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June 24, 1998

Dr. Austin Ken Kutscher
48 Bonnell Street
Flemington, New Jersey 08822

Advisory Opinion No. 05-1998

Dear Dr. Kutscher:

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 your 1997 general election candidate committee funds to pay costs arising out of a car accident, which occurred on October 4, 1997, involving a vehicle being driven by a member of your campaign staff while driving to a campaign event.

Submitted Facts

You state in your request for an advisory opinion, incorporated by reference in this response, that a car was rented for the use of Matt Colbert, your 1997 general election campaign manager, during Mr. Colbert's employment by the campaign, and that the car was being driven on October 4, 1997 by Mr. Colbert to a campaign event at the time of the accident. You further state that the car was hit by a deer and sustained \$2,054.89 in damage, an amount below the \$2,500 deductible on your personal car insurance policy. The car was rented using your personal credit card and was covered by your private auto insurance which had a \$2,500 deductible. You also attached to the advisory opinion request a copy of a communication from the Parker Insurance Agency, Inc., presumably your personal insurance agent, denying coverage of the costs of the accident because the vehicle was an additional vehicle being driven by a campaign worker who was not a family member and was not a "temporary substitute" vehicle for a family member.

Review of your campaign reports filed for the 1997 general election indicates that payments were made to Marine Midland Bank, the credit card company, for the purpose of "Car Rental for Campaign Manager" as follows: \$572.40 on November 10, 1997 (20-day postelection report) and \$572.40 on December 9, 1997 (first quarterly postelection report). The reports also disclosed outstanding obligations for "Car Rental for Campaign Manager" in the amounts of \$1,740.00 (11-day preelection report), \$1,167.60 (20-day postelection report), and \$595.20 (first quarterly postelection report).

The most current campaign report for your 1997 general election candidate committee, "Dr. Austin Ken Kutscher for State Senate," was filed on April 13, 1998, and indicates a closing balance of \$818.50 in the campaign depository.

Question Presented

Is the proposed use of your 1997 general election candidate committee funds to pay costs arising out of a car accident, which occurred on October 4, 1997, involving a rented vehicle being driven by a member of his campaign staff to a campaign event, permissible as payment of a campaign expense within the scope of N.J.A.C. 19:25-6.5(b)?

Commission Response

You are hereby advised that the use of candidate committee funds to pay \$2,054.89 in costs related to the car accident on October 4, 1997, is permissible as a campaign expense because the accident occurred while the campaign manager was employed by your campaign and on his way to a campaign event. Please note that this expenditure, like all other candidate committee expenditures, is subject to reporting pursuant to the Campaign Contributions and Expenditures Reporting Act (hereafter, the Campaign Reporting Act), specifically N.J.S.A. 19:44A-16.

Discussion

The Campaign Reporting Act limits the permissible uses of candidate committee funds to six purposes, the first of which is the "payment of campaign expenses." N.J.S.A. 19:44A-11.2a(1). The statute defines "campaign expenses" as:

any expense incurred or expenditure made by a candidate, candidate committee . . . from a campaign . . . depository account for the purpose of paying for or leasing items or services used in connection with an election campaign, other than those items or services which may reasonably be considered to be for the "personal use" of the candidate, [or] any person associated with the candidate. . . . (emphasis added) N.J.S.A. 19:44A-11.2a(6).

In 1994, the Commission adopted a rule which incorporated the statutory text, above, to define a campaign expense; see N.J.A.C. 19:25-6.5(b). The statutory and regulatory definition anticipates leasing of items used in a campaign, and the Commission finds that rental or leasing of a car for the use of your paid campaign manager comes within the statutory and regulatory definition of a "campaign expense." You have explained that your campaign manager was *en route* to a campaign event at the time of the accident. The Commission believes that payment of costs related to the accident which occurred while your campaign manager was conducting campaign business is a permissible related campaign expense.

The Commission notes that the accident-related costs were reported on Schedule E, Outstanding Obligations, on your April 13, 1998 quarterly report as an outstanding obligation owed to you. You also indicated in the advisory opinion request that you charged the costs on your personal credit card. N.J.A.C. 19:25-12.4, Expenditures made by credit card (copy attached), governs reporting of campaign-

related expenditures made by means of a credit card, and requires that each charge be reported as a loan from the card owner until such time as it is reimbursed to the owner. You are therefore advised to amend your 1997 general election reports to disclose the credit card charge as a loan on Schedule C, Loans Received in Excess of \$300, until the remaining balance is reimbursed or forgiven. You are also advised that you must disclose on future reports on Schedule 1(D)-Disbursements any payments made from candidate committee funds to pay the credit card charges.

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

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR
Deputy Legal Director