



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

SIDNEY GOLDMANN
CHAIRMAN

JOSEPHINE S. MARGETTS
ANDREW C. AXTELL
M. ROBERT DECOTIIS

NATIONAL STATE BANK BLDG., SUITE 1114
28 W. STATE STREET
TRENTON, NEW JERSEY 08608
16091 292-8700

LEWIS B. THURSTON, III
EXECUTIVE DIRECTOR

EDWARD J. FARRELL
COUNSEL

July 23, 1981

E. Allen Nickerson, Esquire
James J. Florio for Governor, Inc.

Mr. Roger Bodman
Campaign Director
Tom Kean '81 Governor

OPINION 33-1981

Gentlemen:

The Commission has been asked to respond to an inquiry regarding questions of allocation and to an inquiry regarding the status of national party committee and county political party committee expenditures with respect to the forthcoming gubernatorial general election. The response of the Commission follows.

Question 1. Whether the continuing expenses of a state political party committee, such as the salary of the executive director and staff, rent for headquarters and similar recurring costs, are required to be allocated to gubernatorial candidates.

The Commission recognizes that state political party committees incur certain continuing expenses, without respect to whether there will be a gubernatorial election in a given year. It is the view of the Commission that those ongoing expenditures are not allocable to the campaign of the gubernatorial candidate.

Accordingly, expenditures for rent, personnel, overhead, general administrative and other day-to-day costs of the state political party committee would not be allocable to the campaign of the gubernatorial candidate, except in the case in which those expenditures are made on behalf of a clearly defined candidate as described in the answer to Question 2 below.

Question 2. Whether institutional advertising by a state political party committee may properly be allocated entirely to non-gubernatorial candidates.

The Commission is of the view that television and radio advertisement, billboards, direct mail, bumper stickers and other communications, not paid for in any part by the gubernatorial campaign, could properly be allocated entirely to non-gubernatorial candidates so long as the expenditure could fairly be said not to have been made on behalf of the gubernatorial candidate.

Such an expenditure would be made, at least in part, on behalf of the gubernatorial candidate, and thereafter allocable to some extent to the gubernatorial candidate, if (1) either of the gubernatorial candidates is named or visually depicted or referred to; or (2) the office of Governor is named or referred to; or (3) the incumbent governor is named or visually depicted or referred to; or (4) the identity of the candidate, the opponent, or the incumbent governor is apparent by unambiguous reference.

Question 3. Whether advertising on behalf of a gubernatorial candidate could be allocated in some part to persons or organizations other than the gubernatorial candidate.

It is the view of the Commission that communications of the kind described in the preceding question in favor of a gubernatorial candidate or in opposition to the opponent of that gubernatorial candidate would be allocated 100% to the gubernatorial candidate. This would be true whether or not the entire cost of that advertising was paid by the state political party committee.

Question 4. How combined advertising, that is, advertising on behalf of the gubernatorial candidate and other candidates, would be allocated.

This question is necessarily complicated by the fact that a large number of variables can easily be imagined. The Commission is generally of the view that, in the absence of extraordinary circumstances, an ad of this combined type which named or pictured or otherwise clearly identified the gubernatorial candidate would be allocable in an amount not less than 25% to the gubernatorial candidate.

In the simplest case in which the gubernatorial candidate "A" were named together with, for example, "B" and "C" and "D" (a senatorial candidate and two assembly candidates), and equal prominence were given to each of the persons, an allocation of 25% to the gubernatorial candidate would be presumed to be proper in the absence of a substantial showing that some greater allocation to the gubernatorial campaign was called for.

A different question arises where the name of the gubernatorial candidate is linked with, for example, "candidates for senate and assembly" or a similar type of designation. In that case, the Commission is of the view that at least 10% of the cost could properly be allocated to each of those other offices. Whether a greater percentage could be allocated would be a question of fact and would have to depend on the other circumstances involved.

In the case involving one specific example, the mention of the gubernatorial candidate with candidates for 9 other offices (whether or not named) would not result in an allocation of one-tenth of the cost to the gubernatorial candidate. As described above, it would, in the absence of extraordinary circumstances, result in an allocation of at least 25% to the gubernatorial candidate. A piece in favor of "named gubernatorial candidate and the party slate" or "the (named gubernatorial candidate) team" would in all probability be regarded as requiring an allocation of nearly all of the expenditure to the gubernatorial candidate.

Question 5. The extent to which activities, generally known as "party building activities" would be subject to allocation.

(a) The expenses of voter registration would not be allocable in any part to the gubernatorial campaign.

(b) Expenses related to ballot security (as opposed to get-out-the-vote and other election day related activities) would be allocable equally to all candidates of the party appearing on the ballot.

(c) (1) Canvassing and phone banks. No portion of expenditures for the entire ticket or for any combination of non-gubernatorial candidates would be allocable in any part to the gubernatorial campaign, provided that the expenditure met the test described in the answer to Question 2 above.

(2) Voter canvassing, specifically designed to determine whether a voter would vote for the gubernatorial candidate, and the related election day turnout activities on behalf of that candidate; would be allocated 100% to the gubernatorial campaign.

(d) Issues research. The Commission has considered the question of the expense of issues research and has concluded that such expense would be allocable to the gubernatorial candidate to the extent that it could fairly be said to constitute a benefit to the gubernatorial candidate.

Question 6. Allocation of Polling and Survey Research.

Allocation of costs of polls on a question by question basis would be regarded by the Commission as an appropriate way of calculating allocation. With respect to particular kinds of questions, it is the view of the Commission that:

(1) Candidate related questions ("head to head questions") respecting the gubernatorial candidates would be allocated 100% to the gubernatorial campaign.

(2) Demographic questions could properly be allocated among all candidates to whom the poll is made immediately available.

(3) Issue questions relating to the gubernatorial candidate would, in the absence of extraordinary circumstances, be allocable at least 25% to the gubernatorial candidate and issue questions relating exclusively to the gubernatorial campaign would be allocated 100% to the gubernatorial candidate. Questions within those two limits would be allocated to the gubernatorial candidate to the extent that they were for the benefit of the gubernatorial candidate.

(4) Legislative District Polls. Polls commissioned for the benefit of legislative candidates and conducted strictly within a legislative district would not be allocable to the gubernatorial campaign, assuming that nothing in the poll or the use of the poll made it a fair conclusion that the poll was for the benefit of the clearly defined gubernatorial candidate as described in the answer to Question 2 above.

Question 7. The allocation of expense of fundraising appeals.

In general, the allocation of fundraising appeals would be made by charging the costs of such appeals in the same proportion as the funds derived from those appeals were used. There is a caveat here, however, that literature claiming to be fundraising appeals would be allocated to the gubernatorial campaign to the extent that it could reasonably be said to be in fact material benefitting the clearly defined gubernatorial candidate. Accordingly, the mention of the gubernatorial candidate or the signature of the gubernatorial candidate on the solicitation would not necessarily lead to a conclusion that such a piece was in fact a campaign piece, but those would be facts taken into account in evaluating that question.

Question 8. The status of National Political Party Committees.

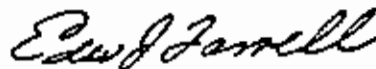
The Commission has considered the question and its earlier opinion (0-24-77), and has concluded that, in the absence of a specific statutory provision authorizing involvement of the national political party committee in the election process, the Commission should view those committees as persons or political committees under the Act and Regulations, and that accordingly a national political party committee is limited to a contribution to the gubernatorial candidate not in excess of \$800.

Question 9. Whether county political party committee expenditures are subject to the expenditure limitation applicable to the gubernatorial candidate.

The Commission has reviewed the question whether the expenditures of county and municipal committees (the \$100,000 provision) are exempt from the expenditure limit imposed upon a candidate. We reaffirm the conclusion of the Commission with respect to the 1977 campaign that these expenditures are included within the expenditure limitations. Our judgment in this regard is buttressed by the fact that the statutory amendments in 1980 specifically changed the wording of the relevant section from "contributions" to "expenditures", so that whatever argument might previously have been made to the

effect that what were in fact expenditures by the county organizations were "contributions" under the statute and therefore exempt, cannot now fairly be made as a matter of seeking to ascertain legislative intent.

Very truly yours,



Edward J. Farrell
Legal Counsel

EJF:no