



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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June 4, 1984

Arthur L. Raynes  
Friends of Steve Wiley  
250 Madison Avenue  
Morristown, New Jersey 07960

#### ADVISORY OPINION NO. 10-1984

Dear Mr. Raynes:

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 several questions pertaining to the reporting and public financing requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) as applied to items donated to a fund raising auction, and to the proceeds generated from conducting that activity.

You have written that the "Friends of Steve Wiley," is an organization that is raising funds for the purpose of exploring the feasibility of a 1985 gubernatorial candidacy by Mr. Wiley, i.e. "testing the waters." This committee will solicit donations of services or goods to be sold at the fund raising event. By way of specific example, you write that among the items to be auctioned will be a gourmet meal, the use of a vacation cottage, tickets to an entertainment event, art work, and other miscellaneous articles.

Initially, you have asked what value should be assigned to contributions of goods or services which are given to the committee. The Act requires that candidates report contributions consisting of "cash or other things of value." N.J.S.A. 19:44A-16(a). That term is defined to mean ". . . any item of real or personal property, tangible or intangible, but shall not be deemed to include personal services other than paid personal services." N.J.S.A. 19:44A-3(1). Items such as a dinner at a restaurant, clothing, toys, books, the use of a vacation home, tickets to an entertainment event and similar articles come within this definition. As such, they must be reported by the receiving committee at their "fair market value." Commission Regulation N.J.A.C. 19:25-11.4; 19:25-16.34.

As stated in the definition however, the term "other things of value" excludes voluntary personal services, i.e. personal services that are not paid for by other persons. Therefore, if a personal service is

performed on a voluntary basis, the donation of that voluntary personal service does not give rise to a reportable event under the Act. Commission Regulation N.J.A.C. 19:25-11.4. Among the items you listed to be donated were tennis lessons. If the tennis lessons are to be provided by the donor personally, and the donor is not receiving compensation for giving those lessons, the donor has not made a reportable contribution to the committee. However, if a donor employs another person to provide tennis lessons, and that service is donated to the committee for the purposes of its auction, the donor has contributed a reportable "paid personal service." The value of the contribution is the actual amount of compensation paid by the donor to the individual actually performing the services. N.J.A.C. 19:44A-3(f). Any person contributing such services must provide the campaign treasurer of the committee with a statement setting forth the actual amount of compensation paid. Commission Regulation N.J.A.C. 19:25-11.4(b).

The committee must obtain from donors or other competent sources sufficient information to determine fair market value. If the donor is unable to provide fair market value, the committee must obtain information whether the vacation home has been rented previously during a comparable period of time or, if not, what comparable rentals of such homes would be. The committee must obtain from the donor what the cost for a meal at a restaurant would be for anyone purchasing such a meal. The value of donated tickets to entertainment events would normally be their face value, although under exceptional circumstances where because of an extraordinarily high demand it is conceivable that fair market value could exceed the face value of the tickets. The donation of food items constitutes both a contribution of goods and services. The value of the food can be determined at actual cost, while the services provided in preparing the food would be reportable only if they are provided by paid help.

You have asked the Commission to examine Advisory Opinion 10-1981 which addressed an inquiry concerning the gift of a painting or other work of art to a candidate or political committee. The Commission believes that the principles articulated in that Advisory Opinion remain viable. If the painting or work of art is created specifically for the purposes of the candidate or the political committee, and if the artist volunteers his or her personal services in creating the work, only the "fair market value" of the cost of the canvas, frame and paints would be subject to reporting. However, if the owner of a painting or work of art which has not been expressly created for the fund raising purposes of the candidate or the political committee contributes that painting to the candidate or political committee, the receiving candidate or political committee must report the "fair market" value of the painting.

The Commission recognizes that establishing "fair market value" is not always an undertaking of precision and exactitude. Nevertheless, it is incumbent upon the committee to require its donors to provide records and information that enable the committee to arrive at a figure that reflects "fair market value." The determination of the fair market value of donated items is particularly important in the setting of a publicly financed election.

Although your inquiry does not specifically raise the question, the Commission wishes to bring to your attention that a person or committee making a "contribution" to a gubernatorial candidate may not make a contribution or contributions in the aggregate in excess of \$800. N.J.S.A. 19:44A-29(a). The term "contribution" includes "other thing of value." N.J.S.A. 19:44A-3(d). Therefore, the contribution limit applies not only to cash contributions, but also to goods and paid personal services. Also, the Commission wishes to bring to your attention that contributions in the form of goods or services are not eligible for matching with public funds. Commission Regulation N.J.A.C. 19:25-16.11(a).

You have also asked the Commission to examine the reporting and public financing requirements as to the purchase price received by the committee for the auction of goods. Commission Regulation N.J.A.C. 19:25-16.14 provides, in pertinent part, as follows:

"Any contributions in the form of the purchase price paid for an item of intrinsic and enduring value (such as a watch) . . . shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the \$800 contribution limit . . ."

The Commission believes that the disclosure requirements of the Act compel the committee to report the entire purchase price, but only that portion of the price which exceeds the fair market value of the donated goods constitutes a "contribution" to the committee. For example, assume a donated item has a value of \$500, and the committee auctions this item for a purchase price of \$600. As has been already noted in this Advisory Opinion, the donor has made a reportable in-kind contribution of \$500 which is also reportable as an in-kind expenditure. However, the purchaser has made a contribution of only \$100, that is the difference between the fair market value of the donated item (\$500) and the total purchase price (\$600). Therefore, for purposes of imposing the contribution limit of N.J.S.A. 19:44A-29, the donor has made a contribution \$500 and the purchaser has made a contribution of \$100; only the \$100 difference is eligible for matching public funds. The Commission finds that it is only the portion of the purchase price which exceeds fair market value that can be fairly understood under the Act to constitute a "contribution" to the committee from the purchaser. The remainder of the purchase price (\$500) is for the purpose of obtaining the item that was sold. Furthermore, the \$500 received from the purchaser is credited against the in-kind expenditure.

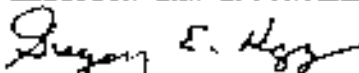
In summary, the committee may accept a donation of an item with a fair market value of up to \$800, i.e. the contribution limit for a gubernatorial candidate. N.J.S.A. 19:44A-29. That item constitutes a reportable contribution by the donor. The committee may sell that item for a price as high as \$1,600. The committee is obligated to report the \$1,600

purchase price, but only \$800 of that price constitutes a "contribution" and is counted toward the \$800 contribution limit. That portion of the purchase price (\$800) that exceeds the fair market value is eligible for matching funds. N.J.A.C. 19:25-16.14.

You have written that the "Friends of Steve Wiley" organization is presently a "testing the waters" entity. As such, the funds it receives and the payments it makes must be solely for the purpose of determining whether Mr. Wiley should become a candidate. Commission Regulation N.J.A.C. 19:25-3.1. Mr. Wiley, or the committee in his behalf, must keep records of all funds received and payments made, N.J.A.C. 19:25-11.6, and all funds must be deposited in a bank depository account established for "testing the waters" purposes. N.J.A.C. 19:25-16.5(b). If Mr. Wiley does become a candidate, the contributions received and the payments made become subject to the limitations, prohibitions and requirements of the Act. N.J.A.C. 19:25-12.6. A person conducting "testing the waters" activity who becomes a gubernatorial candidate must return any portion of any payment received during the "testing the waters" period that exceeds the \$800.00 contribution limit established for gubernatorial primary elections. N.J.A.C. 19:25-16.12.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION



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