



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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September 8, 1983

Victor R. McDonald, III  
Director of Research  
Senate Minority  
State House - Room 222  
Trenton, New Jersey 08625

ADVISORY OPINION NO. 10-1983

Dear Mr. McDonald:

Your letter to the 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 asked whether the costs of a letter from a member of the State Senate to retailers within the Senator's legislative district can be deemed as reportable campaign expenditures under the provisions of the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act), N.J.S.A. 19:44A-1 et seq. For the reasons stated herein, kindly be advised that the Commission, on the limited fact record you have submitted, is unable to offer any opinion.

You have submitted to the Commission the text of a proposed letter by a member of the State Senate concerning that member's position on sales and income tax legislation. The text of that letter is hereby incorporated within the facts of this Advisory Opinion. You write that the Senator will mail the letter this month to retail establishments in his district and that the letter will be typed on office stationery, mailed at State expense and will include photocopies of the Senate and Assembly voting machine tallies of the particular tax measures addressed in the letter. The Commission infers that the Senator is running for re-election and therefore is a "candidate" within the meaning of N.J.S.A. 19:44A-3(c) in the November 8, 1983 general election.

The Commission has on prior occasions considered the question of whether communications by incumbent office holders, paid for by public funds, constituted reportable campaign expenditures under the Act. In the case of In re Dawes, 156 N.J. Super. 195 (App. Div 1978), the Appellate Division affirmed the Commission's finding of a violation where the candidate failed to disclose expenditures made by a public utilities authority for a newsletter which promoted his candidacy. Concluding that the Commission's decision was supported by sufficient credible evidence, the Court observed:

"The hearing examiner's description of the letter as 'a subtle masterpiece of political propaganda' containing useful information 'but cloaked in such self-laudatory raiment [sic] as to make anyone but a politician blush' is accurate." 156 N.J. Super., at 197.

Other factors relevant in making the determination as to whether the publication and distribution of an official mailing is reportable as a campaign expenditure would include whether the mailing was sent during the active portion of the campaign; whether the letter is required to be sent or reasonably appropriate to be sent in carrying out the duties of the public office held by the candidate; whether the subject matter deals with the official duties of such candidate or with matters which properly should be brought to the attention of the public; whether the tone of the letter is the reporting of public information rather than being of a political nature; whether such letters are customarily sent by the candidate or other persons holding similar public office; whether it contains pictures, slogans or political material; whether the mailing is limited to the persons within the area affected by the public office, and the intent of the public official in sending such a letter. See Advisory Opinion No. 17-1978; a copy of which is enclosed.

In contrast to the newsletter that was the subject in the Daves case, the letter you have submitted does not dwell on the accomplishments of the candidate. However, the text does appear to contemplate the approaching general election campaign. For example, the author's characterization of the enactment of the sales and income tax legislation that is the subject of the letter as "robbery" rings of campaign rhetoric. Further, the text states that the candidate is "being criticized" for the position the candidate assumed on the taxing and spending programs. The Commission does not know if the source of the criticism alluded to derives from retailers corresponding with the Senator or as a campaign issue by a political adversary. Further, the Commission does not know whether the Senator intends to limit the mailing of this letter to retail merchants who have written or otherwise previously communicated to the Senator to express their views on the tax issues, or whether the letter will be widely circulated to retailers or other persons in the legislative district of the Senator who have not previously expressed any interest in the subject matter.

The Commission believes that the requirements of the Reporting Act should not be applied to the conduct of the day-to-day communications of a legislator who is responding to ordinary concerns of constituents. Therefore, if the facts indicated that the Senator's letter was to be only in response to communications received from constituents, the Commission's view of the letter might be substantially different. However, unsolicited expressions of partisan viewpoints by a legislative candidate in the context of an approaching election may merit disclosure under the Act. In the instant matter the Commission concludes that it would require additional facts to determine if the Act should be applied.

Also unknown to the Commission are the factors that control the timing of the proposed letter. The Commission understands from the text that the vote that the Senator is publicizing was taken several months ago. The fact that the author has chosen this time to communicate the author's position on the issue places it squarely before the electorate in the time frame of the election campaign.

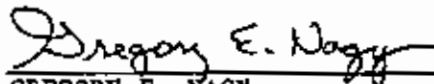
Finally, the Commission does not know whether the election opponent of the Senator was a member of the Assembly at the time that the vote on the tax issues was taken. The Commission understands that the Senator will include with the letter photocopies of the Senate and Assembly voting machine tallies. Therefore, if the opponent was a member of the Assembly, the opponent's vote will be circulated at the same time as the vote of the Senator. The Commission believes that such a circumstance would tend to support an ultimate conclusion that the communication was campaign related.

For the reasons stated herein, the Commission is unable on the limited fact record before it to express any opinion whether the cost associated with the letter submitted can be deemed as reportable campaign expenditures under the Act.

Very truly yours,

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

By:



GREGORY E. NAGY  
Staff Counsel

GEN/ck

ENCLOSURE