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May 28, 1998

The Honorable Robert J. Martin  
Senator, District 26  
101 Gibraltar Drive, Suite 2D  
Morris Plains, New Jersey 07950

**Advisory Opinion No. 04-1998**

Dear Senator Martin:

The Commission has considered your request for an advisory opinion and has directed me to issue this response. You have advised the Commission that you are currently serving as Chair of the New Jersey Senate Education Committee, and you have asked whether or not by virtue of your duties in that office you may use contributions received by a candidate committee you established to pay a portion of your tuition expense for a graduate program in educational administration.

**Submitted Facts**

You state in your opinion request, incorporated by reference in this response, that in January of this year you assumed the Chair of the New Jersey Senate Education Committee and (acting) Chair of the Joint Legislative Committee on the Public Schools. You note that in those positions you have been given "...primary legislative oversight for the disbursement of the largest portion of the state budget and legislative responsibility for the performance of New Jersey's public schools." You describe your knowledge of public school administration and policy as limited to date because you have had no formal training in or direct involvement with the public school system other than your service on legislative education committees.

You further write that on the recommendation of a New Jersey legislator who is a professional educator, you have enrolled in a graduate program in the "Inquiry Program in Educational Administrative Practice" at the Teacher's College of Columbia University in New York City. The courses are taught in July for two summers and during several weekends, and are primarily designed to provide "state-of-the-art" thinking on such topics as public school funding and school choice. You state that you are currently a law professor at Seton Hall University School of Law holding degrees (J.D. and LL.M.) for your position, so your purpose in attending the Teacher's College program is not to advance your professional career but "...solely to make me more knowledgeable in my work as a legislative

leader in the field of public education." You anticipate that the program will be of "extreme value" to your legislative responsibilities, and note that Senate President Donald DiFrancesco wrote a letter in support of your enrollment.

The most current campaign report for your candidate committee, the Election Fund of Bob Martin, was filed on April 15, 1998, and indicates a closing balance as of March 30, 1998 of \$20,363.24.

### **Question Presented**

Is the proposed use of your candidate committee funds an ordinary and necessary expense of holding elected office within the scope of N.J.A.C. 19:25-6.5(c)4?

### **Commission Response**

You are hereby advised that the proposed use is permissible pursuant to N.J.A.C. 19:25-6.5(c)4, subject to the following conditions: You remain in your Senate position as Chair of the Education Committee, and all tuition payments are made to an accredited institution of higher learning in the field of public school administration and are made only for courses specifically pertinent to that field. Further, the Commission suggests that you consider informing the other members of the Senate Education Committee of your studies in this field and your willingness to share any course materials or information that you may receive. Note that all candidate committee expenditures, including those made for tuition pursuant to this opinion, are subject to reporting pursuant to the Campaign Contributions and Expenditures Reporting Act (hereafter, the Campaign Reporting Act), specifically N.J.S.A. 19:44A-16.

### **Discussion**

The Campaign Reporting Act limits the permissible uses of candidate committee funds to six purposes, one of which is applicable to this request, that is the payment of ordinary and necessary expenses of holding public office (see N.J.S.A. 19:44A-11.3a(6)). In 1994, the Commission proposed and subsequently promulgated a rule that set forth several examples of impermissible personal use of candidate funds, among which was the following example of an impermissible use, at N.J.A.C. 19:25-6.5(c):

4. A tuition payment, unless made for a course of study specifically related to the candidacy or officeholding duties of the candidate or officeholder who established or who controls the candidate committee...making the payment...."

Also proposed and promulgated at that time was N.J.A.C. 19:25-6.7(a), which provides, in pertinent part, as follows:

The term 'ordinary and necessary expenses of holding public office' as used in N.J.A.C. 19:25-6.5(a)6 means any expense that reasonably promotes or carries out the responsibilities of a person holding elective public office, except that no funds received by a candidate, a candidate committee...shall be used for the payment of any expense arising out of the furnishing, staffing or operation of an office used in connection with the officeholder's official duties as an elected public official.

Applying the above-quoted rules to the submitted facts, the question presented becomes whether or not the proposed tuition expense, by virtue of your particular committee assignments, comes within the scope of your "ordinary and necessary officeholding expenses" as defined by those rules. But for the particular legislative committees you chair and are a member of, the nexus between your duties as an elected State Senator and your tuition expenses for an education in the field of public school education and administration might not be sufficient to justify the characterization of "ordinary and necessary officeholding expenses." However, in your role as Chair of the Senate Education Committee, and (acting) Chair of the Joint Legislative Committee on the Public Schools, it appears that you have acquired duties beyond those of other members of the State Senate in the area of public school education and administration. In view of your Committee assignments, the Commission finds that the course of study you are embarking on can be viewed "as specifically related to...(your officeholding duties)" within the meaning of the rules.

The Commission notes that the particular courses that you will be taking have not each been identified by name and subject matter. For example, it may be the case that some specific courses are required as degree prerequisites, but are not specifically in the field of public school education or administration. Therefore, any permission extended in this opinion to spend candidate committee funds is qualified to permit payment only for courses specifically in this field, and at an institution of higher learning accredited in the field. Further, the Commission suggests that the other Education Committee members be notified of your willingness to share course materials or information you may receive. Should your Legislative Committee assignments change with the result that your officeholding duties are no longer so closely tied to formulation of public policy in school education or administration, the permission to pay tuition expenses for this course of study as set forth in this opinion would no longer be applicable in the future.

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

ELECTION LAW ENFORCEMENT COMMISSION

By: \_\_\_\_\_  
GREGORY E. NAGY