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June 22, 1992

Louis A. Romano
Assemblyman, 33rd District
5918 Bergenline Avenue, Suite 200
West New York, New Jersey 07093

Advisory Opinion No. 05-1992

Dear Assemblyman Romano:

The Commission has directed me to issue the following response to your request for an advisory opinion. You have asked how the receipt of complimentary tickets for your attendance at various political functions should be reported pursuant to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Campaign Reporting Act), and pursuant to the Legislative Disclosure Statement Act, N.J.S.A. 19:44B-1 et seq. (hereafter, the Financial Disclosure Act).

In a letter addressed to the Joint Legislative Committee on Ethical Standards (hereafter, Joint Legislative Committee) and copied to the Commission, you write that you have received complimentary tickets (i.e., tickets given without any charge or cost) for your attendance at political events. You have attached a copy of your Legislator's Financial Disclosure Statement for calendar year 1991 that was filed pursuant to the Legislative Code of Ethics with the Joint Legislative Committee. That Statement indicates receipt of gifts of more than \$250.00 in the form of tickets from the following entities: Janiszewski '91, Committee to Re-Elect Bernard F. Kenny, Jr., and People Who Love West New York.

The Commission notes that you were a candidate for State Assembly in the 33rd Legislative District (parts of Hudson County) in the 1991 general election, and filed campaign reports with the Commission for that election under the name "Committee to Re-Elect Assemblyman Louis A. Romano." The 29-day preelection report filed on behalf of your candidacy indicated receipt on September 25, 1991, of a complimentary ticket valued at \$250.00 from Janiszewski '91. Also, the 20-day postelection report indicated receipt on October 23, 1991, of a complimentary ticket valued at \$150.00

from the Committee to Re-Elect B. Kenny. Further, a continuing political committee, under the name "People For Romano," for which you have indicated you were treasurer, filed a 1991 second quarter report (Form R-3) on July 11, 1991, indicating receipt of contributions in the form of complimentary tickets from: People Who Love West New York, valued at \$500.00; Janiszewski '91, valued at \$500.00; and the Committee to Re-Elect Bernard F. Kenny, Jr., valued at \$200.00. The Commission presumes that "People for Romano" has been established to promote your possible future election campaigns.

You have asked the Commission whether your receipt of these complimentary tickets must be reported on candidate reports, or on continuing political committee reports, and whether the receipt of these tickets must be reported on a candidate Personal Financial Disclosure Statement (Form PFD-1).

Initially, the Commission wishes to bring to your attention that it does not have any jurisdiction to express any opinion concerning the financial disclosure requirements applicable to a member of the General Assembly filing with the Joint Legislative Committee on Ethical Standards. Therefore, the Legislator's Financial Disclosure Statement and the reporting requirements of that Statement can only be addressed by the Joint Legislative Committee, and nothing contained in this opinion is intended to express any interpretation or opinion of that Statement or the reporting requirements that exist pursuant to the Legislative Code of Ethics. This opinion addresses solely reporting requirements pursuant to the Campaign Reporting Act, and the Legislative Disclosure Statement Act, both of which pertain to you in your capacity as a candidate or prospective candidate.

In regard to requirements under the Campaign Reporting Act, the Commission believes that if complimentary tickets to fundraising or other similar events are given and accepted with the intent of aiding or promoting a candidacy, the receipt of the complimentary tickets should be treated as receipt of an "in-kind" contribution subject to reporting. The Campaign Reporting Act specifically requires a candidate to report the sources of all contributions in the form of money "... or other things of value"; see N.J.S.A. 19:44A-16(a). In Advisory Opinion No. 46-1980 (copy enclosed), the Commission was asked whether a candidate could use his or her campaign funds to purchase tickets to such functions. The Commission responded that if the principal purpose of the attendance was promotion of the candidacy, payment for the purchase of the tickets would meet the definition of "expenditures" in N.J.S.A. 19:44A-3(d), and therefore would be permissible and subject to reporting. The Commission believes that if a candidate may use campaign funds to purchase such tickets as an appropriate expense of running for elected office, receipt by a candidate of complimentary tickets given without any charge constitutes a contribution of a "thing of value" to the candidate within the meaning of N.J.S.A. 19:44A-16(a), and therefore constitutes an "in-kind" reportable campaign contribution.

Further, the Commission also believes that reporting the receipt of such complimentary tickets as "in-kind" contributions to a continuing

political committee (CPC) formed to promote possible future election efforts of an officeholder is permissible if the tickets are received at a time when the officeholder is not filing election-cycle campaign reports. In Advisory Opinion No. 03-1989 (copy enclosed), the Commission stated that the costs for the attendance of an officeholder or prospective candidate at social events which can be reasonably described as in furtherance of duties of holding elective office, or seeking elective office in the future, may be permissibly paid for by a CPC supporting that officeholder or prospective candidate. Therefore, the Commission believes that the receipt of complimentary tickets by the officeholder or prospective candidate constitutes receipt of a reportable "in-kind" contribution to the CPC.

In addition to the requirements of the Campaign Reporting Act, a candidate for Governor or member of the Legislature must file with the Commission in any year in which an election for such office is held a financial disclosure statement pursuant to the Financial Disclosure Act. For example, a candidate for Legislature in the 1993 primary or general election must file with the Commission a Personal Financial Disclosure Statement (Form PFD-1) for calendar year 1992. The statement must identify the donor of any gift having a value of more than \$250; see N.J.S.A. 19:44B-4(e). However, the term "gift" is specifically defined to exclude "... any political contribution reported as otherwise required by law"; see N.J.S.A. 19:44B-1(a). Therefore, if the receipt of complimentary tickets is reported by a candidate on his or her campaign reports filed pursuant to the Campaign Reporting Act, the candidate does not also have to report the tickets as a "gift" on his or her financial disclosure statement filed pursuant to the Financial Disclosure Act. The apparent legislative intent of this provision is to distinguish between a "contribution" which aids the election effort of a candidate or prospective candidate, and a "gift" intended for the personal use or benefit of a candidate but not related to his or her election effort.

Not all complimentary tickets received by a candidate should be reported as campaign contributions. Therefore, a complimentary ticket for a social event that has no correlation or relevance to any present or future election candidacy should be reported solely as a "gift" on a financial disclosure statement.

If a complimentary ticket to a political event is offered and accepted for the principal purpose of promoting a possible future election candidacy of an elected officeholder who has established a CPC for future election purposes, the receipt of the ticket must be reported as an "in-kind" contribution to the prospective candidate's CPC. If so reported, the receipt of the ticket does not also constitute a reportable "gift" for purposes of the candidate Financial Disclosure Act; see N.J.S.A. 19:44B-1(a). However, if the receipt is not treated and reported as an "in-kind" contribution to the CPC established for the candidate, it must be reported as a "gift" on the candidate's personal financial disclosure form.

The Commission also observes that the value of a complimentary ticket received under such circumstances is the face value of the ticket, or

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the amount that it would cost the attendee to purchase the ticket. Commission Regulation N.J.A.C. 19:25-11.5(a) provides that where a contribution of goods is made for an election-related purposes, the value of the contribution is the "fair market value" of the goods to the candidate who receives them. In the absence of receiving the complimentary ticket, the candidate would be required to pay the face amount of the ticket to attend the event. Therefore, the Commission views the "fair market value" of the ticket as equivalent to the face value, or purchase price.

Thank you for your inquiry, and for your interest in the Commission.

Very truly yours,

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

By: _____


GREGORY E. NAGY
Legal Director

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