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October 5, 1983

Honorable Jimmy Zangari
Assemblyman, District 28
1134 Clinton Avenue
Irvington, New Jersey 07111

ADVISORY OPINION NO. 13-1983

Dear Assemblyman Zangari:

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 New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) requires the reporting of funds raised at a testimonial dinner in your honor. For the reasons stated herein, you are advised that the reporting requirements are applicable to this event.

You have written to the Commission that on October 12, 1983 two fund raising events will be conducted in your behalf at a local restaurant. One of these functions will have as its purpose the solicitation of contributions to promote your candidacy for State Assembly in the November 8, 1983 general election. The contributions received for this event will be deposited in a campaign depository maintained on behalf of your candidacy, and the Commission understands that you do not raise any question as to the applicability of the reporting requirements of the Act to this function.

The second event will be conducted on the same evening in a different room of the same restaurant. This event is described as the "Jimmy Zangari Testimonial." In your letter of inquiry, you have stated that the arrangements were made ". . . by my close personal friends in order to raise money to purchase a car for me." You further state that the funds raised will not be used ". . . to further my political ambitions in any way and will be used for the above described purpose (purchase of the automobile) only." It is in regard to this testimonial event that you have inquired whether the reporting requirements of the Act are applicable.

You have submitted with your inquiry copies of three documents, as follows:

1. A one-page letter on letterhead stationery for the "Jimmy Zangari Testimonial," bearing a photograph of yourself, and written over the name of Elmer J. Herrmann, Jr., Esq.; apparently a principal organizer of the testimonial event. In his invitation, Mr. Herrmann makes several laudatory references to your performance as a member of the State Assembly, as well as to an ". . . exceptional record of public service."

2. A reservation card for the recipient to place a ticket order for the "Jimmy Zangari Testimonial." The reservation form contains the following statement: "Because we only have a short time to show 'Jimmy' we can give him all the support he needs and deserves, please respond as soon as possible. Upon receipt of this form, your tickets will be mailed."

3. A ticket for the "Cocktail-Buffer Reception honoring Assemblyman Jimmy Zangari."

Neither the invitation letter, the reservation card or the ticket indicate that the revenues received from the sale of tickets will be dedicated for any particular purpose. The Commission believes that a fair reading of these materials could reasonably lead a recipient to believe that the proceeds would be used for the furtherance of Assemblyman Zangari's 1983 legislative campaign. The timing of the event is in close proximity to the date of general election. Further, the invitation letter not only praises qualities of the honoree, but specifically praises his record as a member of the State Assembly and applauds his service to his constituents. While the invitation letter does not specifically solicit the reader to vote for or otherwise support the 1983 legislative candidacy of Assemblyman Zangari, its recital of laudatory performance as a State Assemblyman creates the same effect. See In re Dawas, 156 N.J. Super. 195 (App. Div. 1978). The inference that the solicitation is campaign related is reinforced by the reservation card which refers to "a short time" to show support for the Assemblyman. The meaning that a recipient would normally ascribe to such a statement is that the date of the election is imminent and the Assemblyman, who is a candidate in that election, is soliciting a campaign contribution.

The Commission believes that the fact record supports the finding that the moneys being solicited for the "Jimmy Zangari Testimonial" event should be characterized as campaign contributions and therefore are subject to disclosure. The fact that the organizers have an uncommunicated intention to apply the proceeds for other purposes does not alter the terms under which the noncontributions are being solicited and given.

The Commission has previously observed that the timing of a fund raising event, and the circumstances under which solicitations are made, are factors that could determine if the reporting requirements of the Act are applicable. In Advisory Opinion No. 30-1975, the Commission ruled that the reporting requirements must be applied to the proceeds of a fund raising brunch that was conducted by a municipal political party committee only eight days prior to an election, and at which the candidates would be in attendance. More recently, in Advisory Opinion No. 11-1981, the Commission

was initially asked to consider whether reporting requirements would be required if the proceeds were deposited in a testimonial account of a State Assemblyman, who did not intend to use the proceeds for campaign purposes. However, before the opinion could be issued, the candidate advised the Commission that the proceeds were entirely or substantially transferred to a campaign account. The use of the funds for campaign purposes necessarily resulted in the conclusion that reporting was required. However, the Commission also noted that factors it would consider in the absence of a campaign use included the date of the testimonial dinner and the circumstances under which the contributions were solicited.

The stated legislative purpose of the Act is in pertinent part, ". . . to require the reporting of all contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office . . ." N.J.S.A. 19:44A-2 (emphasis added). This statutory expression of public policy makes no qualification that only those contributions that ultimately result in expenditures made to promote a candidate be reported. Rather, reporting is necessary if contributions are received to promote a candidacy, regardless of how they are ultimately expended.

The term "testimonial affair" is defined in the Act at N.J.S.A. 19:44A-3(k) as follows:

"The term 'testimonial affair' means an affair of any kind or nature including, without limitation, cocktail parties, breakfasts, luncheons, dinners, dances, picnics or similar affairs directly or indirectly intended to raise campaign funds in behalf of a person who holds, or who is or was a candidate for nomination or election to a public office in this State or directly or indirectly intended to raise funds in behalf of any State, county or municipal committee of a political party- or in behalf of a political committee . . ." (emphasis added).

The Commission believes that the terminology "directly or indirectly" signals a legislative recognition that fund raising events are not always promoted with clear, specifically stated goals or intention linking them to campaign activity. Nevertheless, where the circumstances of the solicitation justify it, as the Commission believes is the case here, public confidence in the integrity of the election process compels their disclosure he obtained.

The campaign reporting requirements for candidates and their treasurers specifically includes reporting of a "testimonial affair" under the provisions of N.J.S.A. 19:44A-16(g), which reads as follows:

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"Any report filed pursuant to the provisions of this section shall include an itemized accounting of all receipts and expenditures relative to any testimonial affair held since the date of the most recent report filed, which accounting shall include the names and addresses of each contributor in excess of \$100.00 to such testimonial affair and the amount contributed by each, the expenses incurred, and the disposition of the proceeds of such testimonial affair." (emphasis added)

Almost identical language is used to set forth reporting by a political committee conducting a "testimonial affair." N.J.S.A. 19:44A-8, fourth paragraph. The Commission again observes that the statutory language in both Sections 8 and 16 contains no qualification that only those receipts actually employed for an election purpose be reported. Rather, the plain language is that all receipts must be included.

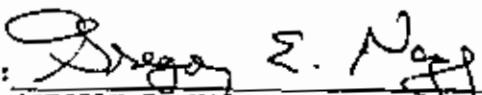
The Commission recognizes that not all fund raising affairs conducted by office holders or candidates are subject to reporting under the Act. A testimonial event, for example, which is held for a former candidate and is not in relation to any election and not for the purpose of raising funds to cover any part of the expense of a candidate in a former election, is not subject to reporting. The Act contains specific provisions for reporting of a "testimonial affair" in a post-election setting. N.J.S.A. 19:44A-18. However, as the Commission has noted, in this case the affair is being conducted prior to the election, and the contributions have been solicited in a campaign setting.

The Commission concludes that the reporting requirements of the Act are applicable to the "Jimmy Zangeri Testimonial." However, the Commission expresses no opinion whether the reporting should be undertaken by the candidate and his campaign treasurer pursuant to N.J.S.A. 19:44A-16, or by the organizers of the affair in their capacity as a political committee aiding or promoting your 1983 legislative general election candidacy. Assuming that the contributions and expenditures relevant to the event are not passed through any campaign bank depository maintained on behalf of your candidacy and therefore not subject to the control of your campaign treasurer, it would appear that the reporting obligation would fall upon the organizers of the event as a political committee.

By requiring the reporting of the financial activity of the testimonial committee, the Commission has not concluded that the committee's receipts should be considered "campaign funds". Rather, it is the circumstances of the event which compel disclosure in the context of the election. If any of the funds of the committee are used for campaign activity, all of the receipts may take on the character of campaign funds. In such a case, the use of the committee's funds for non-campaign purposes would raise serious issues concerning whether such expenditures represent an improper personal use of campaign funds.

Very truly yours,

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

By: 
GREGORY E. NAGY