



State of New Jersey

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October 23, 1995

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Advisory Opinion No. 12-1995

Dear Mr. Sheridan:

The Commission has considered your request for an advisory opinion on behalf of the Committee for Responsible Government, and has directed me to issue this response. You have asked whether or not Governor Christine Todd Whitman may participate in a committee maintained by the Committee for Responsible Government exclusively for candidates for federal office (hereafter, "CRG Federal Committee") without violating the statutory prohibition against a candidate directly or indirectly participating in the management or control of a continuing political committee as set forth in N.J.S.A. 19:44A-9h.

Submitted Facts

You write that the Committee for Responsible Government consists of three distinct organizations: 1. a federal nonconnected committee (that is, "CRG Federal Committee"), 2. a Section 527 political organization under the Internal Revenue Code, and 3. a New Jersey continuing political committee (hereafter, "CRG State Committee"). According to ELEC records, an entity under the name of "New Jersey Committee for Responsible Government" filed a Registration Statement and Designation of Organizational Depository on February 24, 1995, and its most recent quarterly report was filed on July 17, 1995, indicating a balance of \$419,139.49. You have advised the Commission orally that each organization maintains a separate bank account.

You have further written that the CRG Federal Committee anticipates inviting the Governor, as well as other Republican Governors, to serve on its Steering Committee, to participate in fundraisers, to make fundraising solicitations, to appear and speak on its behalf in a number of forums, and to participate in all its federal activities. In regard to CRG Federal Committee, you write: "In rendering your opinion, you may rely on the fact that CRG Federal Committee does not contemplate undertaking activities covered by the Act (that is, the Campaign Contributions and Expenditures Reporting

Act, see N.J.S.A. 19:44A-1 et seq., hereafter "Reporting Act") because it does not intend to make contributions or expenditures to aid or promote the nomination, election or defeat of a candidate for State or local office in New Jersey; to aid or promote the passage or defeat of a New Jersey public question; or to provide political information on any such candidate or question" (parenthetical matter added).

Questions Presented

You have asked the Commission to respond to the following questions:

1. May the CRG-Federal Committee invite Governor Whitman to participate in its activities without resulting in a possible violation of the prohibition against a candidate participating directly or indirectly in the management or control of a continuing political committee as set forth in N.J.S.A. 19:44A-9h(1) (hereafter, Section 9h(1))?

2. May the CRG-Federal Committee make expenditures for the purpose of circulating communications by Governor Whitman that will not be subject to reporting as contributions under the political communications regulation at N.J.A.C. 19:25-10.10 in the event Governor Whitman decides to become a candidate for reelection as Governor in the 1997 primary or general elections?

Commission Response: Question 1

In your letter, you suggest that the prohibition in Section 9h(1) is not applicable to the participation of Governor Whitman in the CRG-Federal Committee because that entity is not a political committee or continuing political committee as those terms are defined in the Reporting Act, and because Governor Whitman is not a "candidate" as that term is defined. Section 9h(1) provides, in pertinent part, as follows:

"On and after... (April 8, 1994), 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..." (parenthetical matter added).

Initially, the Commission notes that while the CRG-Federal Committee may submit a request for an advisory opinion concerning whether or not a given set of facts would constitute a violation by it of the Reporting Act (see N.J.S.A. 19:44A-6f), it has no standing to ask the Commission to extend advice to another person or party. Since this request is not submitted on behalf of Governor Whitman, the Commission cannot assume that the Governor will or will not participate in this Committee. Accordingly, the Commission must confine its response to the question of whether or not the CRG-Federal Committee is a political committee or continuing political committee as those terms are used in the above quoted statute, but the Commission specifically declines to consider whether or not Governor Whitman is a "candidate" within the meaning of the Reporting Act.

Subject to the facts represented in this request that the three Committee for Responsible Government organizations are "distinct" from each other, and the specific representation that the CRG-Federal Committee exercises no control or management over the CRG-State Committee, the

Commission concurs that CRG-Federal is not a political committee or continuing political committee as those terms are defined by the Act; see N.J.S.A. 19:44A-3i and 3n, which provide respective definitions in terms of raising and expending funds to aid or promote "candidates." See also N.J.S.A. 19:44A-3c, which defines the word "candidate" to mean a person seeking election to State or local office. In view of the fact statement that CRG-Federal will not be receiving contributions or making expenditures to aid or promote State candidates or public questions covered by the Act, it cannot be deemed to be a political committee or continuing political committee, and does not come under the proscription of Section 9h(1).

There is no statutory restraint on a State candidate from participating in the management or control of an entity that does not receive contributions or make expenditures for State candidates or questions, nor does any reason suggest itself why there should be. The purpose of Section 9h(1) is to protect the integrity of the State contribution limits. Therefore, a candidate is limited to the establishment of and control over a candidate committee and a joint candidates committee, and no other committee that can raise and spend money for the candidate's candidacy. Since an exclusively Federal committee cannot contribute to, or make expenditures in support of, a State candidate, it presents no threat to equal application of contribution limits.

This response is subject to the qualification that if by virtue of participation in the CRG-Federal Committee a candidate acquires direct or indirect control or management over the CRG-State Committee, that candidate would be in violation of Section 9h(1). See Advisory Opinion 07-1994 (copy enclosed). For this reason, the Commission wishes to admonish the CRG-Federal Committee that safeguards be put in effect so that a participating State candidate not be positioned to exercise any control or management directly or indirectly over the CRG-State Committee. Nothing contained in the advisory opinion is intended to approve the exercise of such control by a candidate.

Question 2

Initially, the Commission again notes that the CRG-Federal Committee lacks standing to seek an advisory opinion on behalf of Governor Whitman, or on behalf of any future candidacy she may or may not undertake. In the absence of such standing, and a specific fact issue, the Commission can only reiterate the circumstances described in the regulation under which an entity may be deemed to be making a political contribution to a gubernatorial candidate.

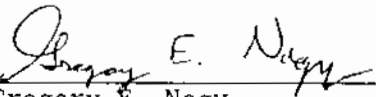
N.J.A.C. 19:25-10.10 provides in subsection (a) that the term "political communication" includes a written or broadcast statement that contains an explicit appeal for the election or defeat of a candidate, such as "Vote for (name of candidate)." Such a subsection (a) communication expenditure is reportable without regard to its timing in relation to an election; see N.J.A.C. 19:25-10.11. In the absence of an explicit election advocacy text as described above, a reportable political communication arises only if all the criteria in subsection (b) are satisfied, and none of the exclusionary provisions of subsections (c) and (d) are applicable. Among the criteria established in subsection (b) in the case of a candidate for

nomination for the office of Governor in a primary election is the requirement that the communication be circulated or broadcast on or after January 1st of the year in which the primary election for Governor is being conducted. Therefore, any communication made by CRG-Federal Committee which did not contain an election advocacy text such as that described in subsection (a), and was circulated in reference to a 1997 gubernatorial primary election candidate prior to January 1, 1997, would not satisfy the criteria of subsection (b) and therefore would not be reportable by the CRG-Federal Committee.

Thank you for your inquiry, and your interest in the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
Gregory E. Nagy

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