

ATTORNEY GENERAL

May 5, 1977

GEORGE W. LEE
Acting Secretary of State
Department of State
State House
Trenton, New Jersey 08625

FORMAL OPINION 1977—No. 9.

Dear Mr. Secretary:

You have asked whether a political party committee, a subcommittee thereof or a member thereof may, prior to a primary election, endorse a candidate for party nomination.

The relevant statute is N.J.S.A. 19:34-52 which reads as follows:

“No state, county or municipal committee of any political party shall prior to any primary election indorse [*sic*] the candidacy of any candidate for a party nomination or position.”*

It should be noted at the outset, that, of late, there has been much confusion surrounding the applicability of the aforementioned statute. Pursuant to chapter 67 of the Laws of 1975, the provisions of N.J.S.A. 19:34-52 were suspended from the effective date of chapter 67, *i.e.*, April 10, 1975, until February 1, 1977. Prior to the expiration of chapter 67, Assembly Bill No. 2435 was introduced to amend N.J.S.A. 19:34-52 to permit endorsements according to specified procedures. Assembly Bill No. 2435 would have an effective date retroactive to February 1, 1977. While the bill has passed both the General Assembly and the Senate, it has not yet been signed by the Governor. Thus, at present, N.J.S.A. 19:34-52 is in full force and effect.

Pursuant to Title 19 of the Revised Statutes, the selection of candidates for office is to be accomplished by the primary vote, not by party committee. *Rogers v. State Committee of Republican Party*, 96 N.J. Super. 265 (Law Div. 1967). Accordingly, N.J.S.A. 19:34-52 clearly prohibits pre-primary endorsements of candidates by state, county or municipal committees of any political party (as defined in N.J.S.A. 19:1-1). The Legislature, by restricting the pre-primary activities of party committees, “safeguard[ed] the right of individual voter participation in choice of party candidates.” *Cavanagh v. Morris County Democratic Committee*, 121 N.J. Super. 430, 438 (Ch. Div. 1972).

Beyond the question of an endorsement by a state, county or municipal committee itself, the court in *Cavanagh* was faced with the problem of an endorsement given by committee, *viz.*, a “Candidate Screening Committee,” established by the Morris County Democratic Committee. The court held that N.J.S.A. 19:34-52 was similarly applicable to said Candidate Screening Committee stating:

“The Morris County Democratic Committee does not have the authority to create a committee independent from itself. N.J.S.A. 19:5-3, which provides for the organization of county committees, gives ‘Such committee ...power to adopt a constitution and by-laws for *its* proper government.’ (Emphasis added.) Any special committee established by defendant must be considered a part of the Democratic Committee. Since the screening

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committee is an arm of the County Committee, it would completely circumvent the legislative prohibition in N.J.S.A. 19:34-52 to say that the statute only applied to the parent committee but not to a 'committee thereof'. If defendant's contention were true, then any state, county or municipal political committee could evade any regulatory provision it wished by establishing a subcommittee. For example, if a county committee desired to provide financial support for a primary candidate, an act strictly prohibited by N.J.S.A. 19:34-33, it could do so by creating a finance committee and avow its independence. A decision in compliance with defendant's position would render many electoral regulating provisions meaningless." *Cavanagh, supra*, at 435.

The court proceeded to compare the composition of the Candidate Screening Committee with the County Committee and noted that the former was the "*alter ego*" of the latter. The court further noted that the purpose of the Candidate Screening Committee was to endorse candidates prior to the primary election:

"The County Committee has an obvious interest in which persons receive the nomination of the county party. To think otherwise would be naive. To effectuate this interest a screening committee was established with the purpose of endorsing candidates prior to the primary election. The language of N.J.S.A. 19:34-52 clearly prohibits such activity. This statute cannot be given any other meaning." *Cavanagh, supra*, at 436, 437.

Thus, organizations similar to the Candidate Screening Committee in *Cavanagh* are prohibited, under N.J.S.A. 19:34-52, from endorsing candidates prior to the primary election.

Individual members of a party committee are not subject to a similar prohibition on pre-primary endorsements—the emphasis on members *qua* members being on the individual right of free expression under the First Amendment to the Constitution of the United States. Where such committee members consort to individually *and* collectively endorse a candidate, it seems clear, however, that the *alter ego* doctrine of the *Cavanagh* opinion would prohibit such activity.

Therefore, you are advised that political party committees or subcommittees thereof are prohibited from endorsing candidates prior to the primary election but that an individual member of a party committee is free to express individually his or her own preference.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey
By: GREGORY E. NAGY
Deputy Attorney General

* The remedy for a violation of the prohibition against endorsements by party committees enunciated in N.J.S.A. 19:34-52 is a matter of civil rather than the criminal law. Other sections of the act from which N.J.S.A. 19:34-52 derives—chapter 187 of the Laws of 1930—specifically carry misdemeanor penalties while N.J.S.A. 19:34-52 does not.