



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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January 17, 1995

The Honorable Peter A. Inverso
Senator, 14th Legislative District
900 Kuser Road
Hamilton, New Jersey 08619

The Honorable Paul R. Kramer
Assemblyman, 14th Legislative District
900 Kuser Road
Hamilton, New Jersey 08619

The Honorable Barbara Wright
Assemblywoman, 14th Legislative District
900 Kuser Road
Hamilton, New Jersey 08619

Advisory Opinion No. 01-1995

Dear Senator Inverso, Assemblyman Kramer and Assemblywoman Wright:

The Commission has considered your request for an advisory opinion and has directed me to issue this response concerning the applicability of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) to the use of your campaign funds for making a donation to a family facing extraordinary medical expenses and residing within your Legislative District.

FACTS

By letter received December 15, 1994, you have written that a family residing within your legislative district has been beset with a number of extraordinary medical difficulties, and according to newspaper reports county officials are unable to provide welfare assistance because of what your letter describes as "technicalities in the eligibility guidelines." You have further advised the Commission that none of the three legislators requesting this opinion has any family or business relationship with the family to whom the donation will be made. Finally you have advised that because of the emergent circumstances and in anticipation of receiving approval from the Commission, a donation in the amount of \$100.00 was made by check from the Election Fund of Kramer and Wright, a joint candidates committee filing reports for the 1995

primary election, and a donation in the amount of \$100.00 was made by check from the campaign fund of Peter Inverso, a candidate committee filing reports for the 1997 primary election.

COMMISSION RESPONSE

For the reasons set forth below, the Commission concludes that the use of campaign funds for the purpose you have described in the above facts is "an ordinary and necessary expense of holding public office," as that phrase is used in N.J.S.A. 19:44A-11.2a(6), and therefore is permissible.

The phrase "ordinary and necessary expense of holding public office" appears in the above-cited statute without any statutory definition, or statutory criteria. To assist in the application of this standard to specific fact situations, on October 17, 1994, the Commission promulgated a regulation, N.J.A.C. 19:25-6.7, Ordinary and necessary officeholding expense, which listed a number of officeholding expenses that fell within the Commission's understanding of expenses that appropriately furthered the duties of a person holding public elected office. Before the regulation was proposed in the New Jersey Register, the Commission closely consulted with the Joint Committee on Ethical Standards of the New Jersey Legislature, which Committee provided many useful suggestions for more detailed guidance on specific officeholding expenditures. However, the Commission placed the following statement in the proposal notice: "The Commission cannot anticipate all circumstances under which officeholders may wish to expend campaign funds and therefore relies on officeholders to seek advisory opinions from the Commission as new or unanticipated circumstances arise," see 26 N.J.R. 2754 (July 5, 1994).

The facts you have presented appear to be precisely a case not explicitly addressed by the regulation, but within the spirit of statutory intent. In pertinent part, subsection (e) of N.J.A.C. 19:25-6.7 states:

(e) Permissible uses of funds as ordinary and necessary expenses of holding public office shall include, but not be limited to, the following provided the costs are not paid for by the State of New Jersey, or by any political subdivision of the State:

1. Costs of communications to constituents, including:

iii. The making of donations to charitable or non-profit organizations or activities that promote the welfare of constituents, such as the sponsorship of a neighborhood sports team;

v. The nominal purchase of memorial or get-well gifts, flowers, party favors, or similar items for constituents or other persons involved in the execution of the officeholder's duties. (emphasis added)

Subparagraph iii. quoted above contemplates the making of donations to non-profit organizations or activities that promote the welfare of the community, not the welfare of any individual constituent. No single constituent family can be understood to be a non-profit organization or activity in the same sense that a neighborhood sports team is. Subparagraph

v. is directed towards individual constituents, but is limited to "nominal purchases" of relatively inexpensive cards, flowers or other small items, and not towards larger donations to cover delivery of medical services. Therefore, neither of the subparagraphs appears applicable.

The omission in N.J.A.C. 19:25-6.7 of a specific category under which the expenditure by an officeholder can fit does not result in the conclusion that the expenditure is prohibited. As the regulation text states, the regulation shall "not be limited" to only those permissible uses that are specifically provided.

The Commission is confident that nothing in the 1993 amendments to the Reporting Act (which amendments included the "ordinary and necessary" statutory provision discussed herein, see P.L. 1993, c. 65, sect. 34) was intended to preclude an elected officeholder from using campaign funds to provide emergency financial assistance to a constituent faced with extraordinary medical expenses, provided that the officeholder has no familial or financial interest in that constituent that could be construed as promoting the officeholder's personal interests. The Commission is cognizant of the prohibition against "personal use" of campaign funds that appears in the statute, see N.J.S.A. 19:44A-11.2a. The officeholders in this inquiry have represented that none of them have any such a familial or financial connection to the family to which they are providing financial assistance, and the Commission therefore concludes that the financial assistance does not violate the restrictions on the use of campaign funds contained in the Act.

Because the Commission anticipates that other officeholders or candidates may seek to use campaign funds for similar financial assistance to needy constituents or prospective constituents, the Commission will consider proposing amendments to its regulations to specifically address this contingency.

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

VERY TRULY YOURS,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____

GREGORY E. NAGY

Legal Director