

# State of New Jersey

## ELECTION LAW ENFORCEMENT COMMISSION

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SCOTT A. WEINER  
EXECUTIVE DIRECTOR

EDWARD J. FARRELL  
COUNSEL

July 14, 1982

Martin S. Barber, Treasurer  
Tom Kean for Governor Committee  
1090 Morris Avenue  
Union, New Jersey 07083

### ADVISORY OPINION No. 10-1982

Dear Mr. Barber:

Your letter to Scott Weiner, Executive Director, Election Law Enforcement Commission, requesting an advisory opinion has been considered by the Commission and I have been directed to issue this response. You have made four inquiries concerning reporting of paid personal services or reporting of vendor cost overruns under the provisions of the Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-1 et seq.) in your capacity as treasurer of the Tom Kean for Governor Committee and as deputy treasurer for the Kean Emergency Recount Fund.

You have asked whether your services as treasurer to the Kean for Governor Committee, which you characterize as "volunteered," constitute a reportable campaign contribution to the committee. Volunteer services, that is services for which no salary or other consideration is given, are expressly exempted from the definition of "paid personal services". N.J.S.A. 19:44A-3(f). That definition, in pertinent part, provides as follows: "... personal, clerical, administrative or professional services of every kind and nature including, without limitation, public relations, research, legal, canvassing, telephone, speech writing or other such services, performed other than on a voluntary basis, the salary, cost or consideration for which is paid, borne or provided by someone other than the committee, candidate or organization for whom such services are rendered". If your services have been provided without "salary or other compensation," there is no obligation on the recipient committee to report them under N.J.S.A. 19:44A-8.

Your second question concerns the use of employees of your firm who were paid by your firm to provide services to the Committee. Such services appear precisely within the terms of the "paid personal services" definition. Their salaries were paid by your firm, thus sparing the Committee from having to make expenditures for those services and their value must be reported by the Committee pursuant to N.J.S.A. 19:44A-8. The definition of "paid personal services" at N.J.S.A. 19:44A-3(f) provides the following statement concerning valuation:

In determining the value, for the purpose of reports required under the act, of contributions made in form of paid personal services, the person contributing such services shall furnish to the campaign treasurer through whom such contribution is made a statement setting forth the actual amount of compensation paid by said contributor to the individuals actual amount of compensation paid by said contributor to the individuals actually performing said services for the performance thereof. But if any individual or individuals actually performing such services also performed for the contributor other services during the same period, and the manner of payment was such that payment for the services contributed cannot readily be segregated from contemporary payment for the other services, the contributor shall in his statement to the campaign treasurer so state and shall either (1) set forth his best estimate of the dollar amount of payment to each such individual which is attributable to the contribution of his paid personal services, and shall certify the substantial accuracy of the same, or (2) if unable to determine such amount with sufficient accuracy, set forth the total compensation paid by him to each such individual for the period of time during which the services contributed by him were performed. "

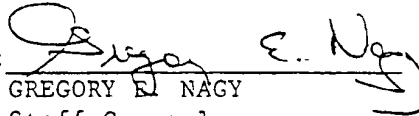
A contributor to a candidate in a publicly financed election, such as a gubernatorial election, may contribute no more than \$800.00 to the primary election candidacy and no more than \$800.00 to the general election candidacy. N.J.S.A. 19:44A-29. If the value of the "paid personal services" provided by your firm exceeded these limitations, arrangements must be undertaken forthwith for payment by the Committee to your firm for received "paid personal services" exceeding contribution limits.

In your third inquiry, you state that certain service contracts were negotiated for fixed dollar amounts. Assuming the vendor experiences a cost overrun, you ask whether such an overrun is reportable as a contribution to the Committee. Initially, it should be noted that the Reporting Act governs only the reporting of contract obligations, not their creation or retirement. If the transaction between the vendor and the Committee was bona fide and the fixed price arrived at as a result of arm's length bargaining, the Committee had the duty to report only the fixed price at the time of the report. The fact the vendor has experienced a cost overrun does not in itself affect the reporting obligation. However, if the terms of the agreement between the vendor and the Committee are subsequently altered to create a new lawful obligation upon the Committee, that new obligation must be reflected on the Committee reports. While it may well be the Committee benefitted from what proved to be favorable terms, at the time the terms were negotiated, assuming arm's length bargaining, there was no contemplation or intention of a "contribution" within the meaning of N.J.S.A. 19:44A-3(d) by either party. If the Committee reasonably concludes that a new obligation has been created, by way of compromise or settlement of the disputed claim, or subsequent litigation so determines, the Committee must report the new obligation and the eventual means of satisfying it.

questions one and two, but asked they be applied to the Recount Committee. The Commission has previously determined the Recount Committee is subject to the requirements of the Reporting Act as a political committee, but is not subject to the provisions (including contribution limits) of publically funded elections, N.J.S.A. 19:44A-29 et seq. Therefore the receipt of "paid personal services" must be reported by the Recount Committee. Your request that the Commission waive such reporting cannot be entertained by the Commission because the requirement is established by the terms of the Reporting Act. See N.J.S.A. 19:44A-8.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By:   
GREGORY E. NAGY  
Staff Counsel

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