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ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., SUITE 1215
25 W. STATE STREET, CN-105
TRENTON, NEW JERSEY 08609
(609) 992-8700

FREDERICK M. HERRMANN
EXECUTIVE DIRECTOR

EDWARD J. FARWELL
COUNSEL

May 7, 1986

John F. Boyle
106 N. Pleasant Avenue
Ridgewood, NJ 07430

ADVISORY OPINION NO. 04-1986

Dear Mr. Boyle:

Your letter dated April 14, 1986 to the New Jersey 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 the cost incurred by a citizen's group in your community for the preparation and circulation of a newsletter endorsing your candidacy for election to the Board of Education was a contribution to your campaign, and whether you are required to report that contribution in reports filed pursuant to "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 (hereafter, the Act). For the reasons herein stated, kindly be advised that the Commission finds that your candidacy did receive an "in-kind" contribution subject to the reporting requirements of the Act, and you may be required to disclose it in your campaign reports depending on its precise value.

You have written that you were a candidate in the April 15, 1986 Board of Education election in the Village of Ridgewood, Bergen County. You have submitted to the Commission a ten-page pamphlet, which bears on its front page a mast identifying it as a publication of the "Concerned Parents of Ridgewood at Work," (hereafter, "C.P.R."). You have written that the "C.P.R." group is comprised of parents of children in the Ridgewood school system and other interested persons. You have orally advised staff that you are a member of the organization, but you are not an officer and you did not exercise any control over the editorial content of the organization's publication.

An examination of the pamphlet you have submitted discloses that on the first page of the pamphlet your name appears among those of three candidates who are endorsed by the "C.P.R." in the Board of Education election. On pages 4 and 5, photographs appear of the families of the three endorsed candidates under the heading: "CPR's Choice for Board of Education You Can Trust." Beneath the photograph of you and your family appears four paragraphs of text containing: a paragraph giving your biography and listing community activity, a short paragraph setting forth what is described as the focus of your campaign for election and two paragraphs of quotations attributed to you concerning the

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Ridgewood public schools and criticism of the Board. You have further advised the Commission staff that the publication was mailed on or about March 20, 1986 to approximately 400 members of the organization, and to parents of current students. You supplied the photograph that appeared in the newsletter, and you permitted the organization to use the U. S. Post Office "Bulk Rate" postage permit purchased by yourself and another candidate, which permit was also used for the mailing of your campaign literature.

Under the facts you have submitted in this inquiry, the Commission finds that the "C.P.R." organization made a campaign "in-kind" contribution to your 1985 school board election candidacy by printing and circulating to at least a portion of the electorate in the school district the pamphlet you submitted because it advocated your election and provided you with a platform for expressing your campaign views. This result is consistent with that in the case of ELEC v. Brown, 206 N.J. Super. 206 (App. Div. 1985), in which opinion a Newsletter containing laudatory, noncritical biographies of school board candidates was held to be a campaign contribution. By "in-kind" contribution, the Commission means a contribution of a thing of value rather than a monetary contribution; see N.J.S.A. 19:44A-3(d) defining "contributions" as including "... (some) other thing of value..." (Parenthetical material added).

You have advised the Commission staff that the "C.P.R." organization did not provide you written notice of any "in-kind" contribution it made on behalf of your candidacy; see N.J.S.A. 19:44A-8(a)(2). Nevertheless, the Commission is satisfied that you had reasonable notice of the fact that an expenditure was being made on behalf of your candidacy on or about March 20, 1984 by which date you had already supplied the C.P.R. organization with a copy of your family's photograph, and knew that the pamphlet endorsing your candidacy and containing your election views was in the process of being circulated to at least a portion of the electorate in your community.

Commission Regulation N.J.A.C. 19:25-11.5(a) provides as follows:

"Where contribution of goods is made for election-related purposes, the value of the contribution shall be the fair market value of the goods to the candidate or committee receiving them."

In order to calculate the "fair market value" of the "in-kind" contribution received by your candidacy, you must ask the "C.P.R." organization to provide you with information concerning the cost of the preparation and printing of the publication. Assuming that the organization paid full price, and that the preparation and printing costs are the result of a normal commercial transaction, cost may be used as the "fair market value." However, if the preparation or printing was done on a volunteer basis, or at something less than normal commercial rates, the organization must supply you with an estimate of what the normal commercial rate for the preparation and printing would be. Once the "fair market value" for preparing and printing the entire pamphlet is established, you may divide that value to reflect the proportion of the pamphlet that promoted your candidacy. In this case, since the photograph and article concerning your candidacy consumed almost a full page of a 10-page pamphlet, ten percent would appear to be a reasonable percentage.

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In addition to the preparation and printing of the pamphlet, postage costs were incurred in mailing the pamphlet. However, you have advised the Commission that these costs were charged against a postal meter purchased for your campaign. Therefore, the Commission assumes that the cost related to the mailing will appear as a campaign expenditure on any campaign reports you are required to file, and your campaign therefore did not receive any "in-kind" contribution in regard to postage costs paid out of your campaign fund.


Candidates in Board of Education elections are not required to file campaign reports (Forms R-1) unless more than \$2,000 is expended, and provided no contributions from a single source aggregates more than \$100; see N.J.S.A. 19:44A-16(a).

The Commission is forwarding copies of this Advisory Opinion to the other C.P.R. endorsed candidates for their information.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY:



GREGORY E. NAGY
Staff Counsel

GEN/cn

cc/John Stemwedel

386 William Street
Ridgewood, NJ 07450

Doug Pedersen
46B Stevens Avenue
Ridgewood, NJ 07450