



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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July 21, 1993

James Gotti
c/o The Citizen
157 Luke Street
South Amboy, New Jersey 08879

Advisory Opinion No. 06-1993

Dear Mr. Gotti:

The Commission has considered your request for an advisory opinion at its meeting of July 20, 1993, and has directed me to issue the following response. You have informed the Commission that you are the publisher of a bi-weekly newspaper, The Citizen, in South Amboy (Middlesex County). You have asked whether expenditures related to columns or "Editorials" published in your newspaper which are written by a Democratic Assembly Candidate, John Wisniewski, and a Republican Assembly Candidate, Stephen Mikulak, must be characterized as non-monetary contributions ("in-kind" contributions) by you on behalf of those candidates.

The Commission notes that for the 1993 general election John S. Wisniewski is a Democratic candidate for General Assembly in the 19th Legislative District, that Stephen A. Mikulak is a Republican candidate for General Assembly in the 19th Legislative District, and that Marion Lipira and Theodore T. Moran are independent candidates for Assembly in the 19th Legislative District.

You have provided the Commission with "tearsheets" of sample articles which appeared recently in The Citizen. Mr. Wisniewski's column is entitled "As I See It" and appears on a page called "Viewpoint." Mr. Mikulak's column is entitled "Capital Comments." You have further advised Commission staff that neither Mr. Wisniewski nor Mr. Mikulak owns any interest in or exerts any control over publication of The Citizen. Neither receives compensation for the articles. The decision to include either the "As I See It" or "Capital Comments" column is strictly your determination as publisher.

The Commission is of the opinion, for the reasons expressed below, that First Amendment protection of free speech and commentary by the press extends to publication of the two columns in The Citizen and precludes

imposition of campaign reporting requirements under the New Jersey Campaign Contributions and Expenditures Reporting Act (hereafter, the Campaign Reporting Act) upon your expenditures related to those columns. The Commission believes that to find otherwise would deprive bona fide news organizations of status which is guaranteed to them in the United States Constitution.

The Commission has historically acknowledged that it would be an impermissible intrusion upon First Amendment guarantees of freedom of the press if the Commission were to be asked to make judgments concerning the content of communications appearing in the print or broadcast media. Therefore, regulations adopted by the Commission have provided for protection of free speech in the press by exempting from the definition of an "expenditure" on behalf of a candidate or committee:

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication ... unless the facility is owned or controlled by any continuing political committee, political committee, or candidate....

N.J.A.C. 19:25-1.7

Therefore, when an article or item appears in an independent bona fide news outlet and when that news outlet is not controlled by a candidate or other entity required to report under the Campaign Reporting Act, expenditures relating to the article or item cannot be characterized as "in-kind" contributions.

In the absence of the exemption contained in the Regulations, the Commission would continually be asked to review the content of all forms of news items in both the print and broadcast media. The Commission would have to determine whether an article, editorial, cartoon, commentary, letter to the editor, or news broadcast was sufficiently "political" to require that it be viewed as an "in-kind" contribution (i.e., a non-monetary contribution) by a print or broadcast news outlet for or against a candidate. Reporting obligations under the Campaign Reporting Act would attach to an item if it were found to be an "in-kind" contribution and the print or broadcast news outlet which carried the item or story would be required to report the expenditure.

The Commission does not believe that such a result was intended nor that it would be sustained as constitutional in the courts. In reaching this conclusion, the Commission has relied upon a similar exemption from the definition of "expenditure" which appears in federal campaign law and which attempts to protect the freedom of the press to report on political campaigns. Absent a showing that a news outlet is controlled by a candidate or other reporting entity, and is therefore not exercising independent press judgment concerning the items it carries, the Federal courts have held that the Federal Election Commission (FEC) may not undertake investigation of an item carried by a news outlet, and therefore that no reporting obligations attach to expenditures by a news outlet related to independent news items (see Reader's

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Digest Association v. Federal Election Commission, 509 F.Supp. 1210 (S.D.N.Y. 1981) and Federal Election Commission v. Phillips Publishing, Inc., 517 F.Supp. 1308 (1981)).

Applying the test articulated above to the information you have provided, the Commission is of the opinion that the articles or columns you have described are not "in-kind" contributions on behalf of candidates and do not require reporting pursuant to the Campaign Reporting Act. The Citizen is not owned by a candidate or other reporting entity and the decision to publish the columns or articles is made by you in your capacity as an independent press entity.

You have also asked whether the "Fairness Doctrine" applies to publication of your newspaper. Please be advised that federal law under the jurisdiction of the Federal Communications Commission (FCC) governs such concepts as "equal time" which apply to broadcast outlets. You may wish to contact the FCC to verify that information.

The Commission thanks you for your inquiry.

Very truly yours,



NEEDA GOLD MASSAR
Deputy Legal Director

NGM/jah

A.O. 06-1993

The Citizen

"Your neighborhood in print since 1882"

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May 28, 1993

ELEC RECEIVED

JUN - 1 1993

Gregory E. Nagy, Esq.
New Jersey Election Law Enforcement Commission
28 West State Street - 12th Floor
CN - 185
Trenton, N.J. 08625-0185

Dear Mr. Nagy:

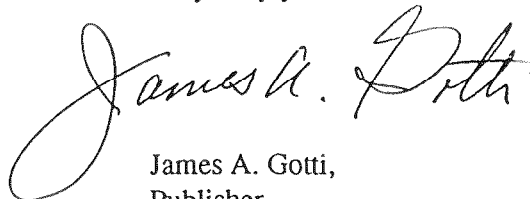
I am the publisher of a long established (since 1882) bi-weekly newspaper, *The Citizen*, located in South Amboy, New Jersey. I am writing to request clarification from the New Jersey Election Law Enforcement Commission in the form of an Advisory Opinion pursuant to *N.J.A.C. 19:25-14.3*.

An independent candidate for the General Assembly has written accusing me of making unreported in-kind campaign contributions to one of the Democratic and one of the Republican candidates for General Assembly. I believe that he is incorrect, but I am seeking your advisory opinion to be sure.

The Democratic candidate, John Wisniewski, has written an Editorial for *The Citizen* for approximately eighteen (18) months. His Editorial deals with current local, county, state and national issues. He neither refers to or mentions in his column that he is a candidate, nor does he discuss the names of *any* of his opponents. The Republican candidate, Stephen Mikulak, does write about issues in terms of Republican vs. Democrat, but again, he has thus far not mentioned his candidacy.

N.J.A.C. 19:25-1.7 excludes from the definition of expenditures "[a]ny cost incurred in...carrying...[an] editorial by any...newspaper." Since carrying an Editorial is not an expenditure, it cannot be considered an in-kind contribution. It is further my understanding that the so-called "Fairness Doctrine" applies only to electronic media, so that I am under no obligation to provide equal time to anyone. Based upon the foregoing, it is my understanding that I have done nothing improper in publishing *The Citizen* as I have. However, I would appreciate your advisory opinion to confirm this.

Very truly yours,



James A. Gotti,
Publisher