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January 19, 1994

Andrew G. Hodulik
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Advisory Opinion No. 12-1993

Dear Mr. Hodulik:

The Commission has directed me to issue the following response to your recent request for an advisory opinion. You have asked if donations of cash made for the purpose of conducting a reception for the swearing-in of an elected public officeholder, specifically Middlesex County Freeholder-Elect David B. Crabiel, are subject to the reporting and contribution limit requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act). For the reasons stated below, the Commission holds that such donations made for the purposes you describe are subject to the provisions of the Act.

You have written that Freeholder-Elect Crabiel, who was elected in the November 2, 1993 general election, will be sworn into office in a ceremony that will be followed by a reception. Funds necessary to pay for the expense of the ceremony and reception will be solicited, but there will not be any ticket sales or other admission fee for attending the swearing-in or reception. All funds collected will be applied for the costs of the ceremony or the reception. Although you do not so state expressly, the Commission understands as part of your fact record that under no circumstances will any donated funds be deposited in a campaign account or, applied for any candidate-related purpose of Mr. Crabiel or any other candidate or reporting entity.

The Act defines the term "contributions" to include all transfers of money or other thing of value to any "candidate," or "candidate committee," see N.J.S.A. 19:44A-3(d), as amended by P.L. 1993, c. 65, sect. 2. A "candidate" is defined at N.J.S.A. 19:44A-3(c) as follows:

"The term 'candidate' means: (1) an individual seeking election to a public office of the State or of a county, municipality or school district at an election; ... and (2) an individual who shall have been elected or failed of election to an office, for which he sought election and who receives contributions and makes expenditures for any of the purposes authorized by section 17 of P.L. 1993, c. 65 during the period of his service in that office" (emphasis added).

This definition includes within its scope an elected officeholder who is receiving funds for any of the purposes set forth in the cited statute (that is, section 17 of P. L. 1993, c. 65). The text of Section 17 therefore becomes critical to the response to the question you have presented. If Section 17 authorizes an elected officeholder to expend campaign funds for the purpose of paying for ceremonies and a reception in connection with taking an oath for the public office to which the officeholder was elected, funds collected for that purpose are subject to the provisions of the Act.

Section 17(a) sets forth the permissible purposes for which campaign funds may be applied. Among these permitted purposes is spending campaign funds for: "... the payment of ordinary and necessary expenses of holding public office," see subsection 6 of Section 17(a). No statutory definition is provided for the term "ordinary and necessary expenses of holding public office."

The Commission is satisfied that expenses associated with the swearing-in ceremonies of an elected public officeholder fall within the statutory term "ordinary and necessary expenses of holding public office." It is a customary practice for many elected public officials to celebrate the occasion of their assuming the duties of public office. Conducting such a celebration may have a beneficial governmental and social impact, and an elected officeholder should not be precluded by any overly-restrictive reading of the term "ordinary and necessary" from using campaign funds for such an officeholding activity. If the Commission were to rule that expenses of such ceremonies were not "ordinary and necessary," campaign funds could not be used to pay for them because the use would not be permissible under Section 17.

The Commission is further persuaded that permitting persons to provide donations to an elected officeholder without subjecting those donations to the reporting and contribution limit provisions of the Act raises a substantial risk of undue influence over that officeholder. Such donations are as potentially influential as are actual contributions to be used for campaign purposes and in the Commission's view there is no reason to treat them differently for reporting or contribution limit purposes. In any event, the Commission believes that if the Legislature intended for inaugural celebratory donations to be treated differently from campaign contributions, the Act would have contained specific directions to that effect, as was done for gubernatorial inaugural events, see N.J.S.A. 19:44A-18.1.

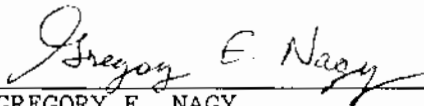
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The Commission therefore concludes that contributions received by an officeholder for the purpose you describe, including any made by the officeholder from personal assets, must be deposited in the candidate committee account and must be reported pursuant to the Act. All contributions are subject to the contribution limits in the Act, except any contribution made by the officeholder; see P.L. 1993, c.65, section 18(a).

Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 

GREGORY E. NAGY
Legal Director

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