



A.O. 4-1989

ROBERT J. DEL TUFO
ATTORNEY GENERAL

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW

RICHARD J. HUGHES JUSTICE COMPLEX
CN 112
TRENTON 08625

KENNETH S. LEVY
ASSISTANT ATTORNEY GENERAL
DIRECTOR

May 11, 1990

Frederick M. Herrmann
Executive Director
Election Law Enforcement Commission
28 West State Street - CN 185
Trenton, New Jersey 08608

Re: 90-0003: Political Contributions
by Solid Waste Haulers.

Dear Mr. Herrmann:

You have asked whether statutory prohibitions on the making of political contributions extend to corporations engaged in the businesses of collecting and/or disposing of either solid or hazardous waste. For the following reasons, you are advised that the statutory prohibitions of N.J.S.A. 19:34-45 extend only to the specifically enumerated industries and to corporations holding the right to condemn land or to exercise franchises in public ways. Businesses engaged in the collection of solid waste are neither listed in the statute or vested with the authority to condemn land or exercise a franchise. Accordingly, such businesses are not prohibited from making political contributions. On the other hand, businesses engaged in the disposal of solid or hazardous waste, while not specifically listed in the statute, do possess the authority to condemn land and exercise a franchise. For these reasons, such businesses are precluded by the statute from making political contributions.

The pertinent statute, N.J.S.A. 19:34-45, provides as follows:

No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in

public ways granted by the state or any county or municipality, and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

Although companies engaged in the collection and/or disposal of solid (and hazardous) waste are styled by law as public utilities, infra, it is plain from the list of entities prohibited from making political contributions that the Legislature intended to include only certain public utilities. In addition to financial institutions, the statute lists industries which plainly are public utilities, or were when N.J.S.A. 19:34-45 was enacted in 1930. The statute further includes any corporation "having the right to condemn land, or to exercise franchises in public ways...", which are general characteristics of public utilities. In short, the statute does not specifically include the general category of all "public utilities."

A significant addition to the field of regulated public utilities was made by the passage of the Solid Waste Utilities Control Act, N.J.S.A. 48:13A-1 et seq., in 1970. That Act rendered both solid waste collection and hauling and solid waste disposal facilities public utilities. N.J.S.A. 48:13A-6.* While not specially enumerated in N.J.S.A. 19:34-45, solid waste disposal corporations nonetheless do possess two of the qualifying attributes which bring them under the bar to political contributions. Specifically, solid waste disposal facilities possess the right to condemn land, N.J.S.A. 48:3-17.6,** and the right to obtain a franchise, N.J.S.A. 48:13A-5. It is thus plain that corporations carrying on the business of solid waste disposal are included in the express ban on political contributions pursuant to N.J.S.A. 19:34-45.

*Hazardous waste collection and disposal companies are not regulated as public utilities. N.J.S.A. 48:13A-6, 48:13A-3(a).

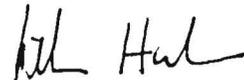
**Prior to condemnation, a solid waste disposal facility must have the approval of the Department of Environmental Protection as to the suitability of the land proposed for condemnation. N.J.S.A. 48:3-17.6. The need for State administrative agency review prior to the exercise of the condemnation power cannot serve to modify the prohibition set forth in N.J.S.A. 19:34-45.

On the other hand, solid waste haulers do not satisfy any of the attributes which would bring them within N.J.S.A. 19:34-45. Unlike solid waste disposal facilities, solid waste haulers lack both the authority to exercise eminent domain or to hold a franchise. Indeed, in recently adding solid waste disposal utilities to those utilities with authority to exercise eminent domain, N.J.S.A. 48:3-17.6, the Legislature did not include solid waste haulers. L. 1984, c. 214, §1. Further, the Legislature has limited the holding of a franchise to solid waste disposal facilities. N.J.S.A. 48:13A-5(a); L. 1985, c. 38, §36. Because solid waste hauling utilities are not expressly enumerated in N.J.S.A. 19:34-45 or do not possess the authority to condemn land or hold a franchise, they are excluded from the statutory prohibition on campaign contributions.*

In conclusion, it is our opinion that the prohibitions of N.J.S.A. 19:34-45 apply to the specifically enumerated types of corporations and to those with authority to condemn land or to exercise a franchise, and not to public utilities generally. Applying these principles to your inquiry, businesses engaged in the collection of solid waste are not precluded from making political contributions. Since businesses engaged in the disposal of solid and/or hazardous waste possess the power to condemn land and the right to obtain a franchise, they are precluded from making political contributions.

Very truly yours,

ROBERT J. DEL TUFO
Attorney General



WILLIAM HARLA
Assistant Attorney General

/fd

*In making any such contributions, however, solid waste haulers should be mindful of N.J.S.A. 48:3-6 which provides in relevant part: "No public utility shall give, grant or bestow upon any local, municipal or county official any discrimination, gratuity or free service."



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., SUITE 1215
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February 21, 1989

Honorable Peter N. Perretti, Jr.
Attorney General of New Jersey
CN-080
Hughes Justice Complex
Trenton, NJ 08625

RE: Advisory Opinion Request from Browning-Ferris Industries
Our File No.: Advisory Opinion No. 04-1989

Dear Attorney General Perretti:

On behalf of the Election Law Enforcement Commission, I have been asked to request an advisory opinion in response to an inquiry made by Browning-Ferris Industries, etc.; see attached letter from Scerbo, Kobin, Litwin and Wolff, designated as Advisory Opinion Request 4-1989. This inquiry concerns the application of a statutory prohibition against political contributions by certain regulated corporations; see N.J.S.A. 19:34-45 and is beyond the jurisdictional authority of the Commission to issue advisory opinions; see N.J.S.A. 19:44A-6(f), extending authority to the Commission to issue advisory opinions concerning questions arising under the Reporting Act.

Therefore, the Commission respectfully forwards this request for your consideration because it believes that a response from the State Attorney General will be of assistance to this and other similarly situated corporations.

Thank you for your consideration.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory Nagy
GREGORY E. NAGY

GEN/cn
Attachment



State of New Jersey

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February 21, 1989

Arthur R. Kobin, Esq.
Scerbo, Kobin, Litwin & Wolff
10 Park Place
Morristown, NJ 07960

Advisory Opinion No. 04-1989

Dear Mr. Kobin:

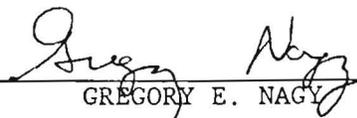
The Commission has directed me to respond to your letter received February 14, 1989 (dated January 5, 1989) requesting an advisory opinion. You have asked whether Browning-Ferris Industries of Elizabeth New Jersey, Inc., Browning-Ferris Industries of North Jersey, Inc., Browning-Ferris Industries of South Jersey, Inc., and Browning-Ferris Industries of Paterson, New Jersey, Inc. (hereafter, "BFI"), solid waste utilities of the State of New Jersey, are prohibited by virtue of N.J.S.A. 19:34-45 from making political contributions directly or through political action committees (PAC's) formed by BFI.

The jurisdiction of the Commission to issue advisory opinions is limited to matters arising under "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. Therefore, your inquiry requires the application of statutes outside of the Reporting Act, prohibiting certain regulated corporations from making political contributions. While the Commission lacks jurisdiction to provide an advisory opinion to this request, it has in the past sought the opinion of the State Attorney General on questions involving statutes prohibiting political contributions. Since your inquiry falls within that category, the Commission will refer your letter for consideration by the State Attorney General.

At such time as the Commission receives a response from the State Attorney General, it will forward the opinion to you.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY E. NAGY

GEN/cn

A.O.4-1989

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TELECOPIER 201-538-1223

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ELECTION LAW ENFORCEMENT COMMISSION

ARTHUR R. KOBIN
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MEMBER OF NEW YORK AND
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FRANK C. SCERBO (1926-1986)
LOUIS S. FREEMAN
OF COUNSEL

ALBERT E. CRUZ
DAVID F. SALVAGGIO
LAUREN A. ADESSA

January 5, 1989 - NOTE: Received
by Express Mail, February 14, 1989.
EN

Edward J. Farrell, Esq.
State of New Jersey
Election Law Enforcement Commission
National State Bank Bldg., Suite 1215
28 W. State Street, CN-185
Trenton, New Jersey 08625-0185

Re: Advisory Opinion No. ~~16-1988~~ 04-1989

Dear Mr. Farrell:

Thank you for your letter of December 20, 1988, regarding the above captioned request for an Advisory Opinion. This firm represents Browning-Ferris Industries of New Jersey, Inc. and its various New Jersey subsidiaries, namely Browning-Ferris Industries of Elizabeth New Jersey, Inc., Browning-Ferris Industries of North Jersey, Inc., Browning-Ferris Industries of South Jersey, Inc. and Browning-Ferris of Paterson, New Jersey, Inc. ("BFI" individually and in the aggregate) all of which are solid waste utilities of the State of New Jersey subject to the jurisdiction of the New Jersey Board of Public Utilities.

BFI intends, prospectively, to make political contributions either directly and/or through Political Action Committees, provided such contributions are not legally proscribed. As you correctly stated in your letter to me of December 20, 1988 N.J.S.A. 19:34-45 does not specifically apply, by name, to public utilities or to the solid waste industry. The statute does, however, clearly prohibit contributions by entities traditionally considered to be public utilities ("...railroad, street railway, telephone, telegraph, electric light, heat or power...") and other corporate enterprises affected with a public interest, which are closely regulated. See Formal Opinion #4, 1983.

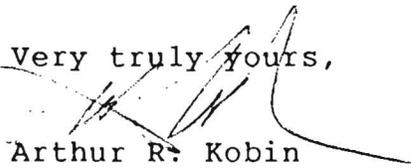
SCERBO, KOBIN, LITWIN & WOLFF

January 5, 1988
Page 1

Furthermore, Assembly Bill No. 3638 quoted in my letter of December 13, 1988, while not enacted, is indicative of at least some support that the solid waste industry be prohibited from making political contributions. Given these circumstances, the requested Advisory Opinion would be most helpful. I would therefore request that you refer this matter to the State Attorney General.

Should you require any further information, please do not hesitate to contact me.

Very truly yours,



Arthur R. Kobin

ARK/fj/128F