



State of New Jersey

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

FREDERICK M. HERRMANN, PH.D.  
EXECUTIVE DIRECTOR

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DEPUTY DIRECTOR

GREGORY E. NAGY  
LEGAL DIRECTOR

August 25, 1994

Peter Sheridan, Esq.  
Cullen and Dykman  
One Riverfront Plaza  
Suite 1410  
Newark, New Jersey 07102-5497

ADVISORY OPINION 07-1994

Dear Mr. Sheridan:

The Commission considered your request for an advisory opinion on behalf of Schoolchildren First, Inc., a continuing political committee (hereafter, "Schoolchildren"), and at its meeting of August 24, 1994 directed me to issue this response. You have asked whether or not a continuing political committee (hereafter, CPC) may publicly designate a candidate as its "honorary chair" as well as undertake other activities related to the candidate without resulting in the candidate violating the prohibition in N.J.S.A. 19:44A-9h(1) precluding a candidate from participating in the direct or indirect management or control of a CPC.

SUBMITTED FACTS

You write that Schoolchildren First, Inc., is a not-for-profit corporation established on or about April 29, 1994 "... to promote and foster reform in public education by raising and spending money on certain activities in support of legislation as deemed appropriate by the trustees of the Schoolchildren." On May 4, 1991, Schoolchildren filed a Continuing Political Committee Statement of Organization (Form CPC-1) with the Commission indicating that the organization anticipated contributing or expending in excess of \$2,500 per year for New Jersey candidates or committees in future elections. You further write that Schoolchildren has opened a checking account and appointed officers, including an organizational treasurer. To date, however, the Commission notes that it has no record of a Designation of Organizational Treasurer and Depository (Form D-3) on behalf of Schoolchildren.

In your letter, you state that Schoolchildren anticipates appointing Jersey City Mayor Bret Schundler as its honorary chair. Specifically, Schoolchildren anticipates the following:

1. Listing Mayor Schundler on its letterhead and literature as its "honorary chair";
2. Sending a fundraising letter to potential contributors over the signature of Mayor Schundler;
3. Sending fundraising letters over the signature of its chairperson which would include discussion of Mayor Schundler's contributions to education reform; and,
4. Using Mayor Schundler as its principal spokesperson in a direct mail or mass media program developed to promote school choice legislation in New Jersey.

According to your letter, Mayor Schundler would have no authority to direct or control the implementation of the direct mail or media programs. Furthermore, any monies raised by Schoolchildren will not be contributed to any campaign committee of Mayor Schundler, nor will he have any authority to issue checks, or determine any policy issues. Mayor Schundler will have no authority to direct to whom Schoolchildren makes political contributions, and will not participate in the organization's decision making. He will not receive any compensation, and he will not have any management responsibilities.

Mayor Schundler was elected Mayor of Jersey City in the May, 1993 municipal election, and his term of office will run to May, 1997. He has designated a candidate committee which is currently filing reports with the Commission for the May, 1997 municipal election.

#### 1993 AMENDMENTS

The 1993 amendments to the Act permit a candidate to establish only a candidate committee and a joint candidates committee for the purposes of receiving contributions and making expenditures in an election, see N.J.S.A. 19:44A-9a. Prior to the enactment into law of the 1993 amendments, candidates commonly maintained in addition to their campaign accounts one or more continuing political committees (CPCs), frequently referred to in ELEC parlance as "personal PACs." However, the 1993 amendments limited the amount that a candidate could accept as a contribution in any election from a contributor. In order to make these contribution limits viable, the amendments limited a candidate to the establishment of the candidate committees described above, and specifically prohibited a candidate from establishing a continuing political committee, or "personal PAC." The text of the statutory prohibition at N.J.S.A. 19:44A-9h(1) is as follows:

"On and after the 366th day following the effective date of P.L. 1993, c. 65, no candidate shall establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of, any political committee or any continuing political committee" (emphasis added).

Pursuant to the 1993 amendments, no candidate may knowingly accept, and no continuing political committee may contribute, more than \$5,000 to a candidate committee in an election, see N.J.S.A. 19:44A-11.3b.

#### LEGAL ISSUE

May a candidate be listed as the "Honorary Chair" of a CPC, sign fundraising letters on behalf of that CPC, be the subject of communications paid for by the CPC discussing the candidate's "contributions to education reform," and serve as the principal spokesperson in direct mail or mass media programs of the CPC without violating the prohibition in the 1993 amendments to the Campaign Reporting Act against participating directly or indirectly in the management or control of a CPC?

#### DISCUSSION

The term "candidate" as defined in the Act means an individual who has been elected to office and who receives contributions and makes expenditures for the campaign purposes authorized in the Act, see N.J.S.A. 19:44A-3c(2). Mayor Schundler has been elected to public office and maintains a candidate committee, and therefore meets the statutory definition of "candidate." Accordingly, he is subject to the previously quoted prohibition against a "candidate" participating directly or indirectly in the management or control of a CPC, see N.J.S.A. 19:44A-9h(1). Applying the statutory text to the activities proposed by Schoolchildren, the Commission reaches the following results:

1. Mayor Schundler cannot be permitted to authorize Schoolchildren to list his name on its letterhead and literature as its "honorary chair." Such a title would be a signal that the candidate consented to be identified with the organizational goals and principles of the CPC. Notwithstanding the representation that Mayor Schundler would not "determine any policy issues," the fact the candidate permits the use of his name as "honorary chair" communicates his approval of and at least implicit participation in the formation of the CPC's policies. Contrary to the suggestion in your letter, it is not necessary that a candidate serve as a trustee, officer or employee of Schoolchildren to come under the scope of the statutory prohibition. Mayor Schundler, by assuming a title such as "honorary chair," assumes a position of influence over the policies and affairs of the CPC. This is because a candidate would not permit a CPC whose management and political goals were in conflict with the candidate's to bestow such a title as "honorary chair" on the candidate, nor would a CPC choose as its "honorary chair" a candidate who was in conflict with its management or political goals. Therefore, the

acceptance of such a title implicates some degree of participation in the management and affairs of the CPC, contrary to the plain language and intent of the statutory mandate of N.J.S.A. 19:44A-9h(1).

2. Mayor Schundler cannot be permitted to authorize the use of his signature by Schoolchildren for a fundraising communication. The Commission believes that a candidate who consents to the use of his or her name and signature for the fundraising purposes of the continuing political political would be directly participating in the management or control of the CPC within the meaning of the statutory prohibition. Fundraising is a critical and fundamental activity of a CPC. Indeed, it is difficult to conceive how a person who would play such an important role in a fundraising effort as proposed here could not be deemed under the statute to be participating at least indirectly in the management or control of the organization. The power to grant, withhold or withdraw the use of a candidate's signature or name provides the candidate with a degree of influence and control over the CPC that frustrates the statutory plain language and purposes of N.J.S.A. 19:44A-9h(1).

3. In regard to Schoolchildren's anticipated activity of sending a fundraising letter including in its text a discussion of Mayor Schundler's "Contributions to Education Reform," nothing contained in the text of N.J.S.A. 19:44A-9h(1) would preclude a CPC from making reference to or discussing the policies of a candidate or officeholder in communications it made to the public. This activity differs from the prior items because it does not rely on the consent of the candidate. Any CPC could circulate favorable or unfavorable commentary on a candidate without the candidate's permission or approval.

Although it has not been directly raised in the request, the possible applicability of the "political communication" regulation at N.J.A.C. 19:25-11.10(b) should be noted. Under that regulation, if a candidate cooperates, consents or consults in the making of the communication, and if the communication occurs within 90 days of the date of a municipal election, depending on the content of the communication, the costs associated with the production and circulation of the communication may have to be reported by the candidate as an "in-kind" contribution from the CPC, see N.J.A.C. 19:25-11.11(b). (Copies of these regulations are attached). Further, the "in-kind" contribution would be subject to the contribution limit for a CPC contained in the 1993 amendments, see N.J.S.A. 19:44A-11.3.

4. Lastly, Schoolchildren proposes using Mayor Schundler as its "principal spokesperson" in a direct mail or mass media program to promote school choice legislation in New Jersey. To the extent that "principal spokesperson" implies that Mayor Schundler will be engaged in direct or indirect management or control of the CPC, that activity is proscribed. However, the mere fact that the CPC articulates Mayor Schundler's views, with or without his cooperation, does not in itself rise to the level of direct or indirect management or control. The Commission notes that to the extent this item contemplates that Schoolchildren will be undertaking communication expenses, the principles set forth in item three (3) above apply. Again, the CPC's attention should be drawn to the "political communication" regulations.

The Commission infers from this last proposed activity a possible suggestion that Schoolchildren may be contemplating making communications to legislators or regulators, activities that could be subject to the registration and reporting requirements of the Legislative Activities Disclosure Act, see N.J.S.A. 52:13C-18 et seq. (hereafter, "Lobbying Act"). Whether the Lobbying Act has any applicability would depend on whether communications will be made to legislators or regulators, a fact that is not stated in the request. Because Schoolchildren has not directly raised lobbying registration or reporting in its request, the Commission draws your attention to the existence of the requirements of the Lobbying Act, but nothing contained in this advisory opinion is intended to address its possible applicability.

Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: *Gregory E. Nagy*  
GREGORY E. NAGY  
Legal Director

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