



State of New Jersey

RONALD DEFILIPPIS
Chairman

ELECTION LAW ENFORCEMENT COMMISSION

Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

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March 6, 2017

Gary Schaer, Assemblyman
36th Legislative District
511 Passaic Avenue
Passaic, NJ 07055

Advisory Opinion No. 01-2017

Dear Assemblyman Schaer:

Your request for an Advisory Opinion has been reviewed and I am issuing this response pursuant to N.J.S.A. 19:44A-6(f). You submitted your request on behalf of Schaer for Assembly (Schaer Committee or Committee), a candidate committee for the 2017 primary election. A completed submission was filed with the New Jersey Election Law Enforcement Commission (Commission) on February 22, 2017.

Your request pertains to the use of campaign funds to establish a scholarship program. Specifically, you have asked whether N.J.A.C. 19:25-6.5 and N.J.A.C. 19:25-6.7 “permit the use of legislative campaign funds to establish a scholarship program to assist college bound students within the legislative district.”

Commission Response

You are advised that the use of campaign funds to establish a scholarship program is not permitted pursuant to N.J.S.A. 19:44A-11.2, N.J.A.C. 19:25-6.5 and N.J.A.C. 19:25-6.7. The establishment of a scholarship program is not a campaign or office holding expense. N.J.S.A. 19:44A-11.2; N.J.A.C. 19:25-6.5; N.J.A.C. 19:25-6.7. Further, pursuant to Commission regulations, a tuition payment is considered to be a personal use of campaign funds. N.J.A.C. 19:25-6.5(c)(4).

Submitted Facts

You indicate that the Schaer Committee desires to “set up a creative writing scholarship program, which would award monetary scholarships to college bound high school students.” You state that you would not participate in the review of the applications or selection of the winners, but that you would select a panel of judges. Further, the panel would be comprised of principals and teachers serving in your district, and selected based upon recommendations by organizations for educational professionals and superintendents.

You also indicate that monetary prizes for this scholarship program would be \$2,500 and \$1,000, for first place and second place, respectively. The monetary prizes would be paid from your campaign depository directly to each accredited New Jersey institution of higher education chosen by the winners.

Discussion

A candidate committee’s campaign funds can only be used for the following: (1) campaign expenses; (2) donations to charitable organizations pursuant to 26 U.S.C.S. § 170(c) or non-profit organizations exempt from taxation under 26 U.S.C.S. § 501(c); (3) transmittal to another candidate or committee; (4) overhead and administrative expenses of the committee; (5) pro-rata repayment of contributors; and, (6) ordinary and necessary office holding expenses. N.J.S.A. 19:44-11.2(a); N.J.A.C. 19:25-6.5(a).

A “campaign expense,” listed above as (1), is defined as the payment or lease of services or items used “in connection with an election campaign.” N.J.S.A. 19:44-11.2(a); N.J.A.C. 19:25-6.5(b). However, “items or services which may reasonably be considered to be for the personal use of the candidate [or] any person associated with the candidate” are not campaign expenses. N.J.S.A. 19:44-11.2(a); N.J.A.C. 19:25-6.5(b). An expense “that would arise or exist irrespective of the candidate’s campaign or ... ordinary and necessary expense of holding public office” would be an impermissible “personal use” of campaign funds. N.J.A.C. 19:25-6.5(c). Further, the payment of tuition is an enumerated “personal use,” unless the tuition payment is for a course of study related to the candidate’s office holding duties or candidacy. N.J.A.C. 19:25-6.5(c)(4).

An ordinary and necessary office holding expense is an expense that “reasonably promotes or carries out the responsibilities of a person holding” office, except for expenses related to the operation, staffing or furnishing of a legislative office. N.J.S.A. 19:44A-11.2(b); N.J.A.C. 19:25-6.7(a). Permissible office holding expenses include constituent communication costs, such as a donation to a charitable or non-profit organization or activity that promotes the welfare of the officeholder’s constituents. N.J.A.C. 19:25-6.7(e)(1)(iii).

The scholarship program you have detailed is not one of the six permissible uses of campaign funds. It is neither a campaign or an office holding expense, as tuition incurred by any student in your legislative district is an expense that would arise irrespective of your campaign or office holding expenses. Nor is the scholarship program a donation to a charitable or non-profit organization described in (2) above or a donation to an organization or activity pursuant to N.J.A.C. 19:25-6.7(e)(1)(iii), as you describe a direct tuition payment, not a donation to an organization. Thus, any tuition payments made directly from your campaign depository to an institution of higher education on behalf of another is a prohibited use of campaign funds. See N.J.S.A. 19:44-11.2(a); N.J.A.C. 19:25-6.5.

As discussed above, a donation to a charitable or non-profit organization established pursuant to 26 U.S.C.S. § 170(c) or 26 U.S.C.S. § 501(c), respectively, that provides scholarships is a permitted use of your campaign funds. Please be advised, funds of a candidate committee cannot be used to establish such a charitable or non-profit organization. Campaign funds may be used to make a donation to such an organization that is created independently of the campaign.

Conclusion

You are advised that the use of campaign funds to establish a scholarship program that makes direct payment to institutions of higher education on behalf of scholarship winners is not a permitted use of campaign funds. Thank you for your inquiry.

Very truly yours,
Election Law Enforcement Commission

By:



Demery J. Roberts, Esq.



Advisory Opinion Request For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
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FEB 22 2017

PLEASE PROVIDE THE INFORMATION REQUESTED BELOW

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 include the following:

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

Full name of Person, Committee, or Entity:
Schaer for Assembly

Mailing Address:
511 Passaic Ave.

Passaic, NJ 07055

*Day Telephone Number:
973-634-0020

*Evening Telephone Number:

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
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., 2005 general election) or calendar years, and identify filing capacity:

c. If reports are or were filed under a different name than that appearing in Question #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).

Whether § 19:25-6.5 and § 19:25-6.7 permit the use of legislative campaign funds to establish a scholarship program to assist college bound students within the legislative district.

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

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:

I would like to set up a creative writing scholarship program, which would award monetary scholarships to college bound high school students. Juniors and seniors living in the 36th district would be eligible to participate by submitting an essay one of a few topics related to policy and State government. I would not be involved in reviewing the applications or determining the winners. Instead, I would select a panel of judges, comprised of teachers and principals serving the 36th District, based upon recommendations from superintendents and organizations representing educational professionals. Monetary prizes of \$2,500 for the first place winner and \$1,000 for the second place winner would be paid from my legislative campaign fund directly to the winners' chosen institutions of higher education, limited to accredited NJ institutions. The third place winner would accompany me and my staff to Trenton to observe an Assembly voting session.

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:

I am seeking permission to establish the scholarship program outlined above as well as any guidance you can offer to ensure that the scholarship program I establish complies with relevant ELEC regulations on use or disposition of campaign funds.

6. Person who is submitting this advisory opinion request on behalf of the committee or entity listed in Question #1:

Full Name:
Gary Schaer

Mailing Address:
511 Passaic Ave
Passaic, NJ 07055

*Day Telephone Number:
973-634-0020

*Evening Telephone Number:

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. ~~Thereby 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.~~

~~(GROSS 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.

Feb 22, 2017
Dated: _____


Signature: _____

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FEB 22 2017

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.