



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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March 19, 1990

Edward T. Collins, Assistant Counsel
Allstate Insurance Company
Allstate Plaza North
Northbrook, Illinois 60062

Advisory Opinion No. 01-1991

Dear Mr. Collins:

The Commission has directed me to issue this response to your request for an advisory opinion as contained in your correspondence dated February 12, 1991 and February 27, 1991. You have asked whether the Allstate Insurance Company (hereafter, the Company) will acquire disclosure obligations pursuant to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act), by complying with an Administrative Order of the Department of Insurance requiring the Company to circulate to its policyholders a letter from Governor Jim Florio. For the reasons stated below, the Commission finds that no reporting requirements under the Act arise under the facts that you have submitted.

You have written that pursuant to Department of Insurance Order No. A91-108, the Company is required to circulate to its policyholders on and after April 1, 1991, copies of two letters. Each of the letters concerns elimination of automobile insurance premiums for the Joint Underwriting Association (JUA), and one is signed by Governor Jim Florio while the other is signed by Insurance Commissioner Samuel F. Fortunato. Copies of these letters, and the Administrative Order, are attached and incorporated by reference in this opinion.

You write that simultaneously to making this request to the Commission for an advisory opinion, you are also seeking an opinion from the State Attorney General regarding "the political nature" of the Florio letter. The Commission infers that you have asked the Attorney General to provide an opinion on the possible applicability of N.J.S.A. 19:34-32 and 19:34-45, which statutes provide criminal sanctions and are not part of the Act. You have asked the Commission to assume that the Florio letter is determined by the Attorney General "to be political in nature," and you therefore ask whether the Company would acquire reporting responsibilities under the Act.

Kindly be advised that the Commission has the sole statutory jurisdiction to issue advisory opinions concerning applicability of the Act to a submitted fact pattern; see N.J.S.A. 19:44A-6(f). In executing its

statutory responsibilities to administer the Act, the Commission is independent of any supervision or control by the Department of Law and Safety; see N.J.S.A. 19:44A-5. Therefore, the Commission is satisfied that it is the appropriate public agency to make a determination of whether the Florio letter can be characterized as "political" in the sense that it aids or promotes a candidate and thereby generates reporting requirements under the Act.

The Commission has promulgated a rule (N.J.A.C. 19:25-11.10) (copy enclosed) which sets forth criteria for determining whether a communication can be deemed as "political," and therefore subject to reporting. Pursuant to subsection (a), a communication that contains an appeal for votes for a candidate in an upcoming election, or otherwise makes an unambiguous reference to an upcoming election, may be deemed to be "political." Even in the absence of an explicit reference to a candidacy, or an election, a communication may still be deemed political pursuant to subsection (b) if it contains a statement or reference concerning governmental or political objectives or achievements of a candidate in an upcoming election and is circulated, in the case of a candidate for nomination for the office of Governor in a primary election, on or after January 1st in the year of that primary election.

The Commission believes that Governor Florio's letter meets neither of the conditions set forth in subsections (a) or (b). The text of the letter contains no explicit reference to a candidacy, or to an upcoming election. In regard to subsection (b), under the facts as you have submitted them, the Company will be circulating the Florio letter to its policyholders from a period of time beginning on April 1, 1991 and extending for approximately one year after that date. The letter will not be circulated on or after January 1, 1993, which under subsection (b) would be the operative cutoff date for the 1993 gubernatorial primary election.

Even prior to the promulgation of the above-cited rule, the Commission has refrained from attaching political communication reporting requirements to communications made by an elected officeholder to constituents far in advance of the date of an election in which the officeholder might be a candidate. In Advisory Opinion No. 15-1984 (copy enclosed) radio and television commercials concerning public school issues which prominently featured Governor Thomas H. Kean were not found to be subject to reporting in the context of the 1985 gubernatorial primary election because the advertisements were scheduled for broadcast eight months before that election. As noted in that opinion, incumbent officeholders or other public figures may obtain some collateral benefit for a potential, future candidacy when they make communications directly related to their public duties. However, it is only when the timing, context, and

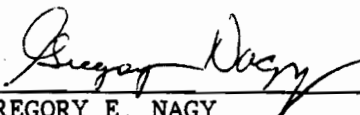
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other circumstances of the communication can be reasonably said to have been made on behalf of a candidate that reporting requirements arise.

You have asked several other questions, all of which are conditioned upon the assumption that Governor Florio's letter is a "political communication" subject to reporting. Since the conclusion of the Commission is to the contrary, the Commission finds it unnecessary to proceed to consider those other questions.

Thank you for your inquiry.

Very truly yours,
ELECTION LAW ENFORCEMENT COMMISSION

By: 

GREGORY E. NAGY
Legal Director

Attachments
GEN/ck