



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

RONALD DEFILIPPIS
Chairman

WALTER F. TIMPONE
Vice Chairman

AMOS C. SAUNDERS
Commissioner

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

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

Website: <http://www.elec.state.nj.us/>

JEFFREY M. BRINDLE
Executive Director

JOSEPH W. DONOHUE
Deputy Director

CAROL L. HOEKJE
Legal Director

AMY F. DAVIS
Compliance Director

EDWIN R. MATTHEWS
Legal Counsel

May 29, 2013

Tom Mastrangelo
59 Village Drive
Montville, New Jersey 07045

Advisory Opinion 02-2013

Dear Mr. Mastrangelo:

The Election Law Enforcement Commission (the “Commission”) considered your request for an Advisory Opinion at its meeting of May 21, 2013, and directed me to issue this response. You have submitted your request on behalf of your single candidate committee, the Friends of Tom Mastrangelo for Morris County Freeholder. You have asked the Commission for a determination that your candidate committee is permitted to hold a campaign fundraiser on public property pursuant to the exemption set forth in the statutory prohibition on the making or soliciting of contributions on public property.

Question Presented

Does the prohibition set forth in N.J.S.A. 19:44A-19.1 on the making or solicitation of campaign contributions on public property categorically prohibit fundraising by a political campaign on that public property, or can the exemption set forth in N.J.S.A. 19:44A-19.1d for a meeting “for a non-governmental purpose” apply?

Commission Response

The Commission hereby advises you that the exemption set forth at N.J.S.A. 19:44A-19.1d would apply to a campaign fundraiser held on public property by pre-arrangement with the owner(s) for reservation and rental at fair market value of that property and related services for the exclusive use of the campaign, and provided that such arrangements are made according to terms available to the general public. The fundraising would occur during a meeting for a political, i.e. non-governmental, purpose, and solicitation and making of campaign contributions would be permitted in accordance with the provisions of the exemption. The campaign would disclose contributor and expenditure information on its campaign reports as required by the Reporting Act.

Submitted Facts

Commission records indicate that you are currently filing as a Republican candidate for Freeholder in Morris County in the 2013 primary election and that you have designated both a single candidate committee, Tom Mastrangelo for Morris County Freeholder, and a joint candidates committee, Cabana Defillipo & Mastrangelo, the EFO Republican Freeholder Team for Morris. You write that your candidate committee has been told by the Morris County Park Commission and its golf courses, the Knoll Country Club (owned by the Township of Parsippany Troy Hills) and “even the Republican Party” that candidates for public office cannot hold campaign fundraisers on their respective properties to collect contributions with such events as golf outings or banquets, since these properties are publicly owned. You write that you believe campaign fundraisers on public property, including on golf courses, are specifically exempted by the statute, N.J.S.A. 19:44A-19.1, under its subsection 19.1d, as further discussed below.

Discussion

Applicable law

Statutory prohibitions. First enacted in 2004 as part of a comprehensive ethics reform package, N.J.S.A. 19:44A-19.1 initially prohibited soliciting of campaign contributions on certain public properties by, and the making of campaign contributions to, candidates for gubernatorial and legislative office. (P.L. 2004 c. 21, effective June 16, 2004). In signing into law in 2004 the comprehensive reform package which also included the “pay-to-play” laws and expansion of lobbying regulation, Governor James McGreevey stated that the reform package “provides a more accountable and more transparent government for all” and highlighted the standards of “disclosure and transparency” set by the reform package. (Press release dated June 16, 2004). In 2009 the statute was amended to add the office of Lieutenant Governor. (P.L. 2009, c. 66 §14, effective June 26, 2009). In 2012, the statute was again amended, to expand the prohibition to include all candidates for elective public office, and any public property (S3166, P.L. 2011, c.204, approved January 17, 2012).

In its current text, the statute provides as follows:

N.J.S.A. 19:44A-19.1b(1) No candidate for any elective public office, or any holder of that elective public office, or the candidate’s agent or representative, while located on any property exclusively owned or leased by the State, or any agency of the State, or by any county, municipality, board of education of a school district, fire district, authority, or other State or local entity, district or instrumentality shall, directly or indirectly, solicit any contribution to or on behalf of any candidate for elective public office or the candidate committee or joint candidates committee of any such candidate.

The same prohibitions on solicitation exist for making of contributions by any person while located on public property. N.J.S.A. 19:44A-19.1b(2). The provisions do not apply to “any casual or inadvertent communication otherwise made in connection with, but without intent to solicit, such a contribution.” N.J.S.A. 19:44A-19.1b(1).

The statute defines “contribution” and “candidate” as those terms are defined in the Campaign Reporting Act, N.J.S.A. 19:44A-3, and “property” as “buildings used for the discharge of official government functions, business, duties, or purposes.” N.J.S.A. 19:44A-19.1a.

Statutory penalties for violations are “not less than \$5,000 for each violation.” N.J.S.A. 19:44A-19.1c. The 2012 amendment also specifically provided the Commission with the jurisdiction to enforce the provisions of the section. N.J.S.A. 19:44A-19.1e.

Statutory exemption. The statute provides an exemption, set forth at N.J.S.A. 19:44A-19.1d, in its current text as follows:

d. In the event property exclusively owned or leased by the State, or any agency of the State, or by any county, municipality, board of education of a school district, fire district, authority, or other State or local entity, district or instrumentality or part thereof, is made available, through rent, reservation or otherwise, for the exclusive use of any group for a non-governmental purpose as a meeting location, the prohibition in subsection b. of this section shall not apply and the solicitation or making of contributions or funds of any nature from any or among or by the members of the group during the time the group is using the property made available as a meeting location is permitted.

The statement attached to the legislation enacted in 2004 does not discuss the exemption other than to note that “[e]xceptions are provided for casual and inadvertent communications that are made without an intent to solicit a contribution, and for the use of State property for meetings by groups for non-governmental purpose through rent, reservation or otherwise.” (See Statements to Senate 8, June 3, 2004 and to Assembly 8, May 27, 2004). The statement attached to the 2012 amendment does not discuss the exemption at all. (See Statement to S3166, A4432).

In a press release dated January 9, 2012, Senator Raymond J. Lesniak, a sponsor of the amendment introduced as S3166, stated that he had introduced the legislation in response to reports that members of the Elizabeth School Board had pressured teachers and other employees on school property to make campaign contributions. Referring to a candidate “treating public service as if it were a personal campaign ATM,” he stated “[w]e’ve seen too many instances... in which public employees have been strong-armed into supporting an elected official’s campaign, because the elected official holds the purse strings, and the employee could face retaliation if they [sic] don’t play ball. Not only is this a potential for conflict of interest, but it paints a horrible picture of both the political and governmental process, blurring the line between legitimate public service and no holds barred politics.” (GovNetNJ.com, Senate & Assembly New Releases, “News from the Senate Democrats” January 9, 2012.)

The Commission does not find that a campaign or political fundraiser held by a political group involving its members, under terms as provided in the exemption, creates an uneven playing field in a governmental relationship or process, which uneven playing field is addressed by the prohibition sections of the statute. The statutory exemption applies to the making and solicitation of contributions **of any nature (emphasis added)**, N.J.S.A. 19:44A-19.1d, by a group involving its members, under the conditions as set forth in the exemption. Provided that a campaign meeting on the public premises is conducted under the same provisions offered to the general

public at large, the Commission finds that the exemption applies no less to a political meeting than to any other non-governmental meeting. Further, disclosure of the activity will be achieved as required by the Campaign Reporting Act, through the reporting on election-cycle and quarterly reports of expenditures for the campaign event and the disclosure of required contributor information for contributions received through the campaign event.

In applying the language of the statutory exemption, the Commission notes that the arrangements for reservation and rental of the property and any related services must be made under terms available to the general public. Under those circumstances, the campaign fundraising is occurring at a meeting held for a political, non-governmental purpose and meets the criteria set forth in the exemption at N.J.S.A. 19:44A-19.1d. The Commission finds that the goals of disclosure and transparency highlighted in the original legislation are achieved in this result.

Conclusion

The Commission advises you that a campaign fundraiser held on public premises, including a public golf course, by a campaign by prior arrangement and reservation, under terms available to the general public, for the exclusive use of that campaign as a meeting place, falls within the statutory exemption of N.J.S.A. 19:44A-19.1d and is not prohibited activity contemplated by that statute, either in the making or acceptance of campaign contributions. The Commission thanks you for your inquiry.

Very truly yours,
Election Law Enforcement Commission

By: _____
Carol L. Hoekje, Esq.



Advisory Opinion Request For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P O Box 185, Trenton NJ 08625-0185
(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)
Website www.elec.state.nj.us

FOR STATE USE ONLY

ELECTED
MAY 20 2013

PLEASE PROVIDE THE INFORMATION REQUESTED BELOW

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 include the following:

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

Full name of Person, Committee, or Entity. TOM MASTRANGELO on behalf of

"FRIENDS OF TOM MASTRANGELO FOR MORRIS COUNTY FREEHOLDER"

Mailing Address

59 Village Drive
MONTVILLE, NJ 07045

*Day Telephone Number:

973-632-7378

*Evening Telephone Number

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

[X] 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

Checkboxes for filing capacity, with the first one checked.

- Recall committee
Recall defense committee
Personal financial disclosure statement
Other (please describe)

Checkboxes for recall and other categories.

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., 2005 general election) or calendar years, and identify filing capacity:

c. If reports are or were filed under a different name than that appearing in Question #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).

The question is in regards to SF 53166.
PLEASE SEE DETAIL TO FOLLOW UNDER STATEMENT OF FACTS.

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

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

BILL S 3166 provides a specific exception allowing donations to be collected on public property if the collection of donations is for a non-government purpose. The exception specifically states that in the event property is exclusively owned or leased by the state, or any agency of the state, or by any county, municipality, board of education or a school district, fire district, authority, or other state or local entity, district or instrumentality, or part thereof, is made available, through a gift, reservation or otherwise, for the exclusive use of any group for a non-governmental purpose ~~and~~ as a meeting location, the prohibition in subsection b. of this section shall not apply and the solicitation or making of contributions or funds of any nature from any or among or by the members of the group during the time the group is using the property made available as a meeting location is permitted.

The issue for which we are seeking an advisory opinion is due to the fact that our committee has been told by the Middlesex County Board of Commissioners & its Golf Course, The Royal Country Club (owned by Parsimony Golf Links) and even the Republican Party that candidates for public cannot hold campaign fund raises on their respective properties to collect donations with such events as golf outings, tournaments or any type event on their property (public) (which includes all of their venues including their Golf Courses), since the properties are publicly owned. They all have communicated that their venues do not fall under the exception. Even after pointing them to ISSUE # 37 July 2012 News Letter. It is important to note that our committee is aware of several candidates who have been turned away by publicly owned golf courses who will not allow candidate fund raises, which is a political purpose, not a government purpose.

SEE OTHER SIDE →

AS SUCH WE REQUEST AN ADVISORY OPINION FROM THE NEW JERSEY ELECTION LAW COMMISSION WHICH CAN SPECIFICALLY PROVIDE THAT CANDIDATES FOR PUBLIC OFFICE AND/OR THEIR CAMPAIGN COMMITTEES CAN HOLD CAMPAIGN FUND RAISER UNDER THE EXCEPTION OF BILL S 3166 AND TO FURTHER CLARIFY THAT PUBLIC GOLF COURSES AND ANY PUBLIC VENUE WHICH IS PUBLICLY OWNED AND SERVES THE GENERAL PUBLIC AS LONG AS THE FUNDRAISING FOR COLLECTING DONATIONS IS FOR A NON GOVERNMENTAL PURPOSE AND THAT "POLITICAL" IS NOT A GOVERNMENT PURPOSE.

PLEASE ALSO REFERENCE LETTER ATTACHED TO JEFF BUNDE DATED 4/24/2013. ☺

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

PLEASE SEE STATEMENT OF FILES # 4.

6. Person who is submitting this advisory opinion request on behalf of the committee or entity listed in Question #1:

Full Name

THOMAS MASTANGELO

Mailing Address

59 VILLAGE DRIVE
MANTON, NJ 07045

*Day Telephone Number:

973 632 7378

*Evening Telephone Number

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

5/17/2013

5/26/2013

Dated.

Thomas Mastangelo

Thomas Mastangelo
Signature:

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 17:14-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

Tom Mastrangelo
59 Village Drive
Montville, New Jersey 07045
tjmastrangelo@optonline.net

~~April 24, 2013~~

5/17/2013

Mr. Jeff Brindle
New Jersey Election Law Enforcement Commission,
P.O. Box 185
Trenton, NJ 08625-0185

Re: Advisory Opinion of Legislation S3166

Sent via Fax and email.

Dear Mr. Brindle,

Per our discussion last week with regards to Bill S3166, there seems to be a lot of confusion over the specific exception within the law. The specific exception within the Bill is as follows:


" In the event property exclusively owned or leased by the State, or any agency of the State, or by any county, municipality, board of education of a school district, fire district, authority, or other State or local entity, district or instrumentality, or part thereof, is made available, through rent, reservation or otherwise, for the exclusive use of any group for a non-governmental purpose as a meeting location, the prohibition in subsection b. of this section shall not apply and the solicitation or making of contributions or funds of any nature from any or among or by the members of the group during the time the group is using the property made available as a meeting location is permitted."

I have been told members of the Republican Party, The Morris County Park Commission, the Knoll Country Club (which is owned by the Township of Parsippany Troy Hills) that candidates for public office cannot hold campaign fundraisers on their respective public properties to collect donations with such events as golf outings, banquets or any other type event on their property (which includes all of their venues including their golf courses), since the properties are publically owned. They all have communicated that the exception does not apply to their venues. I have spoken with many other candidates and elected officials who have cancelled these types of events at these publically owned venues. I have pointed them all to the July 2012 ELEC newsletter, Issue # 37, but the parties are still not clear.

As such I request an advisory opinion from ELEC which can specifically state that candidates for Public Office and/or their campaign committees can hold campaign fundraisers under this law S3166 and that public golf courses and any other public venue which serves the general public for holding such events falls under the above exception as long as the fundraiser is held for a political purpose and not a government purpose.

I respectfully request and advisory opinion ASAP.

Thank you for your time.

5/17/2013


Tom Mastrangelo
Morris County Freeholder
973.632.7378