



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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PUBLIC SESSION MINUTES

SEPTEMBER 12, 1989

TELEPHONE CONFERENCE

Except for Commissioner Axtell, all of the Commissioners and senior staff were present.

Chairman Bedford called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-8 et seq., special notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

The meeting convened at 9:40 a.m. at the Commission offices, 28 West State Street, Trenton, New Jersey.

1 Certification of Public Funds

Director of Public Financing Nedda G. Massar reviewed the applications for public matching funds. She said that on August 21, 1989, the Commission received two submissions for matching funds. She said that the submissions were from general election Candidates Jim Courter and Jim Florio.

The Commission reviewed and certified the submissions individually.

1. Candidate Jim Courter

The net amount submitted by Candidate Courter for match was \$1,064,579.50. This submission was Candidate Courter's first in the general election. Staff informed the Commission that the Courter campaign documented the expenditure of \$150,000 for the 1989 general election and that Candidate Courter filed a Statement of Agreement to participate in 1989 General Election Debates. Based on its review, staff therefore deemed this candidate to be eligible for matching funds. A complete review of all items resulted in temporary refusal of 33 contribution items. After subtracting \$50,000, it was determined that \$979,279.50 was eligible for match at the 2:1 ratio.

Staff therefore recommended that the Commission certify \$1,958,559 in matching funds.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford and passed by a vote of 3-0, the Commission certified \$1,958,559 in matching funds to Candidate Jim Courter.

## 2. Candidate Jim Florio

The net amount submitted by Candidate Florio for match was \$311,231.33. A complete review of all items resulted in temporary refusal of 7 contribution items. A total amount of \$353,556.33, including resubmissions, was determined to be eligible for match at a 2:1 ratio.

Staff recommended that the Commission certify only \$680,262 of the \$707,112.66 in public funds that could be certified because to certify the total amount would cause Candidate Florio to exceed the public funds cap. Since this submission is Candidate Florio's third, the Commission has now certified a total of \$3,300,000 in matching funds to this candidate.

On a motion by Vice Chairman McNany, seconded by Chairman Bedford and passed by a vote of 3-0, the Commission certified \$680,262 in matching funds to Candidate Jim Florio.

## 2. Ballot Statement Issue

Director Massar reported that Socialist Workers' Party gubernatorial Candidate Catherine Sedwick submitted her ballot statement on September 5, 1989. She said that the deadline for submitting those statements was August 18, 1989.

Chairman Bedford excused himself from the meeting at this point but indicated to Counsel Farrell that he would vote in favor of accepting Ms. Sedwick's ballot statement as timely filed and that he would make a motion to that effect.

The telephone connection was interrupted at this point. When telephone contact with the Commissioners was reestablished, Counsel Farrell reported the Chairman's action.

On a motion by Chairman Bedford, seconded by Vice Chairman McNany and passed by a vote of 3-0, the Commission approved Ms. Sedwick's ballot statement as timely filed.

Chairman Bedford no longer participated in the meeting following the vote on the ballot statement.

## 3. Advisory Opinion Request No. 19-1989

This advisory opinion request, submitted by Stephen J. Edelstein, Special Counsel to the New Jersey State Democratic Committee/Campaign '89, Inc., involves the question of allocability to the Florio gubernatorial campaign of certain costs related to a proposed generic electronic media

advertising campaign to be conducted by the New Jersey State Democratic Committee/Campaign '89, Inc.

For details, see the advisory opinion request from Mr. Edelstein to Executive Director Frederick M. Herrmann, dated September 1, 1989. Also see the letters addressed to Executive Director Herrmann from Mr. Edelstein, dated September 6 and September 8, 1989, including enclosures consisting of four advertising scripts. Finally, see the legal analysis from Mr. Edelstein to Executive Director Herrmann, dated September 11, 1989.

In short, Mr. Edelstein maintains that no portion of the cost of the media campaign should be deemed allocable to Congressman Florio's gubernatorial campaign.

Applying the standards of N.J.A.C. 19:25-15.29(c) and Advisory Opinion 33-1981, Mr. Edelstein maintains that there is no unambiguous reference to a gubernatorial candidate or incumbent governor in the scripts submitted to the Commission. Therefore, Mr. Edelstein maintains that the Commission should not require that any cost associated with the generic advertising campaign be allocated against the gubernatorial campaign of Jim Florio.

N.J.A.C. 19:25-15.29(c) calls for an allocation to be made if "the communication makes an unambiguous reference to the gubernatorial candidate in an audio, visual, or printed format...."

Advisory Opinion 33-1981 states that allocability results if 1) either gubernatorial candidate is named or visually depicted or referred to; 2) the Office of Governor is named or referred to; 3) the incumbent governor is named or visually depicted or referred to; or 4) the identity of the candidate, the opponent, or the incumbent governor is apparent by unambiguous reference.

In his legal analysis of September 11, 1989, Mr. Edelstein states that in the initial request for an advisory opinion, the Democratic State Committee (DSC) did not request confidentiality in this matter. Mr. Edelstein states that he is doing so in this correspondence merely to bring the matter before the Commission and to seek a formal policy on confidentiality by the Commission in advisory opinions of this type. Mr. Edelstein indicated that it was the position of the Democratic State Committee that the confidentiality of the text, once presented for an advisory opinion at a public meeting of the Commission, cannot reasonably be expected to remain confidential, even if permitted to remain confidential under the "Open Public Meetings Act." In addition, Mr. Edelstein, in his legal analysis, maintains that most importantly, the Commission should establish an even-handed policy to be uniformly applied, whether that policy is to keep this special type of advisory opinion confidential or make it public.

In this matter, the New Jersey Republican State Committee (RSC) submitted a statement relative to this advisory opinion which specifically addresses the issue of confidentiality. This statement, addressed to Executive Director Herrmann and signed by Peter Verniero, Executive Director

of the New Jersey Republican State Committee, is dated September 11, 1989. In his statement, Mr. Verniero asserts that the material relative to this advisory opinion request should be made public. He states that a secret advisory letter, in this instance, may create a harmful precedent for future parties inconsistent with the principle of disclosure embodied in the law.

In considering this advisory opinion, Executive Director Herrmann initiated the discussion by stating that the first issue to be considered is the issue of confidentiality. This aspect of the advisory opinion request, according to the Executive Director, involves the questions of whether staff should release the materials being presently considered and whether in the future these kind of advisory opinion requests should be made public, or kept confidential.

Vice Chairman McNany recognized Mr. Edelstein. Mr. Edelstein clarified for the Commission that the initial request made by DSC was not one of asking for confidentiality. He said that the DSC does not perceive confidentiality to be an issue. Mr. Edelstein said that the DSC believes that these matters should be made public. He said that the DSC's main concern is that a policy of even-handedness be adopted.

Mr. Edelstein said that the request for this advisory opinion was made more than ten days before the meeting and that the script was submitted four days before the meeting. He said that, in terms of future policy, he would propose a regulation calling for all scripts to be submitted at least three days in advance of the meeting.

Vice Chairman McNany recognized Mr. Peter Verniero.

At this point, Executive Director Herrmann noted that a statement from Mr. Verniero was received very late yesterday, September 11, 1989. He said that the Commissioners received a copy of the statement today.

Mr. Verniero stated that the Republican State Committee's main concern is that there be an even-playing field and that whatever policy is adopted should be applied in a consistent manner.

Mr. Verniero said that the RSC was in the same position in 1981 that the DSC is in today. He said that the RSC made a similar request for an advisory opinion in that prior year. Mr. Verniero said, however, that the treatment of the 1981 advisory request was slightly different than the Commission's treatment of this one. He said that in 1981 the script that was submitted by the RSC was immediately made public.

Mr. Verniero said that the RSC is in a difficult position today because members of the staff had not had the opportunity to review the four scripts submitted by the DSC. Mr. Verniero said that the RSC was disappointed with the treatment of this matter by the Commission. He expressed the hope that from this day forward, the Commission would provide for an even-playing field.

Vice Chairman McNany asked if the DSC had any objection to releasing the scripts.

Mr. Edelstein responded that the DSC never had a problem with releasing the information. He said the question is one of even-handedness.

Counsel Farrell agreed that the rules should be applied equally. He said, however, that there is a difference between 1981 and the present. He said that no firm policy was adopted in 1981 regarding confidentiality. He said that the Commission accepted the staff recommendation in 1981 to release the material but did not formulate a formal policy. He said that adopting a formal policy is what the Commission is doing for the first time today.

Counsel Farrell voiced the opinion that the Commission certainly would be able to give a more considered opinion if it had the advantage of receiving commentary from both sides. He said that there is a very substantial reason for the Commission to adopt a policy of making the texts available to all sides and allowing everyone the opportunity to respond.

Mr. Verniero, at this point, asked if the Commission would grant the RSC staff a reasonable period of time to review the scripts.

Mr. Edelstein added that he did not have a problem with the Commission calling a brief recess to allow Mr. Verniero time to review the scripts. He said, however, that he could not agree to a postponement of action on this matter until another day. He said that because of the schedule for media buys, the DSC needs a decision today by the Commission.

Commissioner Linett asked if it were in the public interest for candidates to come to the Commission in advance with these requests. He queried whether a lack of confidentiality would deter candidates from requesting advisory opinions on these matters.

Mr. Edelstein responded that candidates typically would not request advisory opinions of this nature. He said that the State Committees made these requests because of the allocation question involved with respect to any action they may take. He said that the gubernatorial campaign of Jim Florio is not buying these advertisements so there is no reason for the campaign to seek an advisory opinion.

Mr. Verniero said that the RSC merely seeks the same treatment of this advisory opinion request as was accorded in 1981 to the DSC. He said that he did not believe that a brief recess would remedy the situation and provide for a level playing field. He reiterated that equal treatment has not been accorded to the RSC in this matter.

At this juncture, Vice Chairman McNany directed staff to distribute the scripts and all relevant information to the interested parties.

Mr. Verniero said that, optimally, what the RSC would like to do is submit a written reply relative to the generic advertising scripts and the

advisory opinion request. He said that the Commission has had the request for 11 days. He said that he is seeing the scripts now for the first time. Mr. Verniero said that within a day he could provide a response, but not immediately.

Mr. Edelstein said that the scripts would not take very long to analyze. He reiterated, however, that he strongly felt that an opinion should be rendered today. He said that in the absence of any adoption of a confidentiality policy before today, merely relying on a 1981 precedent is not sufficient.

Mr. Verniero said that he disagreed with Mr. Edelstein's last statement. He said that the 1981 precedent is important. He said that at this point, a lopsided record exists. Mr. Verniero said that the precedent set should include a complete written record.

Vice Chairman McNany asked the Commission to determine a reasonable time period for review of future advisory opinion requests of this nature.

Mr. Verniero said that a reasonable time period for a written response to be prepared would be 48 hours.

Mr. Edelstein agreed that in the future, a period of 48 hours for public review would be reasonable.

At this point, Legal Director Nagy cited the Minutes from the August 31, 1981 meeting of the Commission in an effort to clarify the actions of the Commission at that time.

To paraphrase Legal Director Nagy, who read directly from the Public Minutes of August 31, 1981 (Item 7), the Commission received an oral request from Mr. Stuart Gavzy, the Finance Director of the Republican State Committee, as to whether any cost of generic advertising by the RSC would be allocated against the Republican gubernatorial campaign. He said that Mr. Gavzy requested that the texts of the two advertisements be accepted on a confidential basis. The Commission directed Mr. Gavzy to make a written request for an advisory opinion, and agree to the release of the script if he wished to pursue an advisory opinion. Mr. Nagy said that a written request was received on September 1, 1981.

Counsel Farrell said that the record shows that the decision in 1981 was made without the Commission turning over the scripts to the other campaign. He said, further, that no decision was made at that time relative to the confidentiality policy. He said the issue was not addressed.

Counsel Farrell said that the question now before the Commission is whether or not to adopt a policy that once an advisory opinion request and script is received, it should be distributed immediately. He said that the basis for keeping the DSC script confidential is that no formal policy has been adopted by the Commission and that the Commission has to be careful about not injecting itself into any campaign.

Mr. Scott Weiner, Treasurer for the Florio Campaign, commented that he was Executive Director of the Commission in 1981 and that his recollection of what transpired is the same as Counsel Farrell's and Counsel Nagy's. He said that no materials were made public until the request was officially received in writing.

Mr. Verniero said that the Commission needs to establish a bright line test. He said that in 1981 the policy was murky. He said that what he is urging the Commission to do is to clarify its policy and apply an even-handed policy across the board.

Mr. Edelstein said that with regard to this matter, the DSC has a request before the Commission. He reiterated that it is important for the DSC to get a ruling today. Mr. Edelstein said that nothing in the four scripts are in violation of any regulation or rule of the Commission.

Counsel Farrell said that text questions of this type can be treated differently than normal requests for advisory opinions. He said they are unique to the gubernatorial elections and involve questions of allocation. He said that a procedure is non-existent thus far.

Vice Chairman McNany asked if the Commission's approach this time was different than in 1981.

Counsel Farrell said that the request, with respect to scripts in 1981, was treated differently from normal advisory opinion requests. He said that in 1981 it came up in the form of an oral request and it was treated differently. He indicated that the Commission, in 1981, decided the allocation issue on the day the oral request for an opinion was made. Counsel Farrell said that the matter was made public after the fact, and only when the written request was received. Counsel Farrell added that he believes that it is to the Commission's advantage to get as much information as possible, however, and to obtain it ahead of time. Counsel Farrell said that he believed that requests of this type should be made public as soon as they are received.

Vice Chairman McNany agreed that the policy, as articulated by Counsel Farrell was appropriate, but for future advisory opinion requests. He asked, however, what policy should be applied with respect to the present request.

Counsel Farrell said that a 48-hour period is reasonable. He said that such a period would not adversely affect anyone.

Mr. Edelstein indicated that he would like to recap the history of this particular request. Mr. Edelstein said that subsequent to the initial advisory opinion request made by the DSC on September 1, 1989, a meeting was held between the Democratic staff and members of the ELEC staff. Mr. Edelstein said that during the meeting, the question of even-handedness in the treatment of such requests arose. He noted that the ELEC staff believed that the only way for the Commission to decide upon the proper treatment of this type of request was through a Commission discussion of the issue of

confidentiality. Mr. Edelstein said that staff's suggestion was correct, and reiterated that the DSC never asked for confidentiality but rather a consistent policy for handling these matters. On the matter before the Commission presently, Mr. Edelstein urged that the Commission make a ruling at today's meeting.

Mr. Verniero said that he felt deeply that the RSC should be given 48 hours to respond to the advisory opinion request and build a written record.

Vice Chairman McNany, at the behest of Commissioner Linett, asked Counsel Farrell to summarize the arguments.

Counsel Farrell said that a request for confidentiality was made by the DSC to obtain a clear, consistent rule by the Commission on this issue that would be applied evenly to both parties.

He said that staff kept the scripts of the advertisements and the legal analysis developed by Mr. Edelstein confidential because it did not know the policy that would be adopted by the Commission relative to Mr. Edelstein's request for confidentiality expressed in his September 6, 1989 letter.

Counsel Farrell indicated that the issues before the Commission are: 1) should the Commission adopt a policy that would allow for advisory opinion requests of this nature to be made public; and 2) should the Commission decide this current request this morning or reconvene in 48 hours for that purpose.

Counsel Farrell queried whether a decision made today would create a fairness question.

Legal Director Nagy added that the Commission should also decide whether these advisory opinion requests, if not kept confidential, should also be distributed to independent candidates.

Mr. Edelstein said that he would like to resolve the question of how to handle today's request. He said that the DSC is making plans based on a time schedule for running the advertisements. He said that the Committee wants to adhere to it. Mr. Edelstein said that the DSC made its advertising plans on the basis of the decision being made today. He concluded that in the presence of a previous rule by the Commission, the Commission should decide without delay in order to allow the DSC to adhere to the time schedule as planned.

Counsel Farrell said that the issue comes down to whether the Commission rules today or 48 hours from now.

Vice Chairman McNany said that based on the information presented and the 1981 ruling, he did not see any problem with the Commission ruling on the advisory opinion request today.

Vice Chairman McNany said that he would like to act today and asked Commissioner Linett for his opinion.

Commissioner Linett asked Counsel Farrell about the legal standing of an advisory opinion.

Counsel Farrell said that it has the effect of law. He said that the Commission would not act against any person who acts in conformance with an advisory opinion.

Mr. Verniero stated that great comfort can be taken from advisory opinions. He said that there is a tremendous benefit to an advisory opinion relative to a gubernatorial campaign which must be concerned about the expenditure limit. Mr. Verniero said that for this reason he believed that the Commission should develop a written record as the test for any opinion it makes.

Commissioner Linett said that he did not object to the Commission considering this advisory opinion today. He did, however, express some concern about the fairness issue.

Vice Chairman McNany said that the Commission would rule today on the matter and that it would recess for one hour to permit Mr. Verniero to review the scripts.

Mr. Verniero stated that he would review the script and seek others at the RSC to do the same within the one-hour time period. He said, however, that the RSC was disadvantaged in this matter and that he could not promise that at the end of one hour he would be able to make any comment with respect to the scripts.

The Commission recessed at 10:45 a.m. to reconvene at 11:45 a.m.

Upon reconvening at 11:45 a.m., Vice Chairman McNany asked if anyone in the audience had further comments.

Mr. Edelstein said that pursuant to his written legal analysis, the DSC did not believe that any allocation should be required as the result of the DSC's generic advertisements.

Referring to N.J.A.C. 19:25-15.29(a), Mr. Edelstein said that the Commission's regulation requires there to be an unambiguous reference to a gubernatorial candidate in order for the cost of an advertisement to be allocable. He said that the advertisements submitted by the DSC are generic and do not make an unambiguous reference to any candidate.

Mr. Edelstein also insisted that any issue of coordination or benefit passing did not apply in this case because the matter involves the DSC. He said that the only standard to be applied is one of "unambiguous reference."

Mr. Edelstein next addressed each of the four scripts submitted. He said that the scripts entitled "Limo" and "Angry" contain nothing that could even arguably be considered an unambiguous reference.

Mr. Edelstein said that the script entitled "Environment" contains the phrase, "In the last eight years" and the one entitled "Crime" contains the phrase "after eight years of Republican leadership." Mr. Edelstein said that in neither of these scripts is there an unambiguous reference to either Candidate Florio or Candidate Courter, the Office of Governor or Governor Kean. Moreover, Mr. Edelstein added that the Commission has issued advisory opinions on prior advertisements containing phraseology similar to that contained in the scripts "Environment" and "Crime."

The DSC Counsel reminded the Commission that in 1981, the Republicans ran generic advertisements containing phrases such as, "in the eight years the Democrats have run things in New Jersey," and "for eight years the Democrats have been the 'in crowd' in New Jersey."

Mr. Edelstein added that a fundraising letter from President Ronald Reagan at that time contained the phrase "since the Democrats were elected in 1973." Mr. Edelstein said that in each case the Commission ruled that none of the phrases clearly identified any candidate for Governor and that therefore no allocation need be done.

Mr. Edelstein said that the phrases contained in the two Democratic advertisements in 1989 are no different than the ones in the earlier Republican advertisements. In fact, continued Mr. Edelstein, the Democrat's phraseology is even less specific than the Republican "for eight years the Democrats have been in the 'in crowd' in New Jersey."

Mr. Peter Verniero asked to be recognized. He asked who among the Commission were present at this meeting.

Executive Director Herrmann said that Vice Chairman McNany, Commissioner Linett and Counsel Farrell were present, participating by phone. The Executive Director said that Chairman Bedford is now undergoing tests in the hospital and is not participating in the meeting at this point. Executive Director Herrmann added that a fourth Commissioner has not been confirmed and that the seat formerly held by Commissioner Andrew Axtell is currently vacant.

Mr. Verniero asked what constituted a quorum for the Commission.

Counsel Farrell said that the Commission needed three votes to act on enforcement matters but only two votes to act on advisory opinions.

Vice Chairman McNany asked Mr. Verniero if he had any comment to make about the advisory opinion request, specifically about the allocability of the advertisements.

Mr. Verniero said that he was unable to contact the appropriate people in the hour allotted by the Commission. He said that, with due respect and sincerity, he could not comment on such short notice.

Mr. Angelo Genova, Counsel to the Florio for Governor Committee asked to be recognized. He said that Mr. Weiner and he had an opportunity to review the scripts. He said that they believed that no unambiguous reference is contained in the advertisements. Mr. Genova said that he supported Mr. Edelstein's position.

Vice Chairman McNany asked if any member of the public or staff had any comment to make.

Executive Director Herrmann said that Chairman Bedford had asked him to convey certain concerns about the advertisements to the Commission. Executive Director Herrmann indicated that Chairman Bedford had concerns with the "eight year" language. The Executive Director said that Chairman Bedford questioned whether this was not an unambiguous reference to Governor Kean.

Vice Chairman McNany asked if the Chairman was privy to the 1981 advisory opinions.

Executive Director Herrmann responded that Chairman Bedford had seen the 1981 advisory opinions.

The Executive Director said that, specifically, Chairman Bedford felt that the factual situation in 1989 is different than it was in 1981. He said that while the texts are similar, the political situations are different. Executive Director Herrmann said that Chairman Bedford commented that in 1981 the Democratic Party controlled the Governor's Office, the Assembly and the Senate, whereas, in 1989, the Republican party controls the Governor's Office and the Assembly, but not the Senate. Prior to 1986, the Republicans did not even control the Assembly. The Executive Director indicated that Chairman Bedford believed, therefore, that the 1981 advertisements could be construed as more generic than the 1989 advertisements.

Mr. Edelstein responded that the factual distinction made by Chairman Bedford is inconsequential in terms of the effect of the wording used in 1981 and 1989. He said there is no difference.

Executive Director Herrmann stated that he had been asked to convey the Chairman's concerns but had no idea of the way the Chairman would have wished to vote on this matter.

Commissioner Linett said that in applying the standards of the 1981 advisory opinions he sees nothing objectionable in the 1989 advertisements.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 2-0, the Commission deemed the advertisements to be non-allocable against the gubernatorial candidacy of Jim Florio.

The Commission directed staff to draft the advisory opinion and to fax it to the Commissioners during the next working day. The Commission indicated that the written opinion would be a formality and that they were giving permission for the DSC to proceed at today's meeting.

Counsel Farrell said that with respect to the confidentiality question, the Commission seems to be ruling that in future cases the request should become public at the time it is submitted. He said at the time the request is complete, including the script, the 10-day period for Commission consideration would begin.

Mr. Verniero said that if the ruling is as Counsel Farrell states, the RSC is further disadvantaged. He said that if the RSC submits an advisory opinion with scripts, the rule to be applied would be different than applied to the DSC's current request. Mr. Verniero asked if the rule could be made prospective and apply to the next gubernatorial election.

Counsel Farrell said that the confidentiality ruling is part of the advisory opinion action today, or should be.

Mr. Edelstein said that the DSC wants to know what to do in the future. He said that nothing could be gained by postponing consideration of the issue.

Mr. Verniero said that the Commission has not acted on the confidentiality policy.

Vice Chairman McNany suggested that the official adoption of a policy be postponed until the September 26, 1989 regular meeting of the Commission.

Mr. Verniero asked about the treatment that would be accorded to a Republican request for an advisory opinion if the request is submitted during the interim period before the Commission formalizes its policy.

Counsel Farrell said that the Commission could not answer that question definitively.

Mr. Verniero asked: "Until the rule is official, would the DSC object to the same procedure being applied to a Republican advisory opinion as was applied in this advisory opinion?"

Mr. Edelstein responded that it has been the DSC's position that these matters be made public.

Commissioner Linett said that he would like to propose that the Commission adopt an interim policy that advisory opinion requests of this kind, along with supporting documentation, be made public upon their receipt.

On a motion by Commissioner Linett, seconded by Vice Chairman McNany and passed by a vote of 2-0, the Commission adopted an interim policy of

requiring advisory opinion requests to be released at the time they are submitted.

Mr. Verniero asked if, upon the time of submission, the Commission would take 10 days to consider it or 48 hours.

Counsel Farrell said that in an election setting, the Commission must provide itself with 10 days for review, but at the same time, retain the flexibility to consider the matter earlier. He said the Commission always tries to act expeditiously during the election period but must maintain the ability to take up to 10 days to make its determination.

Vice Chairman McNany said that the Commission must retain the right to take up to 10 days to respond to an advisory opinion.

4. Advisory Opinion Request No. 18-1989

This advisory opinion request is from Alice Van Veen, Chairwoman of the Butler Republican Municipal Committee. Butler is located in Morris County, New Jersey.

The advisory opinion request involves the question of whether funds raised by the Butler Republican Club can be used to pay for the legal costs of a court challenge. In its legal action, the Butler Republican Committee is seeking to overturn an earlier court decision which ordered a special municipal primary election for September 12, 1989. The election will be held to determine the Republican candidate for Butler Borough Council. The Butler Republican Municipal Committee is challenging the decision which ordered a special election, suggesting instead that the Committee should determine the party's nominee. Ms. Van Veen desired to know if Republican Club funds can be used to pay the cost of litigating this matter.

In the draft response to the advisory opinion request, Legal Director Nagy pointed out that the issue presented by the request is whether funds raised or spent by a municipal political party committee to contest the holding of a special primary election are in furtherance of, or in aid of, the candidacy, of all or any of the special primary election candidates and therefore prohibited under N.J.S.A. 19:44A-11.

The draft response holds that the Commission is satisfied that raising or spending funds for the limited purpose of contesting the holding of a special primary election is not activity in furtherance of the candidacy of any candidate running in that special election, and therefore, not under the statutory prohibition.

The draft response, while permitting that activity, does express its concern that the Butler Borough Republican Municipal Committee has not been filing quarterly reports. The draft, therefore, directed the Butler Republican Municipal Committee to take remedial steps to bring itself into compliance with the law.

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission approved the draft advisory opinion response.

5. Adjournment

On a motion by Vice Chairman McNany, seconded by Commissioner Linett and passed by a vote of 2-0, the Commission adjourned at 1:25 p.m.

Respectfully submitted,



FREDERICK M. HERRMANN, PH.D.

FMH/jah