



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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April 25, 1991

Michael E. Hubner
Special Counsel for the County
of Morris
Johnson, Murphy, Hubner, McKeon
& Wubbenhorst
P. O. Box 70
Riverdale, New Jersey 07457

Advisory Opinion No. 02-1991

Dear Mr. Hubner:

The Commission at its public meeting of April 24, 1991, directed me to issue the following response to your request for an advisory opinion as set forth in your letter received March 27, 1991. In your capacity as Special Counsel to Morris County, you have asked whether or not a freeholder candidate must report as a campaign contribution from the county the opportunity extended to that candidate to appear on certain television programs which are produced partially at county expense. For the reasons set forth below, kindly be advised that under the facts submitted in your request letter and also presented in response to our staff inquiries, the Commission concluded that the incumbent candidate has received a reportable contribution from the county pursuant to Commission Regulation N.J.A.C. 19:25-11.10 (copy enclosed) which concerns political communications.

You write that the County of Morris "funds" a public information program with the title "Debate the Press," which program is shown on local cable television stations. County freeholders often appear as program guests. You further write that one of the freeholders participating on programs concerning the county budget, salary increases, and a proposed jail location will be seeking re-election and will be a candidate in a contested primary election to be conducted on June 4, 1991. The television programs you refer to will be broadcast on dates that fall after the filing of the candidate's nominating petition, and before the date of the June 4, 1991 primary election.

At your suggestion, the Commission has obtained further information from Ms. Judy Kiggins-Sheehan, a member of the Morris County

public information staff. She states that Morris County has been taping similar programs since September, 1980. Further, she states that the programs will each be 15 minutes long, and will be broadcast by two cable television channels at three different times during the week. One of the cable television companies is located in the Dover-Rockaway area, and the other in the Chester area of the county.

Ms. Kiggins-Sheehan has advised the Commission that she is the only paid county staff person involved in the production of the program. Students from the county college operate cameras and use county college equipment to make the tape. She selects one or two freeholders as guests, along with other persons of newsworthy interest in the county, and she selects topics which generally concern county government affairs. She invites two newspaper reporters to present questions to the guests. There are apparently no plans to include non-incumbent freeholder candidates as guests. She states that one of the programs has been taped and did not contain any reference to any candidacy or to the upcoming 1991 primary or general elections, and that she does not anticipate any such reference in any future programs.

The Commission has been further advised that three of the present freeholders are candidates in the 1991 primary election. However, only one of them, Freeholder Director John O'Keefe, is scheduled to appear on programs that will be broadcast before the date of the primary election. He has appeared on a broadcast concerning county budget and salaries that was aired on April 8, 12, and April 14, 1991, and he will be appearing on a program concerning the location of proposed jail facilities scheduled to be aired on April 29, May 3, and May 5, 1991. Mr. O'Keefe is one of six candidates in the Republican Party primary election seeking nomination for three at-large seats on the Board of Freeholders. Two of the other five candidates are also incumbents, but they are not scheduled to appear on any preelection programs.

Commission Regulation N.J.A.C. 19:25-11.10 sets forth standards for determining whether or not a communication shall be deemed as a political communication and therefore subject to campaign reporting under the Act. Since none of the broadcasts will contain an appeal for votes for candidates or make an unambiguous reference to the upcoming primary election, subsection (a) is not applicable. Therefore, the provisions of subsection (b) must be examined in order to determine whether the County of Morris, by virtue of its support for the production and broadcast of these programs is making a reportable campaign contribution to a candidate.

Subsection (b) sets forth three criteria:

1. The communication must be circulated to ten or more persons and must contain a statement or reference concerning the governmental or political objectives or achievements of a candidate in upcoming elections. For the purposes of this opinion, the Commission assumes that ten or more persons will view these programs. Both the budget and jail programs will each be aired three times in two different population centers. Further,

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although the Commission has not reviewed the one program that has already been aired, it is satisfied that by virtue of the subject matter the candidate may be expected to make statements or references that concern the candidate's governmental objectives. Indeed, the very purpose of the programs is to present the views of the participants on county government topics, an opportunity that has not been offered to non-incumbent candidates.

2. The audience of these programs must be comprised substantially of persons eligible to vote for the incumbent candidate appearing on them. The geographic areas that will be targeted by the cable transmissions are within the boundaries of Morris County. Further, the topics of the program suggest that the very audience that is being targeted is comprised of Morris County voters. The Commission believes therefore it may fairly infer that the viewing audience will be substantially comprised of Morris County voters.

3. All the broadcasts have been or will be broadcast within the 60-day period which immediately precedes the June 4, 1991 primary election, thus meeting the time limit criteria.

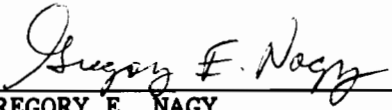
The exemption from reporting contained subsection (c) of the regulation is not applicable because nothing submitted in the fact record suggests that the appearance of the incumbent candidate was necessitated by the need to communicate some governmental event which required constituents to make applications or take other actions within a specified time, or for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

Therefore, the Commission is satisfied that by applying the criteria set forth in subsection (b) of N.J.A.C. 19:25-11.10 to these facts, the County of Morris is making a reportable political contribution to the incumbent candidate in the 1991 primary election.

Thank you for this inquiry, and your assistance in amplifying the fact record presented to the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY E. NAGY
Legal Director

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enclosure