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December 20, 1990

Dr. Carol Goodheart
President, NJP*PAC
349 East Northfield Rd. Suite 211
Livingston, NJ 07039

Advisory Opinion No. 11-1990

Dear Dr. Goodheart:

The Commission has directed me to issue this response to your request for an Advisory Opinion received November 19, 1990. You have asked whether the New Jersey Psychology PAC (hereafter, NJP*PAC) may accept political contributions made by credit card. For the reasons stated hereafter, the Commission concludes that NJP*PAC may accept political contributions made by credit card subject to the reporting requirements described in this opinion.

You have advised the Commission that NJP*PAC will enter into agreements with various credit card companies so that it may receive contributions charged to the credit card accounts of contributors. You have indicated that some of these charges may be made by telephone and therefore a signature of the contributor will not necessarily be obtained. Once a contribution has been made with a contributor's credit card, the credit card company will collect the amount so charged, deduct its fees, and will ultimately pass to NJP*PAC the net proceeds.

"The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter, the Reporting Act), which was enacted into law in 1973, does not explicitly mention contributions made by credit cards. However, the term "contributions" is defined to include all pledges or other commitments to make any transfer of money or other things of value, and for the purposes of reports required under the Reporting Act such a commitment shall be deemed to have been made upon the date that the commitment is made; see N.J.S.A. 19:44A-3(d). The Commission is satisfied that a contribution made by credit card is a transaction that can fairly be described as a pledge, or a commitment to make a transfer of funds, and

therefore permitting NJP*PAC to utilize credit card technology for the purpose of receiving contributions is consistent with the provisions of the Reporting Act.

In order to comply with the recordkeeping and reporting requirements of the Reporting Act, the following procedures and restrictions must be observed:

1. The date that a contribution made by credit card is received by NJP*PAC is the date on which the credit card holder authorizes it to charge his or her credit card account. Please note the definition of the term "contribution" which provides that for purposes of the reports required under the Act a contribution shall be deemed to have been made upon the date that the commitment to make that contribution arises; see N.J.S.A. 19:44A-3(d).

2. The amount that is subject to reporting as a contribution made by credit card is the total amount that the credit card holder authorizes NJP*PAC to charge his or her credit card account. The Commission recognizes that the credit card company may withhold a portion of the proceeds for its fees before those proceeds are passed ultimately to NJP*PAC. Nevertheless, the amount that is the reportable contribution is the entire amount pledged or otherwise committed in the credit card transaction. If a contribution exceeds \$100.00 in the aggregate for a calendar year, the contributor must be listed on Schedule A - Itemized Receipts of Form R-3. A contribution of \$100.00 or less is included in the total to be reported on Table I - Receipts, line 13a of Form R-3.

3. Any fee imposed by the credit card company must be reported as a disbursement to that company from NJP*PAC. All amounts paid in compensation to the credit card company, whether by the fact that the credit card company has retained a portion of the amounts contributed, or whether by direct payment by NJP*PAC, must be reported as disbursements on Schedule C - Itemized Operating Expenditures of Form R-3.

4. NJP*PAC must make and retain a record of each contribution it receives, which record must include the name and address of the contributor and the amount and date of receipt of the contribution. The record must be retained for a period of not less than four years; see N.J.A.C. 19:25-6.1(a) (copy enclosed).

5. Any contribution made by credit card must be from a contributor who is authorized to use the credit card. If a contribution by credit card is made from more than one authorized person, a notation to that effect must be made by NJP*PAC on the credit card charge document and such notation must include all required information for each person identified as a partial contributor.

The Commission anticipates that it will be proposing in early 1991 regulations governing use of credit cards to make contributions, and will

look forward to any comments you may want to provide when those proposals are made.

The Commission wishes to bring to your attention that under the provisions of N.J.S.A. 19:34-32 and 19:34-45, no corporation carrying on the business of an insurance company, bank, or other regulated industry listed in these statutes may make a contribution to a candidate or political party. That statute is not contained within the Reporting Act, and therefore the Commission has no jurisdiction or authority to issue any advisory opinion in regard to its possible applicability. NJP*PAC should review the corporate entities that are prohibited from making political contributions, including casino license holders (see N.J.S.A. 5:12-138), and take measures to insure no contributions are received from those entities.

In the event that the NJP*PAC contracts for credit card services with a financial institution that is itself subject to the prohibition against making political contributions, that institution should provide its service at a commercially reasonable rate comparable to that offered to its other customers. If, for example, the financial institution providing credit card services charged NJP*PAC an amount below what is a commercially reasonable rate, the financial institution itself might be construed as making a contribution to NJP*PAC.

Thank you for this inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: 

GREGORY E. NAGY
Legal Director

GEN/lr
Enclosures