



*State of New Jersey*

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Chairman

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Vice Chairman

AMOS C. SAUNDERS  
Commissioner

## 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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Compliance Director

October 26, 2012

Gregory Nagy, Esq.  
Genova Burns Giantomasi & Webster  
494 Broad Street  
Newark, NJ 07102

### Advisory Opinion 02-2012

Dear Mr. Nagy:

The Election Law Enforcement Commission (the “Commission”) considered your request for an Advisory Opinion at its meeting of October 25, 2012, and directed me to issue this response. You have submitted your request on behalf of Sharpe James, Cheryl Johnson, and the Election Fund of Sharpe James (hereafter, the Requestors). You have asked the Commission for a determination that the Requestors may use campaign funds from the Election Fund of Sharpe James to pay for reasonable legal fees and expenses in connection with their appeal of an Order granting Summary Judgment against the Requestors as Defendants in a civil action brought by the Commission alleging violations of the New Jersey Campaign Contributions and Expenditures Reporting Act (the “Reporting Act”).

### Question Presented

Does use of campaign funds for legal fees and expenses in connection with a former officeholder’s appeal of a decision in a civil action adjudging a violation of the Reporting Act fall within the scope of permissible use of campaign funds?

### Commission Response

The Commission hereby advises you that the contemplated use of campaign funds is permissible pursuant to Commission regulation N.J.A.C. 19:25-6.10(a)3.

### Submitted Facts

The Requestors are Defendants in a civil action in which the Commission is Plaintiff, see New Jersey Election Law Enforcement Commission v. Sharpe James, Cheryl Johnson, and Election

Fund of Sharpe James, Docket No. C-131-11 (N.J. Super. Ct. Ch. Div. 2012). The two-count Complaint alleged: 1) five violations of the New Jersey Campaign and Expenditures Reporting Act, arising from five expenditures for the purpose of criminal defense as impermissible under the Act; and 2) a breach of fiduciary duty owed to contributors. On August 23, 2012, the Hon. Harriet Farber Klein, J.S.C., entered an Order granting summary judgment to the Commission and denying Defendants' cross-motion for summary judgment. The Order Granting Summary Judgment to Plaintiff and Denying Cross-Motion further orders Defendants to be permanently enjoined from making any additional expenditures from the Election Fund of Sharpe James in violation of the [Reporting] Act, repayment to the Election Fund of \$94,004.08, and statutory civil penalties pursuant to the Reporting Act totaling \$30,000.

The Requestors intend to appeal the August 23, 2012 Order. You have stated that the Election Fund has not paid, obligated itself to pay, or otherwise incurred any debt for the costs of legal services for the appeal.

### **Discussion**

Sharpe James served as mayor of the City of Newark from July 1, 1986 until July 1, 2006. The Election Fund of Sharpe James files quarterly reports with the Commission as a single candidate committee designated by Mr. James for the receipt of campaign contributions and making of campaign expenditures. Cheryl Johnson serves as campaign treasurer for the Election Fund of Sharpe James. The 2012 third quarter report filed on October 16, 2012 by the Election Fund of Sharpe James indicates a closing balance of \$706,372.96. The civil action named Mr. James, Ms. Johnson, and the Election Fund as defendants.

**Applicable law.** N.J.S.A. 19:44A-11.2 provides that candidate committee funds shall be used for only six purposes, which purposes include the "payment of ordinary and necessary expenses of holding public office." N.J.S.A. 19:44A-11.2a(6). N.J.S.A. 19:44A-11.2a also prohibits expenditures for "those items or services which may reasonably be considered to be for the personal use of the candidate ...."

N.J.A.C. 19:25-6.7 defines as "ordinary and necessary" expenses, "any expense that reasonably promotes or carries out the responsibilities of a person holding elective public office." N.J.A.C. 19:25-6.5(c) defines as "personal use" any use of contributions to pay or fulfill a commitment, obligation or expense ... that would arise or exist... "irrespective of the candidate's campaign" or "irrespective of the candidate's ordinary and necessary expense of holding public office."

N.J.A.C. 19:25-6.10 specifically addresses the use of campaign funds for legal fees, as follows:

#### N.J.A.C. 19:25-6.10 Use of funds for legal fees

(a) Contributions received by a candidate committee...may be used for reasonable fees and expenses for legal representation, the need for which arises directly from and is related to the campaign for public office or the ordinary and necessary duties of holding public office. Examples of permissible uses of contributions, that is campaign funds, to pay legal fees and expenses shall include, but not be limited to, legal fees and expenses arising in connection with the following:

1. Litigation directly related to a recount proceeding ... or an election contest [concerning the campaign];
2. Defense of a defamation action against the candidate or officeholder;

3. The defense of a civil action or administrative proceeding alleging a violation of the Act and naming as a respondent or defendant the candidate or officeholder whose campaign funds are to be used to pay such expenses; and

4. The defense of an action ... before the Joint Legislative Committee on Ethical Standards...

(b) Permissible use of funds for legal fees and expenses shall not include legal fees and expenses for defense of a candidate or officeholder, who is the subject of a criminal inquiry or criminal investigation, or defense of a criminal indictment or other criminal proceeding.

(c) Permissible use of funds for legal fees and expenses shall not include such fees and expenses incurred in connection with the candidate or officeholder's personal or business affairs, or which would otherwise qualify as "personal use" under N.J.A.C. 19:25-6.5(c).

### Conclusion

N.J.A.C. 19:25-6.10 specifically provides as an example of permissible use of campaign funds for reasonable legal fees and expenses, the defense of a candidate or an officeholder in a civil action alleging a violation of the Reporting Act. N.J.A.C. 19:25-6.10(a)3. The summary judgment order which the Requestors intend to appeal was issued in such a civil action. Therefore the Commission advises you that the proposed use is a permissible use of campaign funds under Commission regulation N.J.A.C. 19:25-6.10(a)3. This Advisory Opinion determination is intended to apply only to the particular facts presented. The Commission thanks you for your inquiry.

Very truly yours,  
Election Law Enforcement Commission

By: \_\_\_\_\_  
Carol L. Hoekje, Esq.



Advisory Opinion Request For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P.O. Box 185, Trenton, NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Website: www.elec.state.nj.us

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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:

Sharpe James, Cheryl Johnson and Election Fund of Sharpe James

Mailing Address:

c/o Genova Burns Giantomasi & Webster

494 Broad Street, Newark, NJ 07102

\*Day Telephone Number:

973-533-0777

\*Evening Telephone Number:

same

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

[X] Yes

[ ] No

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

Candidate committee

[X]

Recall committee

[ ]

Joint candidates committee

[ ]

Recall defense committee

[ ]

Political committee

[ ]

Personal financial disclosure statement

[ ]

Continuing political committee

[ ]

Other (please describe):

[ ]

Political party committee

[ ]

Legislative leadership committee

[ ]

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).

Can Sharpe James, Cheryl Johnson and/or the Election Fund of Sharpe James (collectively,

"Defendants") use funds in that Election Fund to pay reasonable fees and expenses of legal

representation in the appeal of a civil order entered in the Superior Court Order in ELEC v. James, Dkt.

No. C-131-11, adjudging them liable for violations of the New Jersey Campaign Contributions and

Expenditures Reporting Act? (A copy of the Order is attached). This request is made without prejudice to

and with an express reservation of all of Defendant's rights, defenses, claims and the like in this matter

and in the matter of ELEC v. James, Dkt. No. C-131-11,

\*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:

On or about May 25, 2011, the New Jersey Election Law Enforcement Commission bought a civil action in the Superior Court, Chancery Division, Essex County against defendants Sharpe James, Cheryl Johnson and Election Fund of Sharpe James (hereafter, "Election Fund"), alleging Defendants' violations of the New Jersey Campaign and Contributions Expenditure Reporting Act.

On August 23, 2012, the Hon. Harriet Farber Klein, J.S.C., entered an Order granting Summary Judgment to the Election Law Enforcement Commission and Ordering Defendants to be "permanently enjoined from making any additional expenditures from the Election Fund of Sharpe James in violation of the New Jersey Campaign Contributions and Expenditures Reporting Act." Further, the Defendants Sharpe James and Cheryl Johnson were Ordered to repay to the Election Fund \$94,004.08, and all Defendants further were Ordered jointly and severally liable for statutory civil penalties for each separate violation of the Act for a total penalty of \$30,000. As of the date that this request is being submitted, the Election Fund has not paid, obligated itself to pay or otherwise incurred any debt for the costs of legal services for the appeal from that Order described in this request.

The Order entered above was the result of a civil action initiated by the Election Law Enforcement Commission alleging a violation of the New Jersey Campaign and Contributions Expenditure Reporting Act. That Order enjoined the Defendants and imposed statutory civil penalties on the Defendants. Thus, any ruling to the effect that the Election Fund could not use its funds to pay for reasonable legal expenses arising in the appeal of this Order would have the effect of leaving the Election Fund without any means to pay for its legal representation. Further, it would as a practical matter deprive the candidate and treasurer respondents from pursuing their appeal that the Election Fund's payment of pre-indictment reasonable legal fees was permissible.

N.J.A.C.19:25-6.10 (a)(3) explicitly permits the use of campaign funds to pay legal fees and expenses for the defense of a civil action alleging a violation of the Act, and the facts of this request as stated above squarely fall within that permissible use.

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:

We seek an opinion from the Commission that under the narrow and limited facts submitted by this request that the Election Fund is entitled to use monies in its possession to pay the legal fees and costs incurred pursuing the appeal of the Order described above.

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

Full Name:  
Gregory Nagy, Esq.

Mailing Address:  
Genova Burns Giantomasi & Webster  
494 Broad Street  
Newark, NJ 07102

\*Day Telephone Number:  
973-533-0777

\*Evening Telephone Number:  
~~same~~ 609-273-6375

Fax Number:  
973-533-1112


a. Official Capacity of Person Requesting Opinion:

- Candidate
- Treasurer
- Organizational Treasurer
- New Jersey Attorney representing requesting person, committee, or entity
- Other (please describe):

~~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.

10/10/12  
Dated:

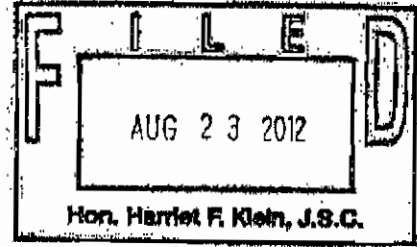
  
Signature:

\*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.

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JEFFREY S. CHIESA  
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124 Halsey Street - 5th Floor  
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Attorney for Plaintiff



By: Brian O. Lipman  
Deputy Attorney General  
(973) 648-3709  
E-Mail: brian.lipman@dol.lps.state.nj.us

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION - ESSEX COUNTY  
DOCKET NO.: C-131-11

NEW JERSEY ELECTION LAW  
ENFORCEMENT COMMISSION,

Plaintiff,

v.

SHARPE JAMES, CHERYL JOHNSON,  
and ELECTION FUND OF SHARPE  
JAMES,

Defendants.

Civil Action

ORDER GRANTING  
SUMMARY JUDGEMENT  
*TO PLAINTIFF AND  
DENYING CROSS-MOTION*

This matter having been opened to the Court by Jeffrey S. Chiesa, Attorney General of New Jersey, by Brian O. Lipman, Deputy Attorney General, attorney for plaintiff, New Jersey Election Law Enforcement Commission, for an Order granting Summary Judgment of the within matter, and the Court having

*and a cross-motion for summary judgment, having been filed by Hunt, Hamblett & Ridley, attorneys for defendants (Ronald C. Hunt, Esq., appearing)*

considered the Briefs and Exhibits submitted in support herein,  
and for good cause shown; *and for the reasons set forth  
on the record on August 17, 2012,*

IT IS on this 23<sup>rd</sup> day of August, 2012;

ORDERED that, pursuant to R. 4:46-1, plaintiff's Motion for  
Summary Judgment is hereby granted *and the cross-motion of defendants  
is hereby denied;*

IT IS FURTHER ORDERED that Defendants are permanently  
enjoined from making any additional expenditures from the  
Election Fund of Sharpe James in violation of the New Jersey  
Campaign and Contributions Expenditures Reporting Act;

IT IS FURTHER ORDERED that Defendants Sharpe James and  
Cheryl Johnson shall repay to the Election Fund of Sharpe James  
\$94,004.08 paid to attorneys for legal fees in violation of the  
New Jersey Campaign and Contributions Expenditures Reporting  
Act;

IT IS FURTHER ORDERED that Defendants are jointly and  
severally liable for statutory civil penalties for each separate  
violation of the Act for a total penalty of ~~\$94,004.08~~ <sup>30,000.00</sup>;

IT IS FURTHER ORDERED that Defendants are jointly and  
severally liable for ~~Defendants'~~ <sup>Plaintiffs'</sup> costs and fees, including  
attorneys' fees. Plaintiffs are to submit a certification to



~~Defendants supporting the claim for costs and fees within thirty  
days of this Order.~~

A COPY OF THIS ORDER  
SERVED UPON ALL PARTIES  
WITHIN 5 DAYS FROM  
THIS DATE HEREOF

  
HON. HARRIET FABBER KLEIN, J.S.C.

In accordance with the required statement to R. 1:6-2(a), this  
motion

was ✓ opposed \_\_\_\_\_ unopposed.