



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

OWEN V. McNANY, III
CHAIRMAN

STANLEY G. BEDFORD
COMMISSIONER

DAVID LINETT
COMMISSIONER

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

FREDERICK M. HERRMANN, PH.D.
EXECUTIVE DIRECTOR

JEFFREY M. BRINDLE
DEPUTY DIRECTOR

GREGORY E. NAGY
LEGAL DIRECTOR

EDWARD J. FARRELL
COUNSEL

November 27, 1991

Frank M. Pelly
953 Curtis Place
North Brunswick, New Jersey 08902

Advisory Opinion No. 07-1991

Dear Mr. Pelly:

The Commission considered your request for an advisory opinion at its meeting of November 20, 1991, and has directed me to issue the following response. You have asked whether you may use funds remaining unexpended in a "personal PAC" for certain proposed purposes.

You write that you assumed the position of Executive Director of the New Jersey Lottery Commission subsequent to your resignation from the State Assembly on July 15, 1991. You have advised staff that during the time you held elective political office, you had established a "personal PAC," "Friends of Frank M. Pelly," which is a continuing political committee and has been filing quarterly reports (Form R-3) with the Commission. Its most recent quarterly report was filed on October 16, 1991, and reflects a balance of cash-on-hand in the amount of \$9,700.73.

Initially, the Commission wishes to note its appreciation to you for raising these important issues under the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, et seq. (hereafter, "the Act"), and the regulations promulgated under it. This is the first occasion on which the Commission has been asked by a former candidate who subsequently assumed appointive public office in the Executive Branch of the State Government for guidance in applying surplus funds regulations.

The Commission responds as follows to the possible uses of unspent funds remaining in "Friends of Frank M. Pelly" that you have asked the Commission to consider:

1. The purchase of tickets for entertainment and sporting events for former staff and constituent use "as a gesture of

appreciation" appears to be a use reasonably related to your former role as a candidate for and holder of elective office. Commission Regulations N.J.A.C. 19:25-7.2 and 19:25-7.4 (copies enclosed) prohibit conversion of campaign or continuing political committee funds to the "personal use" of a candidate. Providing tickets in appreciation to former staff or constituents for past political activity does not result in any personal benefit to you as a former candidate unless you are also purchasing tickets for your attendance. If that is the fact situation, the Commission would again have to evaluate the totality of the circumstances. For example, personally accompanying a group of former staff and constituents to such a single event might be an expected social courtesy and entirely appropriate. On the other hand, the purchase of season tickets primarily for the use of the candidate would lead to a different conclusion.

2. Defraying the cost of a dinner or social event for former constituents, staff, and supporters as an expression of thanks for their support and assistance during your term as an elected officeholder also would appear to be an appropriate use of surplus funds. The use of campaign funds for a "thank-you" dinner or some other similar postelection social event has been addressed in Advisory Opinions Nos. 20-1983 and 02-1984 (copies enclosed). Essentially, those opinions permit a candidate to use unspent campaign funds for such events. In this inquiry, the events that are being contemplated apparently will be conducted some several months after the last date on which you held a public elective office. Nevertheless, the Commission agrees that those events may be sufficiently campaign-related to justify use of unspent funds provided that the participants or invitees are persons who played a role in your campaign and subsequently in your elected position. The response of the Commission might be different if such events were to be conducted at a point in time long after there could be any reasonable relevance to your former activities as a candidate and elected officeholder.
3. The purchase of tickets for political events, retirement dinners, and testimonial dinners also appears, as a general proposition, to be an appropriate disposition of unspent "personal PAC" funds. The Commission recognizes that the political attachments and activities of a former candidate and elected officeholder do not terminate immediately upon leaving elected office. Specifically in regard to retirement or testimonial dinners, the Commission distinguishes between events on behalf of a person who had a connection to your career as an elected officeholder, and a person who may be solely associated with your position as Executive Director of

the New Jersey Lottery Commission. For example, using the funds at the disposal of "Friends of Frank M. Pelly" to purchase tickets to attend a retirement dinner for a lottery employee, who had no role in your career as elected officeholder, would not be contemplated under the facts that you have suggested here. Also, in Advisory Opinion 03-1989 (copy enclosed), please note that a candidate was advised that while the Commission had no objection to the use of campaign funds for purchasing tickets to attend social events at private fraternal associations, such funds should not be used to purchase memberships on behalf of the elected officeholder.

4. The payment of expenses associated with your current position as Executive Director of the New Jersey Lottery Commission, such as attending conferences, professional organization meetings, and other similar activities, does not appear reasonably related to your former activities and duties as a candidate and elected officeholder. While the Commission recognizes that as an officer of the Executive Branch, attendance at such events is beneficial to both you and the public you serve, the Commission is not persuaded that the use of campaign or political contributions for such purposes is sufficiently related to campaign or political objectives. Furthermore, the Commission notes that as an officer of the Executive Branch, you are subject to the jurisdiction of the Executive Commission on Ethical Standards in regard to any possible conflict of interest, or in regard to the payment of travel and conference expenses from any source other than the State; see N.J.S.A. 52:13D-13 et seq.. Therefore, even if the Commission were to approve of this possible use, you would be advised to seek also an opinion also from the Executive Commission on Ethical Standards.

Once again, the Commission has asked me to express its appreciation for your inquiry, and for your interest in the Commission's work.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
GREGORY E. NAGY
Legal Director

GEN/jah
attachments