



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Respond to:
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Deputy Director

GREGORY E. NAGY
Legal Director

JAMES P. WYSE
Counsel

April 18, 2001

BY FAX & FIRST CLASS MAIL

Mayor Herman T. Costello
338 East Union Street
Burlington, NJ 08016

Advisory Opinion No. 03-2001

Dear Mayor Costello:

Your request for an Advisory Opinion has been considered by the Commission, and the Commission has directed me to issue this response. You have asked whether or not you may use your campaign funds to make and purchase a video history of the City of Burlington, for which municipality you currently serve as mayor. A family member of yours, your son, Mark del Costello, is undertaking the production of the video and will receive payment for his work on the video.

Submitted Facts

In a letter Mr. del Costello submitted in support of this request, he writes that he is producing a promotional and historical video of the City of Burlington's history, revitalization, and future growth. He states that he is an instructor at the Art Institute of Philadelphia, and he has underwritten the production costs to date. He states that although the production of the video could cost up to approximately \$10,000 if produced by another company, the cost he anticipates for the video will be approximately \$2,000. He writes that you wish to use the remaining funds in your candidate committee account to pay that cost.

By letter received April 9, 2001, you provided the Commission with the following additional information:

1. Mr. del Costello is your son, and you have no legal or financial responsibility for him. Mr. del Costello lives independently of you, and is self-supporting.
2. You have no intention to seek reelection, and wish to close your campaign account, which has a balance of \$2,248.
3. The Art Institute of Philadelphia will be the recipient of your campaign committee funds. Among the individuals listed in your letter as being recipients of payments from the Art Institute of Philadelphia is your son, Mr. del Costello.

4. You represent that you have no financial interest in any person or entity that is listed as a payee.
5. The video will become the property of the City of Burlington.

The Commission notes that the most recent campaign report filed on your behalf was a postelection quarterly report for your 1999 general election candidacy for mayor of the City of Burlington, received on January 9, 2001, which reported an unexpended balance in your candidate committee account of \$2,248.02 as of December 31, 2000.

Question Presented

Are the production costs of a video about the history of a municipality and purchase of that video for the municipality a permissible use of an officeholder's campaign contributions pursuant to N.J.S.A. 19:44A-11.2 and applicable Commission regulations, notwithstanding that one of the recipients of those funds includes a family member of the officeholder?

Commission Response

The Commission finds that the use of a municipal officeholder's campaign funds (that is contributions received by the officeholder's candidate committee) to produce and purchase a historical video of the type described in this request is a permissible officeholding expense contemplated under N.J.S.A. 19:44A-11.2. Further, the circumstance that a family member of the officeholder will be a recipient of those funds for services provided by that family member in connection with the production of the video does not prohibit the expenditure as personal use of those funds by that officeholder where that family member is financially independent of the officeholder, the officeholder has no legal or financial obligation for that family member's support, and the amount of payment for the provided services is reasonable and consistent with fair market value for those services.

An officeholder is permitted by N.J.S.A. 19:44A-11.2a (hereafter, Section 11.2a) to use campaign funds to make a contribution to certain charitable and nonprofit organizations exempt from taxation under the Internal Revenue Code. The Commission is satisfied that the use of campaign funds by a municipal mayor to produce and purchase a video of the type described in this request for the municipality that the mayor is elected to serve is a permissible use of campaign funds. Section 11.2a(2) permits campaign funds to be contributed to a non-profit organization exempt from taxation under Section 501(c) of the Internal Revenue Code. A municipal government is a tax-exempt entity. Under the facts submitted, the video is intended to become the property of the municipality, and therefore, assuming the video is accepted by the municipality, payment for the costs of its production and for the purchase of the video for the municipality constitutes a contribution by the mayor's candidate committee to a nonprofit entity, that is the City of Burlington.

Also, an officeholder such as a mayor may use campaign funds for payment of "ordinary and necessary expenses of holding public office"; see specifically Section 11.2a(6). Even assuming for some reason the municipal government determines ultimately not to accept ownership of the video, the costs of the production and purchase of the municipal video is sufficiently related to the mayor's officeholding duties to permit the expenditure from his campaign funds as an "ordinary and necessary" officeholding expense within the meaning of Section 11.2a and the Commission regulations. The Commission's regulations define "ordinary and necessary expense of holding public office" as "...any expense that reasonably promotes or carries out the responsibilities of a person holding public elective office ...(with an exception for furnishing, staffing or operating an office that is not pertinent here)" see N.J.A.C. 19:25-6.7, Ordinary and necessary officeholding

expenses. Included in the examples of permissible expenditures listed in the rule are the costs of communications to constituents such as the production or circulation of a municipal newsletter; see N.J.A.C. 19:25-6.7(e)1i. The video that is the subject of this request appears to the Commission to come within the types of constituent communication contemplated by the regulation, and is similar to the expenditure from candidate funds approved by the Commission in Advisory Opinion 06-1996 for the production and distribution of the Annual Report of a county government.

Campaign funds may not be used for "...those items or services which may reasonably be considered to be for the personal use of the candidate, any person associated with the candidate ...(and other uses not pertinent to this request);" Section 11.2(a). In administering this restriction, the Commission must exercise care that campaign funds are not expended to enrich a candidate or his dependent family members. Under the facts as presented in this inquiry, Mr. del Costello is a family member, but no longer financially dependent on his father, and you have represented you no longer bear any legal or financial obligation for your son. Further, the contemplated expenditure of approximately \$2,000 is a figure, according to Mr. del Costello, that is substantially less than would be required if the video were being made by another company, suggesting to the Commission that the \$2,000 cost is at or less than the fair market value of employing another filmmaker to produce the video. That figure does not appear to the Commission to be unreasonable. According to your letter, the Art Institute of Philadelphia will be the payee, and therefore it is that institution that will assume responsibility for distribution of the proceeds of the expenditure to those persons employed to produce the video, including Mr. del Costello, an instructor at that institution. For these reasons, the Commission concludes that the expenditure described by the facts in this request is in conformity with the permissible use restrictions of Section 11.2.

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

Very truly yours,

GREGORY E. NAGY
Legal Director



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:

COSTELLO FOR MAYOR

Mailing Address

33 E. UNION ST.

Day Telephone No.

609 386 2912

Evening Telephone No.

609 386-2912

BURKINGTON, NJ 08016

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

Yes

No

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): _____

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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:

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

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).

PERMISSABLE USE OF FUNDS.

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 LETTER ATTACHED.

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.

SEE ATTACHED LETTER.

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

Full Name: <u>HERMAN T. COSTELLO</u>	
Mailing Address: <u>338 E. UNION ST.</u>	Day Telephone No. <u>609 386 2912 OR 0200X100</u>
<u>BURLINGTON, NJ 08016</u>	Evening Telephone No. <u>609 386-2912</u>
	Fax Number:

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.

4/2/01 Dated: _____ Herman Costello Signature

Mark del Costello

Ms. Evelyn Ford
New Jersey Law Enforcement Commission
P.O. Box 185
Trenton, New Jersey 08625-0185

March 25, 2001

The following is a description of the project that I have been asked by Mayor Herman T. Costello to produce for the City of Burlington, New Jersey.

The project is a promotional and historical video 5 to 8 minutes in length and will feature the City of Burlington's history, revitalization and future growth. It will be a vital tool in physically exhibiting the great assets of the City and its attraction for tourism, funding and development.

The production phase of the video is completed and the editing of it will be completed by April 30th. The entire cost and labor of the production have been provided by Mark del Costello an instructor at the Art Institute of Philadelphia and a staff of his present and former students. While most of the cost of equipment rentals have been donated the hard costs of videotape, voice over talent, crew expenses and fees have been underwritten by Mark Delcostello.

To date a full ten days of videotaping have been dedicated to this project. An additional six days of editing is required.

If this production were contracted to a formal production company the cost were estimated to be \$10,000. So, the City of Burlington is getting a fine product at a great savings and in fact no cost to the taxpayers. The cost as I am producing it is approximately \$2000.

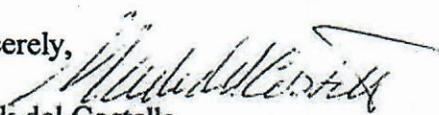
Mayor Costello is requesting that the remaining funds in his Campaign fund be used to underwrite the costs of this production.

The project is being produced with the cooperation and support of the Art Institute of Philadelphia where I have been an instructor for nine years. The funds can be released directly to the Art Institute for disbursement and reimbursement or released to me directly and I will do the disbursement to the crew and reimbursement of all costs which to date have been born by me.

The Art Institute of Philadelphia is located at 1622 Chestnut Street, Philadelphia, Pennsylvania 19103-5198. The President of the Art Institute is Frank Covalesskie, and Mr. Covalesskie is awaiting the decision of the Election Law Enforcement Commission. The Art Institute's phone number is: 215 246 7080, and fax number is 215 246 3358.

Thank you for your consideration of this matter.

Sincerely,


Mark del Costello

217 Penn Street
Burlington, New Jersey 08016
609 747 0601

338 E. Union Street
Burlington, NJ 08016
April 6, 2001

Gregory E Nagy, Legal Director
Election Law Enforcement Commission
PO Box 185
Trenton, NJ 08625-185

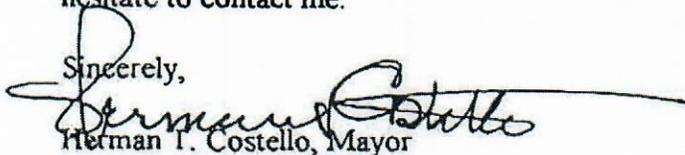
Dear Mr. Nagy:

I am in receipt of your letter/fax of April 4, 2001 requesting additional information regarding an advisory opinion on the release of my remaining campaign funds from November 1999 General Election for Mayor.

1. Mark delCostello is my son. I have no legal or financial responsibility for him. He lives in his own home and is fully self-supporting.
2. I have no intention of running again and I would like to close my account. The total remaining is \$2,248
3. The Art Institute of Philadelphia will handle the disbursement of the funds. Some of the money will be used to offset the cost of film and any supplies needed. Any remaining money, after all expenses are paid, will remain with the Art Institute to offset cost for use of any of their equipment. The following is a list of those who will be paid:
 - Brian Padla, 5445 Aubrey Ave., Phila., Pa. 19114
215-338-1785 – Primary Cameraman, Lighting, Editing.
 - Brian Raby, 3726 Westhampton Dr. Phila., PA 19154
215-632-7117 – Cameraman, lighting.
 - Christopher Vena, 6 Corvas Court, Sewell, NJ 08080
856-415-1925 – Asst. Director, Cameraman.
 - Mark delCostello, 217 Penn St., Burlington, NJ 08016
609-747-0601 – Producer, Director, Writer.
4. I have no financial interest in any person or entity who will be a payee.
5. The Video will become the property of The City of Burlington

Thank you for your assistance in this matter. If you have any other questions do not hesitate to contact me.

Sincerely,


Herman I. Costello, Mayor