

0-33-76

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September 17, 1976

Senator James H. Wallwork  
9 Patton Drive  
West Caldwell, N. J. 07006

Re: The New Jersey Campaign Contributions and Expenditures Reporting Act, Chapter 83, Laws of 1973 as Amended and Supplemented ("the Act")  
Your letter dated August 20, 1976  
Opinion No. 0-33-76

Dear Senator Wallwork:

Your letter dated August 20, 1976, to the New Jersey Election Law Enforcement Commission ("the Commission"), including a request for advisory opinion, has been forwarded to me for reply.

The term "undeclared candidate" is not defined in the Act. Your statement that a person is an "undeclared candidate" includes within it the assumption that such a person is a "candidate" within the meaning of the Act. It is of course true that a person may under the Act become a candidate prior to the time of the filing of the petition. In such case, contributions and expenditures with respect to the candidacy of the candidate must be made, except to the extent that the statute provides otherwise, through a duly appointed campaign treasurer.

The more complex question, however, is that of determining when a person becomes a "candidate". Obviously, activity of some kind aimed at determining whether or not a person will in the future become a candidate is distinguishable, and probably must be given recognition under basic federal and state constitutional principles. While the time frame within which the activity of such a person is being considered would be important in determining whether that person was a candidate, much in the same way that the timing of mailings under a franking privilege would be significant in determining whether they constituted an improper campaign activity, the element of timing alone could not be dispositive. In an appropriate case in which funds were expended for the purpose of calling together prospective supporters of a candidate for speeches or other activities which reasonably could be said to be geared to that candidacy, such activities might well constitute the person a candidate. This result would follow whether or not the person involved was ultimately a declared candidate. It should be emphasized that the facts and events attending a so-

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called "undeclared candidate", their sequence and context, are all factors which the Commission must take into account in determining whether such person is subject to the reporting or other requirements of the Act.

The considerations would be substantially the same with respect to question Number 2, with the additional question raised that the "alleged purpose" would have to be examined to determine whether it was in fact the substantial purpose or whether in fact the candidate or persons acting under his control and on his behalf were using the poll for campaign purposes.

The same considerations generally deal with respect to your questions Number 3 and Number 4. The answer to question Number 5 would depend in large measure on whether the poll by the "undeclared candidate" was to be used for the purpose of guiding his campaign organization in choice of issues, positions respecting issues, and the like, or whether it was in fact nothing more than an effort at the outset to inform himself as to the potential, if any, of his possible candidacy.

With respect to question Number 6, assuming that contributions or expenditures were required to be reported, their receipt outside the State of New Jersey would have no significance in determining their legality.

Yours very truly,

*Edward J. Farrell*

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