



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

NATIONAL STATE BANK BLDG., 12th FLOOR
28 W. STATE STREET, CN 185
TRENTON, NEW JERSEY 08625-0185
(609) 292-8700

William H. Eldridge
Chairman

Owen V. McNany, III
Vice Chairman

David Linett
Commissioner

Ralph V. Martin
Commissioner

Frederick M. Herrmann, Ph.D.
Executive Director

Jeffrey M. Brindle
Deputy Director

Gregory E. Nagy
Legal Director

James P. Wyse
Counsel

January 4, 1996

The Honorable Dr. Gerald Cardinale
Senator, 39th District
350 Madison Avenue
Cresskill, N.J. 07626

Advisory Opinion No. 13-1995

Dear Senator Cardinale:

The Commission has considered your request for an advisory opinion, and has directed me to issue this response. You have asked whether or not you may use candidate committee funds to pay legal expenses for your defense in a complaint pending before the Joint Legislative Committee on Ethical Standards.

Submitted Facts

You write that a complaint has been lodged against you with respect to fundraising activity efforts in 1994 by a political action committee (PAC) which you state is not connected with you and not for your benefit. You indicate that you have retained an attorney to represent you in proceedings before the Joint Legislative Ethics Committee (i.e., the Joint Legislative Committee on Ethical Standards). That Committee is considering a complaint apparently initiated by Donald C. DeFabio, Chairman, Ethics Committee of the New Jersey Chiropractic Society, concerning a fundraising solicitation for the Fighting Thirty Ninth PAC, c/o Wilson X. Bezerra. Subsequent to the submission of this request, a hearing in this matter was conducted and concluded by the Committee.

The Commission notes that Friends of Senator Cardinale, a 1997 primary election candidate committee established for your candidacy, filed a report with the Commission on October 16, 1995, reporting a balance of \$146,293.53. The Commission assumes it is this candidate committee account that you propose to use to pay for legal expenses in connection with your representation before the Joint Legislative Committee on Ethical Standards (hereafter, the Joint Committee).

The Commission notes that the Joint Committee has been established as a Standing Joint Committee of the State Legislature with jurisdiction to receive, investigate, and report to the Senate and General Assembly with respect to allegations concerning the conduct or activities of members reflecting upon the good name, integrity, and reputation of the

Legislature. See subsection a of Section 19 of the Joint Rules of the Senate and General Assembly, temporarily adopted January 11, 1994, as reprinted in the New Jersey Legislative Manual, 1995. Further, the Joint Committee is authorized by the Conflicts of Interest Law to issue advisory opinions and review complaints regarding violations of the Conflicts of Interest Law, see N.J.S.A. 52:13D-12 et seq. A member of the Legislature found guilty by the Joint Committee of violating the Conflicts of Interest Law, or any rule of either or both Houses which gives the Joint Committee jurisdiction and authority to investigate a matter, may be fined up to \$1,500 and may be subject to further action as determined by the House of which the legislator is a member, see N.J.S.A. 52:13D-22(j).

Issues Presented

1. May an elected officeholder, in this case a State Senator, use funds from the officeholder's candidate committee to pay for legal expenses incurred by that officeholder for the officeholder's defense against a complaint pending before a public body that has statutory jurisdiction to enforce sanctions on the officeholder that potentially implicate the officeholder's abilities to carry out the duties of the office to which he was elected?

2. Alternatively, may an elected officeholder establish a legal defense fund to pay for such legal expenses and solicit donations not subject to contribution limits (and, by inference, not subject to campaign reporting) pursuant to the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq?

Response to Question 1

For the reasons expressed below, you are advised that you may use the funds of your candidate committee, Friends of Senator Cardinale, for legal expenses incurred for your legal representation before the Joint Legislative Committee on Ethical Standards.

In regard to your initial question concerning use of your candidate committee funds for these legal expenses, the permissible use statute at N.J.S.A. 19:44A-11.2 provides six permissible uses of candidate committee funds, among which is the following: "(6) the payment of ordinary and necessary expenses of holding public office." See N.J.S.A. 19:44A-11.2a(6). Commission Regulation N.J.A.C. 19:25-6.7(a) further provides that an ordinary and necessary expense of holding office "...means any expense that reasonably promotes or carries out the responsibilities of a person holding elective public office... (except that no funds shall be used for furnishing, staffing or operation of an office)" (parenthetical matter paraphrased).

Applying the above-cited statute and regulation to the facts submitted, the Commission concludes that a legislator incurring expenses to mount a defense to accusations pending before the Joint Legislative Committee is incurring ordinary and necessary officeholding expenses within the meaning of the statute and regulation. The expense is "ordinary" in the sense that all members of the Legislature are subject to the Rules of the Legislature and to its Code of Ethics. Because of their status as elected officeholders, a member can in the ordinary course of carrying out his or her duties be

required to demonstrate that the member has fully complied with the Rules or the Code of Ethics. The expense is "necessary" because in the absence of mounting a complete and competent defense, a member may be unfairly adjudicated as guilty of a violation. The permissible use statute permits a candidate to spend funds to achieve election to public office; see paragraph (1) of Section 11.2, allowing use of candidate committee funds to pay campaign expenses. Since candidate committee funds may be used to achieve election to office, it appears consistent that paragraph (6) of the statute be understood to permit use of those same funds for an officeholder to defend his fitness for office before the very body that has specific statutory authority to adjudicate that fitness.

The Commission notes that nothing contained in this opinion is intended to serve as authority for permitting the use of candidate committee funds for the legal defense of an officeholder facing any civil or criminal charge in any court of law or other forum. This holding is intended to be applicable only when an officeholder is required to answer charges related to his or her fitness as an officeholder before a body that has statutory authority to adjudicate that officeholder's fitness for that office.

Response to Question 2

The Commission considers your alternative question moot in view of its conclusion that you may use candidate committee funds for legal expenses arising out of the Joint Committee proceedings, and therefore has not addressed it.

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

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory E. Nagy
Gregory E. Nagy