



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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February 20, 1990

Honorable Raymond J. Zane
Assistant Majority Leader
New Jersey Senate - District 3
The White House
39 South Broad Street
Woodbury, New Jersey 08096-4626

Re: Advisory Opinion No. 01-1990

Dear Senator Zane:

The Commission has directed me to issue the following response to your request for an advisory opinion, which request was received on January 12, 1990. You have asked whether pursuant to the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., (hereafter, "the Act") you may use surplus campaign funds remaining unexpended from a prior candidacy for a possible future federal or State election candidacy. Also, you note that you may conduct a fund-raising event within two or three months, and you have asked what reporting requirements will arise.

You write that you are considering the possibility of either seeking election to the United States Congress in 1990, or reelection to the State Senate in 1991, and you are contemplating employing surplus campaign funds remaining unspent from your 1987 general election State Senate campaign to explore the possibility of either the State Senate or United States Congressional candidacy.

In regard to the surplus funds remaining from your 1987 general election State Senate candidacy, the Commission notes that on February 2, 1988, you filed a campaign report (Form R-1) certified as final which disclosed an unexpended balance of \$85,217.01. Of this sum, \$83,000 was used to purchase four separate six-month certificates of deposit, and the remaining \$2,217 was placed in a checking account. The report indicated that the certificates of deposit and the checking account were established under the name "Raymond J. Zane Campaign Fund." There were no reported outstanding obligations.

Surplus campaign funds remaining unexpended at the conclusion of a candidacy may be retained by a candidate ". . ." in a separate campaign account established pursuant to N.J.S.A. 19:44A-12 for a future election

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campaign of such candidate. . ."; see N.J.A.C. 19:25-7.4(b)(6) (copy enclosed). The statute referenced in the regulation, i.e., N.J.S.A. 19:44A-12, requires a campaign treasurer of a candidate to make and retain a written record of all funds received as contributions to the candidate, and further requires that all funds so received must be deposited by the campaign treasurer into a campaign depository account of the candidate designated, "Campaign Fund of (name of candidate or committee)" no later than the tenth calendar day following the receipt of any such funds.

In the event that a candidate retains surplus campaign funds from a concluded State election for possible use in some future State election, that candidate acquires a continuing obligation to disclose the ultimate use to which the retained funds will be put. If the retained funds are in fact expended in a future State election, the obligation will be met by the disclosure of that fact in the campaign reports filed by the candidate pursuant to N.J.S.A. 19:44A-16 at the time of the future election. However, if the retained funds are spent for some other ultimate purpose, such as a federal election, or any other purpose permitted by N.J.A.C. 19:25-7.4, the candidate must file with the Commission an amended final report for the election which generated the surplus funds, and the amended final report must disclose the ultimate disposition of the retained surplus funds.

The final report filed on behalf of your 1987 State Senate candidacy indicated that the surplus campaign funds have been invested in certificates of deposit, or deposited in a checking account, all of which bear the designation "Raymond J. Zane Campaign Fund." Such a designation is in conformity with the requirement of N.J.S.A. 19:44A-12, which mandates that a campaign depository account for a future state campaign be designated "Campaign Fund of (name of candidate or committee)." However, because you are retaining surplus campaign funds for possible use in a future State election, you must file as soon as practicable a designation of a campaign depository (Form D-1) pursuant to N.J.S.A. 19:44A-9.

The Commission recognizes that at this point in time you have not declared your candidacy for either the 1990 Congressional election, or the 1991 State Senate election. Nevertheless, as noted above you must file with the Commission one or more designations of the campaign depository or depositories (Form D-1) pursuant to N.J.S.A. 19:44A-9. A copy of the Form D-1 is enclosed for your convenience. You should file a Form D-1 for each account or certificate of deposit which is comprised in whole or in part of surplus campaign funds.*

* The Commission notes that the great majority of the surplus campaign funds have been invested in certificates of deposit rather than deposited in a specific campaign depository bank account. As the Commission has noted in prior advisory opinions, candidates may choose to invest campaign funds in appropriate investment vehicles without violating any provisions of the Act as long as there is full disclosure of the specific investment vehicles that have been selected; see Advisory Opinions 02-1989 and 34-1980 (copies enclosed).

The establishment of a campaign depository and the filing of the Form D-1 necessitate that some future State election campaign be identified. Since you have indicated you are considering a reelection candidacy for State Senate, the Commission presumes that either the 1991 primary election or the 1991 general election will be the election designated on the Form D-1 that you file. Such a designation should not be construed as a formal declaration of candidacy. The purpose of the designation is merely to permit a candidate to retain surplus funds from a prior State election for the possible use in the indicated future State election. By establishing such a campaign account and filing the Form D-1, you will acquire campaign reporting obligations in regard to the future election that you designate. Specifically, you will be required to file the candidate preelection and postelection reports as set forth in N.J.S.A. 19:44A-16 for such future election, unless in the interim an ultimate disposition of the retained funds is made and you disclose that fact by amending your final 1987 general election report.

The Commission recognizes that you may never become an actual candidate for reelection to the State Senate. Rather, you may expend all or some of the retained funds prior to that date for a federal Congressional candidacy. Under such circumstances, you may entirely extinguish your reporting obligations for the 1991 State election by filing with the Commission an amended 1987 general election final report accounting of the ultimate disposition or use of the surplus campaign funds.

Please note that nothing contained in this Advisory Opinion is intended to express any opinion in regard to restrictions that may exist under federal law on the transfer of State campaign funds to a federal campaign, or on federal campaign reporting requirements imposed under federal law. In regard to campaign reporting requirements and other restrictions existing under federal law, you may wish to contact the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20563 (800-424-9530) to obtain specific instructions for federal candidates.

The Commission has considered the possibility that you may choose not to undertake either a 1990 Congressional candidacy, or a 1991 State Senate reelection candidacy. Under those circumstances, at the time you make the determination not to be a candidate you would be required to either file a superseding Form D-1 indicating a State election beyond 1991 for which the funds were being retained, or file an amended 1987 general election final report disclosing what ultimate disposition was made of the surplus funds pursuant to N.J.A.C. 19:25-7.4.

With regard to your inquiry concerning possible fund-raising activity, if proceeds that you anticipate raising may possibly be applied towards a 1991 State candidacy, both the contributions you receive and the expenditures you make in regard to the fund-raising activity should be made from an account subject to campaign reporting under the Act. Specifically,

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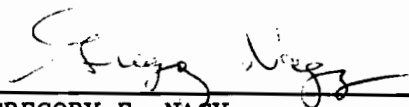
you may use an account in which your surplus funds are being held, and for which a Form D-1 has been filed. Contributions made into and expenditures made from that account will be included in the information filed in your 29-day preelection report (Form R-1) for the 1991 election designated in your Form D-1.

If you determine that under no circumstances will the proceeds generated by your fund-raising event be used for any State candidacy but rather will be applied exclusively to a federal candidacy, you have no reporting obligation under the Act for that event.

Thank you for your inquiry, and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: 

GREGORY E. NAGY
Legal Director

Enclosures
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