



State of New Jersey

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November 21, 2000

Roi Ann Morford, Treasurer
New Jersey Health Care Political Action Committee
Lexington Square Commons
2131 Route 33
Hamilton, New Jersey 08690-1740

ADVISORY OPINION No. 04-2000

Dear Ms. Morford:

Your request for an advisory opinion has been considered by the Commission, and I have been directed to issue this response (Advisory Opinion No. 04-2000). In your capacity as organizational treasurer of the New Jersey Health Care Political Action Committee (hereafter, NJHCPAC), you have asked two questions regarding the receipt of funds from the New Jersey Association of Health Care Facilities (hereafter, NJAHCF), which funds have been held in an escrow account pending a tax ruling from the Internal Revenue Service (IRS).

Submitted Facts

You write that the NJHCPAC is a continuing political committee (CPC) dedicated to the advancement of long-term health care facilities with membership open to all persons employed or active in such facilities. Commission records reflect that on July 17, 2000, the NJHCPAC filed a CPC Registration Statement (Form D-4) naming you as the organizational treasurer, and on October 12, 2000, NJHCPAC filed its most recent quarterly report (Form R-3).

You further write that the NJAHCF is a statewide association of long-term care facilities (the membership is comprised of facilities, not individuals). Prior to the beginning of this calendar year, the NJAHCF members adopted a resolution to the effect that a portion of the dues from certain members could be dedicated by those members for the NJHCPAC. Such funds were to be held in escrow by the NJAHCF association until it received an Internal Revenue Service (IRS) ruling that the dues dedication by some members would not jeopardize the tax exempt status of the non-proprietary members who were

organized under Section 501(c) 3 of the federal tax code. You state that the IRS ruling has been received to the effect that non-proprietary members will not lose their tax-exempt status.

The funds received during this calendar year from those members who elected to dedicate a portion of their dues to the NJHCPAC is currently in an attorney escrow account awaiting transfer to NJHCPAC upon receipt of the Commission's response to this advisory opinion request concerning reporting requirements for those funds.

Questions Presented

1. For the calendar year 2000, may the dedicated monies be reported as a single contribution from the NJAHCF, or must each long-term facility that opted to dedicate a portion of dues money to the NJHCPAC be reported?
2. For calendar year 2001 and after, assuming the NJAHCF continues such a voluntary dedication, how should those dedicated monies be reported?

Commission Responses

1. The monies dedicated by each NJAHCF facility member must be reported as contributions from each member, and may not be reported as part of a single contribution to NJHCPAC from the NJAHCF. The submitted facts indicate that each facility member determined the amount of its funds it would contribute to NJHCPAC, and each facility provided the NJAHCF organization with its funds with the understanding that the NJAHCF would deliver the facility's funds to NJHCPAC if a favorable IRS ruling were obtained. The utilization of an escrow account for holding the funds of the member facilities was for the express purpose of ultimately delivering the funds as contributions from the members to NJHCPAC when and if the contingency of the favorable tax ruling was satisfied. The character of those funds as the beneficial property of each contributing member was not altered, and they remained subject to the control of each member. In the event of an unfavorable tax ruling, the terms of the escrow account would have required that the funds be returned to or otherwise disposed of by each of the members who had provided them. Accordingly, treating the funds in the escrow account as a single contribution from the NJAHCF organization would be contrary to the statutory and regulatory mandate that only funds belonging to a contributor and in the full custody and control of that contributor can be contributed; see N.J.S.A. 19:44A-20 and N.J.A.C. 19:25-10.8(a).

The above cited statute contains an exception for "...group contributions by persons who are members of the contributing group;" see N.J.S.A. 19:44A-20. Similarly, N.J.A.C. 19:25-10.8 (c) provides as follows: "A group contribution, that is a contribution made collectively by persons who are members of the contributing group, shall not be deemed an anonymous contribution by any member of the group." However, under the facts presented by this advisory opinion request, the Commission concludes that the "group contribution" exception is not applicable. The employment of an escrow account evidenced an intent on both the part of the member facilities and the NJAHCF organization that the funds would remain as the property of each member facility, and until the disgorgement of the escrow account and the delivery of the funds to NJHCPAC those funds remain the property of the members.

For calendar year 2000 only, the date of the contributions from the members must be reported as the date the funds in the escrow account are delivered or otherwise committed by the trustee of the escrow account to NJHCPAC. Although the funds from the members were deposited into the escrow account earlier in the year, the contributions to NJHCPAC were subject to the contingency of the IRS

ruling, and it was not until the IRS ruling that the contingency was removed. Since that time, the contributions of the facility members have remained in the escrow account pending issuance of this advisory opinion. Therefore, upon receipt of this opinion letter, the Commission understands that the trustee of the escrow account will have no further basis for continuing the escrow account, and that all funds in the escrow account will be delivered to you as the organizational treasurer of NJHCPAC for deposit within 10 days in NJHCPAC's organizational depository pursuant to N.J.A.C. 19:25-6.1(a).

Finally, although the question has not been specifically raised, the Commission notes that any interest earned on the funds in the escrow account must be allocated among the facility members in proportion to the amount contributed by each member, and that allocated amount of earned interest must be added to the respective contribution of each member.

2. For calendar year 2001, when the escrow account will no longer exist, the reporting requirements will turn on whether or not the members of the NJAHCF organization deliver their funds to NJAHCF without restricting them for use as contributions to NJHCPAC, and whether or not the members provide the NJAHCF organization with full custody and control over the funds for any use the NJAHCF organization chooses. The fact record of this request includes a resolution adopted by the NJAHCF organization establishing an escrow account for this calendar year, but does not include directions concerning the particular practices that are to be employed in future years when no escrow account will exist. Therefore, for future years, apparently undecided at this time is whether or not funds from the member facilities will be solicited by and deposited into an account of the NJAHCF organization without restriction as to their use, whether or not the funds will be solicited by and deposited directly into an account of the NJHCPAC, or whether or not some other alternative will be employed as to the solicitation and handling of the contributions from the members. In the absence of a more complete fact record pertinent to the procedures that will be followed in future years, the Commission cannot express any opinion regarding those future years until such time as another opinion with an amplified fact record is submitted.

The Commission notes that this advisory opinion request cited the regulation prohibiting the receipt of contributions from partnership entities at N.J.A.C. 19:25-11.10 (page 3 of your advisory opinion request, question 1). Since nothing in the narrative of the request specifically addresses or raises any question concerning contributions from partnerships, the Commission is unaware of the pertinence the citation has. Therefore, if the NJAHCF organization has an inquiry concerning the prohibition against contributions from partnerships, a separate advisory opinion request on that subject is required.

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
Legal Director

ELEC RECEIVED

OCT 19 2000



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity

NJHCPAC (New Jersey Health Care Political Action Committee)

Mailing Address

Lexington Square Commons - 2131 Rt33

Day Telephone No.

609-890-8700

Hamilton NJ 08690-1740

Evening Telephone No.

same

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes

No

#U0000000533Q2000

a. If yes, indicate in what capacity it is filing:

Candidate committee

Joint candidates committee

Political committee

Continuing political committee

Political party committee

Legislative leadership committee

Recall committee

Recall defense committee

Lobbyist

Legislative agent

Personal financial disclosure statement

Other (please describe): _____

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

n/a

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

n/a

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

See attached #3 - 1 page

NJHCPAC
REQUEST FOR ADVISORY OPINION FROM ELEC
OCTOBER 2000
#3 - pg. 1 of 1

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission of regulations (if known).

How would NJHCPAC report receipt of a transfer of funds from a New Jersey Association of Health Care Facilities (NJAHCf) account? Said monies, collected as a voluntary dedication to NJHCPAC through NJAHCF proprietary (member) long-term care facility dues for the year 2000, were held pending an opinion from Internal Revenue Service on whether or not such a dedication from NJAHCF's proprietary facility members would jeopardize the tax-exempt status of non-proprietary facility members. The sum in question is currently in an attorney escrow account. It is probable that these monies will be transferred after receipt of ELEC's Advisory Opinion on reporting requirements for such a transfer. The question is two-fold:

- 1) For the year 2000, may the dedicated monies be reported as one contribution from the NJAHCF to NJHCPAC? - or - Does data on each long-term care facility that opted to dedicate a portion of dues monies to NJHCPAC need to be reported, as outlined in *N.J.A.C. 19:25-1.7 et seq*; *N.J.A.C. 19:25-11.10 et seq*; and/or any other appropriate sections of *N.J.A.C. 19:25*?
- 2) In the event the NJAHCF, through its 2001 or any future budget, continues such a voluntary dedication, how should those dedicated monies be reported?

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4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts: See attached #4 - 2 pages

A large rectangular area containing horizontal lines for writing, with a diagonal line drawn across it from the top-left corner to the bottom-right corner.

NJHCPAC
REQUEST FOR ADVISORY OPINION FROM ELEC
OCTOBER 2000
#4 - pg. 1 of 2

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

New Jersey Health Care Political Action Committee (NJHCPAC) is a continuing political committee dedicated to the protection and advancement of long-term health care facilities. The committee is not affiliated with any political party. Membership is open to all persons employed or active in long-term care health facilities. Contributors to NJHCPAC are its' members. NJHCPAC is registered with and reports to the New Jersey Election Law Enforcement Commission.

The New Jersey Association of Health Care Facilities (NJAHCF) is a statewide association of long-term care facilities: nursing (NF), assisted living (AL), comprehensive personal care (CPC), and residential health care facilities (RHCF). Members are facilities, not individuals. NJAHCF's budget is approved annually by the membership for the following calendar year. An initiative was approved by the members as part of the NJAHCF's 2000 budget that, if particular circumstances were met, a portion of the facility's dues monies could be dedicated to NJHCPAC:

"... a motion was made, seconded and carried to approve NJAHCF's 2000 Budget, including the following:

... Dues Dedication for New Jersey Health Care Political Action Committee (NJHCPAC): To accept the recommendation that \$2.00 per NF bed and \$1.00 per AL, CPC, and RHCF bed be dedicated to NJHCPAC, with the understanding that:

- a. Every member would have the option to say no to the dedication on their 2000 dues statement. However, if the member says no, the money would not be refunded. It will go into the dues line item of the budget.
- b. The dedicated dues are not tax deductible.
- c. The dedicated dues would not be an allowable cost for the purpose of Medicaid and Medicare cost reporting.
- d. That NJAHCF's non-proprietary, 501c3 members be barred from participating because of concern that participation could jeopardize their tax exempt status.

NJHCPAC
REQUEST FOR ADVISORY OPINION FROM ELEC
#4 - pg. 2 of 2

e. All monies dedicated to NJHCPAC be held in escrow until NJAHCF ... requests and receives from the Internal Revenue Service a letter ruling that the dues dedication initiative would not jeopardize the tax exempt status of NJAHCF's 501(c)3 members, despite their non-participation. If an unfavorable ruling is obtained, all money in escrow would be immediately returned to the NJAHCF dues budget line item. If a favorable ruling is received, the money would be transferred to NJHCPAC."

NJAHCF's dues renewal notice to proprietary facility members for 2000 member dues included the language "... If you do not wish any portion of your 2000 NJAHCF dues to be dedicated to the New Jersey Health Care Political Action Committee (NJHCPAC) please check below." The remittance stub returned with their dues payment included a place to check " I do not wish any portion of my 2000 NJAHCF dues to be dedicated to the New Jersey Health Care Political Action Committee (NJHCPAC)". Dues renewal notices to non-proprietary facility members did not include the above statement, nor the check-off.

NJAHCF received an opinion from Internal Revenue Service that non-proprietary members will not lose their 501(c)3 tax exempt status by being a member of the NJAHCF.

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5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

To ensure that NJHCPAC will be in compliance and that reporting requirements are properly met.

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name:

Roi Ann Morford

Mailing Address:

NJHCPAC

Lexington Square Commons - 2131 Rt33

Hamilton NJ 08690-1740

Day Telephone No.

609-890-8700

Evening Telephone No.

same

Fax Number:

609-584-1047

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee or entity

Other (please describe):

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

Oct 19, 2000

Dated:

Roi Ann Morford
Signature