



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Respond to:
CN-185
Trenton, New Jersey 08625-0185

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Counsel

March 25, 1997

Attorney General Peter G. Veniero
CN-080
Trenton, New Jersey 08625-0185

Re: Request for Advisory Opinion, ELEC File No. A.O. Request No. 02-1997


Dear Attorney General Verniro:

The Commission has directed me to refer to your office as a request for an advisory opinion the attached Advisory Opinion Request form received from Kevin G. Lynott, on behalf of JCP&L/GPV Employees PAC. Mr. Lynott asks whether or not this New Jersey PAC can receive contributions from an out-of-state PAC and a federal PAC affiliated with the JCP&L/GPV Employees without violating the restrictions on political contributions by regulated industries contained in N.J.S.A. 19:34-45.

At its March 25, 1997 meeting, the Commission directed its staff to refer this request for advisory opinion consideration to your office since that statute is not part of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., and therefore beyond the authority of the Commission to consider for advisory opinion action; see N.J.S.A. 19:44A-6f. Assistant Attorney General Mark Fleming has been kind enough in other similar requests to provide his assistance in coordinating with your office, and accordingly I am forwarding a copy of this letter to him.

Thank you for your consideration of this request. If I or my staff may be of any assistance in your consideration of this request, please do not hesitate to call upon me or the staff. Of course, the Commission would appreciate being advised of any opinion that is issued by your office.

Very truly yours,
ELECTION LAW ENFORCEMENT
COMMISSION

By: 
Frederick M. Herrmann, Ph.D.

c: AAG Mark Fleming
Kevin G. Lynott
Leslie L. Halyard



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
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Governor

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Director*

(609) 292-3212

August 8, 1997

Frederick M. Herrmann
Executive Director
Election Law Enforcement Commission
P. O. Box 185
Trenton, New Jersey 08625-0185

Re: 97-0093 – Whether the JCP&L/GPU Employees' PAC may receive contributions from an out-of-state PAC or a federal PAC affiliated with the Employees' PAC.

Dear Executive Director Herrmann:

You have asked whether the JCP&L/GPU Employees' Political Action Committee (PAC) may receive contributions from an out-of-state PAC or a federal PAC affiliated with the Employees' PAC. For the reasons which follow, you are advised that N.J.S.A. 19:34-45 prohibits the out-of-state and federal PACs from making political contributions either directly or through their New Jersey affiliate PAC so long as they receive corporate funds for administrative purposes.

The JCP&L/GPU Employees' PAC (JCP&L PAC) was organized by New Jersey-based employees of JCP&L and two affiliated companies, GPU Service, Inc. and GPU Nuclear, Inc., in 1983 for the general purpose of making contributions to political campaigns for State office in New Jersey. As required by New Jersey law, the JCP&L PAC solicits contributions from employees without the use of corporate funds from JCP&L, its parent company or any of its affiliates. See Attorney General Formal Opinion No. 14-1979 (advising that while a separate political fund contributed to voluntarily by employees of a utility who are members of a PAC is not prohibited by N.J.S.A. 19:34-45, the use of corporate funds to establish, administer or solicit contributions for the political fund is prohibited by N.J.S.A. 19:34-45).



Subsequently, the parent company of JCP&L consolidated the management employees of JCP&L with the management employees of two Pennsylvania electric utilities it holds, Metropolitan Edison Company (Met-Ed) and Pennsylvania Electric Company (Penelec). All three utilities are now doing business as "GPU Energy." As a result of the reorganization, many of the former management employees of JCP&L now work in Pennsylvania. Under the by-laws of the JCP&L PAC, these Pennsylvania-based employees are now ineligible to contribute to the JCP&L PAC. However, these employees can contribute to GPU's Pennsylvania Employees' PAC (Keystone PAC) and a GPU PAC organized to influence federal elections (Federal PAC). Both the Keystone PAC and the Federal PAC receive corporate funds for administrative purposes as allowed by Pennsylvania and federal law. The JCP&L PAC has asked the Election Law Enforcement Commission (ELEC) whether the Keystone PAC and the Federal PAC are permitted to make contributions to the JCP&L PAC or directly to New Jersey political campaigns in order to offset the loss of funding resulting from the reduction in the number of New Jersey-based management employees.

The pertinent statute, N.J.S.A. 19:34-45, provides as follows:

No corporation carrying on the business of bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in public ways granted by the state or any county or municipality, and no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to add or promote the interests, success or defeat of any political party.

As we have noted in our prior opinions interpreting this statutory provision, see, e.g., Attorney General Formal Opinion No. 4-1983, the intent of the Legislature in enacting N.J.S.A. 19:34-45 was clear. Just three years prior to the enactment of New Jersey's statute, Congress had enacted 2 U.S.C. §441(b). The concern underlying the enactment of that statute was the growing use of aggregated corporate wealth to control the election process and to influence elective officials to act in a manner favoring corporate interests over those of the general public. Curt v. Ash, 422 U.S. 66 (1975); United States v. International Union, United Auto etc., Workers, 352 U.S. 563 (1957). N.J.S.A. 19:34-45, like its federal counterpart, was plainly intended to address the same evil, corporate influence over government officials.

Indeed, the language chosen by the New Jersey Legislature could not be more clearly articulated. No corporation carrying on the business of "gas, electric light, heat or power" may make political contributions. Thus, the Legislature particularly intended to insulate elective officials from the influence of regulated industries. As we noted in Attorney General Formal Opinion No. 4-1983:

Each business listed in the act may be characterized as of a type strongly affected with a public interest. Each business has been made the subject of extensive and pervasive government regulation. Comprehensive regulatory programs, vital to the protection of the public, could become prime targets of elected officials seeking to satisfy perceived debts to corporate benefactors affiliated with a regulated industry.

Notably, since its enactment in 1930, N.J.S.A. 19:34-45 has not been amended by the Legislature. It can therefore reasonably be implied from the Legislature's failure to amend the statute that this Office's long-standing strict construction of N.J.S.A. 19:34-45 has been accepted by the Legislature. See Quaremba v. Allan, 67 N.J. 1, 14 (1975); see also State v. Dalglish, 86 N.J. 503, 512 (1981).

When viewed in the light of this compelling legislative history, it is clear that the Keystone and Federal PACs are prohibited by N.J.S.A. 19:34-45 from directly or indirectly making political contributions to candidates for political office in New Jersey. In addition to receiving contributions from employees, both the Keystone and Federal PACs accept and receive corporate funds for administrative purposes. Because the JCP&L PAC is prohibited by N.J.S.A. 19:34-45 from receiving corporate funding, it is clear that it may not accept funding from the Keystone or Federal PACs because of the corporate involvement in those PACs described above. As PACs organized under subsidiaries of GPU, Inc. and affiliates of JCP&L, the Keystone and Federal PACs are prohibited from receiving corporate funds for administrative expenses if they wish to contribute to New Jersey political campaigns. Therefore, as long as the Keystone and Federal PACs receive corporate funds, they are prohibited from making political contributions to New Jersey campaigns, either directly or indirectly through the JCP&L PAC. In keeping with the plain purpose of the N.J.S.A. 19:34-45, this result will ensure that no "political debts" are created by a regulated industry doing indirectly what it cannot do directly; that is, involve its funds in any way in the administration of a PAC which contributes to New Jersey political campaigns.

Based upon the foregoing, you are advised that as long as they receive corporate funds for administrative expenses, the Keystone and Federal PACs are prohibited by N.J.S.A. 19:34-45 from either directly or indirectly making political contributions to any candidate for political office under the government of this State or any of its political subdivisions, to any political party in this State or for any political purpose whatsoever in this State.

Sincerely yours,

PETER VERNIERO
Attorney General of New Jersey



MARK J. FLEMING
Assistant Attorney General

/mgh