



State of New Jersey

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September 22, 1994

Manny Grova, Jr.
104 Clark Street
Elizabeth, New Jersey 07206

Advisory Opinion No. 08-1994

Dear Mr. Grova:

The Commission has directed me to issue this response to your request by letter received June 23, 1994 requesting an advisory opinion. You have asked whether or not the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A- 1 et seq. (hereafter, the Act), would permit you to establish and solicit donations for a neighborhood organization, the First Ward Development Fund.

FACTS

You write that during your successful 1994 primary election candidacy you pledged that you would establish the First Ward Development Fund (hereafter, the Fund) if you are elected in the subsequent general election. According to your letter, the Fund would be established to provide incentives and opportunities to youths in the First Ward to become involved in clean-up efforts in the community by rewarding participants with tickets to sports events, awards, or trips to summer camps. You state that you anticipate accepting donations from local businesses to pay for the Fund's operations, as well as making a personal donation from your anticipated salary as a Councilman if elected, but none of the funds received by the Fund will be used for "political contributions."

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). However, the 1993 amendments restricted a candidate to the establishment of the candidate committees

described above, and specifically prohibited a candidate from establishing or controlling any political committee, or CPC. The text of the statutory prohibition at N.J.S.A. 19:44A-9h(1) is, in pertinent part, 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."

LEGAL ISSUE

May a candidate establish, solicit donations for, and control or manage a neighborhood association which makes no "political contributions" and is created to undertake civic projects without violating the above-quoted statutory provision?

DISCUSSION

It is undisputed that you are a "candidate" in the 1994 general election, as the term "candidate" is defined in the Act, see N.J.S.A. 19:44A-3c. As such, you are subject to the statutory restriction prohibiting a candidate from establishing a political committee, or a CPC. Therefore, in order to respond to your request, the Commission must determine whether the association you contemplate establishing should or can be construed to fall within the statutory definitions of "political committee," or "continuing political committee." For the reasons expressed below, the Commission concludes that as long as the First Ward Development Fund refrains from making any monetary or in-kind political contributions, you are not precluded by the Act from establishing the Fund, from soliciting donations for it, or from managing or controlling it.

The term "political committee" is defined in the Act as an association which is organized to, or does, aid or promote the nomination, election or defeat of a candidate in an election, if the association "...raises or expends \$1,000 or more..." for that purpose, see N.J.S.A. 19:44A-3i. The term "continuing political committee" is defined as an association which in a calendar year "...contributes or expects to contribute at least \$2,500.00 to the aid or promotion of the candidacy of an individual...for elective office..." see N.J.S.A. 19:44A-3n. Both of these definitions rely on the making of contributions to candidates (or to public question committees) in order to bring those entities within the scope of the Act, and such contributions can be in the form of money, or "other thing of value," see N.J.S.A. 19:44A-3d, defining the term "contributions."

In this request, the representation that the Fund will not make political contributions, if correct, removes the Fund from the jurisdictional scope of the Act because in the absence of contribution activity it does not fall under the statutory definitions of a political committee, or a CPC. However, because that representation is entirely dispositive of the result in this opinion, the Commission wishes to take this opportunity to articulate some guidelines to delineate what activities of such a candidate-controlled

association could result in the making of a political contribution, particularly an in-kind contribution.

The most obvious contribution activity would be a direct monetary contribution from moneys raised by the Fund to your or another candidate's candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee. However, as noted in the above-cited definition of the word "contribution," a contribution can also be in the form of some "other thing of value," or as it is sometimes referred to, an in-kind contribution. While refraining from the making of monetary contributions is a relatively simple limitation for an association to monitor, the making of an in-kind contribution by an association can occur by mere inadvertence, especially when the association is closely affiliated with or controlled by a candidate.

The Commission cannot possibly anticipate all the varieties of fact circumstances that could lead to the making of an in-kind contribution, but one common situation that has been the subject of federal case law concerns expenditures by a candidate-affiliated or controlled group for a gathering at which the candidate is provided with an opportunity to give an address. The question becomes whether or not the expenditures, in whole or in part, constitute an in-kind contribution by the association to the candidate. If in-kind contributions to the candidate do result, and if they exceed a value of \$1,000, the association may possibly be deemed to be a "political committee" under the Act and, if so, the candidate who is directly or indirectly participating in the management or control of that association may be in violation of the above-cited prohibition regarding candidate management or control of such committees.

In the federal case, decided by the United States Court of Appeals for the District of Columbia, it was alleged that a congressional candidate had been instrumental in the organization of an association interested in senior citizen issues, and the association had sponsored a picnic held thirty-eight days before the congressional election, see Orloski v. Federal Election Commission, 795 F.2d 156, (2d Cir., 1986). The candidate, whose voting record on senior citizen issues was a major issue in the campaign, spoke to the picnic attendees. Free bus transportation and free food had been contributed by corporations. The Federal Election Commission (hereafter, FEC) ruled that the event was not a political one, and therefore the association was not required to register as a "political committee" under federal law and the corporations that had donated items were not in violation of federal prohibitions against corporate contributions to federal candidates, see Orloski, at 159.

In affirming the FEC holding, the Court of Appeals upheld the FEC's two-part test for determining whether or not the picnic was a political event. The test was: 1. Was there any communication expressly advocating the election of the appearing candidate, or the defeat of any other candidate; or 2. was there any solicitation, making or acceptance of a campaign contribution for the candidate in connection with the event? If either part of the test had been answered in the affirmative, the FEC would have concluded the event had been political, see Orloski, at 160. Notwithstanding the connections

between the candidate and the association, since there was no evidence that the candidate made any express appeal for votes, or for voting against an opponent, and there was no allegation of solicitation of campaign contributions, the FEC concluded, and the court sustained, that the picnic was not a political event.

The Commission wishes to point out that in your capacity as a candidate exercising control or management over an association such as the one that you are contemplating, you must be vigilant to guard against the possibility of monetary or in-kind contributions from the association subject to reporting and other restrictions in the Act. In order to minimize any possibility that an inadvertent in-kind contribution might arise in connection with any event sponsored or held by the association, the Commission commends the Orloski opinion to your attention, and urges you to observe the restrictions of the two-part test that was applied. Kindly be advised that the Commission may be proposing that test for consideration as part of the Commission's regulations.

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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