

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE

ETHICS ADVISORY OPINION NO. H94-2

A member of the House of Representatives has requested an ethics advisory opinion on the following issue:

Is there an ethical problem if, the day after the legislative session ends, a legislator sends a letter to leaders of a political party in New Mexico asking them to serve on a finance committee?

The request states: "The committee is formational only. Monies will not be collected or solicited during the twenty (20)-day period following the session."

For the reasons set forth below, the House Rules and Order of Business Committee finds it is appropriate to send the proposed letter.

Analysis

The relevant statute governing this request is Section 1-19-34.1 NMSA 1978, which was enacted as part of the 1993 ethics reform law. That provision, entitled "Legislative Session Fundraising Prohibition", states in relevant part as follows:

"A. It is unlawful during the prohibited period for a state legislator . . . to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature . . . and ending on adjournment of the

. . . session.

B. It is unlawful during the prohibited period for a person holding a state office . . . to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature . . . and ending on the twentieth day following the adjournment of the . . . session."

A "political purpose" is defined as "influencing or attempting to influence an election, including a constitutional amendment or other question submitted to the voters". See Subsection J of Section 1-19-26 NMSA 1978.

We assume the finance committee being formed seeks to raise funds to influence elections, thus qualifying as a political purpose within the meaning of the act. The letter seeking to form the committee will not, however, solicit funds itself. Rather, the letter focuses instead on the limited purpose of asking various political leaders to serve on the committee. The actual fundraising activities will presumably take place later.

Accordingly, since the legislator's letter is not directly soliciting funds for a political purpose during the prohibited period, the law is not violated.

This conclusion is consistent with the reasons why this provision of law was enacted. Its purpose was to cleanse the legislative process of fundraising activities that could be interpreted to raise ethical

questions. By prohibiting political-purpose solicitations during legislative sessions, the law removes the appearance of impropriety that may arise from a legislator asking for funds from someone who has an interest in pending legislation.

Here the legislator is not asking for funds from anyone who has an interest in pending legislation. The formation of the committee is simply a preliminary organizational step taken to pursue legitimate political fundraising activities. The sending of the letter is not, therefore, at odds with the purpose behind the legislative session political fundraising solicitation ban.

It should be noted that the ban extends to twenty days after the session for statewide officeholders, but not legislators, for whom the ban ends the day the session ends. The principal reason for this distinction seems to be that legislators finish their lawmaking activities once the session ends, but statewide officeholders, and particularly the governor, have ongoing lawmaking interests until the governor's time period for acting on all legislation has ended twenty days after the session. See Section 22 of Article IV of the constitution of New Mexico.

Given this distinction, the reference in the request for this advisory opinion to the fact that no fundraising solicitations will occur during the twenty-day period following the session is relevant only to statewide officeholders. A legislator is not prohibited from political-purpose fundraising once the legislative session ends.

In terms of strict legalities, since the letter in question is not itself a fundraising solicitation, it would not be illegal for the letter to be sent by a legislator even during the days of the legislative session. Ethical appearances, however, are often more significant than technical compliance with legal requirements. In this sense, the requestor should be commended for voluntarily refraining from sending the letter until after the legislative session ends. This action honors the spirit and intent behind the reasons for the session fundraising prohibition.

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