O-10-76

STATE OF NEW JERSEY
ELECTION LAW ENFORCEMENT
COMMISSION
NATIONAL STATE BANK BLDG.
SUITE 1114
TRENTON, N.J. 08605
(609) 292-8700

April 30, 1976

Mr. Harvey Hellings
734 Mayflower Avenue
Lawrenceville, New Jersey 08648

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 18, 1976
Opinion #(0-10-76)

Dear Mr. Hellings:

Your letter dated February 18, 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 Dinner-Dance Committee with its own depository must register with and report to the Commission except that, where the Dinner-Dance Committee is not regarded by you as a separate entity, the reporting entity would be the Lawrence Township Democratic Club, which would have the obligation of reporting all of the contributions and expenditures of the Dinner-Dance Committee in accordance with the provisions of the Act, as well as the obligation of reporting all of the other contributions and expenditures of the Lawrence Township Democratic Club. It is not entirely clear from your letter how the matter is regarded by you. So long as there is complete disclosure (including, where necessary, reports by the Lawrence Township Democratic Club with respect to testimonial affairs outside of the period generally covered by pre-election and post-election reports), there is not an additional requirement for reporting of the same information by the Dinner-Dance Committee. Where the Dinner-Dance Committee does its own reporting, the political club must report the receipt of the proceeds as a contribution to it.

The reporting entity should report the 1975 dinner dance and picnic and the February 21, 1976 dinner dance as testimonial affairs. To the extent that affairs held in 1973 and 1974 have

not been previously reported, reports of those affairs as testimonial affairs with whatever financial information is available should be made to the Commission with such explanation as is deemed appropriate with respect to the delay in reporting and the absence of some financial information.

Yours very truly,

Edward J. Farrell
Legal Counsel

EJF:ja

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
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March 24, 1976

Lewis B. Thurston, III
Executive Director
Election Law Enforcement Commission
28 West State Street
Trenton, New Jersey

FORMAL OPINION NO. 10 - 1976

Dear Director Thurston:

You have asked for an opinion as to the impact of a recent decision of the United States Supreme Court in Buckley v. Valeo, 96 S.Ct. 612 (1976), on the validity and continued enforcement of the New Jersey Campaign Contributions and Expenditures Reporting Act of 1973. It is our opinion for the following reasons that the expenditure limitation found in Section 7 of the Act is constitutionally impermissible under the First Amendment to the United States Constitution and all enforcement activities with respect to it should be discontinued. However, it is also our opinion that the Act is otherwise constitutional in its entirety and may be enforced by the Election Law Enforcement Commission in accordance with its statutory and regulatory responsibilities.

In Buckley, the United States Supreme Court was primarily concerned with the constitutional validity of the contribution and expenditure limitations set by the Federal Election Campaign Act of 1971, as amended, under the First Amendment. Initially, the Court in its majority opinion noted that both the contribution and expenditure limits of the federal act implicate fundamental First Amendment guarantees and impose "restrictions on political communication and association by persons, groups, candidates and political parties ..." 96 S.Ct. at 634.

In the area of contribution limitations, the Court concluded that the Act's primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions was a constitutionally sufficient justification and does not directly impinge upon the rights of citizens and candidates to engage in political debate and discussion. On the other hand, the Court stressed that expenditure ceilings impose significantly more severe restrictions on protected political expression:

> "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech." 96 S.Ct. at 634, 635.

Accordingly, the nation's highest Court held that although contribution ceilings constitutionally serve a basic governmental interest in safeguarding the electoral process without impinging on the rights of citizens to engage in political debate and discussion, the First Amendment requires the invalidation of the Act's expenditure limitations as substantial and direct restrictions on the ability of candidates, citizens and associations to engage in protected political expression and association.

In addition, challenges to the Act's reporting and disclosure requirements as overbroad in their application and in their extension to contributions as small as $10 or $100 were rejected. The Court identified significant governmental interests to be vindicated by this form of disclosure and reporting, e.g., "disclosure provides the electorate with information 'as to where political campaign money comes from

and how it is spent by the candidate' in order to aid the voters in evaluating those who seek federal office." In addition, "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." Finally, the Court noted that "disclosure requirements are an essential means of gathering the data necessary to detect violations of the limitations imposed by the Act." 96 S.Ct. at 657, 658. In view of these compelling governmental purposes, no constitutional infirmity was found with either the disclosure, or reporting requirements or the minimum monetary thresholds stipulated in the recordkeeping and reporting provisions.

It is clear that the protections afforded by the First Amendment against unwarranted interference by the Federal Government have equal application to the governmental activities of a state. New York Times Company v. Sullivan, 376 U.S. 254, 257 (1964). The question therefore raised is whether the provisions of our New Jersey Campaign Contributions and Expenditures Reporting Act of 1973 is interdicted in any manner by the First Amendment as construed by the majority of the Court in Buckley.

In many respects, the New Jersey act bears a striking similarity to its federal counterpart as a means to eliminate corrupting influences in the electoral process through regulation and identification of the flow of wealth aimed at affecting that process. Although the Act contains a statutory ceiling on allowable contributions only for purposes of a publicly financed gubernatorial campaign, it does spell out in explicit terms limits on spending in aid of the candidacy of any candidate for a public office at any election in this state. N.J.S.A. 19:44A-7 provides as follows:

> "The amount which may be spent in aid of the candidacy of any candidate for a public office at any election shall not exceed $0.50 for each voter who voted in the last preceding general election in a presidential year in the district in which the public office is sought.
>
> "No money or other thing of value shall be paid or promised, or expense authorized or incurred in behalf of any candidate for nomination or election to any office, whether such payment is made or promised, or expense authorized or

> incurred by the candidate himself or by any other person, political committee or organization, in furtherance or in aid of his candidacy, under any circumstances whatsoever, in excess of the sums provided; but such sums shall not include the traveling expenses of the candidate or of any person other than the candidate if such traveling expenses are voluntarily paid by such person without any understanding or agreement with the candidate that they shall be directly or indirectly, repaid to him by the candidate."

It is clear from the terms of this section that the New Jersey act imposes the same limitations on constitutionally guaranteed freedoms of expression and association as those condemned by the United States Supreme Court in Buckley. This restriction on the amount of money to be spent in aid of the candidacy of a candidate for public office in New Jersey similarly reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. It also represents a substantial restraint on the ability of a political committee or organization in this State "... from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association." 96 S.Ct. at 636.

On the other hand, the remainder of the Act appears to be constitutional in all other respects and entirely consistent with the United States Supreme Court's determination.* The disclosure and reporting requirements of the Act imposed upon those who influence or affect the electoral process serve a valid governmental interest consistent with the demands of the First Amendment.** Moreover, expenditure limitations on gubernatorial candidates who voluntarily accept public financing for general election campaign expenses under N.J.S.A. 19:44A-36 appear to be constitutionally

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* The invalidity of the composition of the Federal Election Commission under Art. II, § 2, cl. 2, of the Federal Constitution (Appointments Clause) has no relevance to the New Jersey agency under our State Constitution, which in any event is composed solely of gubernatorial appointees.

** It should be noted, however, that on July 1, 1975 the Chancery Division of the Superior Court in New Jersey Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 135 N.J. Super. 577 (Ch. Div. 1975), held that

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sound and similar to expenditure ceilings specifically approved by the United States Supreme Court for publicly financed presidential election campaigns. 96 S.Ct. at 666, 671.

You are therefore advised that the spending limitation set forth in Section 7 of the Act, N.J.S.A. 19:44A-7, is unconstitutional under the First Amendment to the United States Constitution and all enforcement procedures of the Commission pertaining to that section of the Act should be terminated. You are also advised that the remainder of the Act is constitutionally sound in its entirety in light of the decision in Buckley and may be properly implemented without Section 7 and be consistent with the underlying broad objectives of the Act.

Very truly yours,

WILLIAM F. HYLAND
Attorney General

By Theodore A. Winard
Theodore A. Winard
Assistant Attorney General

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** (cont'd)
certain regulatory and reporting requirements set forth in N.J.S.A. 19:44A-11 as applied to political information organizations and committees spending less than $100, were facially overbroad in contravention of the First Amendment to the United States Constitution and Art. I, ¶ 18 of the New Jersey Constitution. That decision is now on appeal to the Appellate Division of the Superior Court and will undoubtedly be reconsidered in light of the decision of the United States Supreme Court in Buckley.