



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Respond to:  
CN-185

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January 30, 1997

Senator Edward T. O'Connor, Jr.  
31st District  
1738 Kennedy Boulevard, Office #2  
Jersey City, New Jersey 07305

Re: Advisory Opinion No. 08-1996

Dear Senator O'Connor:

Please be advised that the Election Law Enforcement Commission has reviewed your request for an advisory opinion as supplemented by your letter of January 6, 1997.

At its December 17, 1996 meeting, the Commission considered the initial request for an advisory opinion on behalf of the Committee to Re-elect Ed O'Connor, your duly established candidate committee (hereafter "candidate committee"). In that initial request you asked several questions concerning the proceeds of a winning raffle ticket purchased with funds of the candidate committee. At that time, the Commission concluded that additional information was needed in order make a determination. Specifically, the Commission requested that you advise as to the candidate committee's intent and purpose in making the ticket purchase.

In response to the Commission's request for additional information, you spoke with the Executive Director, advising that the raffle ticket was purchased for the sole purpose of helping the Boys and Girls Club of Hudson County, and subsequently sent a letter dated January 6, 1997, in which you confirm the foregoing and advise that the candidate committee has in fact told the Boys and Girls Club to retain the prize money.

#### Submitted Facts

On December 4, 1996, the Boys' and Girls' Club of Hudson County conducted a raffle. A ticket of \$100 for this raffle was purchased "in the name of Ed O'Connor" but was paid for by the candidate committee. This ticket proved to be a winning one, with a cash prize of \$7,340.00.

The candidate committee advises that its intent in purchasing the ticket was strictly to make a charitable contribution to the Boys' and Girls' Club, and not for any other purpose. You have further advised that the Boys' and Girls' Club has been notified that neither you nor the candidate committee will accept the proceeds of the drawing and that the Club should retain the prize money to further its charitable purposes. Thus, neither you nor your candidate committee will actually receive any funds from the raffle.

Your candidate committee is currently filing quarterly campaign reports with the Commission for the 1997 primary election for State Senate, the most recent being the 1996 fourth quarter report filed January 15, 1997. As of its closing date, that report showed an available balance of \$4,901.64.

#### Questions Presented

You initially asked the following questions:

1. If the proceeds are payable to your candidate committee, how are they to be reported?
2. Are there limits on the amount your candidate committee may receive?
3. If the proceeds were payable to you personally, would you have to reimburse the candidate committee for the purchase price of the raffle ticket?

In view of your follow-up letter of January 6, 1997, it would appear that the foregoing questions have become moot. The proceeds of the drawing will not be paid either to yourself or to your candidate committee, but rather they will be retained by the sponsor of the raffle. You have, however, requested an opinion concerning whether this disposition of the winnings is acceptable.

### Response

Preliminarily, we note that the Commission does not ordinarily give advisory opinions concerning matters which have already taken place. Since the Commission's December 17, 1996 meeting, the candidate committee has in fact disclaimed the winnings from the raffle in favor of the Boys' and Girls' Club. Notwithstanding the present status of the matter, several factors militate in favor of disposing of this issue in an advisory opinion. First, this opinion was initially requested before any disposition of the raffle proceeds has been made. Second, considerable discussion by the Commission has already taken place, and the Commission's concerns over whether the purchase of raffle tickets constitutes gambling by candidate committees has been reported in the media. Permitting the matter to go unresolved at this juncture may have an unintended chilling effect on candidates' willingness to make this type of contribution to charitable organizations. The Commission, therefore, believes it is in the best interest of the public to issue an opinion in this particular matter. However, since the ticket was purchased prior to seeking this advisory opinion and the disclaimer of the raffle proceeds has apparently already occurred, these events are not subject to the prospective protection ordinarily afforded by advisory opinion review. See N.J.S.A. 19:44A-6f and N.J.A.C 19:25-18.1(a)(3).

This occasion is the first in which the Commission has been asked to give an advisory opinion concerning the purchase of charity raffle tickets with campaign funds and the disposition of potential winnings. It is the opinion of the Commission that so long as the candidate committee irrevocably waives and disclaims any and all right, title and interest in and to any actual or potential winnings, the purchase of a raffle ticket from a bona fide charitable organization using campaign funds should be deemed to be permissible as a charitable contribution, and that permitting the Boys' and Girls' Club of Hudson County to retain the proceeds of the raffle ticket purchased by the candidate committee is an acceptable disposition of the funds.

### Discussion

Charitable contributions are among the six permissible uses of campaign funds set forth in N.J.S.A. 19:44A-11.2. In this particular case, the raffle ticket was not purchased by the candidate committee in the hope of realizing a gain from the raffle, but rather with the intention of making a contribution to the Boys' and Girls' Club of Hudson County. This is probably a fairly common scenario. The problem arises from the fact that

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the purchase of a raffle ticket confers upon the owner a mathematical chance not only to recoup its expenditure but also to realize a potentially significant gain. If a candidate committee were to receive raffle winnings from the charity, it would no longer have made a charitable contribution. Indeed the opposite would be true. Raffle ticket purchases are not considered to be deductible charitable donations for federal income tax purposes, precisely because of the opportunity for financial gain. Rev. Rul. 83-180, 1983-2 C.B. 148.

It is this opportunity for gain which the Commission believes should be foreclosed to candidate committees. Doing so will protect the integrity and purpose of the charitable expenditure of campaign funds by avoiding any possibility that what began as a bona fide charitable contribution could be converted into a profit for the candidate committee. It will also have the salutary effect of preventing the use of campaign funds for wagering under the guise of making a charitable contribution to a raffle sponsor.

While the same result could be accomplished by prohibiting raffle ticket purchases altogether, this would foreclose a common avenue of charitable giving. Accordingly, the Commission believes that the purchase of the raffle ticket represents a permissible expenditure of campaign funds provided that it was purchased with the sole intent of making a charitable contribution and all opportunity to recoup the amount spent or receive a financial gain is completely and irrevocably waived and disclaimed by the candidate committee. The Commission does not offer any opinion regarding the method which should be used to accomplish such a waiver and disclaimer, nor does the Commission opine as to the effect, if any, which such a waiver and disclaimer might have under the laws which govern charitable raffles.

Very truly yours,

NEW JERSEY ELECTION LAW ENFORCEMENT  
COMMISSION



James P. Wyse, Legal Counsel

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