



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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ALEXANDER P. WAUGH, JR.

NATIONAL STATE BANK BLDG., SUITE 1114
23 W. STATE STREET, CN-183
TRENTON, NEW JERSEY 08608
(609) 292-8700

SCOTT A. WEINER
EXECUTIVE DIRECTOR

EDWARD J. FARRELL
COUNSEL

March 7, 1983

Stephen J. Edelstein, Esq.
Craig and Edelstein
129 Bloomfield Avenue
West Caldwell, NJ 07006

ADVISORY OPINION No. 03-1983

Dear Mr. Edelstein:

Your letter of January 24, 1983 to the Election Law Enforcement Commission requesting an advisory opinion has been considered by the Commission and I have been directed to issue this response. You have asked several questions concerning the application of the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act), N.J.S.A. 19:44A-1 et seq., to "Friends of Peter Shapiro", a committee established to solicit contributions for the purpose of satisfying outstanding obligations arising out of the 1982 general election candidacy of Peter Shapiro for Essex County Executive, and for making other expenditures that include exploring the feasibility of a candidacy of Peter Shapiro for public office (i.e., "testing the waters").

FACTS SUBMITTED

You have written that the "Friends of Peter Shapiro Committee" (hereafter, F.P.S.) has filed a designation of treasurer and campaign depository pursuant to N.J.S.A. 19:44A-10. Further, F.P.S. has filed a report of contributions and expenditures related to a fund raising affair it sponsored. See Advisory Opinion 05-1983. The proceeds from the fund raising affair will in part be used to meet outstanding obligations remaining from the 1982 candidacy of Mr. Shapiro for Essex County Executive. Expenditures are also contemplated for purposes of supporting other candidates for public office, support or opposition for various public questions on the ballot, mailing information, and politically related expenses of Mr. Shapiro such as travel and polling, commonly referred to as "testing the waters". Specifically, F.P.S. anticipates making expenditures for activities intended to determine the feasibility of Mr. Shapiro undertaking a campaign for public elective office. Your letter does not specify the precise activity that is contemplated, other than travel, attending conferences, the distribution of newsletters and polling. Because your inquiry refers to statutes concerning the public financing of elections, the Commission assumes the office for which the "testing" activity would occur is that of Governor of this State.

QUESTION 1.

Initially, you have asked if F.P.S. would acquire reporting obligations under the Act for what you characterize as "general purposes" expenditures, or expenditures for "testing the waters" such as polling to determine the feasibility of a candidacy.

With respect to expenditures for "general purposes" you are hereby advised that F.P.S. would be considered in the same position as any other entity that might qualify as a "political committee" as that term is defined in the Act. A "political committee" is defined as "...any two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association which is organized to, or does, aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does, aid or promote the passage or defeat of a public question in any election". N.J.S.A. 19:44A-3(1). You have previously been advised that F.P.S. is a "political committee" for the purposes of meeting the filing requirements contained in N.J.S.A. 19:44A-18 because it conducted a fund raiser to satisfy obligations remaining from the 1982 candidacy of Mr. Shapiro for Essex County Executive. Advisory Opinion 05-1983. Contributions received and expenditures made not related to this fund raiser would have to be reported if they were received or made to aid or promote a candidacy. Under such circumstances, F.P.S. would become a "political committee" for another election, and would be subject to the reporting requirements set forth in N.J.S.A. 19:44A-8 and 19:44A-16 as to that election. Such contributions and expenditures would be reported in the appropriate 25-day pre-election, 7-day pre-election or 15-day post election reports, depending upon the day the contributions were received or expenditures made. Because the fact record you have submitted concerning the nature of the activities is rather broad, the Commission cannot determine whether the annual reporting obligations might arise pursuant to N.J.S.A. 19:44A-8 and Commission Regulation N.J.A.C. 19:25-10.1 et seq.

With respect to expenditures for "testing the water" activity in regard to a possible candidacy by Mr. Shephero for the Office of Governor, if F.P.S. had campaign reporting obligations as a "political committee" as previously described, all of its disbursements from its campaign account would have to be disclosed in its campaign reports. Any political committee must account for all expenditures made from the campaign account whether or not those disbursements were for "testing the waters" purposes. N.J.S.A. 19:44A-8. Assuming F.P.S. did not undertake any candidate related or otherwise reportable activity with the exception of "testing the waters" expenditures, the obligation to report those expenditures under the Act would arise only if the individual on whose behalf the expenditures were made did subsequently become a gubernatorial candidate.

The term "candidate" is defined as "...an individual seeking or having sought election to public office of the State, or of a county, municipality or school district at a primary, general, municipal, school or special election...". N.J.S.A. 19:44A-3(c). The Commission has previously examined the question of what specific acts give rise to the inception of a candidacy. Advisory Opinions 33-1976, 06-1978 and 09-1978. Those opinions recognize that a candidacy may arise prior to the filing of nominating petitions, or prior to some other form of public declaration of candidacy. They further recognize that there is a distinction between activity intended to assist an individual in assessing the feasibility of that individual's possible candidacy (i.e., testing the waters), and activities signifying that a private decision to undertake a candidacy has been reached. Advisory Opinion 33-1976.

The Commission concludes that "testing the water" activity coupled with a candidacy for the Office of Governor by the individual on whose behalf the "testing the water" expenditures were made does necessitate reporting by the entity making the expenditures. Such reporting would be made in campaign reports relevant to the election in which the candidacy occurs.

QUESTION 2

You have asked the Commission to assume for the purposes of this Advisory Opinion that F.P.S. may establish a separate bank account to receive contributions on behalf of a candidacy by Mr. Shapiro for the Office of Governor. Contributions received in such an account would be made in accordance with the \$800.00 limit on any contribution from a contributor to candidates for Governor, as set forth in N.J.S.A. 19:44A-29. You have asked if Mr. Shapiro does become a candidate for Governor subsequent to the establishment of such an account whether he could designate it as his principal campaign depository for his candidacy pursuant to N.J.S.A. 19:44A-32. A consequence of such a designation would be that contributions received in that account could be eligible for matching with public funds pursuant N.J.S.A. 19:44A-33. Also, you have asked whether contributors to F.P.S. would be permitted to thereafter make full, maximum contributions of \$800.00 to Mr. Shapiro's gubernatorial candidacy.

There is no prohibition that would preclude F.P.S. from opening an account at any time in anticipation of Mr. Shapiro's candidacy for the Office of Governor in a future election. As to such an account, F.P.S. would acquire reporting obligations as a "political committee", and would be required to designate a bank depository and treasurer pursuant to N.J.S.A. 19:44A-10.

Assuming that Mr. Shapiro does become a "candidate" within the meaning of the Act, he could designate the separate account as his principal campaign committee for the gubernatorial primary election pursuant to N.J.A.C. 19:25-16.4. In regard to a gubernatorial general election campaign, see N.J.A.C. 19:25-15.5. The effect of such a designation would be to establish the election bank account described in N.J.S.A. 19:44A-22, which account would be exclusively for deposit of contributions eligible for matching public funds.

The Commission will require that a separate account be established for any contributions that may be used for "testing the waters" activity, or that may be deposited in an account that eventually is designated as a principal campaign account of a gubernatorial candidate. The purpose of requiring a separate account is to insure that any deposits not in conformity with the \$800.00 contribution limit set forth in N.J.S.A. 19:44A-29 can be identified and, to the extent the contribution exceeds the contribution limit, be returned expeditiously to the correct contributor. The necessity for separation is especially compelling in light of the various activities that F.P.S. anticipates conducting. The F.P.S. Committee, as an entity, is limited to a single \$800.00 contribution on behalf of a gubernatorial candidate, and it is only the separate account that may exceed that limit, if designated. N.J.A.C. 19:25-16.4.

You have asked if contributors to F.P.S. could also contribute to a separate account established in anticipation of a gubernatorial candidacy. The separate account established by F.P.S. would be required to contain only contributions in conformity with the contribution limit in N.J.S.A. 19:44A-29 if it were to be designated as the principal campaign depository of a gubernatorial candidate. Since F.P.S. as an entity is itself limited to a total contribution not to exceed \$800.00, the principle articulated by the Commission in Advisory Opinion 36-1981, New Jersey Food Council Committee for Good Government may be applicable. Under those principles, up to \$800.00 could be deposited in the separate account from a contributor even though the same source contributed to F.P.S. as an organizational entity. However, the Commission does not know on the record before it whether the F.P.S. Committee has a substantial number of contributors and expenditures which in totality demonstrate that the impact of any single contribution to F.P.S. to any specified gubernatorial candidate is de minimus. A copy of Advisory Opinion No. 36-1981 is enclosed for your convenience.

QUESTION 3

You have asked whether "general expenditures" incurred in "testing the water" prior to the time an individual becomes a candidate for Governor are excluded from the expenditure limits set forth in N.J.S.A. 19:44A-7.

As indicated in response to Question No. 2, the characterization of "general expenditures" is too broad for a specific response. If F.P.S. undertakes activity as a "political committee" as defined in the Act, it requires campaign reporting obligations as set forth in N.J.S.A. 19:44A-8 and 19:44A-16. Further, if it is designated as a principal campaign committee of a candidate for the Office of Governor who is subject to the expenditure limit, all the expenditures by the designated committee from its campaign account will be included in determining compliance with the expenditure limit.

As to the "testing the water" expenditures, the Commission has already indicated that the contributions and expenditures relevant to "testing the water" for an individual considering a candidacy for the Office of Governor are subject to the disclosure requirements of the Act if that individual subsequently becomes a "candidate" within the meaning of the Act. Similarly, the expenditure limit provision set forth in N.J.S.A. 19:44A-7, which applies only to gubernatorial candidates participating in partial public funding of their candidacies would incorporate "testing the waters" expenditures. Such expenditures would be subject to the limitations of N.J.S.A. 19:44A-7 as if made after the establishment of a candidacy.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
GREGORY E. NAGY
Staff Counsel

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