



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

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EDWARD J. FARRELL
COUNSEL

September 28, 1990

Attorney General Robert J. DelTufo
CN-081
Trenton, NJ 08625

RE: Advisory Opinion Request No. 07-1990

Dear Attorney General DelTufo:

At its meeting of September 26, 1990, the Commission directed me to refer for your consideration the enclosed request for an advisory opinion from Sanford Schneider, Esq. on behalf of the Mid-Atlantic Independent Power Producers. The request was assigned our agency docket number, A.O. 07-1990.

I have enclosed Mr. Schneider's correspondence dated July 10, 1990, with the materials he submitted describing the Mid-Atlantic Independent Power Producers.

As the Commission understands this request, Mr. Schneider is asking the following:

1. Does N.J.S.A. 19:34-45 prohibit alternate power producers in New Jersey, such as those that are members of the Mid-Atlantic Independent Power Producers, from making political contributions in this State because the alternate power producers are in the business of selling electric power and thermal energy?

2. Assuming that N.J.S.A. 19:34-45 is not applicable to alternate power producers, are those producers that are wholly or partially owned by New Jersey public utilities subject to the statutory prohibition?

The Commission has advised Mr. Schneider that its jurisdiction to give advisory opinions is limited to the provisions of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. Therefore, the Commission has no jurisdiction to issue an advisory opinion on the questions submitted. However the Commission requests that your office take these issues under advisement for advisory opinion purposes because the Commission believes that they present substantial policy issues that have not been addressed in prior Attorney General Opinions.

Although the Commission does not have any jurisdiction to issue any dispositive ruling or opinion, the Commission does wish to suggest that it believes alternate power producers are subject to the restrictions contained in N.J.S.A. 19:34-45. Alternate power producers carry on the business of a heat or power company, and their activities may have a substantial impact on the price paid by consumers throughout New Jersey even if the producers do not directly hold public franchises. Therefore, the Commission suggests that the legislative policies that motivated removal of power companies from political contribution activities appear to have vitality for alternate power producers as well.

The Commission further suggests that in the event the Attorney General finds that statutory prohibition is not applicable to all alternate power producers, those producers that are partially or wholly owned by New Jersey public utilities should be viewed as subject to the prohibition because prior Attorney General Opinions have applied the prohibition to corporate subsidiaries; see Attorney General Formal Opinion No. 4-1983.

Thank you for your consideration.

Respectively submitted,

ELECTION LAW ENFORCEMENT COMMISSION

BY: Gregory E. Nagy
GREGORY E. NAGY
Legal Director

GEN/lis

cc/Attorney General Counsel Alexander P. Waugh
Assistant Attorney General William Harla
Sanford Schneider, Esq.



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EDWARD J. FARRELL
COUNSEL

September 28, 1990

Sanford Schneider, Esq.
Kraft & McManimon
One Gateway Center
Newark, NJ 07102-5311

RE: Advisory Opinion Request No. 07-1990

Dear Mr. Schneider:

Kindly be advised that at its public meeting of September 26, 1990, the Commission directed me to forward your request for an advisory opinion on behalf of the Mid-Atlantic Independent Power Producers to the State Attorney General for advisory opinion consideration.

The Commission's jurisdiction to issue advisory opinions is limited to the provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. Since your request concerns the provisions of N.J.S.A. 19:34-45, the Commission does not have jurisdiction or authority to issue an advisory opinion, but rather has submitted the request to the Attorney General for his consideration.

I am enclosing a copy of the Commission's letter to the Attorney General referring your request.

Please do not hesitate to contact me if you have any further questions.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY:

GREGORY E. NAGY
Legal Director

GEN/lr

cc/Attorney General Counsel Alexander P. Waugh
Attorney General Robert J. DelTufo
Assistant Attorney General William Harla.