



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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April 5, 1989

Senator Richard J. Codey
New Jersey State Senate
District 27
331 Main Street
West Orange, NJ 07052

Re: Advisory Opinion No. 07-1989

Dear Senator Codey:

Your letter received February 28, 1989 by the New Jersey Election Law Enforcement Commission ("the Commission") including a request for advisory opinion has been forwarded to me for reply.

You have asked what campaign reporting responsibilities you have acquired as a result of pre-candidacy (i.e., "testing-the-waters") activities you undertook as a possible 1989 primary election gubernatorial candidate. In connection with that possible candidacy, you established a bank account under the name, "Citizens for Codey," and filed with the Commission on December 5, 1988 a notice of the establishment of that account for pre-candidacy activity (Form T-1). You have decided not to

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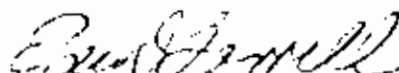
embark upon a 1989 gubernatorial candidacy, and you inquire what reporting obligations arise, and how you may disburse funds remaining unexpended in the pre-candidacy account.

The Commission concludes that payments made by "Citizens for Codey" solely for the purpose of "testing-the-waters" activity as specified in Section 8(a) of the Act are not subject to the reporting requirements of the Act. By its express terms, Section 8(a) provides that such funds are neither "contributions" nor "expenditures."

The Commission is of the view that the use to be made of funds remaining unexpended in the pre-candidacy account should be in conformity with the use permitted for surplus campaign funds set forth in N.J.A.C. 19:25-7.4, a copy of which is enclosed. In the event that any use is made for political purposes, such as payment of an outstanding campaign expense pursuant to N.J.A.C. 19:25-7.4(b)(1), or for transmittal to another candidate pursuant to N.J.A.C. 19:25-7.4(b)(2), or retention for a future candidacy pursuant to N.J.A.C. 19:25-7.4(b)(6), a report must be filed by "Citizens for Codey" at the time of such use, and that report must include the identification of contributors of all of the funds contributed to the pre-candidacy account.

Please note that under the provisions of Section 8(a) records must be kept of all funds received and payments made relevant to "testing-the-waters" activity. Such records are subject to the requirement in its regulations that they be retained for a period of not less than four years after the date of the June 6, 1989 primary election; see N.J.A.C. 19:25-8.2 (copy enclosed).

Very truly yours,



Edward J. Farrell

EJF:dc
Enclosures