

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.



ELEC AO 06-2003

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Acting Governor

PETER C. HARVEY
Attorney General

January 6, 2005

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

Re: Whether Insurance Services Office,
Inc. is prohibited from making
political contributions under
N.J.S.A. 19:34-32

Dear Executive Director Herrmann:

The Election Law Enforcement Commission ("Commission") requested an opinion as to whether Insurance Services Office, Inc. ("ISO") is prohibited by N.J.S.A. 19:34-32 and 19:34-45 from making political contributions. The Commission also inquired whether either statutory section prohibits ISO from establishing and administering a continuing political committee ("CPC"). For the following reasons, the Commission is advised that N.J.S.A. 19:34-32 and 19:34-45 prohibit ISO from making contributions to candidates seeking election to public office in the State of New Jersey or making contributions to New Jersey political committees. The Commission is further advised that N.J.S.A. 19:34-45 precludes ISO from using its own monies to establish and administer a continuing political committee in New Jersey.

This matter stems from a request for advice submitted to the Commission on behalf of ISO by Robert A. Becker, Esq. According to Mr. Becker, ISO is a for-profit stock corporation. Among other products and services, ISO and its subsidiaries and affiliates provide specialized support services to the insurance industry, including analytical and decision-support products and services, and statistical, actuarial, underwriting and claims information; consulting; insurance policy language, advisory prospective loss costs, rules and other supplementary rating



information; fraud identification tools; and data processing. In New Jersey, ISO is a rating organization licensed pursuant to N.J.S.A. 17:29A-2 and ISO DATA, Inc., a wholly owned subsidiary of ISO, is an advisory organization registered pursuant to N.J.S.A. 17:29A-29.

N.J.S.A. 19:34-32 prohibits insurance companies doing business in New Jersey from directly or indirectly using their assets to support candidates for political office. N.J.S.A. 19:34-45 imposes a similar prohibition and provides in comprehensive terms that:

No corporation carrying on the business of a[n] ... insurance ... company ... 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.

The Attorney General has consistently strictly construed the relevant statutory provisions. See Attorney General Opinion No. 89-0143 (1990) (N.J.S.A. 19:34-45 prohibits Exxon Corporation from making contributions to candidates for State elective office because Exxon Corp. has a wholly owned subsidiary that provides insurance only to Exxon Corporation and its wholly owned subsidiaries); Attorney General Opinion No. 89-0184 (1990) (N.J.S.A. 19:34-45 prohibits an entity from making a contribution to a gubernatorial campaign where the entity had authority to carry on a business in New Jersey which is regulated by N.J.S.A. 19:34-45 and can do so at any time, even where it may not be doing so at any particular moment); Attorney General Opinion No. 97-0093 (1997) (N.J.S.A. 19:34-45 prohibits political contributions from an out-of-state Political Action Committee ("PAC") or a federal PAC either directly or through their New Jersey affiliate because they received corporate funds for administrative purposes); Attorney General Opinion No. 02-0030 (2002) (N.J.S.A. 19:34-45 prohibits a trade association of banks from making political contributions); Attorney General Opinion No. 00-0082 (2002) (N.J.S.A. 19:34-32 and 19:34-45 prohibit Hertz Corporation from making political contributions because it is an indirect wholly-owned subsidiary of Ford Motor Company, which owns a subsidiary known as Ford Motor

Credit Company that engages in insurance and financing operations in New Jersey).

In Attorney General Formal Opinion No. 4 (1983), the Attorney General interpreted the statutory prohibition to apply to an out-of-state non-insurance holding company which owned all of the capital stock of an insurance company doing business in New Jersey. It also applied the prohibition to a non-insurance subsidiary of that holding company. The rationale behind the opinion was that in passing the statute the Legislature intended to address the evil of corporate influence over elected government officials and to insulate those officials from the sway of regulated industries and/or businesses which are the subject of extensive government regulation. The opinion noted:

Each business listed in the act may be characterized as of a type strongly affected with a public interest. An absolute legislative ban on political contributions by companies holding a majority interest in a regulated industry, such as insurance, is consistent with its intention to eliminate the corruptive influence of corporate political contributions. [Attorney General Formal Opinion No. 4-1983].

The statutory ban was deemed to embrace a nonregulated controlled subsidiary of a disallowed holding company because of the fact that the holding company is capable of materially influencing the political expenditures of its subsidiaries and therefore a political contribution by the subsidiary could create a political debt by the government official to the holding company or to the holding company's regulated subsidiaries. Id.

ISO is not an insurer. "The theory of insurance is that of transferring risks. Insurance companies accept risks from manufacturers and either retain the risks or spread the risks through reinsurance." See Owens-Illinois v. United Ins. Co., 138 N.J. 437, 472 (1994), citing, John A. Appleman & Jean Appleman, 13A Insurance Law and Practice § 7681 (1976). ISO is not an insurance company, it is not in the business of accepting the transfer of risk, and ISO does not possess a certificate of authority to transact the writing of any kind of insurance in New Jersey. Thus, the statutory prohibitions do not directly apply to ISO as an

insurer. The question then becomes whether ISO is subject to the statutory prohibitions based upon its relationship with insurers.

In the present matter, the facts show that insurers permeate ISO and exercise substantial control over it. As a result, the legislative policy underlying N.J.S.A. 19:34-32 and 45 suggests that ISO should be considered subject to the prohibition contained in these statutes.

The stated business and purposes of ISO include to make available to insurers insurance rating, statistical, actuarial, policy form and related services, and to ascertain and respond to the evolving needs of insurers and the insurance industry, policyholders and regulators through the institution of user advisory panels* and liaison activities. See ISO Restated Certificate of Incorporation, Art. 3 (Restated June 2001). ISO has been described as a for-profit private trade organization that generates standard insurance forms for use by its clients, mainly insurance companies. See Heritage Mutual Insurance Co. v. Advanced Polymer Technology, Inc., 97 F.Supp.2d 913 (S.D. Indiana 2000). It has also been described as an association of domestic property and casualty insurers. See E.I. Du Pont De Nemours and Co. v. Admiral Insurance Co., 711 A.2d 45 (Sup. Ct. Delaware 1995).

We note that effective January 1, 1997, ISO converted to a for-profit stock corporation. See, <www.iso.com/press releases/1996/09_25_96.html.> Insurers own approximately 80% of ISO's common stock. According to ISO, there are two classes of ISO common stock: Class A shareholders elect ten of ISO's thirteen directors and otherwise have unrestricted voting rights. Class A shares may only be held by present or former employees and directors, or their legal representatives, or an employee stock ownership plan ("ESOP"). Class B shareholders elect three of ISO's thirteen directors and have limited voting rights, to wit, any fundamental change in the structure of the corporation, such as merger, consolidation or dissolution, and any change to certain provisions of the certificate of incorporation and by-laws requires the approval of two-thirds of the Class B shares. Class B shares may only be held by an insurer or reinsurer writing a line of

* "User Advisory Panels" do not have any decision-making authority but make recommendations in their areas of expertise. See ISO Bylaws, Art. VII, §7.1.

insurance for which ISO acts. Class A and Class B shares are economically equivalent.*

ISO's certificate of incorporation provides that Class B stock must be at least 75% of issued stock unless two-thirds of Class B stockholders consent. (See ISO Restated Certificate of Incorporation, Art. 4, §H (June 2001)). ISO states that as of April 2003, Class A shares comprised approximately 20.3% of ISO's outstanding capital stock, and approximately 125 separate insurer or reinsurer shareholders, some of whom we assume are authorized to transact insurance in New Jersey, owned shares of Class B common stock comprising approximately 79.7% of ISO's economic value. ISO asserts that no single insurance or reinsurance company owns more than 6.5% of ISO's outstanding capital stock. It is not clear as to New Jersey-authorized insurers' ownership interests.

Insurers permeate the ISO organization. Insurers own much of ISO's stock, have three of thirteen seats on the Board of Directors and are clients of ISO. In addition, ISO's stated purpose is to service the insurance industry, and respond to the needs of insurers, the insurance industry and regulators. While it may be true that insurer stockholders have limited voting rights, nevertheless, insurers own the majority of its stock (close to 80%). Insurers also elect three of thirteen of the Board of Directors, and may serve on ISO advisory panels, which make recommendations in the panels' area of expertise.

In addition, while insurer stockholders vote for only three of thirteen directors, they have significant control over corporate governance issues. For example, the affirmative vote of two-thirds of the insurer stockholders is required for changes to several provisions of the articles of incorporation and bylaws that concern corporate governance - i.e., provisions concerning the number and qualifications of the directors; voting rights of stockholders; powers of the board of directors; and stockholder meetings. (See ISO Restated Certificate of Incorporation, Art. 11 (June 2001)). As such, through the three directors and the matters that require the vote of two-thirds of the insurer stockholders, insurers exercise a significant amount of control over ISO.

* It is our understanding that ISO derives revenues from the sale of products and services to insurer and reinsurer shareholders, but does not knowingly receive any corporate funding from insurer or reinsurer shareholders.

January 6, 2005

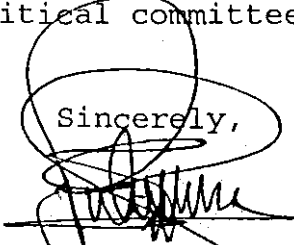
Page 6

Thus, while not an insurer, ISO is so closely allied and related to the insurance industry that the prohibitions in N.J.S.A. 19:34-32 and 19:34-45 should apply to it. Insurers, through their Class B stock ownership, have significant control over corporate governance. Given the insurers' roles in every level (i.e., ownership, membership, clients and Board of Directors) of the ISO organization, insurers would be, or appear to be, directly or indirectly using their assets to support candidates for political office in violation of N.J.S.A. 19:34-32 and 19:34-45. This potential for corruptive influence and the creation of political debt makes the imposition of these statutory prohibitions upon ISO consistent with the Legislature's intent in enacting the statutes.

ISO has not described how it intends to "establish and administer" a continuing political committee. Generally, N.J.S.A. 19:34-45 also prohibits the use of an enumerated corporation's corporate funds to establish, administer or solicit contributions for a political committee. See Attorney General Formal Opinion No. 14-1979. However, it does not prohibit the establishment of a separate political fund contributed to voluntarily by employees of such a corporation, where the employees are members of a political action committee with knowledge of the intended political use of the fund. Id. We have concluded that because insurers have significant control over corporate governance issues and ISO is so closely allied and related to the insurance industry, the prohibitions of N.J.S.A. 19:34-32 and 19:34-45 apply to it. Thus, ISO is also not permitted to use its corporate funds to establish and administer a continuing political committee.

In sum, you are advised that ISO is prohibited from making contributions to candidates seeking election to public office in the State of New Jersey or making contributions to New Jersey political committees. The Commission is further advised that ISO is precluded from using its own monies to establish and administer a continuing political committee in New Jersey.

Sincerely,



PETER C. HARVEY
ATTORNEY GENERAL

JUN 17 2003

A.O. Request 06-2003



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:

Full Name of Person, Committee or Entity

Insurance Services Office, Inc.

Mailing Address
545 Washington Boulevard

Jersey City, New Jersey 07310

*Day Telephone No.
201-469-2000

*Evening Telephone No.
N/A

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): _____ | <input type="checkbox"/> |

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:

The undersigned has no reason to believe that Insurance Services Office, Inc. has previously filed reports with the Commission.

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

N/A

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).

See attached.

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

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:

Robert A. Becker, Esq.

Mailing Address:

545 Washington Boulevard (21-5)

Jersey City, New Jersey 07310-1686

*Day Telephone No.

201-469-2988

*Evening Telephone No.

N/A

Fax Number:

201-748-1729

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.

6/16/03

Dated:

Robert A. Becker

Signature

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:

Insurance Services Office, Inc. [hereinafter ISO] is a for-profit stock corporation. Among other products and services, ISO and its subsidiaries and affiliates provide analytical and decision-support products and services, including statistical, actuarial, underwriting, and claims information; consulting; insurance policy language, advisory prospective loss costs, rules and other supplementary rating information; fraud-identification tools; and data processing. In New Jersey, ISO is a rating organization licensed pursuant to N.J.S.A. 17:29A-2 and ISO DATA, Inc., a wholly owned subsidiary of ISO, is an advisory organization registered pursuant to N.J.S.A. 17:29A-29. ISO files insurance policy forms and endorsements, advisory prospective loss costs, rules and other supplementary rating information with the New Jersey Department of Banking and Insurance for use by ISO participating members, subscribers, and service purchasers. ISO's customers include insurers, reinsurers, and non-insurers.

There are two classes of ISO common stock: Class A shareholders elect all but three of ISO's thirteen directors and otherwise have unrestricted voting rights. Class A shares may only be held by present or former employees and directors, or their legal representatives, or an employee stock ownership plan ("ESOP").

The requested advisory opinion will assist ISO in determining its rights and obligations under the Act.

[their insureds]...and either retain the risks or spread the risks through reinsurance.” Illinois, Inc. v. United Ins. Co., 138 N.J. 437, 650 A.2d 974 (1994).

ISO is not an insurance company -- ISO is not in the business of accepting the transfer of risk, and ISO does not possess a certificate of authority to transact the making of any kind of insurance in New Jersey. Accordingly, because ISO is not an insurance company, ISO is not prohibited by N.J.S.A. 19:34-32 or N.J.S.A.19:34-45 from establishing and administering a continuing political committee in New Jersey, making contributions to candidates seeking election to a public office in the State of New Jersey or making contributions to New Jersey political committees.

New Jersey also prohibits insurance companies from indirectly making political contributions. As noted previously, N.J.S.A. 19:34-32 provides that “[n]o insurance corporation or association doing business in this state shall, directly or *indirectly*, pay or use...any money or property...for any political purpose whatsoever....” (emphasis supplied).

One advisory opinion issued by the Commission (incorporating an opinion rendered by the New Jersey Attorney General's office) identified that New Jersey political action committees [hereinafter PACs], or CPCs, established and administered by employees of a company subject to N.J.S.A. 19:34-45 may not accept funding from federal PACs and non-New Jersey state PACs, supported by

CPC by ISO, would not constitute a prohibited indirect political contribution by any of its insurer and reinsurer shareholders.

New Jersey Attorney General Opinion 4-1983 does not change the above conclusion. The Attorney General's opinion recognized that if a non-insurance holding company owns a majority of the capital stock of an insurance company licensed to do business in New Jersey, then the prohibitions contained in § 19:34-32 and § 19:34-45 will extend to non-insurance corporate subsidiaries of the holding company. Op. N.J. Att'y Gen. 4-1983 (1983). The opinion stated that "[t]his is due to the nature of the holding company -- subsidiary company relationship. 'The dominate characteristic of a holding company is the ownership of securities by which it is possible to control or substantially influence the policies and management of one or more of the operating companies.'" Id. (quoting North American Co. v. Securities and Exchange Commission, 327 U.S. 686, 701 (1946)). ISO is not an insurance company and ISO is not a subsidiary of any insurance or reinsurance company. No single insurer or reinsurer owns more than 6.5% of ISO's outstanding capital stock. Accordingly, because ISO is not a subsidiary of any insurance or reinsurance company, ISO is not prohibited by N.J.S.A. 19:34-32 or N.J.S.A.19:34-45 from establishing and administering a continuing political committee in New Jersey, making contributions to candidates seeking election to a public office in the State of New Jersey or making contributions to New Jersey political committees.



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Legal Director

JAMES P. WYSE
Counsel

June 27, 2003

Robert A. Becker, Esq.
545 Washington Boulevard (21-5)
Jersey City, New Jersey 07310-1686

Dear Mr. Becker:

Your request for an advisory opinion was received on June 17, 2003, and has been scheduled for consideration at the Commission meeting on July 17, 2003. The meeting will begin at 11:00 a.m. at the offices of the Commission, 28 West State Street, Trenton.

Please do not hesitate to contact me if you have any questions about the advisory opinion process.

Very truly yours,

NEDDA G. MASSAR
Legal Director