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ELECTION LAW ENFORCEMENT
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March 27, 1978

Joseph J. Ferrara, Esquire
Messrs. Ferrara and Feinsilver
23 Valley Street
South Orange, New Jersey 07079

Re: The New Jersey Campaign Contributions and
Expenditures Reporting Act, Chapter 83, Laws
of 1973 as Amended and Supplemented ("the Act")
Your letter dated February 14, 1978
Opinion #(0-09-78)

RECEIVED
MAR 30 '78
N.J. ELECTION
LAW ENFORCEMENT
COMMISSION

Dear Mr. Ferrara:

Your letter dated February 14, 1978, to the New Jersey Election Law Enforcement Commission ("the Commission"), including a request for advisory opinion, has been forwarded to me for reply.

There is no such status as "undeclared candidate" under the Act. "Candidate" has been defined by the Commission in its Reg. 19:25-15.4(a) to mean anyone who has filed a nominating petition or filed a form D-1 with the Commission or solicited contributions or made or incurred expenditures, or allowed others to do these things for him.

A person may, therefore, become a candidate prior to the time of filing a petition; in such a case, contributions and expenditures with respect to the candidacy of the candidate must be made, except to the extent the statute provides otherwise, through a duly appointed campaign treasurer and depository. The candidate may also be subject to the reporting requirements of the Act, unless his expenditures do not exceed \$1,000, in which case he may file an appropriate affidavit in lieu of reporting.

In determining when a person becomes a "candidate" prior to the time of filing a petition, various factors must be taken into consideration, including the element of timing and the alleged purpose of his activity. In an

appropriate case in which funds are expended for the purpose of calling together prospective supporters of a candidate, or in any other case where the activity of or on behalf of the candidate could reasonably be said to be geared to that candidacy, such expenditure might well constitute the person a candidate. This result would follow regardless of the amount of money, if any, so expended or whether or not the person was ultimately a declared candidate. Therefore, the facts and events attending the activities of an "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 and other requirements of the Act.

The activities of a group organized to aid or promote the nomination or election of a particular candidate would make the group a political committee on behalf of that candidate. That committee would have the obligation to designate a treasurer and depository and provide pre-election and post-election reports in accordance with §§10 and 16 of the Act. The candidate supported would also have the obligation of filing pre-election and post-election reports. The reports of the candidate should reflect the allocated contributions and expenditures of the political committee with respect to his candidacy.

If the individual mentioned in your letter is presently a "candidate" by reason of the discussion above, then the activities of your association would constitute it a political committee on his behalf, subject to the requirements of the Act. If the individual is not yet a candidate, then the Commission might well consider your civic association a political club of a continuing nature similar to a political party committee with the obligation of reporting on March 1st of each year with respect to its contributions and expenditures during the preceding calendar year. However, when the individual whom the association supports does become a candidate, the civic association would, by virtue of its activities, probably become a political committee on the candidate's behalf and therefore be required to file election reports in accordance with the Act and include therein the allocated receipts and expenditures of the testimonial affair.

Joseph J. Ferrara, Esquire

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March 27, 1978

I have enclosed with this advisory opinion copies of Commission regulations addressing some of the issues raised in your letter.

Very truly yours,

Edward J. Farrell
Legal Counsel

EJF:no

Enclosures