



State of New Jersey

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January 23, 1992

Philip J. Maenza, Esq.
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150 Fairfield Road
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Re: Advisory Opinion No. 01-1992

Dear Mr. Maenza:

The Commission has directed me to issue this response to your recent request for an advisory opinion. You have asked whether funds solicited by your campaign committee to pay for litigation expenses in an election contest court proceeding are contributions subject to the reporting requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, et seq., (hereafter, the Reporting Act). Kindly be advised that the Commission is of the opinion that the fundraising activity you described is subject to the requirements of the Reporting Act.

You have written that you were a candidate for municipal office in the November 5, 1991 general election in East Hanover Township, Morris County. Upon the completion of a formal recount pursuant to N.J.S.A. 19:28-1, it was determined that you had been elected to office by thirteen votes over the losing candidate. The losing candidate has since filed a lawsuit in Superior Court, Morris County, pursuant to N.J.S.A. 19:29-1 contesting the results of this election, and you have been named as a defendant in that lawsuit. You are anticipating soliciting postelection contributions to defray your anticipated litigation expenses, including counsel fees.

The records of the Commission indicate that for your 1991 general election candidacy, you filed a Form SR-1 designating a political committee, "Committee for Open Government," as your campaign fund and as your campaign reporting vehicle. This political committee filed campaign reports on behalf of yourself and four other East Hanover Township candidates, and on December 3, 1991, filed a 20-day postelection report indicating a remaining balance of \$1,605.97. Since this committee has not been dissolved, it will be required to file a 60-day postelection report (Form R-1) for the 1991 general election on January 24, 1992.

An election contest proceeding may be initiated in the Superior Court of New Jersey by a defeated candidate after the completion of recount proceedings; see N.J.S.A. 19:29-2 and 19:29-3. At the completion of a trial conducted under such contest proceedings, a judgment may be entered overturning the Certificate of Election issued to a winning candidate, and declaring a losing candidate as elected; see N.J.S.A. 19:29-8 and 19:29-9.

The Commission has previously ruled that surplus campaign funds, remaining unspent after the date of an election, may be appropriately spent for litigation expenses incurred by a candidate engaged in election contest litigation; see Advisory Opinion No. 06-1989 (copy enclosed). In your inquiry, you indicate that unspent campaign funds remaining after the date of the election may not be sufficient to meet litigation expenses, and you anticipate conducting postelection fundraising activity to raise funds for that purpose. Therefore, you have asked whether such fundraising must be subject to all campaign deposit and reporting requirements.

The Commission notes that the Reporting Act anticipates that fundraising activity may occur after the date of an election. As has been noted above, a candidate for election is required to file both preelection and postelection campaign reports. Further, the Reporting Act requires disclosure of "all contributions," without regard to whether such contributions are received before or after the date of an election; see N.J.S.A. 19:44A-16(a). Periodic campaign reports must continue to be filed by the candidate, or by a political committee designated by a candidate, until a report is filed with a final accounting of campaign funds, and all transactions relating to the election; see N.J.S.A. 19:44A-16(b).

Since an election contest proceeding in Superior Court can result in the election being overturned, the Commission believes that financial activity undertaken to pay for litigation expenses arising out of such a contest is election related and must be subject to all of the provisions of the Reporting Act. The public policy of the Act is to require the reporting of contributions received to aid or promote the election or defeat of any candidate for public office without any specific distinction between preelection or postelection activities; see N.J.S.A. 19:44A-2. By disclosing the identity of postelection contributors, the Reporting Act permits voters and the citizenry at large to have access to information in regard to possible sources of influence over an elected officeholder. A postelection contribution that may enable an elected candidate to defend the legality of his election generates a similar public disclosure interest as exists for a preelection contribution that enables a candidate to solicit a winning total of votes.

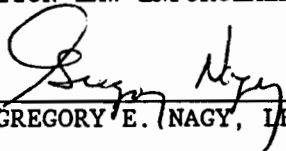
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The Commission assumes that since you have designated a political committee to accept contributions and make expenditures for you in the 1991 general election, you will continue to deposit contributions and make expenditures relevant to the election contest litigation expenses from that joint-candidate campaign fund. If this is not the case, you should consult with the Commission's staff to review any other reporting alternatives.

Thank you for your inquiry.

ELECTION LAW ENFORCEMENT COMMISSION

BY:


GREGORY E. NAGY, LEGAL DIRECTOR

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