



State of New Jersey

**ELECTION LAW ENFORCEMENT COMMISSION**

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Respond to:

CN-185

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Counsel

December 18, 1996

Ralph J. Ciallella, Treasurer  
Committee to Re-elect Joe DiVincenzo  
49 Garden Ave.  
Belleville, N.J. 07109

**Advisory Opinion No. 06-1996**

Dear Treasurer Ciallella:

The Commission considered your request for an advisory opinion submitted on behalf of the Committee to Re-elect Joe DiVincenzo, and has directed me to issue this response. You have asked several questions concerning the use of candidate committee funds for the production and distribution of the Essex County Board of Freeholders' 1996 Annual Report (hereafter, 1996 Report), a draft copy of which is included in your request.

**Submitted Facts**

You write that Mr. DiVincenzo is the president of the Essex County Board of Freeholders, and wants to distribute copies of the 1996 Report to community agencies and county residents. While you state that the mailing expense will be paid by the county government, you write that part of the total projected \$15,000 cost will be borne by the Committee to Re-elect Joe DiVincenzo (hereafter, the candidate committee), and by the following entities that you describe as "contributors": Bell Atlantic \$2,500, First Union \$2,500, and PSE&G \$2,500.

Commission records indicate that Mr. DiVincenzo was a candidate for freeholder-at-large in Essex County in the November 5, 1996 general election, and his candidate committee filed a 20-day postelection report on November 22, 1996, and a revised report on December 3, 1996. The revised report showed a remaining balance of \$39,757.31. While you have not specifically stated, the Commission infers that Mr. DiVincenzo is not a candidate in any 1997 election.

**Questions Presented**

Although you have not stated a specific question, based on your oral conversations with staff it appears the following questions may be inferred:

1. Is this a permissible use of candidate committee funds?
2. Is the attached 1996 Report a possible political communication

pursuant to N.J.A.C. 19:25-10.10, and therefore are the payments for costs of production and distribution reportable by the candidate committee as in-kind contributions to the committee?

3. Are the amounts being contributed by the above-named companies prohibited pursuant to N.J.S.A. 19:34-45?

#### Response to Question 1

The Commission finds that the use of candidate committee funds to produce or distribute the Annual Report of a governing body on which the candidate sits is a payment of ordinary and necessary expense of holding public office within the meaning of N.J.S.A. 19:44A-11.1a(6). The Commission, in considering the importance of promoting communications between elected officials and their constituents, promulgated the following regulation, N.J.A.C. 19:25-6.7, Ordinary and necessary officeholding expenses, which provides, in pertinent part, as follows:

(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:

i. The production, circulation and postage of newsletters, mailings or other written materials for officeholding duties; (underscoring added).

The underscored portion of this regulation was not part of the original proposal (see 26 N.J.R. 2275), but was added to the text upon adoption (see 26 N.J.R. 4214). After review of the Adoption Notice, and of the Minutes of the September 29, 1994 meeting at which the Commission adopted the rule, the Commission is satisfied that no apparent statutory or other purpose would be served by prohibiting the use of candidate committee funds merely because a county government is bearing part of the expense of producing and circulating a particular communication to constituents. The Commission believes the underscored restriction was added in connection with the statutory provision that campaign funds cannot be used "...for the payment of the expenses arising from the furnishing, staffing or operation of an office used in connection with that person's official duties as an elected public official;" see N.J.S.A. 19:44A-11.2b. Since that statute was the basis for this restriction, the Commission concludes that the contemplated expense in this request is not connected to the "operation" of the County Freeholder President DiVincenzo's office, and the regulation should not be construed to prohibit the use of candidate committee funds for the expense of the production or distribution of the 1996 Report.

The Commission notes that if the candidate committee does in fact use its funds for this purpose, any expenditures by the candidate committee must

be reported by it on its candidate committee reports pursuant to N.J.S.A. 19:44A-16.

### Response to Question 2

Commission Regulation 19:25-10.10(a) provides that a political communication is one which contains words of express election advocacy, such as "Vote for (name of a candidate)." The draft text of the 1996 Report you have submitted does not contain such an express advocacy text. Subsection (b) of the regulation provides that even in the absence of express advocacy words, printed matter circulated within 90 days of the date of an election in which a candidate is participating and on whose behalf the communication is made may be a political communication if certain other conditions are met. The Commission notes that Mr. DiVincenzo was a candidate for freeholder in the 1996 general election, but has no information that he will again be a candidate anytime during 1997, and infers for the purposes of this opinion that he will not be a candidate. Therefore, assuming that the 1996 Report is produced and distributed in calendar year 1997, that report cannot be deemed to be a political communication on behalf of any candidacy of Mr. DiVincenzo because he will not be a candidate in an election occurring within 90 days of the distribution of the 1996 Report; see N.J.A.C. 19:25-10.10(b)1.

The Commission notes that this request is submitted on behalf of Mr. DiVincenzo's candidate committee only, and therefore no opinion can be or is intended to be expressed in regard to any freeholder or other person who may be seeking election as a candidate in 1997 when the 1996 Report is being distributed.

### Response to Question 3

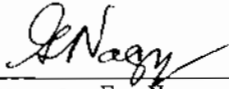
The Commission does not and cannot express any opinion on whether or not payments made by Bell Atlantic, First Union or PSE&G in connection with the production or distribution of the 1996 Report may or may not violate the prohibition contained in N.J.S.A. 19:34-45 against certain regulated industries making contributions to candidates.

None of the entities you describe as "contributors" have indicated that they are seeking an advisory opinion on this question, and therefore the candidate committee of Mr. DiVincenzo lacks any standing to seek Commission review on behalf of those entities. Further, even if they joined in this request, the Commission has no jurisdiction to decide issues arising under N.J.S.A. 19:34-45 because that statute is not part of the Campaign Contributions and Expenditures Reporting Act (see N.J.S.A. 19:44A-6f, authorizing the Commission to issue advisory opinions arising only under the provisions of the Campaign Reporting Act). The prohibition against political contributions by certain companies at N.J.S.A. 19:34-45 is exclusively a criminal statute, not part of the Campaign Reporting Act. If the above-named companies wished to join this request, or submit a separate request, the Commission could only refer it to the Office of the Attorney General for possible review by that office.

Thank you for submitting this request.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By:   
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Gregory E. Nagy