



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

June 6, 2006

Chair English, Vice Chair Tober, Commissioner Burstein, Commissioner Davis, and Counsel Wyse participated by telephone. Senior staff was present.

1. Open Public Meetings Statement

Chair English called the meeting to order, and Executive Director Herrmann announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., adequate notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

The meeting convened at 1:00 p.m. in Trenton.

2. Advisory Opinion Request No. 04-2006

Chair English asked Legal Director Massar to discuss the request.

Director Massar explained that Paul P. Josephson, Esq., submitted a request for an advisory opinion on behalf of three charitable entities and the Booker Team for Newark, Inc., the 2006 municipal election joint candidates committee of Newark Mayor-Elect Cory Booker and six council candidates. The three entities are: Newark Now, Inc., Focus Hispanic Center for Community Development, Inc., and the Lancelot H. Owens Scholarship Foundation, Inc. In his request, Mr. Josephson explained that the three charities are contemplating organizing a joint fundraising event to raise funds for the charities and to celebrate the "swearing-in" of Mayor-Elect Booker and his running mates.

The advisory opinion request posed three questions:

- (1) If the charities jointly conduct a fundraising event from which the "net proceeds . . . will be paid solely to the charities," and if Mayor-Elect Booker is a "prominent participant in the event and solicitation materials," will the charities be subject to the requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act?

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- (2) Will contributions to the event be subject to the limits and prohibitions of the Act?
- (3) May the Booker Team for Newark provide technical, staff, and financial assistance to the charities that are organizing the fundraising event?

Legal Director Massar explained the responses recommended by staff:

- (1) As long as all proceeds of the joint fundraising event are distributed to the charities and none of the proceeds are distributed to the Booker Team or used to make contributions to candidates or for any political communications or other such purpose, the charities are not subject to the requirements of the Act.
- (2) Similarly, as long as all proceeds of the joint fundraising event are distributed to the charities and none are used to make political contributions or for other political purposes, the contributions to the joint fundraising event described by Mr. Josephson are not subject to the limits and prohibitions of the Act.
- (3) The Booker Team may provide technical, staff, and financial assistance to the charities, subject to the reporting requirements of the Act.

Director Massar advised the Commissioners that Mr. Josephson was present.

Chair English asked Mr. Josephson to comment.

Mr. Josephson indicated that he had nothing to add because he believed that Director Massar had represented the issues accurately.

Chair English asked about precedent.

Legal Director Massar indicated that several past advisory opinions provided guidance in responding to the three questions. In Advisory Opinion 03-1996, the Commission considered the plans of a group of individuals to hold a birthday party for an elected officeholder where half of the ticket price to the birthday party was to be used to cover the expenses of the event, and the other half was to be given to the officeholder as a personal gift. The Commission concluded that the event was outside the scope of the Act because no proceeds were to be contributed to a candidate or other political entity.

Staff also relied upon Advisory Opinion 08-1994, where the Commission examined the circumstances under which an event conducted by a neighborhood association might become a reportable contribution under the Act. In that opinion, the Commission applied a two-prong test, articulated in Orloski v. Federal Election Commission, 795 F.2d 156 (2d Cir., 1986), to determine whether or not an event was subject to reporting pursuant to the Federal Election Campaign Act. Staff suggested that the Commission similarly examine whether or not there was any communication expressly advocating the election of the appearing candidate or any solicitation of campaign contributions. In the absence of those factors, staff recommended that the charitable joint fundraising event should not be characterized as activity subject to the Act.

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Chair English asked if there is a parallel case whereby a candidate is involved with a charity?

Legal Director Massar said that while a candidate is prohibited by the Act from participating directly or indirectly in a political committee or CPC, there is no prohibition against charitable involvement.

Commissioner Burstein asked Mr. Josephson what is meant by the words “celebration” and “swearing-in?”

Mr. Josephson said that the event will be akin to an inaugural event.

Commissioner Burstein recommended that the response to Question One also state that the “proceeds of the fundraising event must be applied solely for charitable purposes.”

The Commissioners agreed and Commissioner Burstein moved the measure to direct staff to issue the response.

Vice Chair Tober seconded the motion. On a vote of 4-0, the measure passed.

3. Adjournment

On a motion by Commissioner Burstein, seconded by Commissioner Davis and passed by a vote of 4-0, the Commission voted to adjourn at 1:30 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz