



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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March 22, 1995

The Honorable Jack Collins, Majority Leader
Assemblyman, 3rd District
63 East Avenue, Suite C
Woodstown, N.J. 08098-1499

Advisory Opinion 05-1995

Dear Assemblyman Collins:

The Commission has directed me to issue this response to your request for an advisory opinion concerning the applicability of political communication reporting requirements pursuant to N.J.A.C. 19:25-11.10 (hereafter, political communications regulation).

Submitted Facts

You write that under the provisions of the political communications regulation, there is a "blackout" period for an incumbent officeholder during which communications to constituents can be construed as political even in the absence of a specific reference in the communication to the upcoming election, see subsection (b). This is a reference to the 90-day period prior to the date of an election, see paragraph 1 of subsection (b). For the June 6, 1995 primary election, the 90-day period began on March 9, 1995. During this time, any person or entity paying for the costs of a communication that can be construed as political under subsection (b) must be reported as a contributor, see N.J.A.C. 19:25-11.11. This could have the effect of compelling an incumbent legislator seeking nomination in a primary election to report the State of New Jersey as an "in-kind" contributor if the communication were paid for out of funds provided by the State for the operations of a legislative district office.

Although your letter notes that the deadline for filing nominating petitions for the 1995 primary election will be April 15, 1995, the Office of the Secretary of State indicates that the correct date will be April 13, 1995, 54 days before the primary election. For the purposes of this request, the Commission will assume that an incumbent legislator anticipates making communications that could be subject to the reporting provisions of subsection (b) of the political communications regulation, but that no opposing candidate has filed nominating petitions as of the date the communications will be circulated.

Subsection (d) of the political communications regulation provides that no reporting requirements shall be imposed under subsection (b) if a primary election candidate "...is not opposed by another candidate seeking nomination for election in that primary election."

Issue

If no person has filed a petition for nomination for election in a primary election for the office held by an incumbent officeholder, is that incumbent officeholder "not opposed" within the meaning of subsection (d)?

Discussion

For the reasons set forth below, the Commission concludes that pursuant to N.J.A.C. 19:25-11.10(d) an incumbent officeholder is "not opposed" in a primary election if no opponent has filed a petition for nomination for election in that primary election. However, once such a petition is filed, the incumbent is no longer unopposed and subsequent communications are subject to subsection (b) of the regulation.

Subsection (d) exempts unopposed incumbents in primary elections from the possibility that communications made to their constituents can be construed as reportable political communications even in the absence of specific election-related text (for example, "Vote for (name of incumbent).") This exemption was added by the Commission to the political communications regulation at the suggestion of Assemblymen Garabed "Chuck" Haytaian and Patrick Roma (see attached highlighted portions of their letters dated June 5, 1991 and May 15, 1991, respectively). At the time the Commission adopted the "unopposed candidate" exemption in subsection (d), it noted: "In the absence of any opponent in a primary election, the Commission believes that an incumbent officeholder is entitled to a presumption that any communication to constituents, even if made within the 90 days before the primary election, is not for political purposes unless the communication contains 'express advocacy' language of the type described in subsection (a)" (see attached highlighted portion of adoption notice at 23 N.J.R. 2164, July 15, 1991).

The purpose of the exemption is to promote communications between elected officeholders and their constituents. As long as the elected officeholder has no reasonable basis for believing that he or she faces opposition in a primary election, there appears to be no justification for treating pre-primary election communications as reportable election expenses. There is always the remote possibility, as Assemblyman Haytaian noted, that an incumbent could face a challenge by a write-in candidate who did not file a nominating petition. However, since it may be difficult for an incumbent to ascertain that a write-in opponent even exists, the Commission believes the incumbent officeholder should remain able to make communications to constituents without fear that the communications may later be deemed to be political and subject to reporting because of an opposing candidacy of which the incumbent had no knowledge. This seems particularly true when the costs of those communications are legitimately paid for by the governmental entity the officeholder serves.

As noted above, nothing contained in subsection (d) or this opinion exempts an incumbent officeholder or other candidate from reporting requirements when, pursuant to subsection (a) of the political communications regulation, the communication contains an explicit appeal for the election or defeat of a candidate. The full text of the political communications regulation as adopted is enclosed at 23 N.J.R. 2155.

Conclusion

The Commission hereby advises that a communication made by an incumbent officeholder within 90 days before a primary election that might otherwise be subject to reporting under N.J.A.C. 19:25-11.10(b) shall not be subject to reporting pursuant to N.J.A.C. 19:25-11.10(d) provided that at the time of the circulation of the communication no person has filed a petition for nomination for election in opposition to that incumbent in the primary election.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory Nagy
GREGORY E. NAGY
Legal Director

enclosures
A00595.mmo

OTHER AGENCIES**(b)****ELECTION LAW ENFORCEMENT COMMISSION
Violations; Political Communications****Adopted New Rule: N.J.A.C. 19:25-17.2****Adopted Amendment: N.J.A.C. 19:25-11.10**

Proposed: May 6, 1991 at 23 N.J.R. 1299(a).

Adopted: June 21, 1991 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: June 21, 1991 as R.1991 d.364, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 19:44A-6.

Effective Date: July 15, 1991.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

The Election Law Enforcement Commission (hereafter, the Commission) received written comments from Assemblyman Garabed "Chuck" Haytaian, Minority Leader, on behalf of the Assembly Republican Caucus; from Assemblyman Patrick J. Roma, Assistant Minority Leader; and from John A. Schepisi, Esq., Chairman, Bergen County Republican Organization. A public hearing was held by the Commission on June 19, 1991, but no persons appeared to offer any comments at that time. The following is a summary of the comments received and the Commission's responses:

COMMENT: Mr. Schepisi wrote that although he applauded the proposed new rule on violations (N.J.A.C. 19:25-17.2) as an initiative to improve election reporting, he expressed concern that violations pertinent to substantial amounts of money (for example, \$100,000) would be treated identically to violations pertinent to relatively smaller amounts of money (for example, \$100.00). He suggested that an incumbent or party organization might receive thousands of contributions, each of which would be treated as a separate violation. He suggested that a percentage of a major contributor violation should serve as a standard for determining penalties.

RESPONSE: The proposed rule establishes the principle that each omitted, incorrect, or late reporting or record keeping transaction constitutes a separate violation subject to civil penalties pursuant to N.J.S.A. 19:44A-22. The rule is a departure from past Commission practice in cases where all reporting and record keeping transactions relevant to a single late or non-filed report were treated as a single violation subject to a maximum civil penalty of \$1,000 (\$2,000 in the case of a previous violator) (see N.J.S.A. 19:44A-22). The Commission anticipates that the rule will provide it with greater flexibility to correlate civil penalties that more closely reflect the number and amount of reporting and record keeping violations occurring in a single late or non-filed report.

The Commission agrees that the amount of money implicated in any single reporting or record keeping violation should be one factor considered by it in arriving at an appropriate penalty. However, the Commission would not agree that the amount of a misreported or omitted contribution should be the sole factor in assessing any civil penalty. Other factors must also be considered. These include the type of transaction (that is, contribution, expenditure, designation of campaign account, etc.), the number of days late in cases involving late reporting, whether reporting was accomplished before or after the date of an election, and possible exculpatory reasons for the lateness or non-reporting.

The Commission recognizes that a reporting entity with a high volume of relatively smaller contributions is necessarily exposed to a greater number of potential violations than is an entity with fewer, but larger, contributions. However, N.J.S.A. 19:44A-22 permits the Commission to impose a civil penalty for a violation ranging from a reprimand without monetary fine to a fine of up to \$1,000 (\$2,000 for a previous violator). Therefore, the Commission has considerable discretion to tailor any penalty imposed for any single violation to reflect the amount implicated. Further, if the cumulative impact of all fines imposed for multiple violations in a single report appears out of proportion to the total amount raised or expended in that reporting period, the Commission may in its discretion waive or reduce some of the monetary penalties.

COMMENT: In regard to the amendment to N.J.A.C. 19:25-11.10, Political communications, all of the commenters suggested that communications made by elected officeholders in response to letters or telephone calls from constituents should be permitted without requiring those officeholders to report a political communication. Specifically, concern was expressed that "generic response letters" by legislators (that is, letters sent to a large number of constituents in response to constituent mail, telephone calls or petitions on a particular legislative subject) should not be regarded as political communications subject to subsection (b) of the rule.

RESPONSE: The rule defines the term "political communication" to mean some printed or broadcast matter containing an explicit appeal for the election or defeat of a candidate, typically containing words such as "Vote for (name of candidate)." However, under subsection (b) even a communication that does not contain such an explicit appeal may, under the circumstances enumerated in the rule, be deemed as a "political communication." The circumstances under which a letter from an incumbent legislator seeking reelection might be regarded as a "political communication" and therefore subject to reporting are that the letter is circulated within 90 days of the election, it is circulated to an audience substantially comprised of persons eligible to vote for the candidate, it contains a statement or reference concerning the government or political objectives or achievements of the candidate, and the candidate has cooperated or consented in the circulation of the letter.

The Commission agrees that if an officeholder is circulating such a letter to constituents who have made some prior expression of concern on a topic relevant to public duties as an officeholder, the officeholder should not incur reporting obligations as long as the response is limited to the topic raised by the constituent. In reaching this conclusion, the Commission has attempted to balance the interest in promoting constituent communications by an officeholder against the interest of promoting full campaign disclosure by incumbent-candidates. Since the Commission believes that such "generic response letters" should not be subject to reporting because reporting requirements may inadvertently prove burdensome in the context of responding to constituent concerns, the Commission has amended the text of subsection (c) to exclude specifically such responsive communications by officeholders to their constituents.

COMMENT: Assemblyman Haytaian and Mr. Schepisi suggested that even unsolicited communications made during the 90-day period prior to an election from an officeholder to constituents should be permitted under certain limited circumstances. Specifically, they suggested that if the purpose of the communication is to solicit input or other commentary from constituents on a specific public matter, subsection (b) of the rule should not apply.

RESPONSE: Under the existing text of subsection (b), a letter circulated by an officeholder-candidate that does not contain any statement or reference concerning the governmental or political objectives or achievements of that officeholder-candidate does not meet the "political communication" definition. The Commission believes that an unsolicited letter circulated from an incumbent officeholder to constituents in the 90-day period before an election can seek input from constituents without containing any such statement or reference. Further,

the Commission is concerned that amending the rule to permit unsolicited communications containing such a statement or reference would unduly compromise the candidate reporting purposes of the rule. Therefore, the Commission is unable to agree that an amendment to the rule is necessary on this basis.

COMMENT: Assemblyman Roma inquired whether an incumbent legislator seeking reelection would be permitted to place a public service announcement in a newspaper noting that the legislator had information available at the legislator's district office regarding a matter of public concern such as financial aid information for students, veteran's benefits, or some other service.

RESPONSE: If the public service announcement did not contain any statement or reference concerning the governmental or political objectives or achievements of the incumbent legislator-candidate, the announcement would not meet the definition of a "political communication" pursuant to subsection (b). In the event that the announcement did contain such a statement or reference, the Commission believes it should be subject to reporting as a "political communication."

COMMENT: Assemblyman Haytaian and Assemblyman Roma suggested that an incumbent officeholder who is a candidate in an uncontested primary election should not be subject to the provisions of subsection (b).

RESPONSE: The Commission agrees that in an uncontested primary election no significant reporting purpose is served by requiring an incumbent-officeholder to be subject to the reporting provisions of subsection (b). In the absence of any opponent in a primary election, the Commission believes that an incumbent officeholder is entitled to a presumption that any communication to constituents, even if made within 90 days before the primary election, is not for political purposes unless the communication contains "express advocacy" language of the type described in subsection (a). Therefore, the Commission in adopting this rule has added subsection (d) which excludes a candidate in an uncontested primary election from the scope of subsection (b).

COMMENT: Assemblyman Haytaian suggested that the text of the rule be clarified to reflect that primary elections as well as other elections are intended to be within its scope.

RESPONSE: The Commission agrees that the text of subsection (b) should be clarified to reflect that candidates in contested primary elections as well as other elections are affected. Therefore, the Commission has adopted technical amendments to the text of subsection (b) to this effect.

Summary of Agency-Initiated Changes:

The Commission initiated two changes to the text of N.J.A.C. 19:25-11.10(c) for purposes of clarification. The word "those" was removed from the phrase "... if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring those constituents to make applications or take other actions ..." because it was deemed unnecessary in the context of the full subsection. Also, in the phrase "if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring constituents to make applications or take other actions within a specified time period ...", the Commission substituted the words "before the date of the upcoming election" to replace the phrase "within a specified time period" because that phrase was too vague. The phrase "a specified time period" could be construed to refer to any specified period of time when in fact the intent of the Commission was to specify that the applications or other actions referred to in the text must be made before the date of the upcoming election if the exemption contained in subsection (c) was to be applicable.

Summary of Changes Upon Adoption:

In regard to N.J.A.C. 19:25-11.10, Political communications, the Commission added the words "nomination for election" to the text of subsection (b) to clarify that the rule applies to primary elections. In the absence of this additional phrase, the rule could be construed as omitting primary elections because the winning candidate in a primary election receives the nomination for election from a political party, but is not in fact elected to a public office.

The Commission added to the text of subsection (c) an exemption removing a communication made by an incumbent officeholder seeking reelection if that communication is in writing and is made to a constituent in direct response to a prior communication received from that constituent. The purpose of that addition was to respond to the comments that incumbent officeholders should be able to circulate "generic response letters" to constituents without incurring reporting obligations.

Also, in subsection (c), the Commission substituted the phrase "before the date of the upcoming election" for the phrase "within a specified time period" because the existing text was too vague.

The Commission added subsection (d) in response to comments to the effect that provisions of subsection (b) should not be applicable to a communication made by a candidate seeking nomination for election in a primary election if that candidate is not opposed in that primary election.

These substantive and technical changes do not require additional public notice and comment because they lessen the reporting obligations for candidates. Specifically, candidates are permitted to circulate "generic response letters" to constituents without incurring reporting obligations, and candidates in uncontested primary elections are exempted. The other changes are of a technical nature to clarify the text, but do not create reporting obligations.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:25-11.10 Political communication

(a) The term "political communication" means any written statement, pamphlet, advertisement or other printed or broadcast matter containing an explicit appeal for the election or defeat of a candidate which is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the appeal is directed. Words such as "Vote for (name of candidate)," "Vote against (name of opposing candidate)," "Elect (name of candidate)," "Support (name of candidate)," "Defeat (name of opposing candidate)," "Reject (name of opposing candidate)," and other similar explicit political directives constitute examples of appeals for the election or defeat of a candidate.

(b) A written statement, pamphlet, advertisement or other printed or broadcast matter that does not contain an explicit appeal pursuant to (a) above for the ***nomination for election or for the*** election or defeat of a candidate shall be deemed to be a political communication if it meets the following conditions:

1. The communication is circulated or broadcast within 90 days of the date of any election in which the candidate on whose behalf the communication is made is seeking ***nomination for election or*** elected office; except that in the case of a candidate for nomination for the office of Governor in a primary election, the period of time that a communication shall be deemed political shall be on or after January 1st in a year in which a primary election for Governor is being conducted, and in the case of a candidate for election to the office of Governor in a general election, the period of time that a communication shall be deemed political shall begin on the day following the date of the gubernatorial primary election;

2. The communication is circulated or broadcast to an audience substantially comprised of persons eligible to vote for the candidate on whose behalf the communication was made;

3. The communication contains a statement or reference concerning the governmental or political objectives or achievements of the candidate; and

4. The production, circulation or broadcast of the communication, or any cost associated with the production, circulation or broadcast of the communication, has been made in whole or in part with the cooperation of, prior consent of, in consultation with, or at the request or suggestion of the candidate.

(c) Nothing contained in (b) above shall be construed to require reporting of a communication by an incumbent officeholder seeking reelection ***if the communication is in writing and is made to a constituent in direct response to a prior communication received from that constituent,*** if it is circulated or broadcast for the sole and limited purpose of communicating governmental events requiring ***[those]*** constituents to make applications or take other actions ***[within a specified time period,]*** ***before the date of the upcoming election*,** or if it is circulated or broadcast to constituents for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

***[d) Nothing contained in (b) above shall be construed to require reporting of a communication by a candidate seeking nomination for election in a primary election if that candidate is not opposed**

by another candidate seeking nomination for election in that primary election.*

SUBCHAPTER 17. COMPLAINTS AND OTHER PROCEEDINGS; VIOLATIONS

19:25-17.2 Violations

(a) The term "reporting transaction" means the receipt of a contribution, the making of an expenditure, or the occurrence of any other event which is subject to the reporting requirements of the act or this chapter.

(b) The term "record keeping transaction" means the receipt of a contribution, the making of an expenditure, or the occurrence of any other event which is subject to the record keeping requirements of the act or regulations.

(c) Each reporting transaction that is not reported in the manner or not filed on the date established for reporting or filing by the act or regulations shall constitute a violation of the act subject to the penalties provided in N.J.S.A. 19:44A-22.

(d) Each record keeping transaction which is not made or maintained in the manner prescribed by the act or regulations shall constitute a violation of the act subject to the penalties provided in N.J.S.A. 19:44A-22.



GENERAL ASSEMBLY OF NEW JERSEY
ASSEMBLY REPUBLICAN OFFICE

2ND FLOOR, STATE HOUSE ANNEX

CN-098

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GARABED "CHUCK" HAYTAIAN
MINORITY LEADER

DONALD SICO
EXECUTIVE DIRECTOR

June 5, 1991

Gregory E. Nagy, Legal Director
Election Law Enforcement Commission
CN 185
Trenton, NJ 08625-0185

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N.J. ELECTION
LAW ENFORCEMENT
COMMISSION

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Dear Mr. Nagy:

The purpose of this letter is to provide comments on the proposed Election Law Enforcement Commission (ELEC) regulations concerning "political communications." The proposed regulations were published in the New Jersey Register dated May 6, 1991 at page 1299.

Our comments are not directed at the substance of the proposed amendments. The Assembly Republican caucus is supportive of ELEC's efforts to strengthen the political communication regulation. However, we respectfully suggest that paragraph (b) of the underlying regulation itself should be amended to address several concerns.

Constituent responses

Our primary concern with the political communication regulation is the literal application of paragraph (b) to communications by incumbent elected officials in response to constituents. Please note that we are referring to a communication from an elected official to a constituent in response to a prior communication from the constituent to the elected official. Please note that we are not referring to communications which are initiated by the elected official contacting the constituent.

As State legislators, this problem manifests itself mainly with legislative district office generic response letters. A generic response letter is used when a large number of constituents write or call a legislator on a single topic. Oftentimes, these letters specifically request that the legislator respond. For example, 100 teachers living within a legislative district write to their incumbent legislator urging his/her support for a bill providing early retirement benefits and asking the legislator's position on the issue. The legislator writes back expressing support or opposition. The response is made within 90 days of a primary or general election.

A literal reading of the political communication regulation would require the incumbent legislator to report to ELEC the cost of the above described communication. As such, an incumbent legislator would be required to report the cost of the mailings as a political contribution from the State's taxpayers. Obviously, if this is the case, no incumbent legislator will write generic response letters within 90 days of the primary or general election, at least from district offices.

It should be noted that some legislators might feel constrained to respond to constituents, notwithstanding the political communication regulation. In such a case, the legislator would be required to respond to constituent mail using resources which are separate from the taxpayer supported district offices. The most obvious examples of these resources would be campaign facilities and equipment. Should this occur, the political communication regulation would have the opposite effect of that intended. Namely, that the distinction would become blurred between appropriate action in furtherance of one's elected responsibilities and campaign activity.

Although the existing regulation does not preclude a legislator from writing individual responses, a sizable portion of legislative district office communications would be precluded for six months of the two year term of an Assembly representative. Constituents have a right to expect their elected representatives to respond. In our view, it is our responsibility to do so.

We respectfully urge ELEC to amend (b) of NJAC 19:25-11.10 to exclude a communication which would otherwise meet the criteria, if the communication is sent by an incumbent elected official in response to a prior communication by a constituent.

Informational Inquiries

There are occasions when we believe that even unsolicited communications are appropriate during the 90 day period prior to an election. We suggest that ELEC consider amending the regulation to allow limited unsolicited communications with constituents, if the purpose of the communication is to solicit input from the constituents on a specific matter.

For example, a bill is now pending which would change the governance structure of a State education organization. If that bill is called for a vote of the full Assembly in September 1991, legislators may wish to communicate with the educators affected by the bill to determine their opinion.

Application in Primaries

The existing and proposed regulation is ambiguous as to whether or not it applies to primaries at all. In the current regulation, subparagraph 2 of paragraph (b) refers to the audience being able to vote for a "public office being elected in the upcoming election." Subparagraph 3 refers to communications circulated less than 60 days before the date of an election in which a candidate is seeking "elected office." Since the winner of a primary holds neither elected nor public office, it is arguable that the regulation does not apply to primaries. However, there is a clear reference to a gubernatorial primary.

The proposed regulation maintains the reference to an "elected office" in subparagraph 1 of paragraph (b). We suggest that ELEC correct this reference if the intention of the Commissioner is to apply the regulation to primaries.

Uncontested Primaries

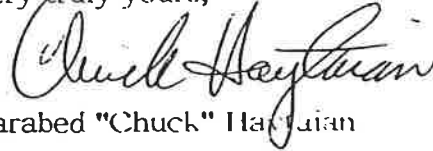
We suggest that ELEC consider exempting uncontested primaries from the scope of paragraph (b) of the political communication regulation.

Paragraph (b) provides a set of criteria which gives rise to a reasonable presumption of a political intent behind a communication with no election advocacy language. One of these criteria is that the communication is made 60, soon to be 90, days before an election. The obvious implication is that political motivations govern within a period of time before an election, or that a communication will result in a political advantage merely because it was sent at that time.

In an uncontested primary, however, the respective political party candidates are virtually assured of victory. These candidates may be challenged only by the remote possibility of serious write-in candidates. As a result, the presumption of political intent or advantage because of a soon to occur election is far less reasonable than in the case of general elections or contested primaries.

Thank you for considering our comments.

Very truly yours,



Garabed "Chuck" Harajian

THE ASSEMBLY
STATE OF NEW JERSEY
TRENTON

ASSISTANT MINORITY LEADER

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COMMITTEES
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SUBCOMMITTEE ON GOVERNMENTAL OPERATIONS,
PUBLIC INVESTMENTS & FINANCE

May 15, 1991

Fred Herrmann, Executive Director
Election Law Enforcement Commission
28 W. State Street
CN 185
Trenton, New Jersey 08625

ELEC RECEIVED

MAY 20 1991

Dear Mr. Herrmann:

I am writing to you in response to proposed regulations concerning written communications between state legislators and their constituents, in the hope that you can clarify a few questions.

I have heard that, within 60 days of a primary election, a legislator cannot respond to a particular inquiry where more than 10 letters are received concerning it. It has always been my understanding to respond to such a letter, no matter how many inquires are received. By not doing so, a legislator would be withholding information from his constituents, and as such, not performing his duties as a legislator. This problem is exacerbated by the fact that some members serve on the Appropriations Committee, which entails a great deal of mail, to answer state wide inquires.

*
Furthermore, is an uncontested primary election considered to be the same as a general election even if I have no opponent?

In addition, would a legislator be permitted to place a public service announcement in a newspaper noting that he had information available at his district office regarding financial aid information for students, veterans benefits, or related services?

I would appreciate your providing me some guidelines on this matter, so that I may continue to serve in the best interests of my constituency.

Sincerely,


Patrick J. Roma

Assemblyman-District 38

Representing: Bergen County—Bogota, Hackensack, Hasbrouck Heights, Haworth, Little Ferry, Lodi, Maywood, Oradell, Palisades Park, Paramus, Ridgefield Park, Rochelle Park, Saddle Brook



RECEIVED

MAR 20 1995

NEW JERSEY GENERAL ASSEMBLY

ELECTION LAW ENFORCEMENT
COMMISSION

MAJORITY LEADER

JACK COLLINS

ASSEMBLYMAN, 3RD DISTRICT

CUMBERLAND-GLOUCESTER-SALEM COUNTIES

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609-769-0049 (FAX)

March 13, 1995

Mr. Owen V. McNany III, Chairman
Election Law Enforcement Commission
28 West State Street
CN-185
Trenton, New Jersey 08625-0185

Dear Chairman McNany:

Pursuant to regulations promulgated by the Election Law Enforcement Commission, N.J.A.C. 19:25-11.10, certain constituent mailings sent by legislators at State expense might be considered "political communications" despite the absence in the communication of an appeal for political support. Essentially, under the regulation any unsolicited communication might be considered political, and, therefore, the expense of producing it reportable to ELEC, if:

- o the candidate is opposed;
- o it is circulated within 90 days of an election in which the communicator is a candidate to persons eligible to vote for the candidate on whose behalf the communication was made;
- o the communication makes a statement or reference to the candidate's governmental or political objectives or achievements; and
- o the communication is made with the cooperation of the candidate.

Mr. Owen V. McNany III
March 13, 1995
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Apparently, these reporting requirements do not apply to:

- o letters written in direct response to a constituent's prior inquiry;
- o communications about governmental events requiring constituents to make applications or take other actions before the date of the upcoming election; or
- o communications circulated or broadcast to constituents for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

Those regulations present a very real difficulty for incumbents because they become operative 90 days before any election, primary or general. In the case of a June primary, the 90 day "blackout" period takes effect in early March. However, the filing deadline for the primary is April 15. Unless a potential opponent files a petition, it is not until that deadline has passed that an incumbent will know if he or she is opposed. It would seem that a rational interpretation of the regulation would be that in the case of a primary, the prohibition on unsolicited mail would not be triggered until the filing of a petition, or April 15, whichever is later.

It would be greatly appreciated if the Commission could review these regulations at its earliest opportunity and issue an advisory opinion as to the time when a candidate is considered to be opposed, and hence subject to the prohibitions of the rules.

Thank you for your attention to this serious matter.

Very truly yours,



Jack Collins
Assemblyman
3rd District

JC:sp