



State of New Jersey

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May 20, 1993

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Advisory Opinion Request No. 05-1993

Dear Mr. Scarinci:

The Commission has directed me to respond to your correspondence dated March 29, 1993 and April 16, 1993, in which you have requested an advisory opinion on behalf of "The F.A.I.R. Committee," a political committee designated to file reports for Anthony M. DeFino, a candidate in the February 2, 1993, special recall election in the Town of West New York. You have asked whether this committee can reimburse the candidate after the election for certain expenses that were not reported as outstanding obligations.

Subsequent to the receipt of your request for an advisory opinion, the Commission learned that the committee on whose behalf this advisory opinion was sought has in fact made the reimbursement that was the subject of this request. Although your correspondence makes no reference to this payment, the 60-day postelection report (Form R-1) filed on April 22, 1993 by "The F.A.I.R. Committee" indicates that on March 12, 1993 the sum of \$4,025.95 was paid to Mr. Defino. You have confirmed that this payment was reimbursement for the very items that were the subject of your request.

The Campaign Contributions and Expenditures Reporting Act authorizes the Commission to give advisory opinions as to whether a given set of facts and circumstances "... would render any person subject to any of the reporting requirements of this Act" (emphasis added). See N.J.S.A. 19:44A-6(f). The Commission understands this statute to provide that a candidate or other filing entity may receive immunity from imposition of any Commission penalty provided that the candidate or entity seeks an advisory opinion before activity is undertaken. Nothing in the statute provides the Commission with authority to provide such immunity retroactively, that is for activity that has been previously undertaken.

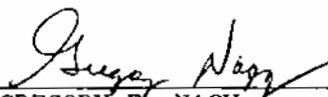
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It appears that "The F.A.I.R. Committee" previously made the reimbursement that was the very subject of its subsequent request. Under such circumstances, the Commission concludes that it is precluded from expressing any opinion on the actions that have been taken.

The Commission notes that according to your correspondence an outstanding obligation to the candidate apparently existed but was not disclosed on any of the reports filed by this candidate-designated committee in connection with the 1992 special election. Therefore, the committee may wish to consider filing amended reports; see Schedule E, Outstanding Obligations (Form R-1). However, nothing contained in this letter is intended to provide any immunity pursuant to N.J.S.A. 19:44A-6(f) for any violation of the Campaign Reporting Act that may have occurred arising out of any of the facts described in this request.

Very truly yours, ..

ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY E. NAGY
Legal Director

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