



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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September 27, 1989

Mary Annie Harper, Aide
Legislative Office of
Frank A. LoBiondo
Assemblyman, 1st District
106 North Main Street
Cape May Court House, NJ 08910

Advisory Opinion No. 22-1989

Dear Ms. Harper:

The Commission has directed me to issue the following response to your request for an advisory opinion, which request was received on September 19, 1989. You have asked whether the costs of circulating two press releases, copies of which you have submitted and are hereby incorporated by reference in this advisory opinion, are subject to the disclosure requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, et seq. (hereafter, "the Act").

You have written that Assemblyman Frank A. LoBiondo (1st District), a candidate for reelection in the 1989 general election, wishes to circulate to his constituents two press releases announcing his selection as chairman of the Assembly Economic Growth, Agriculture and Tourism Committee. You have asked whether the costs associated with the circulation of the press releases would be construed as a reportable campaign contribution to the reelection candidacy of Assemblyman LoBiondo if paid for by the State of New Jersey.

Initially, the Commission notes that case law precedent in this State has upheld the position that the costs of a communication promoting a candidate which communication is circulated to voters prior to an election can be deemed subject to campaign reporting requirements notwithstanding the absence of any specific exhortation to vote for that candidate. Therefore, the costs of a communication containing laudatory statements about a legislative candidate paid for by a local utility authority and circulated to voters in that candidate's legislative district were held to be a reportable campaign contribution to the candidate from the authority; In re Davea, 156 N.J. Super. 195 (App. Div. 1978). Also, the costs of a newsletter containing favorable biographies of three school board candidates which appeared prior to a school board election in a publication paid for and distributed by the school board were held to constitute reportable campaign contributions to the candidate from the board; ELEC v. Brown, 206 N.J. Super. 206 (App. Div. 1985).

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Subsequent to these decisions, the Commission promulgated earlier this year a regulation setting forth criteria to determine whether a communication is "political" and therefore subject to reporting; see N.J.A.C. 19:25-11.10 (copy enclosed). Of particular relevance here are the criteria set forth in subsection (b) for determining when a communication not containing a specific exhortation to vote for a candidate shall be nevertheless deemed as political. These criteria are;

"1. The communication is circulated to 10 or more persons and contains a statement or reference concerning the governmental or political objectives or achievements of a candidate in an upcoming election;

2. The communication is circulated to an audience that is comprised substantially of persons eligible to vote for the public office being elected in the upcoming election; and

3. The communication is circulated fewer than 60 days before the date of any election in which the candidate referred to is seeking elected office,..."

(N.J.A.C. 19:25-11.10(b))

In regard to paragraph (1) above, you have stated that the press releases will be circulated to more than 10 persons. The Commission notes that the texts of the press releases set forth governmental objectives and achievements of Candidate LoBiondo. Specifically, both texts cite the candidate's "legislative record" and "... his work in the Assembly Republican Majority..." Also, the texts describe legislative objectives such as "...his support for the State's Farmland Preservation Program..." and "...the State's Urban Enterprises Zone Program..." The texts also contain a laudatory testimonial from the Assembly Majority Leader. The overall result is that the text has the effect of promoting the candidacy of the Assemblyman, as was the case in the Daves, supra., and Brown, supra., opinions.

In regard to paragraph (2) above, you have orally advised the Commission staff that you anticipate mailing approximately 1,000 copies of the press release to the following constituents within the First District:

1. All businesses within urban enterprises zones (approximately 700);
2. All elected officials (approximately 150);
3. All members of the Southern Shore Region Tourism Council (approximately 60);

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4. Members of local Hotel and Motel Associations; and
5. Presiding officers and board members of all local Chamber of Commerce Associations.

The Commission believes that circulation to some 1,000 persons within the First District will reach an audience comprised substantially of persons eligible to vote for the Assembly seat. The Commission notes that in the 1987 general election, 56,509 votes were cast in the District out of 101,724 registered voters. A communication to 1,000 persons within the district represents a substantial portion of those voters.

Finally, the circulation will occur within 60 days of the date of the November 7, 1989 general election in which the Assemblyman is a candidate for re-election, satisfying the standard set forth in paragraph 3 above.

Nothing in the facts presented in this request suggest that the information in the press releases is necessary for constituents so that they may make applications for a government program, and therefore the exemption contained in subsection (c) of the regulation is inapplicable.

For these reasons, the Commission concludes that pursuant to N.J.A.C. 19:25-11.10 the costs associated with circulation of these press releases are subject to campaign reporting as costs of "political communications." Therefore, to the extent such costs are borne by the State of New Jersey, the State should be disclosed as a contributor in the campaign reports filed by Assemblyman LoBlondo.

The Commission makes no determination as to whether State funds provided to a legislator for district office use may be appropriately applied for this purpose. The Commission has jurisdiction to issue advisory opinions limited to the provisions of the Reporting Act; see N.J.S.A. 19:44A-6(f). Therefore, we refer you to the administrative offices of the General Assembly for further guidance.

Thank you for this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: Gregory E. Nagy
GREGORY E. NAGY

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Enclosure