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October 22, 1997

Honorable John S. Wisniewski  
Assemblyman, 19th Legislative District  
3145 Bordentown Avenue, Suite B  
Parlin, New Jersey 08859

**Advisory Opinion No. 08-1997**

Dear Assemblyman Wisniewski:

Kindly be advised that the Commission has considered your request for an advisory opinion concerning reporting requirements under the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act) with respect to an article you wrote for a municipal newsletter.

**Submitted Facts**

You have advised the Commission in your request that earlier this summer you were solicited by the Borough of Sayreville (Middlesex County) to write a column for the municipality's newsletter, without being advised when the newsletter would be issued by the municipality. The Commission notes that you are currently an incumbent member of the State Assembly seeking reelection in the 19th Legislative District in the 1997 general election, and the Borough of Sayreville is within the 19th Legislative District. You have not provided a copy of the text of the column you authored, but you write that the column reviews your "legislative record and agenda for the future." You further writes that the Borough has decided to distribute the newsletter containing your column to coincide with the municipality's recycling advisory, which has not yet been distributed but apparently will be circulated during the period within 90-days prior to the November 4, 1997 general election.

The Commission notes that you have established a candidate committee, Election Fund of John Wisniewski, for your 1997 general election Assembly candidacy.

### Questions Presented

1. You have asked whether or not the reporting requirements of N.J.A.C. 19:25-10.10, Political communication contributions, would apply assuming you do not consent to the distribution of the newsletter but the municipality proceeds to distribute it to its residents prior to the 1997 general election.

2. You have also asked whether or not the political communication reporting requirements would apply in that case to the Borough of Sayreville, the Mayor, or any member of the Borough Council.

### Commission Responses

**Question 1:** The Commission hereby advises that because you wrote the column for the express purpose of having it included in the municipality's newsletter, and because you did not place any restriction on the timing of the distribution of the column by the municipality, the Commission concludes you have already given your consent to its circulation within the meaning of the political communication regulation you have cited above. Therefore, if the newsletter is circulated within 90-days prior to the 1997 general election to voters in the Borough, the portion of the costs for the preparation and distribution of the newsletter allocable to your column constitutes an "in-kind" contribution to your 1997 Assembly candidacy from the entity or person who paid those costs, which presumably was the municipality. Although you have not directly raised the question, the Commission further advises that such an "in-kind" contribution would be subject to the applicable contribution limits of the Act, see N.J.A.C. 19:25-11.1, et seq., Contribution Limits.

### Discussion

Over the years the Commission has frequently been called upon to consider whether a government newsletter or similar official written communication constituted a legitimate need of an officeholder to communicate with constituents or a means of promoting the officeholder's reelection candidacy with campaign reporting consequences. The progenitor case on this issue concerned a municipal utility authority's newsletter which was drafted and signed by a State Assembly candidate, who was also the authority's chair. See In re Dawes, 156 N.J. Super. 195 (App. Div., 1978). The newsletter, distributed to utility customers who were also constituents of the incumbent, contained references to the incumbent's legislative record that were characterized by the Commission's hearing officer as "a subtle masterpiece of political propaganda." The imposition of a \$100 penalty by the Commission on the candidate for failing to report the cost of the newsletter as a contribution of an "other thing of value" was sustained by the Appellate Division of the Superior Court. Similarly, the Appellate Division sustained a Commission penalty on three school board candidates who failed to report as an "in-kind" contribution the costs of a Board of Education newsletter which was circulated within a month of the school board election, and which contained on its front page photographs and laudatory, noncritical profiles of the three incumbents. See ELEC v. Brown, 206 N.J. Super. 206 (App. Div., 1985).

As a result of these opinions and the frequency with which opposing candidates alleged that incumbent officeholders had used official resources to make campaign communications, the Commission proposed and subsequently adopted rules (now codified as N.J.A.C. 19:25-10.10 and 10.11) to establish criteria for determining whether or not a communication must be regarded as political and therefore subject to campaign reporting. See 21 N.J.R. 703(b), March 20, 1989 (proposal), and 21 N.J.R. 1379(a), May 15, 1989 (adoption). A copy of the text of N.J.A.C. 19:25-10.10 and 10.11 rules is attached to this opinion and incorporated by reference.

In order for a written communication to come under the reporting requirements applicable to a political communication as described in N.J.A.C. 19:25-10.10, it must either contain an explicit appeal for the election or defeat of a candidate [for example, Vote for (name of candidate)] pursuant to subsection (a), or must meet the regulatory conditions set forth in subsection (b). The column that you authored for the Borough of Sayreville's newsletter appears to meet the criteria of subsection (b). It will be circulated within 90 days of the 1997 general election in which you will be a candidate for the General Assembly, the residents of the Borough of Sayreville reside within the Legislative District in which you are seeking reelection, and according to your description of your column it contains a review of your legislative record and future agenda. In regard to your cooperation or prior consent in the production or circulation, you have produced the column by authoring it, and you have effectively consented to its circulation by writing it expressly for the municipal newsletter without placing any restriction on its distribution.

You indicate that you have no knowledge of when the column might be circulated. However, since you provided the column "during the early summer," it appears to the Commission that it was reasonably foreseeable at that time that the column might be circulated by the municipality within 90 days of the general election, a period that began on August 6, 1997. Nothing in this request indicates that you restricted the municipality's right to use your column since the time you provided it, or at any time prior to the commencement of the 90-day period prior to the 1997 general election. Having effectively granted the municipality permission for the circulation of the column within the 90-day period, the Commission concludes that permission cannot effectively be withdrawn after the 90-day period has commenced.

Accordingly, if the newsletter is circulated within 90-days prior to the 1997 general election to voters in the Borough of Sayreville and contains the column at issue in this request, the costs for the preparation and distribution of the newsletter allocable to the column constitutes an "in-kind" contribution to Election Fund of John Wisniewski that is your 1997 general election candidate committee. The reporting requirements for such political communications are set forth in N.J.A.C. 19:25-10.11(b), and the valuation of the costs must be made pursuant to N.J.A.C. 19:25-10.4, Computation of contribution amounts.

**Question 2:** The Commission finds that you do not have standing to seek the Commission's opinion as to the possible reporting requirements applicable to parties other than your candidate committee. See N.J.A.C. 19:25-18.1(a)(3), requiring that a person requesting an opinion must demonstrate that the requester's reporting requirements will be

affected by the result. Therefore, the Commission demurs from undertaking an opinion on this question in the absence of an opinion request from the Borough of Sayreville municipal governing body, the Mayor, or a Borough Council member, and in the absence of an enhanced fact record describing the specific source of funding for the newsletter. Although you have not raised it, the Commission also notes that it has no jurisdiction to consider the legality of the use of public funds to meet costs of circulating a political communication.

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

Very Truly Yours,

ELECTION LAW ENFORCEMENT COMMISSION

By:   
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GREGORY E. NAGY