



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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October 5, 1981

Zulima V. Farber, Comptroller
Lowenstein, Sandler, Brochin,
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65 Livingston Avenue
Roseland, New Jersey 07068

ADVISORY OPINION No. 42-1981

Dear Ms. Farber:

Your letter received September 28, 1981 requesting an advisory opinion from the Election Law Enforcement Commission has been considered by the Commission and referred to me for response. You have asked whether the Degnan '81 Committee, Inc., the principal campaign committee of John Degnan who elected to receive public funds in the 1981 gubernatorial primary election, may make a loan to a county political party committee for use of candidates in the 1981 general election. You have also asked whether such a loan, if permissible, would be included in the calculation of expenditures in aid of Mr. Degnan's candidacy made for the purpose of determining spending limit compliance. For the reasons stated herein, you are advised that the contemplated loan, to be made from campaign funds remaining from the 1981 primary campaign, cannot be made and funds remaining after the discharge of lawful obligations must be paid into the public fund by December 2, 1981. In view of this result, your inquiry concerning expenditure limits is moot.

The Degnan '81 Committee, Inc., was designated by Mr. Degnan as the principal campaign committee for his campaign for nomination for election to the office of Governor in the June 2, 1981 primary election. The most recent report filed by the Degnan '81 Committee on August 17, 1981 discloses that contributions totalling \$506,175.50 were raised for that campaign. Mr. Degnan qualified for and elected to receive public funds. A total of \$382,424. of these contributions were accepted by the Commission for matching with public funds, and a total of \$599,975.80 of public funds, the maximum permissible under N.J.S.A. 19:44A-33(a), was paid out to the Degnan '81 Committee. There is no balance remaining in the "public fund account" of the Degnan '81 Committee, but a balance of \$15,933.92 remains in accounts maintained for other than public funds.

In publicly financed election campaigns, the State has a statutory interest in the ultimate disposition of campaign funds. This interest is set forth in N.J.S.A. 19:44A-35(c), which provides as follows:

"Moneys received by a qualified candidate from the fund for election campaign expenses may be retained for a period not exceeding 6 months after the election for which such moneys were received in order to liquidate all obligations to pay expenses for the purposes permitted by this section which were incurred during the election campaign. All obligations having been liquidated, all moneys remaining available to any qualified candidate, shall be paid into the fund, except that no candidate shall pay into the fund moneys in excess of moneys received from the fund."

The Commission cannot agree that a loan after the date of the primary election to a political party committee for the benefit of candidates in the 1981 general election is in any sense an obligation incurred during the 1981 primary election campaign. The Commission understands the above-cited statute to require that both public funds and funds from other than public sources that remain after the date of an election shall be paid into the State fund after liquidation of campaign expenses. If the return or pay back to the State fund was limited strictly to public funds, then the qualification in the statute that no candidate shall pay back an amount in excess of public moneys received would have no meaning. Without the possibility of reaching funds from other than public sources, a pay back or return from remaining campaign funds could never logically exceed the public funds released to the campaign.

Commission Regulation N.J.A.C. 19:25-16.33 provides as follows:

"All moneys received by a qualified candidate from the public fund for primary election campaign expenses remaining after the liquidation of all lawful obligations with respect to that election shall be repaid to the commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such primary election. All moneys, other than moneys received from the public fund, used by the candidate to obtain matching funds and remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such primary election;

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provided, however, that nothing herein contained shall require any candidate to pay into the public fund a total amount of moneys in excess of the total amount of moneys received by such qualified candidate from the public fund."

Applying the above-quoted regulation to the Degnan '81 Committee, the Commission finds that although there is no balance remaining in the public fund account, the amount of \$382,424 which the Commission accepted for match must be returned to the State fund to the extent any balance remains after payment of obligations for expenses incurred in aid of the 1981 primary candidacy of Mr. Degnan. Such payment to the State fund must be made by December 2, 1981, a date six months after the primary election.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
GREGORY E. NAGY
Staff Counsel

GEN:cej