



State of New Jersey

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June 18, 1992

James C. Morford, President
New Jersey Food Council
30 W. Lafayette Street
Trenton, New Jersey 08608

Re: Advisory Opinion Request No. 07-1992

Dear Mr. Morford:

The Commission has directed me to issue this response to your recent request for an advisory opinion. You have asked the Commission to describe the reporting requirements that would arise in the event the New Jersey Food Council provides small gift bags with sample-sized food products from member companies to the New Jersey delegates attending the national political party nominating conventions to be conducted this summer.

Elections for candidates for political party office are not subject to the provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act (hereafter, the Reporting Act); see N.J.S.A. 19:44A-4(d). Therefore, contributions made to delegates to the national political party conventions, whether appointed or elected, are not subject to disclosure under the Reporting Act. However, the Federal Election Campaign Act, 2 U.S.C.A. 431, et seq. and the regulations promulgated under it, contain provisions governing contributions to and expenditures by delegates to national political party conventions; see specifically 11 C.F.R. 110.14. The Commission has no jurisdiction to offer any opinion concerning the provisions of the Federal Election Campaign Act, or regulations promulgated under it, and therefore suggests that you contact the Federal Election Commission at 999 E Street, N.W., Washington, D.C. 20463, or telephone 1-800-424-9530, for guidance in regard to possible federal reporting requirements.

The Commission notes that the New Jersey Food Council (NJFC) filed an annual report of lobbying activity for calendar year 1991 as a "lobbyist," as that term is defined in the "Legislative

Activities Disclosure Act of 1971” (hereafter, the Lobbying Act). Assuming that the NJFC will again meet the statutory requirements of a “lobbyist” in calendar year 1992, reporting requirements may be generated under the Lobbying Act if any of the delegates receiving benefits provided by the NJFC are public officials covered by the Lobbying Act. Such officials include the Governor, the Governor’s staff, members of the Legislature, legislative staff, and officers or staff members of the Executive Branch, as those terms are defined in Commission Regulation N.J.A.C. 19:25-20.2.

You have asked what reporting would be required of NJFC, or its member companies, if the gift bags are distributed. In regard to NJFC, expenditures of a lobbyist providing benefits to officials covered under the Lobbying Act must be reported in its Annual Report in the aggregate by category. Further, if the aggregate expenditures on behalf of any individual covered by the Lobbying Act exceed \$25.00 per day, or exceed \$200.00 for the calendar year, the expenditures together with the name of the intended recipient of the benefit must be reported along with the date and type of each expenditure, the amount of each expenditure and the name of the person on whose behalf it was made; see N.J.A.C. 19:25-20.11(b). The goods provided to such officials must be valued at their reasonable commercial value to the recipient; see N.J.A.C. 19:25-20.12. Finally, in regard to any cost incurred by the NJFC to prepare or distribute these goods, or for personnel time incurred in preparing such goods, expenditures for such purposes must be reported in the aggregate by category; see N.J.A.C. 19:25-20.11(a).

You have also asked whether any member company of the NJFC would incur reporting obligations under the Lobbying Act. The individual member companies that belong to NJFC are each subject to the requirement to file lobbying disclosure reports if any such company is conducting lobbying activity that is not reflected in the report filed on behalf of the NJFC, and if that unreflected activity exceeds the \$2,500.00 calendar year threshold set forth in N.J.S.A. 52:13C-22.1; see response to question number two in Advisory Opinion 12-1990 (copy enclosed). Therefore, in the absence of such circumstances, a member company would not be required to file an annual lobbying report solely on the basis of having contributed products or goods to NJFC. However, since the products are being contributed to NJFC with the express intent that NJFC give them to public officials covered by the Lobbying Act, NJFC must in its Annual Report identify any member who provides products which in the aggregate have a value of more than \$100.00 in a calendar year; see N.J.A.C. 19:25-20.10(a)2.

Although not of direct concern to the NJFC, the Commission notes that candidates for Governor or State Legislature in the 1993 primary and general elections will be required to file with the Commission financial disclosure statements for calendar year 1992; see N.J.S.A. 19:44B-1 et seq., requiring the filing of 1992 calendar year statements before the 1993 primary election. Therefore, if the value of any gift provided by the NJFC during 1992 to such a candidate is more than \$250.00, the source

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James C. Morford, President
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of the gift must be reported by that candidate on the candidate's financial disclosure statement; see N.J.S.A. 19:44B-4.

Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
GREGORY E. NAGY
Legal Director

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December 20, 1990

Ms. Maureen Lopes
Vice President, NJBIA
Co-Chair, HEAL
102 West State Street
Trenton, New Jersey 08608-7371

Advisory Opinion No. 12-1990

Dear Ms. Lopes:

The Commission has directed me to issue this response to your request for an advisory opinion received November 21, 1990, concerning a lobbying coalition under the name "HEAL" (Help Establish Affordable Health Care Laws). You have asked several questions concerning the applicability of the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq., (hereafter, the Act) to the activities of HEAL, and the Commission responses are set forth below in the order presented in your request:

Question #1

Since no HEAL funds are used for political contribution purposes, is HEAL, in fact, required to file the Annual Lobbying Report of Activities to the Election Law Enforcement Commission?

Response: The fact that none of the funds of HEAL are to be used for political contributions has no relevance to the question of whether or not HEAL is required to file annual financial disclosure reports of lobbying contributions and expenditures pursuant to N.J.S.A. 52:13C-22.1. Political contributions are subject to the reporting requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1. What determines whether or not HEAL has an obligation to file an annual lobbying report (Form L-1) is whether this associational entity can be viewed as a lobbyist receiving contributions or making expenditures for the purpose of direct, express or intentional communication with legislators or their staffs or the Governor or his staff undertaken for the specific purpose of effecting legislation, and whether those expenditures in the aggregate exceed \$2,500 in any calendar year; see N.J.S.A. 52:13C-22.1. In calculating whether the contributions received or expenditures made by HEAL exceed

\$2,500 in a calendar year, amounts raised and spent for the purpose of making political contributions subject to disclosure under the Campaign Reporting Act need not be included.

Question #2

If HEAL is subject to reporting, is each individual member association required to file or would one report from HEAL (completed by Alan Marcus) be satisfactory?

Response: The individual member associations that comprise HEAL are each subject to the requirement to file lobbying disclosure reports if any such member association is conducting lobbying activity that is not reflected in the lobbying reports filed on behalf of HEAL, and if that unreflected activity exceeds the \$2,500 calendar year threshold described above. Most of the organizations that you list in your letter as members of HEAL are currently filing annual reports with the Commission.

Question #3

If each member association and/or HEAL is required to file a report, is it important to identify the member companies that contributed to its association's payment to the Marcus Group?

Response: A lobbyist who receives contributions to influence legislation is required to report the source of any such contribution if the major purpose of the lobbyist is to engage in direct, express and intentional communication with legislators or the Governor or his staff for the specific purpose of effecting legislation; see N.J.A.C. 19:25-20.2 defining "Direct Communication," and see N.J.A.C. 19:25-20.6(a)(2) (copies enclosed). From the facts you have submitted, it appears that HEAL has retained a legislative agent, the Marcus Group, Inc., and that the member associations are providing contributions to HEAL to pay for the legislative agent services. To the extent these revenues are attributable to lobbying activities of HEAL's legislative agent, they are subject to disclosure on Form L-1 (1991), Part C: Summary of Lobbying Receipts. HEAL must determine what percentage of the amounts it collects are attributable specifically to lobbying, and the aggregate total must be reported on line 16. Further, if any member association's payment attributable to lobbying exceeds \$100.00 for the calendar year, the name, address and date of receipt of the payment must be reported on the schedule provided at line 18.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

BY: GREGORY E. NAGY
Legal Director

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Enclosures