



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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July 19, 1988

Clifford M. Sobel
40 Dorison Drive
Short Hills, NJ 07078

RE: Advisory Opinion No. 07-1988

Dear Mr. Sobel:

The Commission has directed me to respond to your letter dated July 1, 1988 in which you requested an advisory opinion. You have asked several questions concerning the application of "The Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter, "the act") to the raising of donations and the making of payments by a group of individuals encouraging Congressman James A. Courter to undertake a gubernatorial candidacy in the upcoming gubernatorial primary election.

In your letter, you have presented the following facts: a group of citizens, whom you represent, is planning to form an organization entitled "Friends of Jim Courter" which will have as its sole purpose engaging in pre-candidacy activity (i.e., "testing the waters") to solicit donations on behalf of a possible gubernatorial candidacy of Congressman Courter. Donations will be solicited through fundraising activities such as direct mail, cocktail parties, and dinners, and will be solicited in amounts not to exceed \$800 from any single contributor. The organization anticipates that Congressman Courter will not be making any decisions concerning a gubernatorial candidacy until the latter part of 1988 or early 1989. In the event Congressman Courter does decide to run, the organization anticipates that the Congressman will designate as his principal campaign committee the bank account established by this entity for the purpose of receiving pre-candidacy donations. Until that time, the only expenditures made from the account established by "Friends of Jim Courter" will be those needed to conduct pre-candidacy fundraising activities.

As you have noted, the Commission has proposed amendments to its existing regulations concerning gubernatorial public financing in primary elections; see 20 N.J.R. 1339(a) (June 20, 1988), proposing to amend N.J.A.C. 19:25-16.1 et seq. However, the responses contained in this opinion are confined to the regulations as they presently exist, and nothing contained herein should be regarded as expressing any opinion on the applicability of the proposed amendments.

The questions you have submitted, and the Commission responses are as follows:

"a. Would the 'Friends of Jim Courter' be acting lawfully if it engaged in fund-raising activity, deposited and expended funds, and reported as set forth above?"

"Friends of Jim Courter" may receive funds and may make payments for pre-candidacy activity without acquiring reporting responsibilities provided that these activities are strictly confined to the purpose of determining whether the Congressman would be a viable gubernatorial candidate. The activities contemplated under the pre-candidacy exemption include, but are not limited to: payments for conducting a poll, for telephone calls, and for travel; all carried out for the purpose of determining whether an individual should become a candidate; see N.J.A.C. 19:25-3.1(a). The pre-candidacy exclusion does not apply to payments made for general public political advertising; nor to funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate; see N.J.A.C. 19:25-3.1(b).

The fundraising activities contemplated by "Friends of Jim Courter" could all be within the pre-candidacy provision if they are confined to raising amounts reasonably necessary to pay for "testing" activities. To the extent they are conducted to amass future campaign funds, or to conduct mass media advertising, they exceed the narrow scope intended for the regulation and give rise to reporting obligations. Please see the response to question (c) below for a more detailed explanation of reporting requirements.

"b. Would the contributions received and deposited be eligible for matching funds in the gubernatorial primary campaign if Mr. Courter becomes a candidate and designates the 'Friends of Jim Courter' as his principal campaign committee and the account as his depository bank account pursuant to N.J.A.C. 19:25-16.4?"

The gubernatorial primary election regulations specifically contemplate that in the event an individual, on whose behalf funds are received and payments are made solely for the purpose of determining whether that individual should become a candidate, does in fact become a candidate; the separate depository established for "testing the waters" may be designated as the matching fund account under N.J.A.C. 19:25-16.18(b); see N.J.A.C. 19:25-16.5(c). All the contributions deposited in that account must meet the matching requirements of N.J.A.C. 19:25-16.18. Subject to these cited restrictions, under the facts you have asked the Commission to assume, donations received in a pre-candidacy setting by "Friends of Jim Courter" could be eligible for matching funds as "contributions" under the Act and regulations should Mr. Courter become a gubernatorial primary election candidate.

"c. Assuming that 'Friends of Jim Courter' undertakes no activities with the monies raised through fund raising to promote the

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candidacy of Mr. Courter for the Office of the Governor until after such time as Mr. Courter becomes a gubernatorial candidate, is any reporting of contributions or expenditures (for fund raising) required prior to the decision by Mr. Courter to become a candidate? In this regard is the last sentence of N.J.A.C. 19:25-3.1(b) applicable to our facts, and, if so, does it require any reporting prior to a decision by Mr. Courter to become a candidate for the Office of Governor?"

With the qualification expressed below in this response, as a general proposition "Friends of Jim Courter" will not acquire any reporting obligations for pre-candidacy donations it receives or payments it makes unless Congressman Courter becomes a "candidate" as that term is defined in the Act and the regulations; see N.J.A.C. 19:25-16.3 defining the term "candidate." At such a time, should Congressman Courter designate "Friends of Jim Courter" as his principal campaign committee, he should file a Form D-1 to that effect pursuant to N.J.A.C. 19:25-16.4, and he will be responsible for the filing of campaign reports pursuant to N.J.S.A. 19:44A-16. Only in the event that the donations received and payments made are restricted narrowly to the pre-candidacy activities described in N.J.A.C. 19:25-3.1, and Congressman Courter never becomes a gubernatorial primary election candidate, is the reporting of the pre-candidate activity not required.

In regard to your inquiry concerning the last sentence of N.J.A.C. 19:25-3.1(b), if funds are received or payments made for general public political advertising, or if funds are received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate, the committee acquires reporting obligations pursuant to N.J.S.A. 19:44A-8(a) regardless of whether or not Congressman Courter ultimately embarks upon a gubernatorial candidacy. The exclusion from reporting for pre-candidate activity is a narrow one, and is intended to be confined to those activities that reasonably are related to the process of determining the viability of a possible candidacy. While the Commission is unable to offer a specific dollar ceiling on donations or payments that would exceed reasonable pre-candidacy activity, the Commission is persuaded that where donations have been collected far in the excess of the amount needed to conduct pre-candidacy evaluations and activity campaign reporting must attach. Therefore, if "Friends of Jim Courter" anticipates amassing campaign funds at this time, it should file a Form D-1 pursuant to N.J.S.A. 19:44A-10. The filing of that form would signal only that the organizational entity has acquired a campaign reporting obligation in the 1989 primary election, but not that any particular individual has in fact achieved candidate status. Advisory Opinion No. 03-1983, which you have cited, and is attached, requires reporting of limited pre-candidacy activity if the individual on whose behalf the activity is undertaken becomes a candidate, and therefore appears consistent with this opinion. In any event, please note that N.J.A.C. 19:25-3.1 was promulgated after the issuance of that advisory opinion and supersedes it; see 15 N.J.R. 616, 15 N.J.R. 1182(a) (July 18, 1983).

"d. Will expenses incurred in connection with fund-raising activities of 'Friends of Jim Courter', which expenses occur prior to a decision by Mr. Courter to become a candidate, be charged against his spending cap in the gubernatorial primary election assuming he becomes a candidate for the Office of Governor and accepts public financing?"

Commission regulation N.J.A.C. 19:25-16.9(a)3 specifically provides that the amount which any qualified candidate may spend in aid of his or her candidacy is subject to an expenditure ceiling amount "... which amount shall include all expenditures for testing the waters activity prior to candidacy." Therefore, should Congressman Courter become a candidate, and should he designate "Friends of Jim Courter" and the account it maintains for pre-candidacy activity as his principal campaign committee, expenditures for pre-candidacy activity will be subject to the overall expenditure limit except to the extent that they are exempted by virtue of N.J.A.C. 19:25-16.27. Expenses exempted from the expenditure limit by that regulation include those that are reasonable and necessary for compliance with the reporting and certification requirements, travel expenses and the reasonable value of food and beverages at fundraising affairs; see N.J.A.C. 19:25-16.27(a)1, 2 and 3.

You have also asked the Commission to consider a variation in the facts given above to the effect that the pre-candidate committee may accept some contributions in excess of \$800 and therefore in excess of the individual contribution limit set forth in N.J.S.A. 19:44A-29. N.J.A.C. 19:25-16.12 specifically provides that pre-candidacy donations in excess of \$800 may be accepted if the excess amount is refunded within ten days of the commencement of the candidacy. To qualify for matching fund eligibility, a candidate must certify any pre-candidacy donation that exceeds \$800 has been reduced to that figure by the return of the excess amount to the contributor; see N.J.A.C. 19:25-16.12(b).

If you wish any assistance with the reporting requirements under the existing public financing regulations, or under the proposed amendments should they ultimately be promulgated, please do not hesitate to contact the staff of the Commission. Thank you for your inquiry.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY: 
GREGORY E. NAGY