



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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January 3, 1984

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

Advisory Opinion No. 19-1983

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 the expense of newspaper advertisements that appeared over your name two days prior to the November 8, 1983 general election must be reported as a campaign expenditure.

You have submitted a copy of a text of newspaper advertisements that appeared in three New Jersey newspapers on November 6, 1983. These newspapers were the "Star-Ledger" (Newark), the "Home News" (New Brunswick) and the "Passaic Herald". The text urges readers to vote "yea" in favor of judicial reform and makes reference to your recent opposition to the reappointment of a judge to the Appellate Division of the Superior Court. Further, the text specifically notes that State Senators Carmen Orechio, Joseph Hirkala and James Bornheimer supported the reappointment of the judge you opposed and therefore are not members of the "Yes Club". The text notes that the three senators are Democrats. The advertisement appears over your name, which indicates you are a State Senator from the 39th Legislative District.

The Commission infers from the facts given by you that the advertisements were placed in newspapers that principally circulate in the legislative districts of the three State Senators identified in the text. These Senators were seeking re-election in legislative districts other than the one you represent, i.e. the 39th District which comprises a part of Bergen County.

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The New Jersey Campaign Contributions and Expenditure Reporting Act N.J.S.A. 19:44A-1 and following ("The Act") contemplates that expenditures made or incurred to support a candidate in any election must be made through the duly appointed campaign treasurer of the candidate, and must be reported by the treasurer and candidate. N.J.S.A. 19:44A-11; 19:44A-16. The public policy of the Act is to achieve the reporting of expenditures which are made "to aid or promote" the election or defeat of a candidate. N.J.S.A. 19:44A-2. The Commission is bound to administer the Act in light of the court decisions, such as Buckley v. Valeo, 424 U.S. 1 (1976) and the cases following it, which restrict the disclosure which can be required with respect to certain kinds of political speech. In the absence of a showing that your activity is part of the campaign effort of the opponents of the senators whom you named in your advertisement, the Commission may not require disclosure with respect to that advertisement, since the advertisement does not explicitly call for the defeat of the named senators or the election of their opponents, and involves a matter which was a public issue.

The Commission has considered the additional question whether reporting of the expense of the advertisement is required by the Act with respect to your own candidacy. The text of the advertisements bore your name, identified you as a State Senator from the 39th Legislative District, appeared two days prior to the date of the November 8, 1983 general election and addressed a subject that was clearly perceived by the public as an issue in your campaign. The advertisement did not specifically urge voters to cast their ballots on your behalf. Nevertheless, the Commission would have no difficulty in concluding that the advertisements, if circulated among voters in your Legislative District, constituted campaign expenditures. The Commission has found that publications distributed by incumbent office holders seeking re-election can be campaign expenditures even in the absence of an express reference to a forthcoming election, and that decision has been sustained by our State Courts. In re Dawes, 156 N.J. Super. 195 (App. Div. 1976).

In the circumstances of this case, however, the Commission is advised that the Newark Star Ledger has a Sunday circulation of approximately 1,350 within the 39th Legislative District, out of a total Sunday circulation of the newspaper of 608,758. Given that percentage, the distribution of the circulation of the newspaper in your Legislative District is regarded as de minimis. It is the understanding of the Commission that

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the other two newspapers have no measurable circulation in the 39th Legislative District. Accordingly, the Commission has concluded on the facts represented by you that the advertisement or reproduction of it were not circulated or otherwise available in any substantial manner to voters in your District, and that the cost of that advertising did not aid or promote your re-election candidacy and is not reportable.

You have also inquired whether the cost of approximately 300 letters sent by yourself to persons residing in the legislative districts of the senators identified in the advertisements must be reported by yourself as campaign costs. You have not provided the Commission with a copy of a text of these communications, but you have advised the Commission that they do not make any reference to any election, and do not urge persons to vote for or against any candidate. The persons receiving these letters were not residents of the 39th Legislative District. For the reasons set forth above, the Commission concludes that the expenses you incurred for these letters are not reportable by yourself as campaign expenditures.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By Gregory E. Nagy
GREGORY E. NAGY
Staff Counsel

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