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ELECTION LAW ENFORCEMENT
COMMISSION

July 2, 1985

Glenn F. Scotland, Esquire
Messrs. Kraft & Hughes
Gateway I
Newark, New Jersey 07102

Re: Advisory Opinion No. 11-1985

Dear Mr. Scotland:

Your letter dated June 14, 1985 has been referred to me for reply. It is not possible to give a definitive response to the questions you raise because the facts set forth in your letter are insufficient. We can provide you with some general observations which may at least provide you some guidance for further inquiry.

Non-partisan efforts aimed at educating the public with respect to candidates, and which are carried on without the prior cooperation or consent of the candidate or his campaign, are not regarded as activities on behalf of a candidate. You should be cautioned, however, that the question whether activities which claim to be non-partisan and independent are in fact such is a question of fact. We are enclosing a copy of Opinion 0-01-73 which sets forth the relevant criteria, in response to a somewhat similar question.

1. If the application of those criteria resulted in a conclusion that the proposed activity was in fact campaign activity on behalf of candidate (or on behalf of the opponent of the candidate, in the case of negative commentary), then the group would be deemed a political committee, and reporting would be required under the Act. Whether that activity would then result in an allocation against the expenditure limit of one of the candidates would in turn be determined by whether the expenditure was in fact independent of that candidate and his campaign.

2. There is no prohibition upon any individuals against participating in a project of the kind you describe. Some levels of activity would tend to suggest that the effort was in fact campaign activity on behalf of the candidate. Registration in a political party and exercise of the right to vote in any

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primary or general election would have no impact. We cannot say on the basis of the facts set forth in your letter what the impact would be of greater involvement with particular candidates or parties by campaign contributions or campaign activity, or of other public or personal relationship with public officials involved in the campaign. There is little doubt that even a slight peripheral contact with the candidacy of either of the major gubernatorial candidates or the major political organizations involved in those candidacies would raise a grave challenge to any claim of non-partisanship or of independence.

J. If the documentary that you describe qualifies under the criteria set forth in Opinion 0-01-73, it would not constitute a contribution to the gubernatorial candidate. If it does not, some portion of value presumably would constitute a political contribution by the individuals who are responsible for the preparation and publication of the documentary. Whether the expenditure for the documentary would be allocated to a candidate would turn on the question of the independence of the expenditure under the provisions of Commission Regulation 19:25-15.2B.

We note that some communication with Governor Kean and present or past members of his administration would presumably be essential to the preparation of a documentary, and the fact of such communication, without more, would not cause the activity to cease being "independent" within the meaning of Reg. 19:25-10.2B. We are not in a position, without more facts, to express an opinion as to what additional circumstances would or would not affect that question of independence.

Very truly yours,

NEW JERSEY ELECTION LAW
ENFORCEMENT COMMISSION

By 
Edward J. Farrell, Counsel

EJF:no

Enclosure

bcc: Mr. Frederick M. Herrmann
Executive Director

bcc: Each Commissioner