



State of New Jersey

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September 15, 1993

Edward Gross, Esq., Counsel
New Jersey Republican State Committee
P. O. Box 188
East Brunswick, New Jersey 08816

Advisory Opinion No. 07-1993

Dear Mr. Gross:

The Commission has directed me to issue the following response to your request for an advisory opinion. You have asked whether costs incurred by the New Jersey Republican State Committee (hereafter, RSC), for a "direct mail" campaign on behalf of Republican 1993 general election legislative candidates must be allocated to the contribution and expenditure limits of the Republican 1993 gubernatorial general election candidate if the "direct mail" text includes the name of the Democratic incumbent governor (who is an opposing general election candidate), and/or makes unambiguous reference to the incumbent. You have provided examples (Schedule A) of the possible references using the words "Administration," "Governor," and "Florio."

For the reasons expressed below, the Commission finds that the costs of the "direct mail" campaign contemplated by the RSC would constitute a non-monetary or "in-kind" contribution by the RSC to the gubernatorial candidate of the Republican party in the 1993 general election.

The public financing provisions of the Campaign Act are intended to create a level playing field between the gubernatorial candidates in the general election. The role of the State political party committees in the gubernatorial election, which can raise funds unfettered by the \$1,800 contribution limit applicable to a gubernatorial candidate, is strictly limited. Once the primary election is concluded and a nominee is selected by a political party in the general election to run for governor, the State party committee of that political party may not make monetary or non-monetary (that is, in-kind) contributions to that gubernatorial general election candidate unless done through the establishment of a special bank account created to accept contributions subject to gubernatorial contributions limits; see N.J.S.A. 19:44A-29d. In part, that statute explicitly provides: "No State committee may make any contribution or contributions in aid of the candidacy of or in behalf of such candidate of monies not deposited in a bank account pursuant to this subsection...." Your letter does not indicate that the RSC

has established such an account, or that the funds to be used for this expenditure were contributed to the RSC in compliance with the \$1,800 gubernatorial contribution limit. Accordingly, the Commission concludes that the RSC may not make any expenditure to aid or promote the party's gubernatorial candidate, and the contemplated "direct mail" expenditure would aid that gubernatorial candidate by virtue of its references and commentary on the gubernatorial candidate of an opposing political party.

The Commission has held in previous advisory opinions that a State committee may make expenditures during the timeframe of a gubernatorial general election that promote the interests of the party as a whole, that is party-building advertising or communications; see Advisory Opinions 33-1981, 19-1989, and 21-1989. The critical determinant in permitting such communications without any resulting allocation to the party's gubernatorial candidate was the absence in the text to any reference to any of the gubernatorial candidates by name, picture, or other similar means. Such references in regard to a gubernatorial candidate exceed the interest the party has in promoting itself because they also advance the election interest of the party's gubernatorial candidate. Further, the preparation and circulation of those references in the "direct mail" communication materials will be paid for out of funds raised by the RSC not subject to the \$1,800 gubernatorial contribution limit. The Commission believes such a result jeopardizes the parity between gubernatorial candidates that the gubernatorial public financing statutes were intended to promote.

Implicit in the above-cited opinions is the understanding that a State political party committee, by virtue of its role in the promotion of its candidates in a general election, cannot be perceived as an entity independent of, and outside the control of, the gubernatorial candidate of the party. As the Commission suggested earlier this year in Advisory Opinions 02-1993 (issued to the RSC) and 04-1993, after the date of the gubernatorial primary election, the State committee is no longer free to undertake expenditures referring to an opposing party gubernatorial candidate without coming under the scope of the "political communication" requirements set forth in N.J.A.C. 19:25 11.10(b).

The Commission also cannot agree with the proposition made in your letter that the "coordinated expenditures" regulation at N.J.A.C. 19:25-15.29 is applicable to an opposing party gubernatorial candidate in the general election.

Nothing in the history of the regulation or the advisory opinions which preceded it suggests that it was intended to apply to references to an opposing party candidate. The subsection of the regulation cited by the RSC which creates the exception for certain "direct mail" expenditures permits references exclusively to the same-party gubernatorial candidate's name, not the name of an opposing party gubernatorial candidate; see N.J.A.C. 19:25-15.29(c)1. In its summary accompanying the proposed "coordinated expenditures" regulation, the Commission specifically noted that the regulation was intended to address situations in which references to the gubernatorial candidate appeared in communication expenditures by "legislative

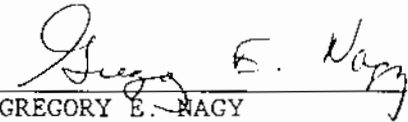
or other candidates of the same political party..." see 21 N.J.R. 1287 (May 15, 1989) (emphasis added).

The Commission concludes that should the RSC incur or make expenditures for the "direct mail" media campaign described herein, the expenditures can only be paid for by contributions which comply with the provisions of N.J.S.A. 19:44A-29d, and further the expenditures must be counted toward the publicly-financed gubernatorial candidate expenditure limit in N.J.S.A. 19:44A-7.

Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: 

GREGORY E. NAGY
Legal Director

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