



*State of New Jersey*

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Respond to:  
P.O. Box 185  
Trenton, New Jersey 08625-0185

(609) 292-8700

Web site: <http://www.elec.state.nj.us/>

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Legal Director

JAMES P. WYSE  
Counsel

July 13, 2001

James Lamb, Counsel  
Democratic Governors' Association  
Ryan, Phillips, Utrecht & MacKinnon  
1133 Connecticut Avenue, N.W.  
Suite 300  
Washington, D.C. 20036

**Advisory Opinion No. 06-2001**

Dear Mr. Lamb:

Your request for an advisory opinion on behalf of the Democratic Governors' Association (hereafter, DGA) concerning DGA's possible reporting requirements under the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Reporting Act), was considered by the Commission at its meeting of July 11, 2001, and the Commission directed me to issue the following response.

**Submitted Facts**

You wrote that the DGA is a private, nonprofit association composed of all Governors of the states and territories who are members of the Democratic Party. It is organized for the purpose of promoting Democratic policies and supporting the election of Democratic Governors. DGA conducts policy conferences for its Governor members, works with the various representatives from the Governors' states in Washington, D.C., publishes policy reports, and makes contributions to gubernatorial candidates and State political party committees. In this calendar year, the DGA made a single contribution of \$37,000 to the New Jersey Democratic Party, and anticipates making a contribution to the Democratic gubernatorial candidate in New Jersey. The Commission notes that \$37,000 is the maximum amount that a group or association is permitted to contribute to a State political party committee in New Jersey in a calendar year; see N.J.A.C. 19:25-11.2, Contribution limit chart.

According to the facts submitted by you in this request, DGA has no intention of making any further contributions to New Jersey committees or candidates in the next election following the 2001 general election.

You further stated that DGA is established to accept unlimited, voluntary contributions from individuals, corporations, PACs, labor organizations, and labor organization PACs. It deposits contributions in separate, segregated accounts that only contain contributions from similar sources. For example, DGA deposits contributions from corporations in a separate, corporate account, and contributions from individuals in a separate account for contributions from individuals. DGA then transfers funds from those accounts to separate state-specific accounts for the purpose of making contributions to that state's gubernatorial candidate or state party committee. In addition, DGA receives contributions used to defray expenses related to its policy conferences, and deposits those funds in a separate account used for conference events and related administrative expenses.

You noted that DGA is not registered as a political committee with the Federal Election Commission (FEC), nor does it file reports in this State. It is registered with the Internal Revenue Service (IRS) as a Section 527 political organization (see 26 U.S.C. 527), and therefore files periodic disclosure reports of contributors as required by the IRS.

### **Question Presented**

Is the DGA subject to the reporting and other requirements of the Act as either a "political committee," or as a "continuing political committee," as those terms are defined in the Reporting Act?

### **Commission Response**

Under the facts submitted, the Commission hereby advises that the DGA is not a political committee, or a continuing political committee, subject to the reporting and other requirements in the Reporting Act for those committees. Rather, the Commission holds that the contribution made to the State political party committee this year, and the anticipated contribution to be made by DGA to a New Jersey gubernatorial candidate are contributions from an association, not contributions from a political committee, or from a continuing political committee. Further, while the Commission does not have jurisdictional authority for enforcement of the various criminal statutes prohibiting certain corporations and casinos from contributing to New Jersey candidates or committees, the Commission wishes to bring the existence of those prohibitions to the attention of the DGA; see N.J.S.A. 19:34-33, 19:34-45, and 5:12-138. Because of these prohibitions, the DGA practice of establishing a separate account for the purpose of making contributions to candidates and committees in accordance with the laws of a specific State may also prove to be useful for contributions DGA intends to make to New Jersey candidates and committees. However, as noted, enforcement of those prohibitions lies exclusively within the jurisdiction of the criminal authorities of this State and any questions surrounding compliance should be addressed to those authorities.

### **Discussion**

The Commission finds two compelling reasons why DGA should not be deemed either a "political committee" or "continuing political committee" within the meaning of those terms in the Reporting Act.

**First**, the New Jersey election activity undertaken by DGA is episodic and only a portion of its overall activities. Requiring the DGA to report with ELEC would result in reports that included financial transactions that were not relevant to New Jersey election activity, including, for example, DGA's costs of conducting conferences, and contributions received by DGA that were used for elections in other States. In its opinion in Buckley v. Valeo, 424 U.S. 1 (1976), the United States Supreme Court examined the definition of "political committee" as that term appeared in the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* In order to avoid reading the term as applying to groups engaged purely in issue discussion, and thereby avoid a potentially overbroad and Constitutionally impermissible interpretation, the Court suggested that "political committee" be construed so that it "...need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate," Buckley, at 424 U.S. 79. To avoid a possibly overbroad application of the Reporting Act, the Commission finds that under the submitted facts the "major purpose" of DGA does not appear to be aiding or promoting New Jersey candidates or committees, and DGA should not be deemed to have recordkeeping and filing requirements as a PC or CPC.

**Second**, as a matter of statutory construction of the New Jersey Reporting Act, it appears to the Commission that a statutory interpretation of the terms "political committee" or "continuing political committee" that includes DGA under the facts submitted in this request would effectively vitiate much of the Reporting Act's contribution limit provisions.

The definition of "political committee" provides that a number of different organizations, including an organization consisting of two or more persons acting jointly, a corporation, a partnership, "or any other incorporated or unincorporated association," potentially could come within the definition's scope if the organization "...is organized to, or does, aid or promote the nomination, election or defeat of any candidate or candidates for public office..." and if that organization "...raises or expends \$1,000 or more to so aid the nomination, election or defeat of a candidate or candidates...." See N.J.S.A. 19:44A-3i. (The threshold figure of \$1,000 recited above has been indexed pursuant to N.J.S.A. 19:44A-7.1, and therefore is currently \$1,500.) Also, the definition of "continuing political committee" similarly lists those organizations listed in the "political contribution" definition, and is written in terms of the organization contributing at least \$2,500 "to aid or promotion of a candidacy of an individual (or individuals)..." Additionally, the organization "...may be expected to make contributions toward such aid or promotion (or toward the passage or defeat of a public question) during a subsequent election." See N.J.S.A. 19:44A-3n. (The threshold figure of \$2,500 recited above has been indexed pursuant to N.J.S.A. 19:44A-7.1, and therefore is currently \$3,700.)

The above definitions cannot be construed alone, but must be construed in the context of the entire Reporting Act, including contribution limits.

The contribution limit provisions in the Reporting Act establish several contributor categories in setting forth the limit on the amount that a contributor may contribute to a candidate or committee. Among those contributor categories is one specifically for a group or association. The contribution limit for a group or association is a contribution to a non-gubernatorial candidate in a New Jersey election of no more than \$2,200. (See N.J.S.A. 19:44A-11.3a, as indexed pursuant N.J.S.A. 19:44A-7.1; see also N.J.A.C. 19:25-11.2, Contribution limit chart, setting forth contributor categories and current limits.) Significantly, separate contribution categories and different contribution limits are established for a "political committee," (hereafter, PC) and for a "continuing political committee" (hereafter, CPC). A PC, or a CPC, is limited to a

contribution of no more than \$7,200 to a non-gubernatorial candidate in a New Jersey election, see N.J.A.C. 19:25-11.2.

The establishment of separate contributor categories with different contribution limits for a group or association on one hand, and for a PC on the other, inevitably leads staff to the conclusion that the legislative intent is to provide different treatment under the Act for an organization that merely contributes to candidates from its resources, and one that undertakes other election-related activities beyond solely making contributions. If that were not the case, that is if the legislative intent was that any group or association that contributes more than \$1,500 becomes by operation of the definition a “political committee,” the existence of a statutory contribution limit of \$2,200 for the group or association category of contributor serves no purpose. It becomes impossible for a group or association to make a contribution of more than \$1,500 for the simple reason that it would by operation of such a construction be metamorphosed into a PC. The contribution limit statute that specifically limits an association to the making of a contribution to a candidate of no more than \$2,200 becomes to an anomalous nullity because as a PC the association is permitted to contribute the higher amount of \$7,200 to the candidate.

The Commission notes that the anomalous result described above would not be limited to the contributor category of group or association. A corporation also is among the entities listed in the definition of “political committee,” and is also among the contributor categories set forth in the contribution limit statutes. Consequently, a corporation making a contribution of \$1,500 to a candidate in an election would also under such an argument become a PC, and similarly the corporate contribution limit of \$2,200 to a candidate in an election would be in jeopardy of becoming a nullity, effectively replaced by the PC limit of \$7,200.

It is a tenet of statutory construction that a statute should not be construed to lead to an unreasonable, absurd, or anomalous result. The statutory structure of the various contribution limits for different categories of contributors is the product of a deliberate legislative design to put in place an interrelated regulatory system intended to promote fair elections. Removing the \$2,200 limit on an association therefore threatens the entire interdependent regulatory structure, see N.J.S.A. 19:44A-2, and Findings and Recommendations of the Ad Hoc Commission on Legislative Ethics and Campaign Finance, October 22, 1990, pp. 10-11, recommending a contribution limit for “group” which is separate from and lower than the limit recommended for a PC or CPC (see attached).

Applying the above reasoning to the facts submitted in this opinion, it is apparent that DGA does not meet the definition of “political committee,” or the definition of “continuing political committee.” DGA as an association has made a permissible contribution in conformity with the contribution limit statute to a State political party committee in 2001, and anticipates making a permissible contribution to a gubernatorial candidate in conformity with the pertinent contribution limit statute. However, the Commission must emphasize that it is not the purpose of this opinion to speculate on all fact circumstances that might take DGA out of the contributor category of association and place it within the PC or CPC definitions. For example, if the DGA were to solicit contributions with the stated or principal purpose of making contributions to New Jersey candidates or committees, or if the extent of the DGA’s overall activities and expenditures made it apparent that its “major purpose” was to aid or promote New Jersey candidates or committees, the PC or CPC definitions would become applicable.

Thank you for submitting this request, and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: \_\_\_\_\_

GREGORY E. NAGY  
Legal Director

ELEC RECEIVED

JUN 28 2001



**ADVISORY OPINION REQUEST**

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity

Democratic Governors' Association

Mailing Address

430 S. Capitol SE

Washington, DC 20003

Day Telephone No.

(202) 479-5153

Evening Telephone No.

(202) 479-5153

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes

No

a. If yes, indicate in what capacity it is filing:

Candidate committee

Joint candidates committee

Political committee

Continuing political committee

Political party committee

Legislative leadership committee

Recall committee

Recall defense committee

Lobbyist

Legislative agent

Personal financial disclosure statement

Other (please describe):

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:  
None.

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

N/A

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

see attached

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts: see attached

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

see attached

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name:  
James Lamb

Mailing Address:  
Ryan, Phillips, Utrecht & MacKinnon

1133 Connecticut Ave., NW Ste. 300

Washington, DC 20036

Day Telephone No.  
(202) 293-1177

Evening Telephone No.

Fax Number:  
(202) 293-3411

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

~~XXXXXXXX~~ Attorney representing requesting person, committee or entity

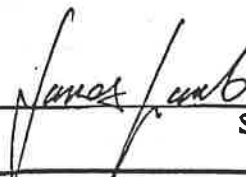
Other (please describe): \_\_\_\_\_

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

26 June 2001

Dated:



Signature



Democratic Governors' Association  
New Jersey Advisory Opinion Request – Response to Question 3  
June 26, 2001

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations.

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a. Is DGA a continuing political committee, a political committee, an out-of-state committee, or an association? N.J.S.A. 19:44A-3 (n) and (i); N.J.A.C. 19:25-11.11(a).

b. If a determination is made that DGA is a continuing political committee or a political committee how must it report receipts and expenditures?

Democratic Governors' Association  
New Jersey Advisory Opinion Request – Response to Question 4  
June 26, 2001

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry.

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The Democratic Governors Association ("DGA") is a private nonprofit association composed of all Governors of the states and territories who are members of the Democratic Party.<sup>1</sup> DGA is organized for the purposes of promoting Democratic policies and programs and supporting the election of Democratic Governors throughout the country. DGA hosts policy conferences at which experts in a particular area meet together with Governors to discuss important state issues such as health care; DGA's staff works closely with the various state representatives in Washington, D.C. on state issues and federal legislative proposals that will impact the states; DGA publishes public policy reports; and DGA makes contributions to gubernatorial candidates and state party political committees.

DGA may accept unlimited voluntary monetary contributions from individuals, corporations, PACs, labor organizations, and labor organization PACs. DGA does not accept any foreign contributions.

DGA is not a political committee registered with the Federal Election Commission. DGA is registered with the Internal Revenue Service as a §527 political organization and it files periodic disclosure reports of all receipts and expenditures as required by the IRS.

DGA receives contributions for political purposes from a variety of sources including corporations, individuals, and political organizations. DGA deposits contributions in separate, segregated accounts which only contain contributions from similar sources. For example, DGA deposits contributions from corporations in a corporate account and individual contributions in its individual account. DGA then transfers permissible funds to a separate state-specific account for the purpose of making contributions to that state's candidate for governor and state party committee. For example, DGA would establish a DGA-Illinois account for the purpose of making contributions to Illinois candidates and committees. DGA then transfers funds permissible under Illinois state law (e.g. contributions from corporations) to the DGA-Illinois account. DGA-Illinois then makes permissible contributions to Illinois candidates and it files periodic campaign finance reports with the State of Illinois itemizing the funds received and the expenditures made by DGA-Illinois.

DGA also receives contributions used to defray expenses related to its policy conferences. These funds are deposited in a separate, segregated conference account and are

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<sup>1</sup> The current members of the DGA include the Governors of Alabama, Alaska, American Somoa, California, Delaware, Georgia, Guam, Hawaii, Indiana, Iowa, Kentucky, Maryland, Mississippi, Missouri, New Hampshire, North Carolina, Oregon, South Carolina, Vermont, Virgin Islands, Washington, and West Virginia.

Democratic Governors' Association  
New Jersey Advisory Opinion Request – Response to Question 4 (continued)  
June 26, 2001

used solely to pay for DGA policy conference events and related administrative expenses. No portion of these funds are used to make contributions to any federal, state or local candidates, campaign committees, political action committees, or political party organizations.

In 2001, DGA made one contribution of \$37,000 to the New Jersey Democratic Party and it anticipates that it will make additional contributions to the Democratic gubernatorial candidate. DGA has no intention of making contributions to any New Jersey candidates or committees in the next election following the 2001 general election. If a determination is made that DGA is a New Jersey continuing political committee or a political committee it will take the necessary steps to terminate immediately following the 2001 general election.

Democratic Governors' Association  
New Jersey Advisory Opinion Request – Response to Question 5  
June 26, 2001

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

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a. DGA seeks a determination that it is an association and/or an out-of-state political committee that is not required to register with the state or file periodic campaign finance reports.

DGA is first and foremost, an association of Governors. DGA's current membership includes only 22 persons who are Democratic Governors of the states and territories. Unlike a New Jersey political committee established for the sole purpose of making political contributions to New Jersey candidates and committees, DGA is an association with an office and staff in Washington, D.C. that organizes policy conferences for its members, issues public policy reports, and provides support on various issues and projects in Washington, D.C. to the representatives of the states.

DGA may be treated as an out-of-state political committee in New Jersey. DGA's offices are located in Washington, D.C. (it does not have any offices or staff in New Jersey) and it makes contributions to candidates and political party committees throughout the country each election year. DGA registers and files campaign finance reports in other states as required under applicable state election law. DGA is also registered with the IRS as a 26 U.S.C. §527 political organization and it files reports itemizing its receipts and expenditures as required by the IRS.

The regulations provide that an out-of-state political committee shall be treated as an association or group for New Jersey contribution limits and it would not be required to file New Jersey campaign finance reports, as stated at N.J.A.C. 19:25-11.11(a):

A contribution received from an organization or entity that is ... filing campaign finance reports in another state, and is not filing reports with the Commission, shall be received by a New Jersey candidate, candidate committee, joint candidates committee, political committee, continuing political committee as a contribution from an association or group, and such contribution shall be subject to the contribution limit applicable to an association or group.

DGA is not a New Jersey political committee. The New Jersey regulations define a "political committee" to be "[a] group or association organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question, without a term of existence substantially longer than the campaign..." N.J.A.C. 19:25-1.7. DGA was not organized for the purpose of promoting one or more candidates in New Jersey and it has a term of existence, as an

Democratic Governors' Association  
New Jersey Advisory Opinion Request – Response to Question 5 (continued)  
June 26, 2001

association and as a contributor to other state candidates and committees, that will be longer than the 2001 campaign.

DGA is not a continuing political committee because it does not intend to raise or expend funds in successive New Jersey elections. Under the regulations, a continuing political committee is, in short, a political committee that expects "to make contributions ... during a subsequent election..." N.J.A.C. 19:25-1.7. The regulations setting forth the procedures for establishing a political committee further clarify that "[a] political committee which expects to raise or expend funds in each of two or more successive elections may apply to the Commission to be certified as a continuing political committee." N.J.A.C. 19:25-4.4(f) [emphasis supplied]. DGA does not expect to raise or expend funds in each of two successive New Jersey elections, therefore, it does not intend to apply to the Commission for continuing political committee certification.

In sum, DGA is an association of governors established for a variety of purposes. DGA is not a New Jersey political committee. Accordingly, DGA should be treated as an association or an out-of-state political committee for contribution limit and reporting purposes.

b. In the event that DGA is deemed a New Jersey political committee or a continuing political committee it requests a determination that it may properly report New Jersey receipts and contributions, as follows:

- (1). DGA establishes a separate account for New Jersey activity ("DGA-New Jersey");
- (2). DGA transfers funds permissible under New Jersey state law from one account (e.g. the corporate account or individual account) to the DGA-New Jersey account;
- (3). Contributions to New Jersey candidates and committees are made from the DGA-New Jersey account;
- (4). DGA-New Jersey reports all disbursements made from the DGA-New Jersey account;
- (5). DGA-New Jersey reports as receipts the original source of the funds transferred from DGA. For example, DGA transfers \$10,000 to DGA-New Jersey. To determine the original source of the \$10,000 DGA uses the First-In-First-Out ("FIFO") accounting method and determines that the original source of the funds transferred by DGA are a \$5,000 contribution from ABC, Inc., \$3,000 from XYZ, Inc., and \$2,000 from ACME Corp. On its report of receipts, DGA-New Jersey would itemize the three contributions from ABC, XYZ, and ACME to show the original source of the funds used to make the DGA-New Jersey contribution.

Democratic Governors' Association

New Jersey Advisory Opinion Request – Response to Question 5 (continued)

June 26, 2001

Under this proposal, all contributions made by DGA-New Jersey and the original source of all receipts used by DGA-New Jersey to make contributions to New Jersey candidates and political party committees would be fully disclosed. The purpose of the disclosure requirements set forth in the Act, to identify the original source of all funds used to make contributions to New Jersey candidates and committees, would be met under the DGA-New Jersey reporting proposal.