



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Respond to:
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June 26, 2012

Ralph W. Holmen, Esq.
Associate General Counsel
National Association of Realtors
430 North Michigan Avenue
Chicago, IL 60611-4087

Advisory Opinion 01-2012

Dear Mr. Holmen:

The New Jersey Election Law Enforcement Commission (the "Commission") completed its discussion of your Request for an Advisory Opinion at its June 19, 2012 meeting and directed me to issue this response. You submitted your inquiry on behalf of the National Association of Realtors (NAR). You write that NAR has established the National Association of Realtors Fund (NAR Fund), a segregated account registered with the Internal Revenue Service as a political organization under Section 527 of the Internal Revenue Code. NAR operates and controls all activities of the NAR Fund. The NAR Fund intends to make expenditures in support of or in opposition to candidates in New Jersey local and state elections which fall within the definition of "independent expenditures" under the Reporting Act and Commission regulations. The NAR Fund may make independent expenditures directly, or in cooperation with other entities. You asked the Commission for a determination that the NAR Fund is not a "political committee" under the definitions of the Reporting Act and Commission regulations, or, if it is a political committee, that the contribution limits are unconstitutional and unenforceable and therefore will not apply to its activity.

Questions Presented

1. Will the NAR Fund making independent expenditures in a New Jersey election incur a filing obligation as a political committee? 2. If the NAR Fund incurs a filing obligation as a political committee, do the contribution limits apply to its activity as a political committee?

Commission Response

The Commission hereby advises you that the NAR Fund's contemplated activity is reportable as independent expenditures only and not as a political committee, and in accordance with the provisions of N.J.S.A. 19:44A-11 and N.J.A.C. 19:25-12.7 and 12.8. The NAR Fund, filing as an

entity making an independent expenditure, would be required to report expenditures but would not be subject to limits on contributions received, nor to the registration and reporting requirements applicable to political committees.

Submitted Facts

NAR is a national trade association with members consisting of individuals engaged in all aspects of the real estate industry. It has established a political action committee, the Realtors Political Action Committee, which reports to the Federal Election Commission and engages in activities relating exclusively to candidates for federal office. It has also established and controls the National Association of Realtors Fund (NAR Fund), a segregated account registered as a “Section 527” organization under the Internal Revenue Code. You write that the purpose of the NAR Fund is to advocate the election or defeat of candidates for state or local office in the various states, which states may include New Jersey, and that the primary activity of the NAR Fund is to make independent expenditures, “that is, communications to the general public expressly advocating the election or defeat of an identified candidate made without consultation, cooperation or coordination with any candidate or campaign.”

The NAR Fund may cooperate with other, affiliated entities in New Jersey for the making of independent expenditures, which cooperation may include the sharing of costs of such expenditures, the pooling of resources, and the making of contributions to, or receipt of contributions from, those affiliated entities for the specific purpose of making an independent expenditure. However, those “other entities” will not be candidates or persons acting on behalf of candidates. The NAR Fund will not make contributions directly to candidates. The NAR Fund does not contemplate engaging in outside fundraising activity.

The portion of membership dues allocated and transferred to the NAR Fund in all states is less than 5 % of the dues collected by NAR. In questioning by the Commission in Public Session, you indicated that the members pay local affiliates which in turn transfer funds to the national organization. Further, any dues transferred into the NAR Fund and subsequently used for the making of independent expenditures in New Jersey would likely fall under the reporting threshold for contribution information from any one contributing member.

Standing issue. Preliminarily, the Commission notes that the request also seeks an opinion concerning reporting obligations of “another entity” with which the NAR Fund “cooperates” in making independent expenditures. The Commission cannot issue an advisory opinion to the Realtors Fund concerning the reporting obligations of another entity, see standing requirement at N.J.A.C. 19:25-18.1(a)3.

Discussion

1. Will the NAR Fund making independent expenditures in a New Jersey election incur a filing obligation as a political committee?

The information presented in your Request indicates first that the contemplated activity will meet the definition of an “independent expenditure” under the Reporting Act definitions because the expenditures will be for communications expressly advocating the election or defeat of an identified candidate, and they will not be coordinated with a candidate or person acting on behalf of a candidate. N.J.S.A. 19:44A-11 and N.J.A.C. 19:25-12.7. See also Commission Advisory Opinions 01-2011, 10-2001 and 11-2001. As an entity making independent expenditures, the NAR Fund must file reports of its expenditures and adhere to political identification requirements, pursuant to N.J.A.C. 19:25-12.8 and 12.8A.

An entity making independent expenditures in a New Jersey election may also incur a filing obligation as a political committee. This result is possible if the entity first exceeds the \$1,200 filing threshold for reporting the making of an independent expenditure, but subsequently also exceeds the \$2,100 threshold for filing as a political committee, see definitions at N.J.S.A. 19:44A-3i and N.J.A.C. 19:25-1.7. The Commission’s Advisory Opinions have also required that an entity must have as its “major purpose” the support or opposition of candidates in order to comply with constitutional requirements set forth in the United States Supreme Court’s decision in Buckley v. Valeo, 424 U.S. 1 (1976).

The Commission by regulation has also excluded from the definition of “political committee,” a “contributor not involved in fundraising (that is, not soliciting or accepting contributions to aid or promote candidates...), and not conducting other election-related activity other than making contributions from its own funds....” N.J.A.C. 19:25-1.7.

The NAR Fund states that its purpose is to advocate the election or defeat of candidates through the making of independent expenditures in a state or local New Jersey election. Further, while it may accept funds from an affiliated entity in New Jersey for the specific purpose of making an independent expenditure to support or oppose a candidate in a New Jersey election, it will not engage in outside fundraising activity. The Commission finds that the absence of fundraising from outside sources is determinative in concluding that the proposed activity does not meet “political committee” status. Further the NAR Fund is established as a segregated account under “Section 527” of the Internal Revenue Code. Its purpose is to advocate the election or defeat of candidates for state or local office in the various states, which states “may include” New Jersey. The Commission is not persuaded that the evidence leads to a conclusion that the “major purpose” of the NAR Fund as established is to engage in the making of expenditures to support or oppose a candidate in a New Jersey election through the pooling of financial resources with an affiliated entity. Therefore the Commission determines that the contemplated activity will not result in a filing obligation as a political committee in New Jersey.

2. If the NAR Fund incurs a filing obligation as a political committee, do the contribution limits apply to its activity as a political committee?

Since the Commission concludes that the contemplated activity meets a filing obligation for independent expenditure reporting only, the Commission does not find it necessary to address Question Two.

Conclusion

Based upon the described contemplated activity, the Commission advises you that the NAR Fund will incur a reporting obligation for independent expenditures only and not as a political committee for the contemplated activity. The NAR Fund must file independent expenditure information only in accordance with the provisions of N.J.S.A. 19:44A-11 and N.J.A.C. 19:25-12.7 and 12.8. In this case the NAR Fund, filing as an entity making an independent expenditure, would be required to report expenditures but would not be subject to limits on contributions received, nor to registration and reporting requirements applicable to a political committee. This Advisory Opinion determination is intended to apply only to the particular facts presented.

The Commission thanks you for your inquiry and for your extension of time to answer.

Very truly yours,
Election Law Enforcement Commission

By: _____
Carol L. Hoekje, Esq.



**Advisory Opinion Request
For Candidates and Committees**

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
 P.O. Box 185, Trenton, NJ 08625-0185
 (609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
 Website: www.elec.state.nj.us

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PLEASE PROVIDE THE INFORMATION REQUESTED BELOW

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 include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full name of Person, Committee, or Entity:
 National Association of Realtors®

Mailing Address:
 430 N. Michigan Ave., Chicago, IL 60611

*Day Telephone Number:
 312 329 8375

*Evening Telephone Number:
 312 286 0945

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"/>	Personal financial disclosure statement	<input type="checkbox"/>
Continuing political committee	<input type="checkbox"/>	Other (please describe):	<input type="checkbox"/>
Political party committee	<input type="checkbox"/>		
Legislative leadership committee	<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., 2005 general election) or calendar years, and identify filing capacity:

None

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

Not applicable

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 National Association of Realtors® (NAR) seeks an opinion regarding the registration and reporting obligations imposed by N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 on the National Association of Realtors® Fund ("Fund"), a segregated account registered with the Internal Revenue Service as a political committee under I.R.C. Section 527, with respect to independent expenditures, as defined in N.J.S.A. 19:44a-11, and application of the limits on contributions to political committees imposed by N.J.S.A. 19:44A-11.5.

*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:

NAR respectfully requests that the Commission issue an Advisory Opinion confirming that to the extent the Fund, or any organization or entity with whom the Fund cooperates in making an independent expenditure, or both, qualifies as a "political committee" under the Act, the limits on contributions to such a political committee limits are unconstitutional and may not be enforced against such entities so long as they confine their activities to making independent expenditures, as defined in the Act and Regulations of the New Jersey Election Law Enforcement Commission, N.J.S.A. 19:44A-11 and N.J.A.C. 19:25-12.7.

6. Person who is submitting this advisory opinion request on behalf of the committee or entity listed in Question #1:

Full Name:

Ralph W. Holmen, Associate General Counsel

Mailing Address:

430 N. Michigan Ave., Chicago, IL 60611

*Day Telephone Number:

3123298375

*Evening Telephone Number:

3122860945

Fax Number:

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee, or entity

Other (please describe):

Counsel

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.

February 13, 2012

Dated:



Signature:

*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.



NATIONAL
ASSOCIATION of
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February 13, 2012

New Jersey Election Law Enforcement Commission
28 West State Street, 13th Floor
Trenton, NJ 08608

Re: Advisory Opinion Request

Dear Commissioners:

This letter is submitted on behalf of the National Association of Realtors® (“NAR”) seeking an Advisory Opinion from the New Jersey Election Enforcement Commission (“Commission”) regarding application of The New Jersey Campaign Contributions and Expenditures Reporting Act, New Jersey Statutes 19:44A et seq. (“Act”), to the facts and circumstances described below. In short, NAR seeks confirmation that the \$7,200 contribution limit set forth in N.J.S.A. 19:44A-11.5(c) is not applicable to a political committee created to and engaged solely in making independent expenditures for candidates as defined in for 19:44A-3(c), that is, candidates for state, county, municipal, or school district public office in New Jersey.

NAR is a national trade association organized as an Illinois Not For Profit corporation exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code (“Code”). NAR’s members consist of individuals engaged in all aspects of the real estate industry. NAR is engaged in a wide variety of activities intended to improve business conditions for its members in the industry, including offering educational programs, industry research, promulgation and enforcement of a Code of Ethics, legislative advocacy, conducting conferences and trade shows, and the like. NAR has also established, operates, and solicits from its members contributions to the Realtors® Political Action Committee, a federal political committee registered with and reporting to the Federal Election Commission, and whose activities relate exclusively to candidates for federal office. Although NAR also engages in certain other political activity primarily but not exclusively related to the election of candidates for federal office, the scope of NAR’s other activities is such that NAR’s major purpose is not to engage in political activities.

NAR has also established the National Association of Realtors® Fund (“Fund”), a segregated account registered with the Internal Revenue Service as a political organization under Section 527 of the Code. NAR operates and controls all activities of the Fund. The purpose of the Fund is to advocate the election or defeat of candidates for state or local office in the various states, which may include New Jersey, primarily by making independent expenditures, that is, communications to the general public expressly advocating the election or defeat of an identified candidate made without consultation, cooperation or coordination with any candidate or



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campaign. A portion of the membership dues paid to NAR by NAR members is allocated for and transferred to the Fund. NAR does not solicit or accept contributions to the Fund except that NAR may accept contributions from an affiliated entity for the specific and exclusive purpose of making an independent expenditure in support of an identified candidate. The portion of membership dues allocated and transferred to and used by the Fund in all states is less than 5% of the dues collected by NAR.

NAR proposes that the Fund make independent expenditures, as defined in N.J.S.A. 19:44A-11 and N.J.A.C. 19:25-12.7, in support of or opposition to candidates in New Jersey. The activities of the Fund with respect to candidates in New Jersey will consist exclusively of independent expenditures in support of or opposition to New Jersey candidates, and in no event will the Fund make any contribution to any candidate or candidate's campaign in New Jersey. The Fund may make such expenditures directly, or may cooperate with other entities or organizations in New Jersey (but not including cooperation or coordination with any candidate or any person acting on behalf of a candidate) to make and distribute communications to the general public that will constitute such independent expenditures. When cooperating with other entities the Fund may contribute monies to such others to enable them to make such independent expenditures, may accept monies from such others to enable the Fund to make such independent expenditures, or each entity may pay an agreed upon share of the costs of making such independent expenditure communications. NAR requests an opinion as to whether in making such independent expenditures either the Fund, or another entity with which the Fund cooperates in making such expenditures, or both (1) will constitute a political committee under the Act, as defined in N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7, and is thus subject to the registration and reporting requirements of N.J.S.A. 19:44A-8 and 8.1, and (2) if constituting a political committee, will be subject to the limits on contributions to political committees imposed by N.J.S.A. 19:44A-11.5.

In Advisory Opinion 01-2011, dated April 27, 2011 and issued to Better Education for New Jersey Kids, Inc. ("Better Kids"), the Commission concluded that the contributions limits of 19:44AA-11.5 did not apply to Better Kids because it was not subject to the political committee or continuing political committee filing requirements of N.J.S.A. 19:44A-8 and 8.1. To the extent the Commission concludes here that the Fund or any entity with which the Fund cooperates in making independent expenditures in support of or opposition to one or more local or state candidates in New Jersey is subject to those filing requirements, NAR respectfully suggests that such contribution limits nevertheless may not be applied to the Fund or such other entity, or any entity formed by the Fund and another entity, so long as they are engaged exclusively in making independent expenditures.

As noted in Advisory Opinion 01-2011, in *Citizens United v. Federal Election Commission*, 588 U.S. 1 (2010) the United States Supreme Court held that the federal prohibition of corporate independent expenditures was unconstitutional. Following the *Citizens United* decision the Circuit Court of Appeals for the District of Columbia in *SpeechNow.org v. FEC*, 599 F.3d 686 (March 26, 2010), held that contribution limits applied to "political committees" exclusively engaged in making independent expenditures are unconstitutional, and that court later enjoined the Federal Election Commission (FEC) from enforcing contribution limits for

“political committees” making independent expenditures in federal elections. Subsequent decisions have similarly confirmed that under *Citizens United* state or municipal limits on contributions to political committees are unconstitutional and unenforceable as applied to committees formed and operated exclusively for the purpose of making independent expenditures. See *Wis. Right to Life State Political Action Committee v. Barland*, ___ F.3d ___, 2011 WL 6225138 (7th Cir. 2011) (Wisconsin’s \$10,000 aggregate annual contribution limit is unconstitutional as applied to organizations that engage only in independent expenditures); *Thalheimer v. City of San Diego*, 645 F.3d 1109 (9th Cir. 2011) (District Court correctly held that plaintiffs are likely to succeed in showing that a municipal law imposing a contribution/expenditure limit is unconstitutional as applied to as applied to committees that make only independent expenditures); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010) (holding unconstitutional a city ordinance prohibiting “persons,” including organizations and political action committees, from making independent expenditures if they have received contributions in excess of specified amounts); *Republican Party of New Mexico, et al v. Gary King*, (D.N.M., No. 11-CV-900 WJ/KBM January 5, 2012) (enjoining the State of New Mexico from enforcing contribution limits for segregated contributions held by political committees for the exclusive purpose of making independent expenditures).

The holdings in these cases apply in the same way to the contribution limits imposed by the Act in N.J.S.A. 19:44A-11.5 to the Fund or any other political committee engaged exclusively in making independent expenditures in New Jersey. Accordingly, NAR respectfully requests that the Commission issue an Advisory Opinion confirming that to the extent the Fund, or any organization or entity with whom the Fund cooperates in making an independent expenditure, or both, qualifies as a “political committee” under the Act, the limits on contributions to such a political committee limits are unconstitutional and may not be enforced against such entities so long as they confine their activities to making independent expenditures, as defined in the Act and Regulations of the New Jersey Election Law Enforcement Commission, N.J.S.A. 19:44A-11 and N.J.A.C. 19:25-12.7.

I appreciate your attention to this request. Please do not hesitate to contact me if you require any additional information.

Very truly yours,



Ralph W. Holmen
Associate General Counsel
National Association of Realtors®

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April 2, 2012

Ms. Carol L. Hoekje
Legal Director
New Jersey Election Law Enforcement Commission
P.O. Box 185
Trenton, NJ 08625-0185

Re: Request for an Advisory Opinion
National Association of Realtors®
Additional Information

Dear Ms. Hoekje:

Thank you for your telephone call advising that the Commission will not be meeting on April 17 as scheduled to address the Advisory Opinion Request of the National Association of Realtors® (“Request.”) As we discussed, the Commission has rescheduled its meeting for April 10. I am unable to attend the Commission’s meeting on that date. We agreed that if the Commission has questions about the Request or otherwise expresses uncertainty or reluctance to issue the opinion requested you and the ELEC staff will request the Commission to defer action on the Request until its meeting in May to permit us to address those questions and/or attend that subsequent meeting to respond to any questions. I greatly appreciate your cooperation and flexibility in this regard.

In our conversation you also requested additional information about certain aspects of the Request. First, you requested confirmation and clarity regarding the independent expenditures to be made by the National Association of Realtors® Fund (“Fund”) in support of or opposition to candidates for office in New Jersey. As indicated in the request, the Fund intends to expressly advocate the election or defeat of candidates for state or local office in New Jersey by making independent expenditures, that is, communications to the general public expressly advocating the election or defeat of identified candidates made without cooperation or prior consent of, or in consultation with or at the request of suggestion of, a candidate or any person or committee acting on behalf of a candidate. See N.J.A.C. 19:25-12.7. Such communications may and in most cases will contain one or more of the “traditional” words of express advocacy, such as “Vote for...”, “Support....”, or “Defeat....”

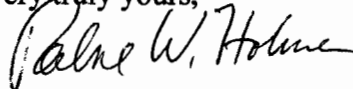


You also requested further information about the manner in which the Fund may “cooperate with other entities or organizations in New Jersey (but not including cooperation or coordination with any candidate or any person acting on behalf of a candidate) to make and distribute communications to the general public that will constitute such independent expenditures.” Such cooperation with other entities contemplated by the Fund will involve related entities such as state or local Realtor® associations in New Jersey. The anticipated cooperation will consist of discussions with those entities regarding candidates for office in New Jersey to be supported by independent expenditures, and the nature, timing, or message to be conveyed in independent expenditure communications to voters. Such cooperation may also involve agreements to share the costs of creating and distributing such independent expenditure communications and, in cases where those costs are to be shared, the details of such cost sharing agreements and how the costs to be borne by each will be paid by the respective parties.

Finally, the Request also indicates that the monies provided for the Fund’s use in making independent expenditures will consist of a portion of NAR membership dues paid by NAR members. Neither the Fund nor NAR will solicit or accept contributions to the Fund from the general public for use for independent expenditures in New Jersey, and in all cases the portion of NAR membership dues transferred to and used by the Fund in all states (including but not limited to New Jersey) will be less than 5% of the dues collected by NAR. The only other monies the Fund may receive and use in making independent expenditures will be those provided by one or more related entities who, as described above, have agreed to share the costs of an independent expenditure communication and transfer to the Fund the agreed upon share of those costs for payment in connection with making the independent expenditure in support of an identified candidate.

I appreciate your attention to the Request, and invite you to contact me if you require any additional information or have any other questions.

Very truly yours,



Ralph W. Holmen
Associate General Counsel
National Association of Realtors®