



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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October 24, 1990

Matti Prima, Chairperson
Citizens for a Better New Jersey
2 Stuart Lane East
Princeton Junction, New Jersey 08550

Advisory Opinion No. 09-1990

Dear Mr. Prima:

The Commission has directed me to issue the following response to your letter dated May 5, 1990, and your supplemental letter dated October 4, 1990, in which you request an advisory opinion concerning application of the "New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq., (hereafter, the Reporting Act) to the use of a 900 line telephone service to generate political contributions.

You have written that you are the chairperson of "Citizens for a Better New Jersey," (hereafter, Citizens), an entity that currently files quarterly reports (Form R-3) with the Commission as a continuing political committee. Citizens anticipates entering into a contract with AT&T to establish a 900 line telephone service to solicit contributions, and to register the names of persons who are supportive of the objectives of Citizens.

At the Commission meeting conducted on October 17, 1990, Dennis J. Marshall, systems consultant, AT&T, advised the Commission that a telephone call to the 900 line service would result in a charge of \$3.00 for the first minute, and \$1.00 for each additional minute. Under the arrangement contemplated by Citizens, a call will automatically be terminated after three minutes, therefore resulting in a maximum fee for any single phone call of \$5.00. The caller will be asked to provide the caller's name and address, and that information will be recorded by AT&T. According to the AT&T spokesman, the charge generated by such a phone call will be billed to the subscriber phone line from which the telephone call was made. In the event that the charge is disputed by a subscriber, Citizens will be responsible for reimbursing AT&T for the disputed charges. Citizens will be assessed thirty cents for the first minute of each such call, and twenty-five cents for each additional minute. AT&T will also be assessing approximately ten percent of the total revenues generated from calls for its billing service and for a bad debts fund. Finally, AT&T will be assessing a rental charge for the use of its equipment. AT&T anticipates that the proceeds generated from the revenues from the 900 line service will be turned over to Citizens within 60 days from the date the phone call was made.

Mr. Marshall represented that all advertising conducted to promote phone calls to the 900 line will contain a statement advising prospective callers of the fees they will be charged.

You have asked whether Citizens may establish such a 900 line service to raise contributions that may be used to aid or promote candidates, or to promote the passage or defeat of public questions. The Commission concludes that Citizens may establish a 900 line service subject to the following restrictions:

1. No single phone call will result in a charge that exceeds \$20.00, and therefore the \$20.00 ceiling on contributions received through a "public solicitation" as defined in N.J.S.A. 19:44A-3 will not be exceeded.
2. All revenues collected through the 900 line telephone service should be reported as contributions to Citizens, including those revenues that are withheld by AT&T and are never delivered to Citizens. Specifically, all deductions made by AT&T under the terms of the contract must be included in reporting the aggregate amount generated by this fundraising technique. This aggregate sum should be included in the amount reported by the continuing political committee as monetary contributions received, without requiring identification of specific contributors.
3. The total revenue withheld by AT&T should be reported as an operating expense of Citizens on Schedule C, Disbursements for Operations, of the Form R-3. No check number will be indicated because payment to AT&T has been accomplished by its withholding of a portion of the revenues.
4. Contributions generated by the 900 line will be deemed made for report purposes on the date that AT&T passes the revenues to Citizens.
5. A copy of the executed contract between Citizens and AT&T must be filed with the Commission by Citizens no later than the date on which the first report is filed which reflects receipt of the 900 line revenue.

The Commission notes that N.J.S.A. 19:34-45 prohibits a corporation that is carrying on the business of a telephone company from paying or contributing any money or thing of value to aid or promote the nomination or election of a candidate, or to promote the interests, success or defeat of a political party. The jurisdiction of the Commission to issue advisory opinions is limited to those statutory provisions that are part of

the Reporting Act, and therefore the Commission must refrain from expressing any cognizable opinion as to the application of N.J.S.A. 19:34-45. However, the Commission is satisfied from the fact record presented by both Citizens and AT&T that the contractual agreement contemplated by these parties would not give rise to a "contribution" by AT&T as that term is defined in N.J.S.A. 19:44A-3(d). AT&T is providing the 900 line telephone service as part of its normal business operations, and has specifically provided against the contingency that it will incur costs that Citizens will be unable to pay by including a "bad debts" fund provision in its contract. Therefore, for purposes of the Reporting Act, AT&T will not be deemed as a "contributor" under the submitted fact record.

In your letter dated October 4, 1990, you asked that the scope of this advisory opinion be extended to include an entity you identified as "Citizens Against Florio" as well as Citizens. The Commission notes that at this time "Citizens Against Florio" is not filing reports with the Commission, nor does your letter specify whether this entity contemplates becoming a "political committee" or "continuing political committee" as those terms are defined in the Reporting Act. Therefore, the Commission believes it does not have an adequate fact record in regard to "Citizens Against Florio" to express any opinion.

The Commission wishes to express its appreciation to you for this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
GREGORY E. NAGY
Legal Director

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