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June 1, 1978

John V. Spinale
310 West State Street
Trenton, N. J. 08618

Re: The New Jersey Campaign Contributions and Expenditures
Reporting Act, Chapter 8, Laws of 1973 as Amended and
Supplemented ("the Act")
Advisory Opinion 0-21-78

Dear Mr. Spinale:

Your letter dated May 18, 1978 addressed to the New Jersey
Election Law Enforcement Commission ("the Commission") in which you
requested an advisory opinion has been referred to me for response.

You have asked whether a citizens' committee organized to
participate in a proceeding you characterize as a "non-binding refer-
endum" to be conducted in the Township of Bordentown, Burlington
County, on Saturday, June 10, 1978, must comply with the financial
reporting requirements of the Act. You have further inquired whether
a company making financial contributions and expenditures in connec-
tion with the "referendum" is similarly required to make such reports.
For the reasons herein stated, the Commission has concluded that the
contemplated proceeding cannot be understood to be a "non-binding
referendum" and therefore is not a public "election" within the meaning
of the Act, and accordingly the Commission has no jurisdiction to
require public reports.

The provisions of the Act apply "(I)n any election at which
a public question is to be voted upon by the voters of the State for
any political subdivision thereof..." N.J.S.A. 19:44A-4(c). The
Commission is unable to find any legal basis or authority for the
Township of Bordentown to conduct a "non-binding referendum" public
election on June 10, 1978. The right of a New Jersey municipality to
call for a referendum is exclusively statutory. Borough of Eatontown
v. Danskin, 121 N. J. Super. 68, 76 (Law Div. 1972), citing Smith v.
Livingston Township, 106 N. J. Super. 444, 452-453 (Ch. Div.), aff'd
o.b. 54 N. J. 525 (1969). Statutory authority permitting municipalities
to conduct non-binding referenda is found at N.J.S.A. 19:37-1. However,
that statute contemplates that the governing body of the municipality
adopt an ordinance or resolution requesting that the question be placed
on the official ballots for a general election only. Thus, only duly
registered voters would have access to the polls and the conduct of the

election would be subject to the protections provided to the electorate under Title 19 of the Revised Statutes of this State. The contemplated "referendum" in Bordentown Township is patently outside of the scope of N.J.S.A. 19:37-1. The Commission is advised that the governing body has not enacted any ordinance or resolution conforming to the enabling statute. The question will not appear on an official general election ballot but rather will be submitted to the Township residents on a day not set aside by Title 19 for a general election. The Mayor of the Township has advised the Commission that duly established voting districts will not be used, that official registration materials will not be available, that no official public advertisements will be published and that no public funds will be expended by the Township. In fact, that municipal officer characterizes the proceeding not as a "non-binding referendum" but rather as an "opinion poll" to be entirely funded from private sources. However the proceeding may be characterized, it is patently evident that it does not comply with the requirements of N.J.S.A. 19:37-1 and, therefore, is not a public referendum. Cf. Borough of Eatontown v. Danskin, supra.

Under these unique factual circumstances, the Commission is of the opinion that the reporting and financial disclosure requirements of the Act cannot be applied because the contemplated proceeding cannot be understood to be a duly conducted public election under the provisions of applicable New Jersey statutes.

Very truly yours,

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION

By: _____

GREGORY E. NAGY,
Staff Counsel

GEN/cm

cc - *Alvin H. ...*
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