



State of New Jersey

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March 18, 2025

Mark Sheridan, Esq.
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Advisory Opinion No. 02-2025

Dear Mr. Sheridan:

You submitted a request for an Advisory Opinion on behalf of Ciattarelli for Governor on February 28, 2025 and consented to an extension until March 19, 2025 to respond. The Commission considered your request and I am issuing this response pursuant to N.J.S.A. 19:44A-6(f).

Your request for an Advisory Opinion asked whether expenditures incurred as a result of sending communications to donors of another candidate's campaign are subject to the expenditure limit of N.J.A.C. 19:25-16.9(a)(3), or if this activity qualifies as an exception to the expenditure limit pursuant to N.J.A.C. 19:25-16.27(a)(1).

Commission Response

You are advised that all expenses incurred to send communications to another candidate's contributors shall count against the expenditure limit pursuant to N.J.A.C. 19:25-16.9(a)(3) and shall not qualify as an exception to the limit under N.J.A.C. 19:25-16.27.

Submitted Facts

You state that "[r]ecent reports revealed that Spadea for Governor deceived elderly contributors on fixed incomes into unknowingly making recurring contributions to his gubernatorial campaign."¹ You further state that Ciattarelli for Governor plans to incur expenses to communicate with donors who made recurring contributions to Spadea for Governor to explain that they may request a refund of any contributions that

¹ Ciattarelli Advisory Opinion Request, p. 1. The Commission takes no position with regard to allegations concerning Spadea's fundraising techniques, submitted by Ciattarelli for Governor in its request, as that issue falls outside the jurisdiction of the Commission.

may have been made to Spadea unwittingly. You attached to the request: 1) a letter that will be sent to those Spadea for Governor contributors that Ciattarelli for Governor believes have unwittingly made contributions to Spadea's campaign, and 2) a letter for those donors to send to Spadea for Governor, requesting a refund. The letter to Spadea for Governor's donors states, in part:

My name is Jack Ciattarelli, and I am a pro-Trump candidate in the Republican primary for the Governor of the State of New Jersey. I am not writing to solicit contributions or your support. Regrettably, I am reaching out to let you know that you may have been scammed by one of my opponents and his unethical fundraising solicitation. I encourage you to check your credit cards or bank account for charges to Spadea for Governor and to protect yourself.

You state that the costs Ciattarelli for Governor will incur to send these letters include the cost of printing the letters and a copy of the recent Politico article, postage for the letters to be sent to the contributors, the self-addressed envelopes to the Spadea campaign, and postage for the request for refund to be sent to Spadea for Governor. AO request, p. 1. You indicate that Ciattarelli for Governor believes these expenditures should not be subject to the expenditure limit that is imposed upon gubernatorial candidates participating in the public matching fund program pursuant to at N.J.A.C. 19:25-16.9(a)(3). AO request, p. 2. Specifically, you assert that "these expenses relate to reasonable and necessary compliance with the reporting and certification requirements imposed by the public finance provisions of the [Campaign Contributions and Expenditures Reporting] Act," which is one of the enumerated exemptions to the expenditure limit, listed at N.J.A.C. 19:25-16.27. AO request, p. 2.

Ciattarelli for Governor has filed documents with the Commission indicating that the campaign is participating in the gubernatorial public financing program for the 2025 primary election.

Discussion

The compelling public policy of the gubernatorial public financing program is that "candidates for election to the offices of Governor and Lieutenant Governor may conduct their campaigns free from improper influence and so that persons of limited financial means may seek election to the State's highest office." N.J.S.A. 19:44A-27. Candidates who participate in the gubernatorial public financing program are subject to requirements and restrictions in the Campaign Contributions and Expenditures Reporting Act (the Act) and Commission Regulations that do not apply to other candidates. The program, as administered by the Commission, distributes public matching funds at a ratio of \$2 in public funds, for each \$1 in qualified private contributions, up to a statutory maximum amount of \$5.5 million in the 2025 primary election. Further, a publicly financed gubernatorial candidate is subject to a separate expenditure limit in the election; in the 2025 primary election that expenditure limit is \$8.7 million. N.J.A.C. 19:25-16.9(a)(3).

N.J.A.C. 19:25-16.27 ("Expenses not subject to expenditure limits") details the exceptions to the expenditure cap. It states:

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-16.9(a)3, Limitations on participating candidates:

1. Reasonable and necessary compliance with the reporting and certification requirements imposed by the public finance provisions of the Act shall not be deemed to be expenditures within the meaning of N.J.S.A. 19:44A-7. Such

expenses shall be specifically identified as such in all reports required under this chapter.

2. Travel expenses of the candidate, as that term is defined in N.J.A.C. 19:25-16.28(a) (Travel expenses), or of any person other than the candidate if such traveling expenses are voluntarily paid by such person without any understanding or agreement with such candidate that they shall be, directly or indirectly, repaid to him or her by the candidate, shall not be deemed expenditures within the meaning of N.J.S.A. 19:44A-7.

3. The reasonable value of food and beverage to persons who attend a testimonial affair on behalf of or in aid of a candidate and for whom a contribution in excess of the reasonable value of such food and beverages is reported as provided in N.J.A.C. 19:25-12.2.

4. Election night celebration or event expenses incurred pursuant to N.J.A.C. 19:25-16.34(c).

The Commission has previously addressed the question of whether certain expenditures should be subject to the expenditure limit pursuant to N.J.A.C. 19:25-16.9(a)(3). In Advisory Opinion 01-2014, the Commission considered whether the Chris Christie for Governor general election campaign could permissibly use campaign funds to respond to legislative and judicial subpoenas after the general election had already passed. Ultimately, the Commission determined campaign funds could be used for this purpose, and also determined that the proposed expenditures would not be subject to the public financing expenditure limit:

The Commission has by regulation exempted from the limit not only travel expenses, see also N.J.S.A. 19:44A-7, but also compliance costs relevant to the public finance provisions of the Act, reasonable value of food and beverage in connection with a testimonial affair, and election night expenses. N.J.A.C. 19:25-15.26. The Commission does not find that the proposed expenditures compromise the level playing field envisioned by the expenditure limit in the public financing program, N.J.S.A. 19:44A-27. N.J.S.A. 19:44A-42 provides that the provisions of the public financing law are to be construed liberally and applied "so as to promote the purposes expressed herein." See also N.J.A.C. 19:25-1.4 and 1.6. The Commission therefore advises you that the proposed expenditures are not subject to the expenditure limit.

AO 01-2014, p. 6.

In Advisory Opinion No. 02-2001, the campaign of McGreevey for Governor 2001 asked, in part, whether the campaign could pay for administrative and compliance costs associated with the receipt of unsolicited general election contributions received prior to the date of the primary election, using primary election funds. The Commission found that "the administrative and compliance costs associated with receipt of unsolicited 2001 general election contributions prior to the primary election are ordinary office expenses that must be paid with 2001 primary election funds and must be reimbursed with general election funds." Notably, the "administrative and compliance costs" discussed in AO 02-2001 were "[s]uch costs include[d] in] compliance review by MFG2001 staff 'with attendant salary and overhead costs that would technically be incurred during the primary cycle.'" AO 02-2001, p. 2. The Commission recognized that these are the types of costs that are not subject to the expenditure limit pursuant to the exception in N.J.A.C. 19:25-16.27(a).

You submit that the costs associated with sending communications to Spadea contributors to inform them that they may request a refund “relate to reasonable and necessary compliance with the reporting and certification requirements imposed by the public finance provisions of the act,” and, therefore, should not be subject to the expenditure limit. The Commission disagrees. The correspondence that Ciattarelli for Governor intends to send to Spadea contributors is not related to the “reasonable and necessary compliance with the reporting and certification requirements,” of its own campaign, but rather, concerns the fundraising activities of a political opponent. Examples of reporting and certification requirements may include expenses related to filing reports, obtaining certifications, or complying with other administrative requirements related to election law. The proposed activity is a direct appeal to reduce the campaign funds of another candidate, a purpose for which there is no exception to the expenditure limit. This differs from the activity described in AO 02-2001, which related to the costs associated with the actual function of processing contributions the campaign received.

Moreover, as compared to the factual scenario presented in AO 01-2014, this request concerns pre-election, as opposed to post-election, activities. The Commission’s determination in AO 01-2014 was influenced by the fact there was no potential for post-election activity to compromise the election’s level playing field. The same cannot be said here. The proposed letter is essentially campaign literature that could affect the outcome of the election, regardless of the location and voting status of its recipients, which is the exact type of activity that is intended to count against the expenditure limit pursuant to N.J.A.C. 19:25-16.9(a)(3).

Conclusion

The communications Ciattarelli for Governor intends to send to Spadea for Governor’s contributors are not reasonable and necessary costs of compliance with the reporting and certification requirements imposed by the public finance provisions of the Act pursuant to N.J.A.C. 19:25-16.27. The costs associated with these communications will be subject to the expenditure limit pursuant to N.J.A.C. 19:25-16.9(a)(3) and must be reported accordingly.

Very truly yours,
Election Law Enforcement Commission

By: _____


Theresa J. Lelinski, Esq.