

The following Attorney General Advisory Opinion concerns application of N.J.S.A. 10:34-32, N.J.S.A. 19:34-45, or both. The Commission is not responsible for administration of N.J.S.A. 19:34-32, Contributions by insurance corporations, or N.J.S.A. 19:34-45, Contributions by certain corporations. These Sections of the law concern prohibitions on contributions by certain corporations and are under the jurisdiction of the Office of the Attorney General. Therefore, this opinion issued by the Attorney General is supplied for informational purposes, and the Commission is not able to interpret or provide advice concerning this opinion.



AO 01-1499

State of New Jersey

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March 14, 2002

Frederick M. Herrmann, Ph.D.
Executive Director
Election Law Enforcement Commission
28 West State Street
P.O. Box 185
Trenton, NJ 08625-0185

Re: 02-0030 -- Whether the New Jersey
Credit Union League may make
political contributions

Dear Director Herrmann:

You have asked for advice regarding two questions raised by the New Jersey Credit Union League (NJCUL): (1) Whether N.J.S.A. 19:34-45, which prohibits banks from making political contributions, applies to a trade association of banks, and (2) whether a continuing political committee (CPC)* established by NJCUL employees may collect funds from credit union members through a voluntary account withdrawal program. For the following reasons, you are advised that a trade association of banks is subject to the prohibition contained in N.J.S.A. 19:34-45. However, the CPC established and operated by NJCUL employees, which is funded through a voluntary account withdrawal program, is not prohibited by N.J.S.A. 19:34-45.

The issues raised here stem from a request for advice submitted on behalf of NJCUL by Michael A. Colodney, Esq. According to Mr. Colodney, NJCUL is a non-profit trade association created to represent New Jersey credit unions. The trade

* A "continuing political committee" is the New Jersey term for a political action committee (PAC). N.J.S.A. 19:44A-3n.

association is funded by dues from credit unions, investment income, and income from two for-profit subsidiaries, Professional Services Group, Inc. and Credit Union League Affiliates Services, Inc.

Mr. Colodney submits that trade associations like NJCUL should not be subject to N.J.S.A. 19:34-45. He further indicates that NJCUL has established a CPC, known as NJCUPAC, for the purpose of making political contributions. Mr. Colodney's letter states that NJCUL employees will operate the proposed CPC on a volunteer basis. The CPC's operating costs will be paid from its own funds. NJCUL time and resources would not be used to run the CPC, and the CPC will not accept monetary or in-kind contributions from member credit unions. Any use by the CPC of NJCUL resources would be "fully and immediately reimbursed," as mandated by Attorney General Opinion 92-0056.

According to Mr. Colodney, the CPC's funds would be raised through a program called "Deduct-A-Buck." This program is used by NJCUL's national counterpart to raise funds for its federal PAC. The New Jersey program is expected to operate in the following manner:

1. The CPC and credit unions will execute agreements to permit solicitations of credit union members.
2. Individual credit union members will receive automatic deduction agreements, allowing the credit union to set up debits from the members' accounts and establish a separate account to receive these funds.
3. Funds would then be transferred to a joint account of the federal PAC and the New Jersey CPC.
4. The CPC would then forward its share to its own account and the remaining monies to the federal PAC.

N.J.S.A. 19:34-45 provides:

No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railways, telephone, telegraph, gas, electric light, heat

or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises ... and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interest, success or defeat of any political party.

This statutory provision was the subject of Attorney General Formal Opinion No. 4 (1983). In this opinion, the Attorney General stated that it was the intent of the Legislature "to insulate elected officials from the influence of regulated industries." The opinion emphasized that each business listed in N.J.S.A. 19:34-45 is "strongly affected with a public interest" and "has been made the subject of extensive and pervasive government regulation." According to the opinion, the statute prohibits political contributions by these industries, which could create "political debt[s]" that might be repaid by granting "unduly favorable regulatory treatment" to the contributing companies. N.J.S.A. 19:34-45 "further[s] the important governmental interest in insuring that organizations which amass great wealth in the economic marketplace do not gain an unfair advantage in the political marketplace." Attorney General Opinion 89-0141, Request for Advisory Opinion from New Jersey Election Law Enforcement Commission (Mobil Oil Corp.), quoting Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 256-57, 107 S.Ct. 616, 626, 631, 93 L.Ed.2d 539, 55-56 (1986).

The NJCUL does not dispute that credit unions are cooperative banks within the meaning of N.J.S.A. 19:34-45. Pursuant to N.J.S.A. 17:13-79 et seq., a credit union is a "cooperative association organized for the purpose of promoting thrift among its members," and is empowered to lend and borrow funds and offer deposits to its members. N.J.S.A. 17:13-80, 17:13-89. Credit unions may not avoid the clear proscription of N.J.S.A. 19:34-45 against political contributions by making such contributions through a trade association. Since a trade association is comprised of credit unions and is funded by them, it must be subject to the same strictures as its individual members.

The NJCUL points out that N.J.S.A. 19:34-45 does not mention trade associations. However, a legislative purpose to exempt trade associations cannot be inferred from this silence. As discussed, the purpose of the statute is to insulate elective

officials from the influence of regulated industries. Formal Opinion 4 (1983), supra. This purpose would be rendered meaningless if regulated industries could exert the prohibited political influence simply by forming trade associations. A statute should not be interpreted to reach an absurd result inconsistent with the legislative goal. State, Tp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999).

Although NJCUL is barred from making political contributions, its employee CPC is not subject to this restriction. In several opinions, the Attorney General has explained that employees of entities included within N.J.S.A. 19:34-45 may make contributions through CPCs. See, e.g., Opinion No. 97-0001 (March 21, 1997); Opinion No. 92-0056 (June 25, 1992) (copies attached). This principle was initially established in Attorney General Formal Opinion No. 14 (1979), which concluded that the entities covered by N.J.S.A. 19:34-45 may establish political action committees for their employees if the corporation's funds are not used to establish, administer or solicit contributions for the political fund. The opinion states:

N.J.S.A. 19:34-45 was not intended to prohibit the establishment of a separate political fund contributed to voluntarily by members of a political action committee with knowledge of the intended political use of the fund.

Moreover, the Attorney General opinions cited above establish the rule that a CPC may make use of the covered company's services or facilities, as long as the costs of these services are immediately reimbursed by the CPC. See e.g., Opinion No. 92-0056 (the CPC of Jersey Central Power and Light Company may use the company's mail facilities, photocopiers and conference rooms).

NJCUL has represented that the CPC will pay its own operating expenses and will fully reimburse the pertinent credit unions and NJCUL for any expenses or use of resources. We understand this to include the costs incurred by credit unions in

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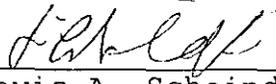
setting up and administering the automatic account deduction system by which the CPC will receive funds. Under these circumstances, the CPC is in compliance with New Jersey law.**

In conclusion, you are advised that NJCUL, a trade association of credit unions, is prohibited by N.J.S.A. 19:34-45 from making political contributions. You are further advised that the CPC to be established by NJCUL employees does not fall within the prohibition of N.J.S.A. 19:34-45.

Sincerely yours,

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Lewis A. Scheindlin
Deputy Attorney General

** We note that the "Deduct-A-Buck" program, while consistent with N.J.S.A. 19:34-45, raises various recordkeeping, reporting and contribution limit issues which are within the exclusive jurisdiction of ELEC in its enforcement of N.J.S.A. 19:44A-1 et seq., the Campaign Contributions and Expenditures Reporting Act. For example, there may be reporting and recordkeeping requirements applicable to each individual credit union member who agrees to make contributions through voluntary account deductions. The CPC should discuss these issues with ELEC.