

**NEW JERSEY ELECTION LAW  
ENFORCEMENT COMMISSION,**

Petitioner,

v.

**NEW JERSEY DEMOCRATIC  
STATE COMMITTEE and**

**PETER P. CURTIN, JR.,**

**Committee Treasurer**

Respondents.

Decided March 3, 1980

**Initial Decision**

**SYNOPSIS**

The Election Law Enforcement Commission charged the Democratic State Committee with filing an untimely annual financial report for 1978 in violation of *N.J.S.A.* 19:44A-8. The State Committee claimed that as a result of a conversation with an Election Commission staff member, it had been granted an informal extension of the filing deadline for an indefinite period of time and thus the Commission was estopped from bringing charges of an untimely filing.

The administrative law judge found that any reliance on such representations was not justifiable since it was grounded in the perceptions of the State Committee's representative alone and since the evidence showed that the Committee was told to file the report as soon as possible and had not been granted an extension.

As a result of the State Committee's failure to attend to its filing responsibilities with reasonable diligence, the public was prevented from access to information on important political financing for a 53-day period. Accordingly, a reprimand and \$500 fine was imposed.

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**Gregory E. Nagy**, Staff Counsel, for Petitioner

**Frederick J. Dennehy, Esq.**, for Respondents

**CLANCY, ALJ:**

The New Jersey Election Law Enforcement Commission charged with the responsibility of enforcing the Campaign Contributions and

Expenditures Reporting Act, *N.J.S.A.* 19:44A-1 *et seq.*, filed a complaint against the respondents for allegedly filing an untimely annual report for the calendar year 1978, and thus violating the provisions of *N.J.S.A.* 19:44A-8.

The issue posed for resolution is whether the respondents violated *N.J.S.A.* 19:44A-8, which provides in pertinent part as follows:

Each State, county and municipal committee of a political party and each political information organization shall also file with the Election Law Enforcement Commission, not later than March 1 of each year, an annual report of all moneys, loans, paid personal services or other things of value contributed to it during the previous calendar year and all expenditures made, incurred, or authorized by it, whether or not such expenditures were made, incurred or authorized in furtherance of the election or defeat of any candidate, or in aid of the passage or defeat of any public question or to provide information on any candidate or public question or to seek to influence the content, introduction, passage or defeat of any legislation.

At the hearing, respondents admitted the following facts:

1. The New Jersey Democratic State Committee was the State committee of a political party at all times relevant to the present complaint and therefore subject to the annual reporting requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act;

2. Peter P. Curtin, Jr., in his capacity as treasurer of the New Jersey Democratic State Committee, verified reports of certain bank accounts filed with the Commission, pursuant to the annual reporting requirements of the New Jersey Campaign Contributions and Expenditures Reporting Act;

3. The Committee was required pursuant to *N.J.S.A.* 19:44A-8, to file and certify to the New Jersey Election Law Enforcement Commission an annual report or reports of all contributions and expenditures for the calendar year 1978 by March 1, 1979;

4. On March 1, 1979, the Committee timely filed or caused to be filed seven annual reports for the calendar year 1978 for certain bank depositories and,

5. On April 23, 1979, they filed or caused to be filed annual reports for the calendar year 1978 for the following bank depositories: (a) Victory Dinner Account No. 1317870, New Jersey National Bank, (b) New Jersey Democratic State Committee Office Account No. 313-000-373-1, First National State Bank, and (c) New Jersey Democratic State Committee Office Account No. 1317837 New Jersey National Bank.

The respondents essentially contend that the Election Law Enforcement Commission condoned and permitted the "late filing," thereby either explicitly or implicitly granting them an extension of the filing deadline.

They conclude, therefore, that the Commission is estopped from prosecuting its complaint and from assessing a penalty, pursuant to *N.J.S.A.* 19:44A-22. Furthermore, they assert that difficulties encountered in the compilation and collation of certain financial data prevented them from filing on time. Thus, the argument goes, the unavoidable nature of the situation is sufficient to excuse what occurred.

Witness Peter P. Curtin, Jr., testified that he became the Committee Treasurer in April 1978. Up until the early part of 1979, he experienced a lot of trouble in reconstructing and consolidating the bank accounts which were turned over to him by his predecessor, despite assistance from his staff, an accounting firm, and the Assistant Director of the Democratic State Committee. In late January or early February 1979, he began to anticipate how complex his responsibilities for the filing of the annual report would be. Nevertheless, he established no personal contact with the Commission or its Executive Director prior to the March 1st deadline nor did he seek an "extension" of the filing deadline. Although his staff was working on the preparation of ten reports, eight-ten hours per day around March 1st, after he discovered that a newspaper reporter had made an inquiry about a "missing report," he "reassigned everyone" to the report project. This resulted in the staff putting in a total of 25 work-hours per day on the three unfinished reports during the two week period of time preceding the late filing. Throughout the discharge of his responsibilities, he was concerned with providing the Commission with complete and accurate information. Since he felt that the annual reports were only partially prepared, he decided not to file them by the March 1st deadline. This decision was made despite the fact that the State Committee had all of the reportable information required for these reports in its possession prior to March 1, 1979. Finally, the witness advised that prior to March 1, 1979 he had instructed Russel Rosen, Assistant Director of the Democratic State Committee, to offer the Commission all of the data on hand regarding the annual reports designated.

Witness Russel Rosen related that he started to work on the annual reports in December 1978 and that of the ten reports required to be filed, seven were filed with the Commission by the March 1st deadline. In mid-February of 1979 he discovered that certain information to be included in the annual reports was "insufficient and missing". Mr. Rosen could not recall *specifically* what information he was lacking at the time, although he generally remembered that certain deposit slips and cancelled checks were then unavailable to him. Other obstacles such as: (a) "matching" deposits and contributors, (b) the inability to properly balance Account No. 313-000-373-1, (c) the necessity for accurately preparing the first seven reports submitted before preparing the last three reports, (d) concern

of the accuracy and completeness of all information to be reported, (e) the need to reconcile available data with that contained in Federal Election Reports and (f) the discharge of his other responsibilities as Assistant Director - all prevented him from complying with the filing deadline, although he was well aware of his responsibility to file reports for each of the ten depositories involved by March 1, 1979. In the face of the above-enumerated difficulties he contacted Ms. Juana Schultz, the Election Law Enforcement Commission's Director of Compliance and Review, on or about February 20, 1979, explained the problems he was encountering, and advised her that he would be unable to file all of the annual reports, that she, in turn, suggested that ". . . those first seven reports should be submitted; the other ones that were not completed should be submitted as soon as they could be completed in their entirety. And they should not be submitted partially." During this conversation Mr. Rosen *implied* that he was willing to furnish the Commission with all of the information he had on hand as of the March 1st deadline. Ms. Schultz indicated that the matter could be handled between themselves and Mr. Rosen "took her reaction to mean that I had been given an informal extension and that she understood the circumstances surrounding that", and he understood the "extension" (a word never used by Ms. Schultz) to be for an indefinite period of time, until the reports were complete and accurate. Mr. Rosen indicated that had he not been under the impression that an extension had been granted, he would have filed the three incomplete reports by the deadline or formally requested additional time to submit them to the Commission. On March 1, 1979, Mr. Rosen personally delivered the first seven reports filed to Ms. Schultz but did not have any further conversation that he could recall with her at that time. Between March 1, 1979 and mid-April 1979, he had other contacts with Ms. Schultz and she advised him that the respondents were in violation of the law, although he inferred that the violation was not of such a nature "that a complaint would be issued against us" and fines would be levied. Mr. Rosen perceived Ms. Schultz's failure to come forward and advise him of the possible consequences of late filing (when coupled with his overall impression that there would be no problems with a late filing) to be tantamount to permission to file after the deadline, and that, although it had occurred to him, he never inquired as to whether Ms. Schultz had any authority to grant an extension of time or permission to file late.

Witness Juana Schultz testified that she had several telephone conversations with Russel Rosen during February 1979 regarding the annual reports. On March 1, 1979, she was advised for the first time that three of the ten reports were not completed and therefore wouldn't be filed on time, and upon learning this, she told Mr. Rosen to file the ones he had completed

“as a sign of good faith” and to complete the other ones as soon as possible. She then specifically advised him that the reports which were not filed by the deadline would be considered late. Later on that day she personally accepted the initial seven reports from Mr. Rosen and reiterated that the non-filed, incomplete reports would be considered late, and that at no time had she and Mr. Rosen ever discussed an extension of the filing deadline. The witness further related that the Commission has granted formal extensions of filing deadlines in the past two that these prior extensions were granted by the Executive Director of the Commission, who alone has such authority. Ms. Schultz testified that she and Mr. Rosen had been in contact with each other frequently since the fall of 1978 with respect to many different reporting requirements. In the early part of 1979 she became aware he was having difficulty in locating certain non-specified information to be included in the annual reports. Although it was obvious to her on March 1, 1979, that an extension was needed, she did not suggest that Mr. Rosen should seek one. During March 1979 Ms. Schultz was in touch with Mr. Rosen about every ten days and kept urging him to complete the reports as quickly as possible since they were already late and delay only continued to deny public access to information which should have been available. Letters, dated March 19, 1979 and April 11, 1979, were sent to the respondents advising them of their obligation to file the annual reports even though the filings would be late. The possible penalties that could be imposed were also outlined in these letters.

Based on the foregoing, I **FIND** that:

(a) The basic, operating facts are not in dispute. They are the ones set forth in the respondent's admissions, *supra*.

(b) Respondent Curtin had no direct contact with anyone at the Election Law Enforcement Commission prior to the March 1st filing deadline. He, therefore, was not a part of the matrix of circumstances focusing on the issues of estoppel and extension (whether express or implied).

(c) Respondent Curtin did not specifically identify any difficulties encountered in the compilation and collation of reportable financial data which may have been responsible for the “late filings;” nor did he explain how these resulted in untimely filings, despite the assistance rendered to him by an accounting firm, his staff, and the Assistant Director of the Democratic State Committee.

(d) Respondent State Committee had all of the information required to be filed in its possession prior to March 1, 1979. Adherence to the filing deadline would have been achieved had sufficient manpower been assigned to the task.

(e) Witness Rosen did not specifically identify the information which he

considered to be "insufficient and missing" in mid-February and which prevented the timely filing of three annual reports, although he did explain that parts of his assignment were difficult to perform, especially since he had other responsibilities to perform as the Assistant Director of the State Committee.

(f) Witness Rosen had a conversation with Juana Schultz, the Commission's Director of Compliance and Review, either in mid-February, 1979 or on March 1, 1979. During this conversation he did not offer to supply the Commission with all of the information compiled to date. As a result of being advised to complete the three missing reports as soon as possible, he *inferred* that he had been granted an informal extension of the filing deadline for an *indefinite period of time*. Although it occurred to him, he never questioned the "authority" of Ms. Schultz to grant the "extension."

(g) Witness Schultz never discussed an extension with Mr. Rosen and repeatedly advised him beginning on March 1, 1979 on (in no uncertain terms) that the three reports not filed on March 1, 1979 would be considered as "late."

(h) The public was effectively prevented from having access to the Democratic State Committee's contribution and expenditure information for a 53-day period of time.

Accordingly, I **CONCLUDE** that:

1. Respondents have not shown that they relied on any representations by the Commission in such a way as to justify the application of estoppel principles. It is elementary law that in order for the estoppel doctrine to be applied in respondents' favor, it must be shown that there was reasonable or justifiable reliance by the respondents on the advice or representations made by the Commission's personnel. *See Dambro v. Union County Park Commission*, 130 N.J. Super. 450, 457 (Law Div. 1974). The evidence suggests that any reliance had was not reasonable or justifiable *because* all Ms. Schultz did was to urge the filing of the three missing reports as soon as possible. There was no formal extension ever granted. Mr. Rosen mistakenly inferred that an informal extension *without any deadline whatsoever* had been granted and no effort was spent to determine Ms. Schultz's authority to grant extensions. Respondents' "reliance" was grounded in Mr. Rosen's *perception* that Ms. Schultz's failure to come forward and advise him of the consequences of the late filing, coupled with his overall impression that there would be no problems with the late filing -- was "tantamount to permission to file after the deadline."

"The applicability of the doctrine of estoppel against public agencies and officials is quite limited to guard against use thereof to injure the public interest." *Tubridy v. Consolidated Police and Firemen's Pension Fund*

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Commission, 84 N.J. Super. 257, 264 (App. Div. 1964). In addition, *Summer Cottagers' Association of Cape May v. City of Cape May*, 19 N.J. 493, 503 (1955) recites that: "The principle of estoppel in pais is not, for obvious reasons given the same freedom of application against the public as against private persons." (Also see *Boyd v. Dept. of Institutions and Agencies*, 126 N.J. Super. 273, 275 (App. Div. 1974).) The application of the principles of law enumerated in the above cases results in a determination adverse to the respondents' position.

2. The respondents failed to attend to their responsibilities with reasonable diligence and attentiveness. Had they done so from the outset and realized the enormity of their undertaking at that time, sufficient man-hours could have been devoted to accomplish the filing by the deadline. This is borne out by subsequent events. After respondent Curtin received a letter from the Executive Director of the Election Law Enforcement Commission, the filing of the three late reports was attended to within the course of approximately 12 days. Since respondent Curtin didn't begin to anticipate how complex his filing responsibilities would be until late January or early February 1979, since Mr. Rosen didn't start to work on the reports until mid-February 1979 and since the Democratic State Committee has been subject to the same annual reporting requirements since 1973, it is apparent that time and work efforts weren't budgeted wisely. This reflects negatively towards the fulfillment of a weighty statutory responsibility.

3. Although the Democratic State Committee substantially complied with the New Jersey Campaign Contributions and Expenditures Reporting Act by filing seven of the ten required reports by the deadline, the filing of the final three reports some 53 days following the deadline reflects a flagrant disregard of a statutorily imposed obligation. This becomes especially clear when one takes into account that both witnesses who testified on behalf of the Committee acknowledged that they knew of their filing responsibilities from the time they assumed their jobs in early 1978.

The end result of respondents' conduct has been to foreclose the public from access to financial information concerning the singularly most important organization of a major political party for a substantial period of time. The public interest in political financing and its right to have access to such information pursuant to law cannot be allowed to be frustrated by inadvertence and neglect. Taking into account the severity of the violation, its lack of justification, its first-time, non-willful nature and the lack of evidence to indicate that the Committee acted in other than good faith, I hereby exercise my discretion, pursuant to N.J.S.A. 19:44A-22, and **ORDER** that the respondents be reprimanded and fined the sum of \$500.00 for having allowed such a state of affairs to occur.

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After reviewing this Initial Decision, the New Jersey Election Law Enforcement Commission on April 7, 1980, issued the following Final Decision:

The Commission hereby adopts the Initial Decision entered in this contested case, and

**ORDERS** on this 7th day of April, 1980, that the respondents, New Jersey Democratic State Committee, and Peter P. Curtin, Jr., Committee Treasurer, be and hereby are reprimanded and jointly fined the sum of \$500.00.