



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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April 16, 1985

Bradley S. Brewster  
Council to the Minority  
General Assembly of New Jersey  
Room 216, State House  
Trenton, New Jersey 08625

#### ADVISORY OPINION NO. 05-1985

Dear Mr. Brewster:

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 on behalf of the Assembly Minority Republicans whether newsletters they anticipate mailing to their constituents in April through June of 1985 which will include a picture of Governor Thomas Kean and discuss actions by the Governor concerning statewide or legislative district issues constitute contributions to the 1985 gubernatorial primary election candidacy of Governor Kean and are subject to the reporting and contribution limit requirements of "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter the Act).

You have written that individual Assembly Republican members anticipate writing and distributing "informational" newsletters which will be circulated to their constituents in their respective legislative districts. You state that the newsletters are not intended to be used for "campaign purposes on behalf of the Assembly members or the Governor." Although you write that none of the Assembly Republican members, nor the Governor, will be involved in the primary election this year, you have informed me that you intended to state that although they will be candidates in the June 4, 1985 primary election, none of them are facing any contests in the primary election. The newsletters will focus on informing the constituents of the member's legislative activity. A series of three newsletters are planned beginning in April and ending in June, 1985. The newsletters will include, where appropriate, a picture of the Governor with the Assembly member who is sending the newsletter and will include information concerning the legislator's activity and programs of the Governor affecting the legislative district. You have not submitted the text or copies of the newsletters that you anticipate publishing.

You have asked whether under the facts submitted, what percentage of the cost of the newsletter, if any, must be considered under the Act as a contribution to the 1985 primary election candidacy of Governor Kean. You have

cited Advisory Opinion No. 33-1981 in which the Commission discussed the allocation of expenses associated with advertising on behalf of more than one candidate. You suggest that the principals articulated in that advisory opinion are not applicable to this request because the mailings of the newsletters "...must necessarily include a mention of the Governor and his programs but that such inclusion should not be allocable to the Governor as a candidate."

The Commission has on prior occasions considered the question of whether the expenses of communications by public office holders to their constituents constituted reportable campaign expenditures under the provisions of the Act. In Advisory Opinion No. 01-1983, the Commission decided that a candidate for school board who was publishing an "informational" newsletter containing no specific reference to an election was required to report the newsletter expense because the newsletter was circulated to the electorate in the jurisdiction in which he was seeking election and provided a platform for the expression of views that could be relevant to his candidacy. Similarly, in Advisory Opinion No. 06-1984, the Commission found that a "newspaper" published and distributed by a school board candidate to prospective voters on a date in proximity to the school election would constitute an expense on behalf of his campaign. In Advisory Opinion No. 10-1983, the Commission was asked to consider whether the costs of a letter from a member of the State Senate to retailers within the Senator's legislative district could be deemed reportable. Among the factors considered by the Commission in making its determination was whether the mailing would be undertaken during the active portion of the campaign. Common to these advisory opinions is the understanding that when a candidate controls a publication expressing his views on matters relevant to his candidacy, and when that publication will be distributed to voters in a time period in reasonable proximity to the election in which he is a candidate, the costs incurred in producing and distributing the publication are reportable campaign expenditures. Copies of these advisory opinions are enclosed for your information.

Assuming that the three newsletters are published prior to the date of the 1985 primary election, under the facts that you have submitted the Commission concludes that the costs associated with the production and distribution of the newsletters must be regarded as campaign "expenditures" within the meaning of the Act, and therefore are subject to campaign reporting in the 1985 primary election. Even assuming that the newsletters contain no reference to the 1985 primary election, the Assembly Republican candidates will exercise control over their contents, and the newsletters will have the effect of placing the names and views of the primary election candidates before the electorate in a timeframe pertinent to the 1985 primary election. The newsletters will provide a platform for the candidates to express their views to the electorate concerning issues that presumably will be relevant to their candidacies in the approaching primary election.

In Advisory Opinion No. 33-1981, the Commission was asked to consider how the costs of advertising that promoted both a gubernatorial candidate and non-gubernatorial candidates should be allocated between the gubernatorial and non-gubernatorial candidates. A candidate for Governor may not receive a contribution exceeding \$800. N.J.S.A. 19:44A-29. Furthermore, gubernatorial

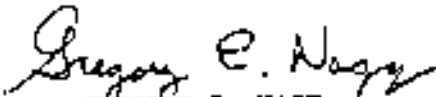
candidates choosing to accept partial public financing are subject to an overall campaign expenditure limit. N.J.S.A. 19:44A-7. Advisory Opinion No. 33-1981 noted that there are many variable factors that the Commission would be compelled to consider in determining precisely what percentage of an advertisement should be allocated to a gubernatorial candidate. However, as a general proposition, an advertisement which named, pictured or otherwise clearly identified a gubernatorial candidate would be allocable in an amount not less than 25 percent to the gubernatorial candidate. In considering your inquiry, the Commission is unable to find any reason to depart from the standard it articulated in Advisory Opinion No. 33-1981.

Governor Egan has publicly announced his candidacy in the 1985 primary election. The contemplated newsletters will circulate his picture and provide a platform for the expression of his views on public issues that concern the electorate. The fact that he is currently the incumbent Governor, and in that capacity serves as a leader of his party, does not alter the fundamental fact that the costs associated with this newsletter will have the effect of furthering his 1985 gubernatorial primary election candidacy. Therefore, the persons or entities defraying the costs of the newsletters are making an in-kind contribution to the gubernatorial candidacy, and the value of that contribution may not exceed \$800. See Commission Regulation N.J.A.C. 19:25-11.5 setting forth that the fair market value of a contributed item must be used in determining its value for contribution purposes.

In order to determine the precise amount being contributed to the gubernatorial candidacy, the persons or entity defraying the costs of the newsletter should establish the fair market value of publishing and circulating such newsletters. As stated in Advisory Opinion No. 33-1981, at least 25 percent of that amount should be allocated to the gubernatorial candidacy.

In regard to the expenditure limit set forth in N.J.S.A. 19:44A-7, the allocated fair market value of the newsletters constitute expenditures on behalf of the gubernatorial candidacy and must be included in calculating the candidate's observance of that limit.

Very truly yours,

  
GREGORY E. NAGY  
Staff Counsel

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