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October 13, 1983

Dr. Gerald Cardinale
Senator, District 39
350 Madison Avenue
Cresskill, New Jersey 07626

Advisory Opinion No. 15-1983

Dear Senator Cardinale:

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 certain expenses incurred in connection with your opposition to the reappointment of a judge of the Superior Court of New Jersey are subject to the campaign reporting requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, "the Act").

You are a candidate for re-election to the State Senate in the 39th Legislative District in the general election to be conducted on November 8, 1983. You recently opposed the reappointment of a judge to the Appellate Division of the Superior Court, and your opposition received considerable public attention. In your inquiry, you state that your opponent in the legislative election has criticized your position on the reappointment, and the Commission notes that your position on that reappointment became and is an issue in your current re-election campaign.

You have written the Commission that disbursements for research, travel and advertising were made in connection with your position on the reappointment issue. The advertising referred to in your letter consisted of advertisements in six newspapers which concerned your position on the reappointment. Some of the newspaper advertisements were placed in newspapers that are not circulated in your legislative district.

The Commission has reviewed the text of an advertisement that appeared in the "The Record," a Bergen County newspaper, published on September 30, 1983. The advertisement contained the following notice: "Paid for by Friends of Cardinale, Fred Whalley, treasa." The Commission notes that on August 18, 1983, a Designation of Campaign Treasurer and Depository (Form D-1) was filed under the name "Friends of Gerald Cardinale Comm." and Fred J. Whalley, 156 E. Linden Ave., Dumont, New Jersey, was listed as the campaign treasurer. The Commission presumes the text of the advertisement was identical in all the newspapers in which it was published.

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You have advised the Commission that in some cases you paid these expenses from your personal resources. Also, you made personal advances with respect to the advertisements. The Commission has been orally advised by you that your campaign treasurer was unavailable to write checks from your campaign fund and therefore you gave your personal check to secure the services of an advertising agency to prepare and place the newspaper advertising. Assuming the advertising expense is reportable, you have asked whether you may report advances paid by yourself as loans to your campaign.

From these facts the Commission concludes that the expenditures related to the reappointment issue are subject to the reporting requirements of the Act, including expenditures undertaken even prior to the emergence of this topic as a campaign issue. The declared public policy of the Act is to accomplish reporting of expenditures "to aid or promote" the election or defeat of a candidate. N.J.S.A. 19:44A-2. It is clear that the reappointment of Judge Sylvia B. Pressler became an issue in your current campaign for re-election, and that the expenditures in question could be characterized as made in aid of your candidacy. As such, expenditures related to that issue must be disclosed in the 25-day pre-election report to be filed on behalf of your legislative candidacy.

You have pointed out that some newspaper advertisements were placed in newspapers that are not circulated in the legislative district in which you are a candidate. However, you also have written that statements made on this issue in other parts of the State were "coming back to my district . . ." It appears to the Commission that the advertisements represent a unitary, coordinated effort to influence public opinion not only within the 39th legislative district, but also in other areas of the State that were deemed most likely to result ultimately in a benefit to your candidacy.

In addition to the fact that these expenditures promoted your candidacy, the Commission notes that the advertisements bore the name of your campaign committee and treasurer. This notice gives the distinct appearance that the advertisements are in fact campaign literature, and that the "paid for" notice is made in conformity with the requirements of N.J.S.A. 19:34-38.1 et seq. The Commission infers from this notice, and from your characterization of payments you personally have made as "advances," that your campaign fund will ultimately assume these expenses. Accordingly, the use of campaign funds, or the extension of credit secured by campaign funds for any expenditure for any purpose necessitates reporting of that expenditure. N.J.S.A. 19:44A-16(a).

The Act requires that campaign expenditures be made through the campaign treasurer or his deputy. N.J.S.A. 19:44A-11. Assuming adequate campaign funds are on hand, and further assuming it is your intention to be reimbursed for your advances, the campaign treasurer should forthwith make disbursements to you for reimbursements. These disbursements must disclose not only yourself as the recipient, but must also identify the names and addresses of the persons or parties who received advances from you, and the amount, date and purpose of each advance. If funds are not available for reimbursement,

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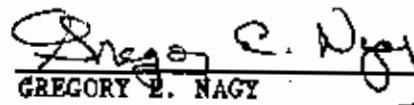
you must identify yourself as a lender on Schedule C of Form R-1, and you must list yourself as an outstanding obligee of the campaign on Schedule E, again listing the pertinent information for each advance. Finally if it is your intention to contribute all or some of the advances to your campaign, you must identify yourself as an in-kind contributor on Schedule A of Form R-1, again disclosing the pertinent information for each advance you are contributing.

The Commission wishes to remind you that its staff stands ready to assist you or your treasurer in the preparation of your campaign reports should you wish to discuss in person or by telephone any question that may arise.

Very truly yours,

Election Law Enforcement Commission

By:


GREGORY E. NAGY
Staff Counsel

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