



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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March 26, 1992

Honorable C. Louis Bassano
State Senator, 21st District
324 Chestnut Street
Union, New Jersey 07083

Advisory Opinion No. 02-1992

Dear Senator Bassano:

The Commission has directed me to issue this response to your recent request for an advisory opinion. You have asked whether you may use campaign funds remaining unspent from your 1991 State Senate general election candidacy to pay federal and State taxes on dividends generated by those surplus funds. Kindly be advised that the Commission is of the opinion that this proposed use does not violate Commission regulation N.J.A.C. 19:25-7.4 prohibiting personal use of such campaign funds by a candidate.

The Commission notes that you were a successful candidate for State Senate in the 21st Legislative District in the 1991 general election. You filed with the Commission a final campaign report (Form R-1) on January 28, 1992, which report indicated that a disbursement in the amount of \$73,636.60 was made as a transfer to a 1993 primary election account. The report also listed two accounts as depositories for campaign funds, one of which, Fidelity Cash Reserves, appears to be an investment equity under the name "Citizens for Bassano Campaign Fund." You have submitted a copy of a Form 1099-DIV indicating that this investment account generated gross dividends of \$4,991.23 during 1991.

The Commission has recognized and approved in past advisory opinions the practice of using an equity investment account for the purpose of holding surplus campaign funds for a future election candidacy; see Advisory Opinions Nos. 01-1990, 02-1989, and 34-1980 (copies enclosed for your convenience). These opinions permit a candidate to invest surplus campaign funds, provided that they are ultimately returned to a depository subject to reporting and that the ultimate disposition of all such surplus funds is reported pursuant to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act).

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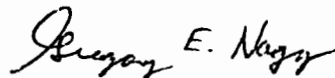
The Commission Regulation controlling use of surplus campaign funds permits a candidate to retain such funds in a campaign account for a future election campaign of that candidate; see N.J.A.C. 19:25-7.4(b)6. As has been previously noted, your final campaign report for the 1991 general election designated the Fidelity Cash Reserve account as a campaign account. However, the Commission has no record of receiving a Candidate Designation of Campaign Treasurer and Depository (Form D-1) on behalf of your anticipated 1993 primary election candidacy.

Assuming you choose to file a Candidate Designation of Campaign Treasurer and Depository (Form D-1) to formalize the status of the Fidelity Cash Reserves account as your 1993 primary election account, the Commission believes that use of funds in that account to pay federal and State tax liabilities generated by the dividends earned in the account is an appropriate campaign expense in regard to your future candidacy. The Commission recognizes that at this early date it is unlikely that a candidate would make any public announcement of candidacy for an election that will not occur until 1993. However, for the purposes of the Reporting Act, your statement in your final report for the 1991 general election that you are holding campaign funds for the 1993 primary election compels the result that you are assuming campaign reporting obligations in regard to that future election at this time. The filing of the Form D-1 for your 1993 primary election candidacy will be further confirmation that you will be filing campaign reports (i.e., 29-day preelection report, etc.) in regard to that future election, and those 1993 primary election campaign reports must reflect the disposition of the surplus funds that are currently being held by you.

The Commission also notes that your final 1991 general election campaign report indicates the existence of a second campaign account at the "Union Center National Bank." If this account also remains open, you should file a Candidate Designation of Campaign Treasurer and Depository (Form D-1) for the 1993 primary election pertinent to this account as well.

Thank you for your request.

Very truly yours,


GREGORY E. NAGY
Legal Director

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