



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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September 19, 1989

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Advisory Opinion No. 19-1989

Dear Mr. Edelstein:

The Commission at its public meeting of September 12, 1989 considered your request for an advisory opinion as contained in your letters of September 1, September 6, September 8 and September 11, 1989. You have asked on behalf of the New Jersey State Democratic Committee/Campaign '89, Inc., whether four scripts that will be used for video advertisements prior to the 1989 general election would result in any allocation of the expense for those advertisements towards the expenditure limit of the gubernatorial candidate of the Democratic Party; see N.J.S.A. 19:44A-7, as amended by P.L. 1989, c.4, section 2. You have also asked whether the four scripts you have submitted, which are attached to your letter of September 8, 1989 and hereby are incorporated by reference in this advisory opinion, may be kept confidential and withheld from public disclosure.

For the reasons stated herein, the Commission hereby denies your request for confidentiality in regard to the four scripts you have submitted, and upon review of those scripts hereby advises you that the text of those scripts would not result in any allocation to a 1989 gubernatorial candidate.

Initially, the Commission wishes to note as a procedural matter that for purposes of the ten-day period established in N.J.S.A. 19:44A-6(F) for responding to advisory opinion requests, the Commission deems this request as made and received on September 8, 1989, the date upon which the scripts of the advertisements that are the subject of this opinion were submitted.

In regard to your request for confidentiality, the Commission recognizes that in partisan election campaigns candidates and political parties have a legitimate interest in seeking confidentiality for media advertising strategy. Nevertheless, the Commission believes that the Open Public Meetings Act (N.J.S.A. 10:4-7, et seq.) does not provide any basis for excluding the public from the Commission's deliberations on any advisory opinion request, which in this case included the scripts. Also, the Public Records Act (N.J.S.A. 47:1A-2) mandates that a record which is required by

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law to be made must be deemed public unless some statute, regulation, or other authority provides otherwise. A written advisory opinion is such a public record because it must be issued pursuant to N.J.S.A. 19:44A-6(f). This advisory opinion necessarily incorporates the scripts at issue, and therefore those scripts also become public records by virtue of their inclusion. Finally, the Commission believes that publication of its advisory opinions serves to provide guidance not only to the requesting candidate or entity, but to others with similar questions. Imposing confidentiality would preclude similarly situated persons from benefiting from the Commission's opinions.

In regard to the substance of the scripts you have submitted, the Commission notes that in Advisory Opinion 33-1981, Question 2, the Commission was asked to consider whether institutional advertising by a State political party committee would result in an allocation to a gubernatorial candidate. The Commission concluded that the issue turned on whether or not expenditures for such advertising were made ". . . on behalf of a gubernatorial candidate." Specifically, the Commission wrote:

"Such an expenditure would be made, at least in part, on behalf of the gubernatorial candidate, and thereafter allocable to some extent to the gubernatorial candidate, if (1) either of the gubernatorial candidates is named or visually depicted or referred to; or (2) the office of Governor is named or referred to; or (3) the incumbent governor is named or visually depicted or referred to; or (4) the identity of the candidate, the opponent, or the incumbent governor is apparent by unambiguous reference."

Advisory Opinion No. 33-1981, p.2.

The above quoted criteria were also relied upon in Advisory Opinions 38-1981 and 39-1981, and resulted in determinations that expenditures by the New Jersey Republican State Committee related to a television advertising campaign and a direct mail campaign would not result in an allocation to the 1981 Republican gubernatorial candidate.

Applying the above criteria to the four scripts you have submitted, the Commission concludes that the text of the scripts in themselves would not result in any allocation to the 1989 Democratic gubernatorial candidate. Nothing in the text names or refers to a gubernatorial candidate. Further, the Commission agrees that the reference in the "CRIME" script to "After eight years of Republican leadership . . ." and the reference in the "ENVIRONMENT" script to "In the last 8 years . . ." does not constitute a reference to the incumbent governor, and believes this language is substantially similar to language considered in Advisory Opinions 38-1981 and 39-1981. Therefore, the Commission concludes the costs of the contemplated advertising constitute political party building expenditures not allocable to a gubernatorial candidate.

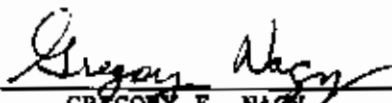
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The Commission wishes to note that you have not submitted the video portion of the proposed advertising for the Commission's consideration, and therefore nothing contained herein should be construed as a determination whether the accompanying videos give rise to a possible allocation to a gubernatorial candidate. This advisory opinion is limited to the submitted texts only.

Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: 
GREGORY E. NAGY

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