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November 19, 1997

The Honorable Alex De Croce, Deputy Speaker
New Jersey General Assembly, District 26
101 Gibraltar Drive, Suite 2-G
Morris Plains, New Jersey 07950

Advisory Opinion Request No. 06-1997

Dear Assemblyman De Croce:

The Commission has considered your request for an advisory opinion concerning permissible uses of candidate committee funds and has directed me to issue this response. Specifically, you have asked whether or not contributions received by a candidate committee you established may be used to pay expenses incurred by your spouse and children who accompanied you during your attendance at the Eastern Regional Conference of the Council of State Governments (ERC/CSG) annual meeting held in Portland, Maine from July 27 through 30, 1997.

Submitted Facts

By letter received on August 25, 1997, you wrote that the ERC/CSG conference is "an opportunity to bring together the largest number of state and corporate leaders from the Northeast to focus on solutions to issues of regional concern." You noted that as a member of the ERC/CSG Transportation Committee, you attended two meetings concerning transportation subjects pertinent to your officeholding duties as Chairman of the New Jersey General Assembly's Transportation and Communications Committee. Further, the Commission notes that on July 2, 1997, you filed with the Commission a designation (Form D-1) of a candidate committee for the 1997 general election under the name Election Fund of Alex De Croce. You propose to pay from the Election Fund of Alex De Croce the following expenses incurred at the conference by your spouse and two dependent children: Registration (3 x \$100) totaling \$300, and hotel expense of \$545.20.

You also wrote: "These meetings are an opportunity for my family to spend time with me while I am out of state to enhance my knowledge of key issues I must deal with in the Legislature. They are an integral part of my life and it is important to me to share my time with them as much as possible. My ability to attend the meeting was contingent on my family being able to join me."

Question Presented

Are the costs arising out of the attendance of an elected officeholder's spouse and dependent children at a conference the officeholder attended in carrying out the officeholder's duties "ordinary and necessary" expenses of holding office within the meaning of N.J.S.A. 19:44A-11.2a(6)?

Response

For the reasons expressed herein, the Commission hereby advises you that the proposed use is impermissible. Although costs arising out of the attendance and participation of yourself in the ERC/CSG annual conference are permissible costs incurred in connection with your officeholding duties pursuant to N.J.A.C. 19:25-6.7(e)3 (quoted below), the Commission finds that the costs arising out of the attendance of your spouse and dependent children were not incurred in connection with your officeholding responsibilities and therefore do not constitute an "ordinary and necessary" expenses of holding elected public office within the meaning of N.J.S.A. 19:44A-11.2a(6). The result is that contributions made to the candidate committee you have established, Election Fund of Alex De Croce, may not be used to pay the costs of your spouse and children.

Discussion

The 1993 Amendments to the Campaign Reporting Act limited the permissible uses of contributions received by a candidate committee to six specified purposes, among which was one pertinent to this request: "...the payment of ordinary and necessary expenses of holding office." See N.J.S.A. 19:44A-11.2a(6). As a result of these statutory restrictions, the Commission in 1994 promulgated regulations that provided specific examples of permissible and impermissible uses of campaign funds, see 26 N.J.R. 2753 (proposal, July 5, 1994) and 26 N.J.R. 4214 (adoption, October 17, 1994). Among these examples of permissible use was the following, set forth at N.J.A.C. 19:25-6.7(e):

3. Costs of dues for membership in educational organizations related to officeholding duties, and costs of registration and attendance at conferences or seminars attended in connection with officeholding duties. Such costs may include the reasonable expense of travel, lodging, and other subsistence expenses..."

The above-quoted regulation makes no provision for expenses incurred by family members of officeholders attending such conferences.

As noted in the Commission's letter to you dated September 16, 1997, with your consent the Commission deferred action on your request in order to seek the views of the New Jersey Legislature's Joint Committee on Ethical Standards. While it is this Commission, not the Joint Committee, that has sole jurisdiction to decide questions concerning permissible uses of campaign funds, the Commission appreciates your cooperation in extending the time provided for responding to your request so that the Commission could consult for informational purposes with the Joint Committee.

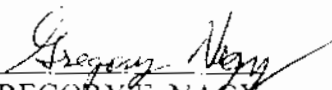
The Commission notes that you write that the presence of your family permitted you to spend time with them while attending the conference, and that your attendance was contingent on your family's presence. Nevertheless, you have not suggested that the attendance of your spouse or dependent children was necessary in order for you to carry out specific officeholding duties, such as might be the case if a spouse were a legislative aide, or otherwise were taking an active role in your participation. The Commission further notes that in the absence of such a specific purpose, expenses arising out of the attendance of an accompanying family member would not typically be reimbursable in the case of a public sector employee.

In the absence of a more specific statement of a supporting role for a spouse and family in carrying out officeholding duties, the Commission does not find a bona fide officeholding reason for payment of costs from campaign funds for their attendance, and therefore concludes that those costs do not constitute "ordinary and necessary" officeholding expenses within the meaning of the statute. Accordingly, the Commission advises that the use proposed in this request is impermissible.

Thank you for submitting this request, and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY E. NAGY