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State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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March 16, 1984

Jesse Rosenblum
112 Roosevelt Street
Closter, New Jersey 07624

ADVISORY OPINION NO. 06-1984

Dear Mr. Rosenblum:

Your letter to the Election Law Enforcement Commission requesting an Advisory Opinion has been considered by the Commission and I have been directed to issue this response.* You have asked whether costs that you have incurred for the publishing and circulating of a publication entitled "I.C.I.C." are subject to the reporting requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) in view of your candidacy for the school election to be conducted in the Borough of Closter on April 3, 1984.

You have written that approximately three and one half years ago you founded a publication, "Informed Citizen In Closter" (I.C.I.C.), in which you endorsed candidates for Mayor and Borough Council in past general elections. You anticipate publishing an issue of this publication in late March in which you will recommend candidates for the 1981 school election, and you anticipate including in this issue an "open letter" from yourself in which you will state your position as a candidate on school issues. You have orally informed the Commission that you serve as the publisher and editor, and to date have personally written the great majority of items appearing in the publication. Approximately 3,000 copies are printed and 2,500 copies mailed unsolicited to local residents of the Borough of Closter. There is no subscription fee or charge for purchase of this publication nor, with two isolated exceptions, does the publication contain advertising. You have informed the Commission that you personally pay the great majority of the expenses generated by the production and distribution of this publication.

You have described the "I.C.I.C." publication as a "newspaper" and have asked the Commission to consider whether the publication is therefore exempt from the reporting requirements of the Act. For the reasons herein stated, the Commission believes the costs you anticipate incurring for the publishing and circulating of the issue to be published in late March are campaign expenditures subject to the reporting requirements of the Act.

* Commission M. Robert DeCotiis abstained from voting on this Advisory Opinion, which was adopted at the March 16, 1984 public meeting of the Commission

Based on your description of the contents of the late March issue of your publication, the Commission believes that the principal purpose will be to convey your views on school issues and candidates in the 1983 school election. Your views will be communicated to the prospective voters of the Borough of Closter on a date that is in immediate proximity to the date of the school election. The Commission entertains no doubt that this expression of your views, undertaken under your control and at your expense will influence prospective voters as to your candidacy and therefore are " . . . to be expended in behalf of his (your) candidacy by the candidate . . ." N.J.S.A. 19:44A-16(e). (parenthetical material added.)

In Advisory Opinion No. 35-1980, the Commission ruled that the costs borne by a candidate for the publication of a newsletter which the candidate had been circulating for two and a half years were campaign expenditures subject to reporting to the extent the materials promoted the candidacy and were in reasonable proximity to the date of the election in which the candidate was seeking office. The Commission does not perceive any dispositive distinction between the newsletter that was at issue in Advisory Opinion No. 35-1980, and the anticipated late March issue of your publication. Therefore, the principles articulated in Advisory Opinion No. 35-1980 are equally applicable to your publication. A copy of Advisory Opinion No. 35-1980 is enclosed for your reference.

In reaching the conclusion that the costs you have incurred are subject to reporting requirements, the Commission does not believe it must rule on the question of whether the "I.C.I.C." publication is a newspaper, and therefore subject to Constitutional protections which preclude the imposition of reporting requirements. In the case of Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210 (S.D.N.Y. 1981), the Federal District Court reviewed a provision of the Federal Election Campaign Act which excluded newspapers " . . . unless such facilities (of the newspaper) are owned or controlled by any political party, political committee or candidate . . ." 2 U.S.C. 431(9)(B)(i). The Court held that the Federal Election Commission was authorized to investigate whether a press entity was owned or controlled by a party or a candidate. That holding supports a conclusion that there is no Constitutional impediment to imposing reporting requirements on a newspaper when it is owned and controlled by a candidate.

The New Jersey Reporting Act imposes the following reporting requirements on candidates for school elections:

"There shall be no obligation imposed upon a candidate seeking election to a public office of a school district to file either the reports required under section 16(b) or the sworn statement referred to in subsection d. of this section or to comply with the requirements of sections 9, 11 or 12 of this act, if the total amount expended and to be expended in behalf of his candidacy by the candidate, any political committee, any continuing political committee or by any person, does not in the aggregate exceed \$2,000.00; provided,

March 15, 1984

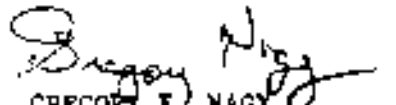
Page 3

that if such candidate receives contributions from any one source aggregating more than \$100.00 he shall forthwith make a report of the same, including the name and address of the source and the aggregate total of contributions therefrom, to the commission." N.J.S.A. 19:44A-16(e).

You have written that you do not anticipate spending in your campaign more than \$1,000.00, or receiving any contribution of more than \$100.00 from any source. Initially, the Commission wishes to advise you that the threshold for filing campaign reports (Form R-1) has been raised from \$1,000.00 to \$2,000.00 as indicated in the above-quoted statute which reflects amendments enacted by chapter 579 of the Laws of 1983. The Commission infers that in representing that you do not anticipate your total expenditures to exceed \$1,000.00, or that you do not anticipate receiving any contribution from a single source of more than \$100.00, you have not included contributions you personally are making to your campaign by incurring publication costs for the late March edition of your publication. In light of the result reached in this Advisory Opinion, you must recalculate these figures to determine whether you will exceed either the \$2,000.00 threshold for filing campaign reports, or the \$100.00 threshold for identifying yourself as a contributor to your campaign on the Form C-1. Please note that the 11-day pre-election report for the school election is due for filing with the Commission no later than March 23, 1984.

You have not inquired, nor has the Commission addressed, the question if you have incurred any reporting obligations for prior elections in which the publication was used to endorse candidates. In the absence of any submitted facts concerning the circumstances of endorsements made in prior elections, and the costs associated with those endorsements, the Commission is unable to express any opinion as to whether or not you incurred reporting obligations under the Act for other editions of your publication.

Very truly yours,


GREGORY E. NAGY
Staff Counsel

GEN/ck
Enclosure