



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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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/>

FREDERICK M. HERRMANN, Ph.D.
Executive Director

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Deputy Director

GREGORY E. NAGY
Legal Director

JAMES P. WYSE
Counsel

September 11, 2001

BY FAX & FIRST CLASS MAIL

Senator Richard J. Codey
449 Mt. Pleasant Ave.
West Orange, NJ 07052

Advisory Opinion No. 08-2001

Dear Senator Codey:

Your request for an Advisory Opinion was considered by the Commission at its meeting of September 6, 2001, and the Commission has directed me to issue this response. You have asked if the mailing of a newsletter by you to your constituents within 90 days of the date of the November 6, 2001 general election would be reportable as a "political communication" pursuant to N.J.A.C. 19:25-10.10 (hereafter, Section 10.10). A copy of your request and the text of Section 10.10 are attached for reference.

Submitted Facts

You write that you are an incumbent State Senator representing Legislative District 27 (Essex), and you serve as Senate Minority Leader. You note that you are currently seeking reelection as a State Senator in the November 6, 2001 general election. The most recent reports received by the Commission from you were for the June 26, 2001 primary election, and included a 20-day postelection report (Form R-1) from the "Election Fund of Senator Codey," and a 20-day postelection report from the "Joint Election Fund for Senator Codey, Mims Hackett, and John F. McKeon for Assembly."

You state that you are contemplating preparing and disseminating a newsletter or form letter in your official capacity as a State Senator and the newsletters or form letters would outline legislative accomplishments and developments of interest to your constituents. You write further that the newsletters or form letters would not be a direct response to a prior communication from a constituent, and would not be for the "sole and limited purpose" (quotation marks supplied in your letter) of alerting constituents to make certain applications or take other actions prior to the date of the election. Also the newsletters and form letters would not be for the "sole and limited" purpose of communicating facts relevant to a "bona fide public emergency" (quotation marks supplied). You therefore state that the exceptions from "political communication" reporting requirements contained

in Section 10.10 would not be applicable. You have not submitted a text of a proposed newsletter or form letter for the Commission to consider.

You further write that State funds would be used to prepare and disseminate the newsletters or form letters. While you have not specifically indicated what State funds you are contemplating using, the Commission for the purposes of this inquiry infers that you are referring to the funds appropriated to members of the State Senate and General Assembly for the purposes of defraying the costs of maintaining legislative district offices.

Question Presented

If State funds are used to prepare and disseminate a newsletter or form letter as described in the facts you have submitted, would the expenses of such a mailing be considered a reportable political contribution by the State, and would public funds used for such a mailing be a reportable political expenditure pursuant to Section 10.10?

Commission Response

Under the fact record you submitted, the Commission concurs that the contemplated newsletter or form letters appear to meet the regulatory criteria set forth in Section 10.10, and therefore would be subject to the reporting requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act), and the regulations promulgated pursuant to that Act at N.J.A.C. 19:25-1 et seq. This result follows because the facts you submitted recite the elements contained in the regulation, and contain conclusions to the effect that the exceptions in the regulation are inapplicable. In the absence of providing any specific text of a newsletter or form letter for the Commission to review, the Commission can only rely on the representations and conclusions submitted as the fact record in your request. Therefore, nothing contained in this letter can serve as an expression by the Commission of any opinion concerning the applicability of Section 10.10 to the text of any actual or existing newsletter or form letter you may create.

In regard to the use of State funds, nothing contained in the Act addresses or otherwise provides the Commission with authority to rule on the permissible or impermissible uses of legislative district office funds. The Commission, therefore has no jurisdiction to express any opinion on whether or not legislative district office funds may or may not be used as described in your inquiry. Any inquiry concerning the propriety of such a use is presumably subject to the Joint Rules of the Senate and General Assembly, adopted January 9, 2001, and therefore any inquiry regarding permissible or impermissible use of legislative district office funds should be directed to the presiding officer of the legislative body of the member involved.

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



ADVISORY OPINION REQUEST SEP 4 2001

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

Richard J. Codey

Mailing Address

449 Mt. Pleasant Ave.

Day Telephone No.

973-731-6770

West Orange, N.J. 07052

Evening Telephone No.

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 | <input checked="" type="checkbox"/> | Recall committee | <input type="checkbox"/> |
| Joint candidates committee | <input type="checkbox"/> | Recall defense committee | <input type="checkbox"/> |
| Political committee | <input type="checkbox"/> | Lobbyist | <input type="checkbox"/> |
| Continuing political committee | <input type="checkbox"/> | Legislative agent | <input type="checkbox"/> |
| Political party committee | <input type="checkbox"/> | Personal financial disclosure statement | <input type="checkbox"/> |
| Legislative leadership committee | <input checked="" type="checkbox"/> | Other (please describe): _____ | <input type="checkbox"/> |

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:

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

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).

If State funds were used to prepare and disseminate a
newsletter or form letter that was sent to my constituents
in my official capacity as a State Senator, and within 90
days of the November 6, 2001 election, would the expenses
of such a mailing be considered a reportable political
contribution by the State, and would public funds used for
for such a mailing be a reportable political expenditure
N.J.A.C. 19:25-10.10?

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:

The contemplated activities have not already been undertaken, and I have standing to seek the opinion as an incumbent State Senator who is a candidate for office, as well as in my capacity as Senate Minority Leader. My inquiry regards a newsletter that would be prepared and distributed in my official capacity as a State Senator and which would outline legislative accomplishments of interest to my constituents. Furthermore, my inquiry regards form letters that discuss legislative developments that would be of interest to my constituents.

These communications could not be considered to be a direct response to a prior communication from a constituent.

Neither communication would be for the "sole and limited purpose" of alerting constituents to make certain applications or take other actions prior to the date of the election.

Finally, neither communication would be for the "sole and limited" purpose of communicating facts relevant to a "bona fide public emergency." Thus, I do not believe that the narrow exceptions to the 90-day rule under subsection (b) of N.J.A.C. 19:25-10.10 would apply.

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.

I am not seeking a specific result. My reading of N.J.A.C. 19:25-10.10 suggests that the cost of such a newsletter or form letter would in fact be a reportable political contribution, (and thus impermissible because it would involve the expenditure of public funds for campaign purposes), but I respectfully request your advice in this matter.

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

Full Name:

Richard J. Codey

Mailing Address:

449 Mt. Pleasant Ave.

Day Telephone No.

973-731-6770

West Orange, N.J. 07052

Evening Telephone No.

Fax Number:

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey 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.

August 31, 2001
Dated:

Richard J. Codey
Signature