

The following Attorney General Advisory Opinion concerns application of N.J.S.A. 10:34-32, N.J.S.A. 19:34-45, or both. The Commission is not responsible for administration of N.J.S.A. 19:34-32, Contributions by insurance corporations, or N.J.S.A. 19:34-45, Contributions by certain corporations. These Sections of the law concern prohibitions on contributions by certain corporations and are under the jurisdiction of the Office of the Attorney General. Therefore, this opinion issued by the Attorney General is supplied for informational purposes, and the Commission is not able to interpret or provide advice concerning this opinion.

FLEC A0 04-2002



State of New Jersey

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APR 9 2003

JAMES E. MCGREEVEY
Governor

PETER C. HARVEY
Acting Attorney General

(973) 648-3709

PAUL P. JOSEPHSON
Assistant Attorney General
Director

April 3, 2003

Frederick M. Herrmann, Ph.D.
Executive Director
Election Law Enforcement Commission
28 West State Street
P.O. Box 185
Trenton, New Jersey 08625-0185

Re: 02-0213 - Whether certain non-utility
generators may make political
contributions under N.J.S.A. 19:34-45

Dear Director Herrmann:

You have asked for advice as to whether the prohibition against political contributions, set forth in N.J.S.A. 19:34-45, is applicable to non-utility generators ("NUGs") operating in the State but not involved in electricity distribution as public utilities and not participating in the retail electric power market. In light of Attorney General Opinion 01-0111, and the current status of NUGs in the State, you are advised that NUGs which are neither involved in electricity distribution nor participating in the retail electricity market, and which are not owned by a company otherwise subject to N.J.S.A. 19:34-45, are not prohibited from making political contributions under N.J.S.A. 19:34-45.

N.J.S.A. 19:34-45 provides:

No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in public ways granted by



the state or any county or municipality, and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

[Emphasis added.]

The underlying purpose of N.J.S.A. 19:34-45 is to "insulate elected officials from the influences of regulated industries," and the businesses listed in this statute have "been made the subject of extensive and pervasive government regulation." Attorney General Formal Opinion No. 4-1983.

In Opinion 01-0111, dated August 3, 2001, attached, we advised that cogeneration facility owners and operators were no longer included in the class of corporations prohibited from making political contributions.* This opinion hinged on the recognition of the relaxation of State and federal regulation over cogeneration facilities. In view of this reduced regulatory situation, we concluded that cogeneration facilities were no longer regulated as public utilities or otherwise extensively regulated. As a result, we determined that prohibiting political contributions from such entities was not consistent with the underlying purpose of N.J.S.A. 19:34-45.

You have now asked if certain other NUGs also are exempt from the prohibition of N.J.S.A. 19:34-45. NUGs are not explicitly defined, but at a minimum consist of "qualifying small power production facilities"" and cogeneration facilities under federal definition, 16 U.S.C.A. § 824a-3, as well as exempt wholesale generators and other generators of electricity not owned by public

*Consistent with the advice in Opinion 01-0111, N.J.S.A. 19:34-45 was amended in 2002 to exclude cogeneration facilities from the prohibition against political contributions.

""Small power production facilities" are defined under 16 U.S.C.A. § 796(17) to include renewable resource facilities or units producing less than 80 megawatts. In addition, the use of "qualifying" adds that the small power production facilities be "owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)." 16 U.S.C.A. § 796(18).

utility companies. Furthermore, the materials you have presented to us indicate that the NUGs at issue are not involved in electricity distribution as public utilities. Additionally, the question posed indicates that these generators do not participate in the retail electric power market.* See N.J.S.A. 48:3-92(d).

Opinion 01-0111 details the limited regulation that the State applies to cogeneration facilities. These limitations apply as well to NUGs as defined above. As with cogeneration facilities, the other types of NUGs being considered herein are not involved in electrical distribution, are exempt from most federal and local electrical regulations, and, as power generation entities, are outside of the Board of Public Utilities' ("BPU") primary regulatory authority under the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. See N.J.S.A. 48:2-13(a) (modifying the definition of "public utility" from including "electric light, heat and power" to only "electricity distribution.")¹ Accordingly, the analysis of Opinion 01-0111 applies squarely to the non-cogenerating NUGs described above. Therefore, NUGs which are not involved in electricity distribution, do not participate in the retail electricity market, and are not owned by a company otherwise subject to N.J.S.A. 19:34-45, should be considered outside the scope of N.J.S.A. 19:34-45 as well.

We also note that N.J.S.A. 19:34-45 forbids contributions from a NUG owned by a regulated utility company or owned by a non-regulated holding company that also owns regulated utilities. See Attorney General Formal Opinion No. 4-1983 (stating that a non-

*Because the NUGs at issue have been described as not participating in the retail electricity market, it is assumed herein that such NUGs are not electric power suppliers, aggregators, energy agents, brokers, or marketers as those terms are used in the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and with reference to retail electricity, and that they are not participants in the Board of Public Utilities' basic generation service auction process which involves the provision of electricity to serve end use retail customers in New Jersey.

¹"This is not to say, however, that the BPU has no jurisdiction whatsoever with regard to the NUGs at issue. Under N.J.S.A. 42:2-13(d), the BPU explicitly retains "the necessary jurisdiction with regard to the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State."

April 3, 2003

Page 4


insurance holding company owning a majority of stock in an insurance company licensed to do business in New Jersey is prohibited from making contributions in both its own right and through any non-insurance subsidiaries).

In light of the foregoing, and consistent with our previous opinions, you are advised that NUGs which are neither involved in electricity distribution nor participating in the retail electricity market, and which are not owned by a company otherwise subject to N.J.S.A. 19:34-45, are not prohibited by N.J.S.A. 19:34-45 from making political contributions.

Sincerely yours,

PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____


Kenneth J. Sheehan
Deputy Attorney General

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OCT 30 2002

ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:
Independent Energy Producers of New Jersey ("IEPNJ")

Full Name of Person, Committee or Entity
Independent Energy Producers of New Jersey

Mailing Address
Independent Energy Producers of New Jersey
The Benjamin Gray House at Millstone Park
Five Mapleton Road, Suite 200
Princeton, NJ 08540

Day Telephone No.
(609) 514-2600

Evening Telephone No.

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes No

a. If yes, indicate in what capacity it is filing:

Candidate committee	<input type="checkbox"/>	Recall committee	<input type="checkbox"/>
Joint candidates committee	<input type="checkbox"/>	Recall defense committee	<input type="checkbox"/>
Political committee	<input type="checkbox"/>	Lobbyist	<input type="checkbox"/>
Continuing political committee	<input type="checkbox"/>	Legislative agent	<input type="checkbox"/>
Political party committee	<input type="checkbox"/>	Personal financial disclosure statement	<input type="checkbox"/>
Legislative leadership committee	<input type="checkbox"/>	Other (please describe): _____	

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

No.

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:
IEPNJ, a Lobbyist Organization, has designated Capital Public Affairs, Inc. as its Legislative Agent to file, on behalf of IEPNJ, its Annual Report of Lobbying Activity. (See attached).

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

The question is whether, in addition to cogenerators, other non-utility generators that are not involved in electricity distribution as public utilities in New Jersey are also not prohibited from making political contributions under N.J.S.A. 19:34-45. If these non-utility generators are allowed to make political contributions, as is being requested herein, then the following sections, among others, of the Campaign Reporting Act and Commission regulations would be implicated: N.J.S.A. 19:44A-7; N.J.S.A. 19:44A-7.2; N.J.S.A. 19:44A-11.3 – 11.5; N.J.A.C. 19:25-11.2

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

See attached. The contemplated activities have not already been undertaken by the members of IEPNJ. IEPNJ has standing to seek the opinion requested in that the opinion will affect the ability of IEPNJ members to make contributions as prescribed by the Act.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

See attached.

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name: Kenneth J. Hollenbeck, Esq.

Mailing Address:

Scarinci & Hollenbeck, LLC

1100 Valley Brook Avenue, P.O. Box 790

Lyndhurst, NJ 07071-0790

Day Telephone No. (201) 392-8900

Evening Telephone No.

Fax Number: (201) 348-3877

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee or entity

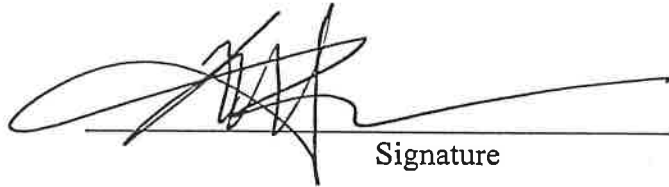
Other (please describe): _____

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. **(CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).**

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

Dated

10/25/02



Signature