presented to the voters but did not necessarily promote the actual passage of the question and the recall of the official. Under the committee's theory, only expenditures made after the filing of the petitions and after certification of the question for the recall election could be subject to reporting because only those expenditures would be promoting an election result, i.e., passage of the recall.

The Act defines the term "political committee" as any two or more persons acting jointly which is organized to, or does, aid or defeat the passage of a public question in any election; see N.J.S.A. 19:44A-3(1).

In the Citizens opinion, the Supreme Court held that a group organized to secure signatures to force a recall election was in fact a "political committee" under the Act, and that the expenditures for circulating petitions were reportable. The court reasoned that the fundamental purposes of the Act were to compel public disclosure of all activities affecting the political process. Specifically, the court approved the observation of the Appellate Division in the same case that "[i]t would defy logic to find a legislative concern with the recall election but not with the preliminary petition effort . . . [which] is as much a part of the overall electoral process as the voting itself." Citizens, supra, at 387, citing the Appellate Division opinion, 208 N.J. Super. at 586 (footnote omitted).

Under the facts you have submitted, it is evident that in the absence of the litigation undertaken and paid for by STOP, the public question could not have been certified for a special election. The Commission does not perceive any significant distinction for campaign reporting purposes between those expenditures paid for circulating petitions to place a public question on the ballot, and those expenditures undertaken for legal expenses to insure that those petitions result in the holding of a special election on the public question.

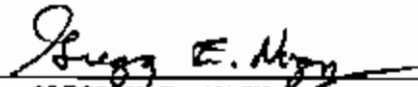
For the above reasons, STOP is hereby advised that the litigation expenditures must be included in determining whether or not more than \$2,500 was expended by STOP to promote the adoption of the public question, and if STOP exceeded that threshold, the expenditure must be disclosed on reports filed by STOP pursuant to the Act.

Please also be advised that a political committee aiding or promoting the adoption of a public question has an obligation to file a Designation of Campaign Treasurer and Depository (Form D-2) no later than the tenth day after the receipt of any contribution or after making or incurring any expenditure, whichever comes first; see N.J.S.A. 19:44A-10. Additionally, if more than \$2,500 is expended, campaign finance reports must be filed 29 and 11 days before the election, 20 days after the election, and every 60 days thereafter until all campaign debts and surplus funds have been dissolved; see N.J.S.A. 19:44A-8(a).

Thank you for this inquiry.

Vary truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: 
GREGORY E. NAGY

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