



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Respond to:

CN-185

Trenton, New Jersey 08625-0185
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Executive Director

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July 17, 1996

H. Lee Rowell
Vice President, Government Affairs
Avco Financial Services
600 Anton Boulevard
P.O. Box 5011
Costa Mesa, CA 92628-5011

Re: Advisory Opinion 10-1995

Dear Mr. Rowell:

The Commission has received the following response from Assistant Attorney General Mark J. Fleming to its referral of your request for advice as set forth in your letter dated June 12, 1995. The Attorney General has concluded that Avco Financial Services is subject to the prohibition against making political contributions contained in N.J.S.A. 19:34-45.

Please let me know if I may be of any other assistance.

Sincerely,

FREDERICK M. HERRMANN, Ph.D.
Executive Director

FMH/elz
Enclosure



State of New Jersey

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Governor

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(609) 292-3212

July 9, 1996

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JUL 12 1996

ELECTION LAW ENFORCEMENT
COMMISSION

Frederick M. Herrman
Executive Director
Election Law Enforcement Commission
28 West State Street
CN 185
Trenton, New Jersey 08625-0185

Re: Request for Advisory Opinion
ELEC File No. A.O. 10-1995

Dear Dr. Herrman:

On behalf of the Attorney General, I wish to acknowledge receipt of your correspondence regarding this file. In this correspondence, you referred a request from Avco Financial Services (Avco) for an advisory opinion as to whether it is prohibited, under N.J.S.A. 19:34-45, from contributing to a political campaign.

N.J.S.A. 19:34-45 provides as follows:

No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in public ways granted by the state or any county or municipality, and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

Avco has not focused upon its own specific circumstances. Rather, it has offered its comments regarding N.J.S.A. 19:34-45. Avco's reading of the statute, however, differs from our prior interpretations inasmuch as Avco appears to be advocating that the statute's campaign contribution prohibition should only apply to those businesses technically identified as one of the corporations listed in the statute. Such a narrow reading renders as surplusage the other provisions of the statute which refer to corporations "carrying on the business of" or "holding stock" of one of the specifically-identified corporations. Constructions which fail to give meaning to all of the language of a statute are to be avoided. See Alling Street Urban Renewal Co. v. City of Newark, 204 N.J. Super. 185, 190 (App. Div.), certif. den. 103 N.J. 472 (1985).

We further note that N.J.S.A. 19:34-45 was not amended or altered by the 1993 Campaign Contributions and Expenditures Act. At the time of those enactments, the Legislature is presumed to have been aware of this existing statute and this Office's construction of the law. See Quaremba v. Allan, 67 N.J. 1, 14 (1975). It can reasonably be implied from the Legislature's failure to amend the statute that this office's long-standing interpretation of N.J.S.A. 19:34-45 has been accepted by the Legislature. Conversely, in the absence of an explicit revision of this provision, one cannot presume a legislative intent to abandon its time-honored interpretation. See State v. Dalglish, 86 N.J. 503, 512 (1981). We, therefore, do not agree with Avco's contention that the Attorney General's reading of the statute is no longer viable in light of the 1993 amendments.

Please contact me if you have any questions about the foregoing. Thank you.

Very truly yours,

DEBORAH T. PORITZ
Attorney General of New Jersey



MARK J. FLEMING
Assistant Attorney General

MJF/mh

A.O. 10-1995
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JUN 16 1995



Avco
Financial
Services.

Avco Financial Services
Subsidiary of Textron Inc.

600 Anton Boulevard
P.O. Box 5011
Costa Mesa, CA 92628-5011
714 435 1200

June 12, 1995

Frederick M. Herrmann, Ph.D.
Executive Director
Election Law Enforcement Commission
28 W. State Street, CN 185
Trenton, NJ 08625-0185

Re: Campaign Reform Question Affecting Avco

Dear Mr. Herrmann:

As our New Jersey representative has discussed with you, the campaign contribution statutes of New Jersey are perfectly clear on their face as to which corporations may make political contributions. There are three pertinent statutes, described and/or quoted in an end-note to this letter, two of which prohibit political contributions entirely, and the third that limits contributions to specific amounts and requires disclosures.

On the face of the law as it stands, corporations specifically identified in R.S. 19:34-32 and R.S. 19:34-45 and holding companies owning the majority of stock of companies identified in R.S. 19:34-45 are expressly prohibited from making political contributions. All other corporations are covered by and may make political contributions only under and in accordance with the Campaign Reform Act of 1993.

Unfortunately, although the law is very clear, an Attorney General's opinion, Attorney General's Formal Opinion No. 4-1983 (1) issued ten years prior to the 1993 reform act casts a cloud of uncertainty and suspicion over a very substantial but undefined class of corporations. This opinion cites no New Jersey legislative history, but concludes that non-regulated subsidiaries of the holding companies of corporations regulated by N.J.S.A. 19:34-45 should also have been barred from making political contributions, even though they clearly are not barred

(1)1983 Attorney General's Opinion No. 4. 1983 N.J. Op.

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by the statute itself. This opinion was rendered despite almost 70 years of practice to the contrary. There are a number of other Attorney General's opinions of which we are aware which deal with these statutes. Some of them are based on the same premise as the 1983 opinion and pre-date the 1993 act. Those all suffer from the same problem in that they are based on the premises of the 1983 opinion which no longer holds. Others of them deal with other aspects, and we do not feel they affect the point under discussion here. The reasons for reaching that conclusion with regard to those opinions are set forth as endnote (ii) attached hereto, which tries to briefly point out the reasons why they either rise and fall with the 1983 opinion, or are not relevant thereto.

Implicit in the rationale of the 1983 opinion was the fact that the affiliates of regulated companies could make unlimited political contributions with no disclosures if the Attorney General did not decide to declare otherwise, since that was the law at the time. Perhaps the legislature did intend to bar contributions by affiliates, but there was certainly no evidence of that cited and of course the law they wrote did not do so.

Whatever the legislative intent might have been 70 or so years ago, the circumstances the Attorney General cited in 1983 do not exist today, since all corporate contributions are now strictly limited in amount and subject to disclosures. The only exceptions, in the old regulated industries laws, were neither repealed nor amended.

We have spoken with many legislators, and all indicate the intent to leave the old law in place, and to have all other contributions covered by the new law. None indicate any intent to create or codify, by omission, some third category of "affiliated" corporations under the old prohibited category. The 1993 legislation itself is absolutely consistent with an intent to cover all corporations except those expressly covered by existing law, and no intent to create, by silence or omission, an undefinable class of "affiliates" can be found. While it is clear the 1983 opinion should not apply today, it nevertheless has a serious "chilling effect" and casts a cloud upon contributions made by many corporations which are not within the "regulated" industries of 17:34-45, and are not holding companies of such corporations. The opinion implies existence of an undefined class of "regulated industries," not covered by the law but being affiliated.

As an attempt at legislation, the opinion is extremely unclear. For example, what if a "regulated" company is not "regulated" by New Jersey but does business here? Is an affiliate of a foreign bank barred from New Jersey contributions if the foreign bank's

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only activity in New Jersey is to have credit card customers which are regulated only under federal law? Does affiliation with an electric company in Ohio bar a non-regulated company from making contributions in New Jersey? Perhaps not, but what if the electric company sells to the grid covering New Jersey and is indirectly "regulated" by New Jersey rates? What about a California company selling to a midwest grid that resells to New Jersey? Frankly, no one can imagine the many potential classes of "affiliates" with no statutory language or legislative history to rely on. The statutes are clear and leave no group unregulated. The Attorney General's opinion creates major uncertainty and confusion as to who is regulated by what.

We cannot ask the Attorney General for an opinion directly. We believe it is appropriate for the Commission to inquire if the 1993 law limits contributions of all corporations except those explicitly identified in and covered by the "regulated industries" sections of the law. This is the law as written, and an opinion to that effect will eliminate a major uncertainty in the application of the law.

Please note that we believe this issue affects not only Avco, but many other companies. For example, we are a member of the New Jersey Financial Services Association and have been advised by the Association that perhaps as many as 13 of the 21 regular members may be similarly affected. The members are licensees under various statutes (2), but we think it is clear none of the licensed activities are included in the "regulated industries" sections of the law (3). However, many of the Association's member companies have indicated to our representatives that they are affiliated in some way with a company which is in the "regulated industry" category. The information we are given indicates that the "regulated" affiliates of those "non-regulated" companies may have a wide variety of connections with New Jersey, from essentially none except the affiliation, to be domiciled in New Jersey.

(2)Including the Consumer Loan Act, the Secondary Mortgage Loan Act, the Mortgage Bankers and Brokers Act and the Retail Installment Sales Act

(3)To the best of our knowledge, none of those licensees are holding companies of "regulated industries" either, but they are operating companies.

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The dilemma of all of these companies is to not know whether they will be included within the Attorney General's next reading of the law. However, if the Attorney General recognizes the plain language which clearly delineates two groups of companies, those covered by the old laws, and the rest covered by the 1993 act, all of the ambiguities are removed. The law as written by the legislature would then mean what it says.

We believe the dilemma is widespread and inhibits many who would participate in the political process and it deserves a clear and prompt resolution.

Sincerely,



H. Lee Rowell
Vice President
Government Affairs

Attachments: Excerpts from N.J.S.A. 19:34-32
N.J.S.A. 19:34-45
Campaign Reform Act of 1993
Notes re Formal Opinion 13-1987
Formal Opinion 16-1989
Formal Opinion 14-1979
Formal Opinion 6-1987
Formal Opinion 16-1987
Formal Opinion 11-1988
Formal Opinion 15-1988
Formal Opinion 4-1989
Formal Opinion 5-1991
Formal Opinion 9-1993
Formal Opinion 3-1994

The three statutes referred to are described or quoted below.

- (1) N.J.S.A. 19:34-32 provides as follows: "No insurance corporation or association doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee, organization or corporation, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this title, who participates in, aids, abets, or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this title, shall be guilty of a misdemeanor."

That section of the law clearly prohibits insurance corporations or associations doing business in New Jersey from making political contributions.

N.J.S.A. 19:34-45 provides as follows: "No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in public ways granted by the state or any county or municipality, and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party." (emphasis added in both cases)

Note that this section of the law is also very explicit and clearly covers only companies engaged in certain specified businesses and corporations, persons or trustees "owning or holding the majority of stock" in a company engaged in such business.

The third pertinent law is the Campaign Reform Act of 1993, which adopted major changes to "The New Jersey Campaign Contributions and Expenditures Reporting Act," and clearly applies to corporations. These amendments provide a new and comprehensive framework for the limitation, control and disclosure of corporate and individual contributions to political, candidates, campaigns and committees. For example, §18 of the act provides a general contribution limitation of \$1500 to any candidate per election, and this limitation expressly applies to both individual and corporate contributors. Additional limitations in §18, §19 and §20 of the act govern both corporate and individual contributions to certain candidates and to various types of political committees, and the law contains disclosure and other requirements which apply to both individuals and corporations.

(ii) There are a number of Attorney General's opinions on the subject of political contributions. They fall into two groups. The first group are opinions based on Formal Opinion 4-1983 and they all suffer from the same essential defect of being based on a non-existent legislative history which is based on the premise that no regulation will exist if the Attorney General does not create it. The second group includes a number of issues relating to regulated companies themselves and whether certain activities are covered and are not germane to the point being made in this letter. The opinions based on Formal Opinion 4-1983 show the opinion's weakness. Since there is no indication of what the legislature's intent was vis-a-vis affiliates (except that they were not covered) it is virtually impossible to define which affiliates will be covered when doing what acts.

A short note as to each opinion follows (the dates are the dates letters were addressed to ELEC):

1. Formal Opinion 13-1987, September 6, 1988. This opinion cited Formal Opinion 4-1983 with regard to its prohibition on affiliates, but decides that affiliates which are not doing any business in New Jersey do not disqualify a company which is not "regulated" (Sea-Land) from making contributions. We would not disagree with this opinion, but it is still based on the erroneous position of Formal Opinion 4-1983. The out-of-state affiliate business was a railroad company. The opinion is not at all helpful if one considers electricity, banking, insurance or other businesses which are not regulated by New Jersey but which might do business here in some degree.
2. Formal Opinion 16-1989, May 11, 1990. This opinion, involving Marine Midland Capital Markets Corporation, simply applies the "affiliate" rule of Formal Opinion 4-1983. While there is a great deal of discussion, none of it provides any further justification that the original opinion for the "affiliate" rule. In utilizing that rule, this decision also should fall with the new law passed in 1993.

Opinions not dealing with the affiliate issue:

1. Formal Opinion No. 14-1979, July 31, 1979. The question here is whether a regulated company (a bank) may pay for political action committee expenses. Payment of those expenses by the corporation was considered an indirect contribution by a clearly regulated company. The affiliate issue is not involved.
2. Formal Opinion 6-1987, May 11, 1990. This case involved a holding company (Exxon) which owned subsidiaries in New Jersey which engaged in the insurance business. Formal Opinion 4-1983 is mentioned, but the issue here dealt only with the holding company itself, and the affiliate issue was not involved.
3. Formal Opinion 16-1987, August 30, 1988. This opinion said that if a non-insurance company used no corporate funds to support a political action committee, affiliation with an insurance company doing business in New Jersey would not bar the activity. Since there are no corporation contributions involved, either directly or indirectly, the opinion is not really related to the issues discussed in this letter. The opinion does cite Formal Opinion

- 4-1983 and assumes the affiliates cannot make political contributions, but that in fact was not at issue.
4. Formal Opinion 11-1988, May 11, 1990. This opinion deals with whether a regulated company (Public Service Electric and Gas Company) could withhold voluntary contributions to a political action committee from employees pay. The affiliate issue is not involved.
 5. Formal Opinion 15-1988, May 11, 1990. This opinion deals with a holding company (Mobil Oil Corporation) and holds that the holding company cannot make political contributions. The issue related to whether the "regulated" business in New Jersey was really "regulated" since it had not exercised its "regulated" powers, but the affiliate issue was not involved.
 6. Formal Opinion 4-1989, May 11, 1990. This opinion relates to waste hauling companies and waste disposal companies and whether they come under the "regulated" category by virtue of their ability, or lack thereof, to condemn land. The affiliate issue was not involved.
 7. Formal Opinion 5-1991, June 25, 1992. This opinion is similar to Formal Opinion No. 14-1979, July 31, 1979. It concludes that the "regulated" company cannot pay any expenses of a political action committee. The affiliate issue is not involved.
 8. Formal Opinion 9-1993, October 29, 1993. This opinion deals with the question of whether a contribution by a "regulated" company for a referendum election is barred by the "regulated industry" prohibitions. It decides that referendums are not covered. The affiliate issue is not involved.

Formal Opinion 3-1994, October 12, 1994. This opinion decides the question of whether a co-generation electric plant is included with the regulated "electric light, heat or power" companies prohibited from making political contributions. The opinion cites Formal Opinion 4-1983 for other reasons, but the affiliate issue is not involved.