

FORMAL OPINION

II

With reference to your question concerning the informal settlement of license suspension proceedings, the Administrative Procedure Act provides that:

Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order. [N.J.S.A. 52:14B-9(d).]

Since no law prohibits an informal disposition prior to hearing it is clear that the Division may conduct "pre-hearing conferences." In the event an informal voluntary disposition cannot be agreed to after such a conference, a "contested case" hearing should be conducted by an administrative law judge.

It is, therefore, our opinion that Motor Vehicle license suspension hearings held pursuant to N.J.S.A. 39:5-30 should be conducted by administrative law judges as "contested cases." It is further our opinion that the Division of Motor Vehicles may conduct "pre-hearing conference" in an attempt to informally dispose of these license suspension proceedings with the consent of the parties.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT M. JAWORSKI
Deputy Attorney General

October 17, 1979

LOUIS J. GAMBACCINI, *Commissioner*
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey

FORMAL OPINION NO. 23—1979

Dear Commissioner Gambaccini:

You have asked whether it would be lawful for insurance companies to be involved in the support of public bond issues. The immediate occasion for your inquiry was the selection of the chairman of the board of a major insurance company to head up a Citizens' Coalition to campaign for passage of the Transportation Rehabilitation and Improvement Bond Issue by the voters on November 6. For the following reasons, it is our opinion that there would be no statutory impediment to insurance companies' involvement in public bond referenda.

The controlling statute in this situation is N.J.S.A. 19:34-32 which makes it a misdemeanor¹ for insurance corporations or associations doing

1. Under the terms of the newly enacted Penal Code, a misdemeanor shall constitute for purposes of sentencing a crime of the fourth degree. N.J.S.A. 2C:43-1(b).

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business in New Jersey, as well as their officers, directors, stockholders, attorneys or agents to:

[D]irectly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee, organization or corporation, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person or money or property so used. . . .

While it is clear that contributions to or in aid of political parties, committees, organizations or candidates would violate the above provision, the answer to your inquiry turns on whether the statute's prohibition on corporate payments for "any political purpose whatsoever" should be interpreted as barring corporate contributions in support of or opposition to a public referendum.

The meaning of the phrase "for any political purpose whatsoever" may be determined by its textual setting in the statutory provision. It is immediately preceded by a ban on corporate contributions for or in aid of a political party or organization, a candidate for political office or for nomination to a political office. All of the items enumerated have a distinctly partisan political character. When general words follow specifically named things of a particular class, the general words should be understood as limited to things of the same class or the same general character. *Transcontinental Gas Pipe Line Corp. v. Dept. of Conservation*, 43 N.J. 135, 146 (1964). It may therefore be assumed that the legislature only intended to prohibit corporate contributions made to or in aid of essentially partisan political objectives and not to embrace a nonpartisan public referendum on an issue of statewide importance. This reading of the statute is also consistent with the rule of statutory construction that in the event of an ambiguity, a criminal statute should be afforded the narrowest possible effect (*State v. Alveario*, 154 N.J. Super. 135 (App. Div. 1977); *State v. Brenner*, 132 N.J.L. 607, 611 (E. & A. 1945)), which in this case is again to limit its application to only partisan political contributions and expenditures.

This conclusion is supported by case law which stands for the proposition that a statutory ban on corporate political contributions to aid or assist in a public referendum would raise serious questions under the Freedom of Speech Clause of the First Amendment to the United States Constitution. In *First National Bank of Boston v. Belotti*, 98 S.Ct. 1407 (1978), a Massachusetts statute restricted corporate contributions in support of a public referendum to only instances when an issue "materially affected" a corporation's business, property or assets. The United States Supreme Court held the statute to be in violation of the First Amendment since the speech which is protected by the Freedom of Speech Clause would include that of a corporation informing the public on matters of general interest. Although the Court acknowledged a legitimate government interest in preventing the corruption of elected officials (which led to the enactment of laws regulating corporate participation in partisan elections),

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it concluded that there was insufficient justification to restrict corporate contributions and expenditures for the purpose of influencing a vote on a public referendum. The Court stated:

[T]here has been no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda. . . . Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections [citations omitted] simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it. . . . [98 S.Ct. at 1423.]

In this instance, an interpretation of N.J.S.A. 19:34-32 to prohibit corporate contributions toward the passage or defeat of a public bond referendum would be clearly inconsistent with the decision of the Court in *Belotti*.

The decision of the United States Court of Appeals in *Schwartz v. Rommes*, 495 F. 2d 844 (2d Cir. 1974), dealt with a New York statute which is almost identical to N.J.S.A. 19:34-32. In that case the New York Telephone Company's financial contributions to a committee in support of a proposed state transportation bond issue were challenged as violative of the state statute. The court held that contributions to a nonpartisan transportation bond referendum were not encompassed within the meaning of "any political purpose whatsoever." The court noted that:

Corporate funds paid to a candidate or political party have the potential of creating debts that must be paid in the form of special interest legislation or administrative action. In contrast, when the issue is one to be resolved by the public electorate monies paid by a corporation for public expression of its views create no debt or obligation on the part of the voters to favor a corporate contributor's special interest. [495 F. 2d at 851.]

2. An analogous statute in N.J.S.A. 19:34-45 provides that no corporation carrying on the business of a bank, savings bank, cooperative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company or having the right to condemn land or franchises in public ways shall pay or contribute money to aid the nomination or election of any person or to aid or promote the interests of any political party. There is in this instance no prohibition on contributions or expenditures "for any political purpose whatsoever" and the ban is directed solely to persons and political parties. Consequently, there also would be no legal impediment to contributions and expenditures by the corporations enumerated in that statutory section to influence the vote on a nonpartisan public referendum.

Although we conclude there would be no statutory impediment under the election laws, it should be made clear that the Board of Public Utilities could determine in individual instances to disapprove such expenditures as allowable expenses in a rate case.

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The Court of Appeals concluded that to construe the statute in any other manner would raise serious questions as to its constitutionality.

In sum, it may be assumed to be the legislative purpose that the New Jersey statute serves the same valid objectives as comparable statutes interpreted by the courts. The legislative ban on corporate contributions for "any political purpose whatsoever" in N.J.S.A. 19:34-32 would not, therefore, include a prohibition on aid or assistance to a nonpartisan public referendum. You are therefore advised that an insurance corporation and its officers or agents are not prevented from providing financial or other support toward the passage of the 1979 Transportation Rehabilitation and Improvement Bond Issue.²

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 23, 1979

SIDNEY GLASER, *Director*
Division of Taxation
West State and Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 24—1979

Dear Director Glaser:

You have asked whether a surviving spouse who was less than 55 years old at the time of his or her senior citizen spouse's death is entitled to the additional annual homestead rebate of \$50 on attaining age 55. You are advised that unless the surviving spouse is over 65, or is permanently and totally disabled, or was 55 at the time of his or her eligible spouse's death, the surviving spouse is not eligible for the additional \$50 rebate.

All residents and citizens of New Jersey are entitled to homestead rebates on real property owned and used as a principal residence. N.J.S.A. 54:4-3.80. Additionally:

If such citizen and resident of this State is of the age of 65 or more years, or is less than 65 years of age yet permanently and totally disabled, as "disabled" is defined in the "New Jersey Gross Income Tax Act" (54A:1-2f), or is the surviving spouse of a deceased citizen and resident of this State who during his lifetime received a real property tax deduction pursuant to this act or P.L. 1963, c. 172 (C. 54:4-8.40 et seq.), upon the same conditions, with respect to real property, notwithstanding that said surviving spouse is under the age of 65 and is not permanently and totally