



State of New Jersey
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October 6, 1997

Peter G. Sheridan, Esq.
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Trenton, New Jersey 08608

Advisory Opinion No. 07-1997

Dear Mr. Sheridan:

Kindly be advised that the Commission has considered your request for an advisory opinion submitted on behalf of the New Jersey Republican State Committee (hereafter, RSC), asking whether or not the costs of a proposed television advertisement would be allocable to the publicly financed gubernatorial candidacy of Governor Christine Whitman, the gubernatorial candidate of the Republican Party in the 1997 general election. You also submitted the script, and you provided a video copy of the advertisement on September 22, 1997.

Submitted Facts

You have advised the Commission that the proposed advertisement is entitled "Hands," and the Commission has viewed the video copy you provided. You write that the advertisement is intended to be "generic advocacy support" for all Republican Party candidates in the 1997 general election; Item 4, page 2 of your request. You have provided the following description of the advertisement:

The "Hands" advertisement is a television spot visually composed of a clock with its hands moving backward. At one point a storefront with "closed" on its windows is shown followed by a burnt-out warehouse. Also, an excerpt from a newspaper article is super-imposed on the screen. The headline reads: "Florio Tax Shocker" and includes his picture. Florio is a former congressman and (New Jersey) governor (of the Democratic Party). His photo is used in the advertisement because he is often associated with higher taxes and liberal policies. The audio portion of the piece describes the situation that existed in New Jersey in the past under Democrats, including higher taxes and loss of jobs. At the end, the voice-over urges voters to reject the failed policies of the past and to "Vote Republican." (parenthetical material added)

Question Presented

You have asked whether or not the costs paid by the RSC arising out of the production and broadcasting of the advertisement are coordinated expenditures as set forth in N.J.A.C. 19:25-15.29, and are therefore allocable to the expenditure limit applicable to the publicly financed 1997 gubernatorial general election candidacy of the Republican Party candidate, Governor Whitman.

Discussion

The Commission finds that the resolution of this question turns on whether or not the advertisement makes an unambiguous reference to the 1997 gubernatorial general election candidacy of Governor Whitman in an audio, visual or printed format pursuant to N.J.A.C.19:25-15.29(a), which provides in pertinent part as follows:

- (a) A communication expenditure by any person or entity...is a contribution by such person or entity subject to the limit on a contribution to a gubernatorial candidate in N.J.S.A. 19:44A-29 and is a coordinated expenditure of the gubernatorial candidate properly allocable against the expenditure limit of the gubernatorial candidate in N.J.S.A. 19:44A-7 if:
1. The communication makes an unambiguous reference to the gubernatorial candidate in an audio, visual or printed format; and,
 2. The gubernatorial candidate or his or her campaign committee has consented to, authorized, or exercised control over the production or circulation of the communication.

The consent of a gubernatorial candidate does not have to be demonstrated pursuant to paragraph 2 above because the entity proposing to make the communication is the State political party committee of the candidate's party. Commission regulation, N.J.A.C. 19:25-15.28(d), prohibits a State political party committee from making an "independent expenditure" for its gubernatorial general election candidate because the Commission deems the State committee during the gubernatorial general election campaign to be sufficiently under the control of that the candidate so as not to be acting independently of the candidate, see 28 N.J.R. 4395, at 4398 (proposed, October 7, 1996) and 28 N.J.R. 5199, at 5202 (adopted, December 16, 1996). Therefore, the sole issue presented in the request is whether or not the advertisement makes an "unambiguous reference" to the candidate pursuant to paragraph 1. above.

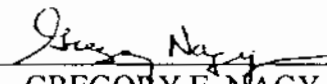
The purpose of the regulation is to protect the viability of the expenditure limit that a publicly financed gubernatorial candidate must observe, which is \$6.9 million in 1997, see N.J.S.A. 19:44A-7, as adjusted by the campaign cost index at N.J.S.A. 19:44A-7.1. Permitting a State political party committee to expend its funds to aid or promote its gubernatorial candidate in a general election would circumvent the effectiveness of the expenditure limit. However, the Commission also has recognized that a party committee is free to expend its funds to promote its political interests as a party, that is it may conduct voter registration drives, or purchase advertising promoting all its candidates as a slate.

The Commission notes that pursuant to its advisory opinion authority at N.J.S.A. 19:44A-6f, it may render its opinion only as to the given set of facts and circumstances presented in the request. The Commission finds based solely on the facts submitted by the RSC, including the copy of the video submitted by the RSC, that no "unambiguous reference" to the Republican gubernatorial candidate appears in the RSC video, or its text. The Commission notes that Paul Josephson, Esq., general counsel for McGreevey for Governor '97, Inc., the 1997 Democratic Party gubernatorial general election candidate, has submitted written arguments and appeared before the Commission, and in particular has submitted a separate video which includes not only the advertisement and video that are the subject of this opinion but also two Whitman for Governor advertisements. Mr. Josephson has argued that all three advertisements are sometimes broadcast in conjunction and create a context in which the RSC advertisement should be evaluated. The Commission does not preclude the possibility that an advertisement which appears unambiguous when viewed alone may become ambiguous when evaluated in the context in which the communication is made. However, this issue or question of context is outside the immediate scope of the advisory opinion process.

Thank you for submitting this request.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY E. NAGY