



State of New Jersey

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February 19, 1998

Peter J. Tober, Esq., Assistant Counsel
Office of the Governor
P.O. Box 001
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Advisory Opinion No. 03-1998

Dear Mr. Tober:

Kindly be advised that the Commission has considered the request for an advisory opinion you submitted on behalf of Governor Christine Todd Whitman, concerning a proposed donation to the State of greeting cards intended to promote immunization of newborn children. Although the request indicates that it is being submitted on behalf of the Office of the Governor, that Office as a governmental entity is not subject to the requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Campaign Reporting Act), or the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq., and therefore you have indicated that the request should be regarded as being on behalf of Governor Whitman in her capacity as an elected officeholder, see N.J.S.A. 19:44A-6f and N.J.A.C. 19:25-19(a) and 19:25-20.17, regarding the standing requirements for advisory opinions. Also, since Hallmark Cards, Inc., seeks a statement that its proposed donation of greeting cards does not violate the ethics or campaign laws of this State, and is not a lobbying expense or a campaign contribution, this opinion is also being regarded as sought on behalf of the greeting card company.

The Commission notes that in regard to a request for an opinion concerning possible applicability of ethics laws, the administration of the New Jersey Conflicts of Interest Law (see N.J.S.A. 52:13D-12 et seq.) is not under the jurisdiction of the Commission, and accordingly nothing contained in this opinion is intended to express any view in regard to that Law. Questions concerning the Conflicts of Interest Law must be submitted to the Executive Commission on Ethical Standards.

Submitted Facts

Hallmark Cards, Inc., a company in the business of selling greeting cards, proposes to donate to the State in 1998 and 1999, an unspecified number of congratulatory cards to be delivered at State expense to parents of newborn children (the costs to the State for printing envelopes, postage and labor are not included in the donation). The purpose of the cards is to remind parents to immunize their children during the first two years of life. While the specific text has not been submitted, the cards will contain a message written over the name of Governor Whitman. The greeting card company states that the immunization information contained in the cards is based on the recommendations of the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices, the American Academy of Pediatrics, and the American Academy of Family Physicians.

Governor Whitman was initially elected Governor of this State in the 1993 general election, and reelected to that office in the 1997 general election. She established a candidate committee, Whitman for Governor, and she qualified for and participated in the public financing program for her 1997 primary election and 1997 general election candidacies. She continues under an obligation to file reports for her 1997 primary election and 1997 general election candidacies until they are concluded.

The Commission has no recent record of Hallmark Cards, Inc., filing annual reports as a lobbyist pursuant to the Legislative Activities Disclosure Act.

Questions Presented

1. Does the donation of the cards to the State by the greeting card company constitute a contribution to a candidate or elected officeholder under the Campaign Reporting Act?
2. Does the donation of the cards to the State by the greeting card company constitute a lobbying expenditure under the Legislative Activities Disclosure Act?

Commission Responses

1. The Commission finds that the proposed donation of the immunization cards in 1998 and 1999 to the State does not constitute a contribution to a candidacy of Governor Whitman. The donation of the greeting cards is being made to the State government, not to any of Governor Whitman's candidate committees. Further, the Commission finds that its regulation on contributions in the form of political communications paid for by third parties is not applicable, see N.J.A.C. 19:25-10.10. Governor Whitman is precluded by the State Constitution from being a candidate for reelection to the office of Governor during her current four-year term, see Article 5, section 1, paragraph 5, precluding any person elected Governor for two successive terms to seek reelection in the following gubernatorial election. Therefore, while Governor Whitman has not yet composed the specific message that will appear on the donated cards, that message cannot contain either an explicit or implicit political communication as regards the next gubernatorial election in 2001 because she is

precluded from seeking reelection. It is only in the unforeseeable event that she should become a candidate for some other State or local office during her present term that the regulation could conceivably have any potential applicability, and in that event this opinion would not be controlling because of the changed facts.

The Commission wishes to emphasize that this opinion is applicable only to the specific facts presented to the Commission, and nothing contained herein is intended to be applicable to messages over the name of an incumbent Governor who may be seeking reelection and therefore is subject to the provisions of the political communications rule (N.J.A.C. 19:25-10.10).

2. The Commission also finds that the donation of the immunization cards to the State is not a personal benefit to Governor Whitman within the meaning of the Legislative Activities Disclosure Act, and the registration and reporting requirements of that Act are not applicable to the donor.

The Legislative Activities Disclosure Act requires a lobbyist, that is a corporation or organization employing a legislative agent to influence legislation or regulation (see N.J.S.A. 52:13C-20d), to report expenditures it makes to provide any benefit it provides to a Governor or the Governor's staff. The phrase "expenditure providing a benefit" is defined at N.J.S.A. 52:13C-20q to mean any expenditures for entertainment, food and beverage, travel and lodging, honoraria, loans, gifts, or any other thing of value, except for money paid as a salary or income derived from investments, trusts and estates. However, Hallmark Cards, Inc., is not currently registered as a lobbyist, and there is no basis in the record that this greeting card company is undertaking any lobbying communication or making any expenditure to influence legislation or regulation. In the absence of an undertaking to influence legislation or regulation in this State within a calendar year, no lobbyist annual reporting obligation arises under N.J.S.A. 52:13C-22.1. If in fact Hallmark Cards, Inc., does undertake lobbying activities in calendar year 1998 or 1999, and those activities result in expenditures in excess of the reporting threshold amount of \$2,500 in a calendar year (see N.J.S.A. 52:13C-22.1), this change in the submitted fact record would require reconsideration.

Thank you for submitting this request, and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____

Gregory E. Nagy