

ATTORNEY GENERAL

August 27, 1975

MS. KITTY C. O'NEIL, *Acting Director*  
Division on Women  
Department of Community Affairs  
363 West State Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 21 – 1975

Dear Ms. O'Neil:

You have asked for an opinion as to whether it is permissible for the Division on Women to actively promote or advocate an affirmative vote on a public referendum to add an Equal Rights Amendment to our State Constitution and to lend its resources to a private organization in support of this effort. You are hereby advised that the Division on Women has the authority and responsibility to commit its resources in furtherance of a strictly informational function. However, the authority to inform must not be conducted in a manner to urge or advocate an affirmative vote.

In order to allow the voters to intelligently consider the merits of a public question, they must have access to all of government's information bearing on the issue. The means by which this information can be made available to the public was the subject of a comprehensive opinion in *Citizens to Protect Public Funds v. Board of Education, et al.*, 13 N.J. 172 (1953). Justice (now Mr. Justice) Brennan established the controlling rule in this jurisdiction as follows:

“The need for full disclosure of all relevant facts is obvious...but the defendant board was not content simply to present the facts. The exhortation ‘VOTE YES’ is repeated on three pages, and the dire consequences of failure so to do are over-dramatized on the page reproduced above. In that manner the board made use of public funds to advocate one side only of the controversial question without affording the dissenters the opportunity by means of that financed medium to present their side, and thus imperiled the propriety of the entire expenditure. The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint. The expenditure is then not within the implied power and is not lawful in the absence of express authority from the Legislature.

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“We do not mean that the public body formulating the program is otherwise restrained from advocating and espousing its adoption by the voters. Indeed, as in the instant case, when the program represents the body's judgment of what is required in the effective discharge of its responsibility, it is not only the right but perhaps the duty of the body to endeavor to secure the assent of the voters thereto. The question we are considering is simply the extent to and manner in which the funds may with justice to the rights of dissenters be expended for espousal of the voters' approval of the body's judgment. Even this the body may do within fair limits. The reasonable expense, for example, of the conduct of a public forum at which all

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may appear and freely express their views pro and con would not be improper. The same may be said of reasonable expenses incurred for radio or television broadcasts taking the form of debates between proponents of the differing sides of the proposition. It is the expenditure of public funds in support of one side only in a manner which gives the dissenters no opportunity to present their side which is outside the pale." *Citizens to Protect Public Funds v. Board of Education, et al., supra*, at 180, 181, 182.

Thus, it is clear that the use of the resources of the Division on Women or the use of the Division's resources by a private group to sponsor the passage of a public referendum would be without any legal justification.

The Act creating the Division on Women directs that the Division promote and expand the rights and opportunities for the women of the State of New Jersey. N.J.S. A. 52:27D-43.13c. The enabling legislation, however, does not specifically authorize the Division to actively sponsor the passage of a public referendum contrary to the general rule established in *Citizens to Protect Public Funds, supra*.

For these reasons, it is our opinion that the Division on Women may not expend state funds or permit state facilities to be used to promote or advocate an affirmative vote on a public referendum. The resources of this agency may, however, be used to disseminate information which will enable the public to make an informed choice on this issue at the polls.

Very truly yours,  
ROBERT J. DEL TUFO  
*Acting Attorney General*

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HONORABLE J. EDWARD CRABIEL  
*Secretary of State*  
State House  
Trenton, New Jersey 08625

August 1, 1975

FORMAL OPINION NO. 22-1975

Dear Secretary Crabiel:

You have asked us to advise you whether the State would be acting in keeping with the provisions of *N.J. Const.* (1947), Art. IX, par. 3, if the proposed Equal Rights Amendment to the State Constitution is published three months prior to the next general election in newspapers given widespread circulation in counties which do not have their own newspapers will publish again prior to August 4, 1975. You inform us that there are three counties in the State in which the county newspaper publishes on a weekly basis and will not be published again until subsequent to August 4, 1975, the date by which amendments must be published pursuant to the above

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provision of the State Constitution. You are advised that the State would be in substantial compliance with this provision of the Constitution if on or before August 4, 1975 it publishes the proposed amendment in newspapers having a wide circulation in all counties and if it also publishes the proposed amendment in every county newspaper as long as publication is as soon as practicable after August 4, 1975.

The provision of the State Constitution involved here is as follows:

“The Legislature shall cause the proposed amendment or amendments to be published at least once in one or more newspapers of each county, if any be published therein, not less than three months prior to submission to the people.” *N.J. Const.*, Art. IX, par. 3.

This provision was added to the Constitution in 1844 and there is no recorded discussion of the purpose or meaning of this clause in the proceedings of that convention. There is very little case law in New Jersey discussing the publication of official advertisements in newspapers. There is, however, one case which deals with an analogous issue and which is helpful to the resolution of the question you have posed. In *Travis v. Borough of Highlands*, 136 N.J.L. 199 (Sup. Ct. 1947), the court held that there was substantial compliance with a statutory requirement for official advertising of a proposed municipal contract when timely publication was made in a daily paper published in a different municipality but circulated in the advertising municipality and when publication was also made in the weekly publication of the municipality's newspaper in the first issue practicable after the statutory limit had expired. In that case, the publication should have been made in the municipal newspaper by March 18 and was not included in the municipal publication until March 20, which according to the court “was the weekly publication date for the week of March 17....” 136 N.J.L. at 201.

The obvious intent of *N.J. Const.* (1947), Art. IX, par. 3, is to disseminate information regarding a proposed constitutional amendment to members of the public. See *Hunterdon County Democrat, Inc. v. Recorder Publishing Company of Bernardsville*, 117 N.J. Super. 552 (Ch. Div. 1971). It would, therefore, be in accordance with the constitutional purpose if the State were to make every effort to advertise the proposed amendment in newspapers having wide circulation in the three counties you have mentioned on or before August 4, 1975, in addition to the publication in county newspapers in other counties where there is no problem posed by the weekly publication date. In order to insure the widest possible dissemination of information pertaining to the proposed amendment even in the three counties, it would be advisable to publish the advertisements in the weekly newspapers there for the week of August 4, 1975 or as soon thereafter as it may be done.

Very truly yours,  
WILLIAM F. HYLAND  
*Attorney General*

BY: RICHARD M. CONLEY  
*Deputy Attorney General*

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