



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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February 28, 1996

The Honorable E. Scott Garrett
Assemblyman, 24th District
P.O. Box 165
Newton, New Jersey 07860

The Honorable Guy R. Gregg
Assemblyman, 24th District
Suite B-4, 88 Bartley Square
Flanders, New Jersey 07836

Advisory Opinion No. 02-1996

Dear Assemblymen Garrett and Gregg:

The Commission has consider your request for an advisory opinion, and has directed me to issue this response. You have asked the Commission for an advisory opinion concerning the possible applicability of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Campaign Reporting Act); the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq.; and the Candidate Disclosure Statement Act, N.J.S.A. 19:44B-1 et seq. to an organization of legislators you propose to establish. Attached and incorporated in the record of this request are:

1. Your letter received January 9, 1996;
2. The Commission's acknowledgment letter, dated January 19, 1996, requesting further information; and,
3. Assemblyman Garrett's letter, received February 6, 1996, supplying supplemental information.

Submitted Facts

You were elected as members of the State Assembly from the 24th District in the 1995 general election. On November 27, 1995, each of you filed a 20-day postelection report for the 1995 general election (Form R-1) for the candidate committee you each are maintaining.

You write that you are considering establishing an organization composed of State legislators, organized along ideological or philosophical grounds, but not necessarily organized by political party affiliation. The purpose of the organization would be to conduct research on public policy, to

issue position papers, and to advocate positions on legislation, public questions and public policy issues. To accomplish these purposes, the organization would solicit funds, employ staff, and make expenditures to carry out its purposes.

In response to this request, the Commission staff requested that more specific information be provided concerning the solicitation of funds and the possible election-related uses of those funds. You have supplemented your initial letter with the following information:

-The intention of the organization is that no solicited funds will be used for any election-related purposes, and solicited funds will not be deposited in any bank account established under the Campaign Reporting Act.

-The intention of the organization is that none of its expenditures will be used to aid or promote candidates in a State election, or to promote the passage or defeat of a public question. For the purposes of this opinion, the Commission considers the prior statement in your initial letter that the proposed organization would advocate positions on public questions to be withdrawn, or otherwise not intended to mean that the proposed organization will aid or promote the passage or defeat of a public question.

-The intention of the organization is that it will not undertake any activity that could be construed as an "in-kind" (that is, other than cash) contribution to a candidate or committee subject to the Campaign Reporting Act.

-The organization may receive contributions, and may make expenditures, to communicate with or provide information to legislators.

-The organization may solicit funds by or on behalf of a legislator of the organization, but such funds would be made payable directly to the organization. Any solicited funds would not be made payable to a legislator, or a legislator's campaign account. While there is some ambiguity in the statement that the proposed organization may solicit funds "by or on behalf of a legislator," it appears and the Commission so considers for the purpose of this opinion that what is intended is that all funds will be payable to the organization, deposited in the organization's bank account, and applied for the use of the organization.

Questions Presented

1. Will the proposed organization be subject to the reporting or contribution limit requirements of the Campaign Reporting Act, and are Assemblyman Garrett and Assemblyman Gregg therefore prohibited by the Campaign Reporting Act from establishing or participating in it?

2. Will the proposed organization be subject to the requirements of the Legislative Activities Disclosure Act?

3. Will funds solicited be subject to reporting as "gifts" under the Candidate Personal Financial Disclosure Act?

Discussion: Question 1

Under the facts that you have submitted, and with the understanding that the limitations described as "intended" are realized in fact, the Commission concurs that the organization would not acquire reporting obligations or be subject to contribution limits under the Campaign Reporting Act, and that you are not prohibited from establishing or participating in it by the Campaign Reporting Act.

The 1993 amendments to the Campaign Reporting Act prohibit a candidate from establishing, maintaining or participating, directly or indirectly, in the management or control of any political committee or continuing political committee, see N.J.S.A. 19:44A-9h (hereafter, Section 9h). Since you each maintain a candidate committee and are officeholders, each of you is a "candidate" as that term is defined in N.J.S.A. 19:44A-3c. Therefore, if the contemplated organization acquires reporting and contribution limit responsibilities under the Campaign Reporting Act as either a "political committee" or "continuing political committee," as those terms are defined at N.J.S.A. 19:44A-3i and 3n, respectively, you would then be prohibited by Section 9h from establishing, maintaining or participating in that organization.

The statutory definition of a political committee is an entity that raises or expends funds in an election to "...aid or promote the nomination, election or defeat of any candidate or candidates for public office..." or to "...aid or promote the passage or defeat of a public question in any election..."; see N.J.S.A. 19:44A-3i. Similarly, the statutory definition of a continuing political committee describes an entity raising or expending funds in a calendar year to aid or promote the candidacy of an individual, or of the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions; see N.J.S.A. 19:44A-3n.

The submitted fact record characterizes the contemplated activity of the planned organization in terms that place the organization outside the above-cited definitions. The representation is made that the organization intends "...that no funds would be solicited for the organization which would be used for any election-related purposes." (See January 31, 1996 letter, item 1). Further, the organization intends "...that none of this organization's expenditures would be used to aid or promote candidates in a state election, or to promote the passage or defeat of a public question." (*Ibid.*, item 2). Also, you have represented that no activity undertaken by the organization will constitute an "in-kind" contribution. (*Ibid.*, item 3). If funds are not raised or expended to promote candidates, or to promote the passage or defeat of public questions, by definition the association is not conducting activity that raises reporting or contribution limit requirements under the Campaign Reporting Act.

The Commission has not been asked, nor can it, anticipate all the variable circumstances or activities of this organization that could be construed as election-related activity and subject to the requirements of the Campaign Reporting Act. Therefore, an officeholder establishing or participating in the contemplated organization should be aware that the demarcation between issue-advocacy activity not subject to the Campaign Reporting Act and election-related activity that is subject to the Campaign Reporting Act is not always readily apparent. Caution should be exercised to

insure that the organization does not conduct election-related activity or speech that would make it subject to the Campaign Reporting Act, and would bring any officeholder who was establishing it, or directly or indirectly exercising control over it, in violation of Section 9h. The Commission notes that you may find the opinion in Orloski v. Federal Election Commission, 795 F.2nd 156 (D.C.Cir. 1986) particularly useful in its discussion distinguishing issue-advocacy and election-advocacy activity of a candidate. You are advised that in the event any specific circumstances arise that you have any reason to believe may constitute election-related rather than issue-related activity, you should submit those specific circumstances to the Commission for further advisory opinion review.

The Commission also wishes to bring to your attention that even in the absence of communications containing election-advocacy phraseology such as "Vote for (name of candidate)" or similar explicit exhortations, communications circulated by an organization within proscribed time periods before an election which contain a statement or reference concerning the governmental or political objectives or achievements of a candidate may be deemed a reportable political communication by the organization. Such activity therefore would bring the organization within the scope of the reporting and contribution limit requirements of the Campaign Reporting Act, and accordingly place any candidates or officeholders participating in the organization in possible jeopardy of a Section 9h violation; see N.J.A.C. 19:25-10.10(b).

Question 2

In regard to the possible application of the Legislative Activities Disclosure Act, the Commission concludes that nothing contained in the Legislative Activities Disclosure Act provides that an organization established or operated by elected legislators to solicit funds and conduct lobbying is exempt from the requirements of that Act. No further statement on the possible applicability of this Act can be undertaken in the absence of a more specific fact record and inquiry. The Commission notes, although it has not been directly raised, that the statutory exemption for the acts of an officer of the State in carrying out the duties of his or her public office (see N.J.S.A. 52:13C-27b) does not appear applicable to this proposed organization because the establishment and operation of such a lobbying organization is not viewed by the Commission as within the ordinary scope of the duties of a legislator as contemplated by that statute.

The Commission also wishes to note that it has no jurisdiction to determine whether or not the Conflicts of Interest Law (see N.J.S.A. 52:13D-12 et seq.) or the Legislative Code of Ethics may have any possible application in regard to legislators establishing or participating in the proposed organization, and therefore any inquiry concerning those provisions should be directed to the Office of Legislative Services and the Joint Legislative Committee on Ethical Standards.

Question 3

You have also asked whether or not funds solicited by the proposed organization could be deemed as reportable "gifts" pursuant to the Candidate Personal Financial Disclosure Act. As defined by that statute, a gift is money or any other thing of value, other than income, received by a

gubernatorial or legislative candidate; see N.J.S.A. 19:44B-1a. While there is some ambiguity in the statement that the organization may solicit funds "by or on behalf of a legislator," it appears that what is intended is that all funds will be payable to the organization, deposited in the organization's bank account, and applied for the use of the organization. In the absence of some personal financial interest of a gubernatorial or legislative candidate in the operations of the organization, and none appears in the facts submitted, the Commission concludes that the candidate has not "received" money or any other thing of value within the meaning of the statute, and therefore donations received by the organization are not reportable gifts to the candidate under the Act.

Thank you for this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory E. Nagy
Gregory E. Nagy