



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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July 20, 1988

Dear Sir/Madam:

Kindly be advised that the public hearing on the Commission's proposed amendments to its regulations of gubernatorial public financing of primary elections has been continued for further testimony to August 11, 1988, 9:30 a.m., at the Commission offices at 28 West State Street, Suite 1215, Trenton. Also, the time to submit written comments has been extended to August 11. I have enclosed a copy of the proposed regulations for your convenience.

Please contact Legal Director Gregory E. Nagy at the above phone number if you would like to testify.

Do not hesitate to contact me or our staff if you have any questions about these proposals or the hearing.

Very truly yours,

FREDERICK M. HERRMANN, Ph.D.

FMH/slm
Enclosure

Authority: N.J.S.A. 19:44A-38.
 Proposal Number: PRN 1988-311.

A public hearing concerning this proposal will be conducted on:
 July 19, 1988 at 10:00 A.M.
 State House Annex, Room 334
 Trenton, New Jersey

Submit written comments by July 20, 1988 to:
 Gregory E. Nagy, Esq., Legal Director
 Election Law Enforcement Commission
 28 West State Street, Suite 1215
 Trenton, New Jersey 08608

The agency proposal follows:

Summary

The New Jersey Election Law Enforcement Commission (Commission) proposes to amend its rules concerning the public financing of primary election candidates for Governor, N.J.A.C. 19:25-16. These amendments are derived from the Commission's experience in administering past programs and from past advisory opinions issued by the Commission. The specific proposed changes are as follows:

1. N.J.A.C. 19:25-16.4 (Designation of principal campaign committee) has been combined in the proposal with N.J.A.C. 19:25-16.5(a) concerning the appointment of treasurers and depositories. No substantive change has been proposed.

2. N.J.A.C. 19:25-16.5 has been retitled "Pre-candidacy activity" in the proposal. Individuals, or committees on their behalf, conducting pre-candidacy fund raising or spending (that is, "testing the waters") will be required to file with the Commission within 10 days after receipt of funds for such activity a statement identifying the name, address and account number of the bank account established for that purpose. Also, an individual conducting pre-candidacy activity, or a committee in his or her behalf, will be required to file with the Commission quarterly reports of moneys received and expended for pre-candidacy activity ("testing the waters").

3. N.J.A.C. 19:25-16.6(c) (Contribution limits: applicability) has been amended in regard to contributions received from minors (under 18 years of age). Such contributions will be attributed to the parents or guardian of the minor contributor for purposes of determining compliance with the \$800.00 contribution limit. The Commission believes that minors under 18 years old, who cannot vote, should not be permitted to make contributions because of the probability that the decision to contribute may be influenced by the parents or guardian and not be made independently.

4. The proposed amendment to N.J.A.C. 19:25-16.10(c) (Who may or may not contribute: generally) establishes specific standards for determining affiliation status among corporate contributors or among labor organization contributors. The existing text establishes the "degree of control or common ownership" as the standard for determining when corporations are affiliated. This amendment provides that corporations shall be considered affiliated when a majority of the directors of both corporations are the same, or when one corporation owns the majority of the stock of others. This provision is sometimes referred to as "anti-proliferation" because it is intended to prevent several corporations from each making contributions which in the aggregate exceed the \$800.00 contribution limit when those corporations are affiliated to each other. In regard to labor organizations, the proposed standards for determining affiliation status are if one labor organization has legal authority to seize or encumber dues or assets of another, or the leadership of one labor organization is identical to the leadership of another.

5. A new N.J.A.C. 19:25-16.11(a) is proposed (Contributions eligible for match: generally) to the effect that a contribution will not be matched unless it was deposited and received in a pre-candidacy or "testing the waters" account, or was received by a person who was a candidate in the primary election for the office of Governor. The Commission's intention is to exclude from matching fund eligibility any contribution received by a candidate at the time when that candidate was seeking an elective office other than Governor.

6. A new N.J.A.C. 19:25-16.11(e) is proposed requiring that contributions received from a corporation or labor organization must be accompanied by a certification that the "anti-proliferation" standards proposed in N.J.A.C. 19:25-16.10 have been observed.

7. A new N.J.A.C. 19:25-16.11(f) is proposed permitting the matching of contributions received from persons or entities who are also contributing to bona fide continuing political committees with at least 15 contribut-

(a)

ELECTION LAW ENFORCEMENT COMMISSION
Public Financing of Primary Election for Governor
Proposed Amendments: N.J.A.C. 19:25-16.4, 16.5,
16.6, 16.10, 16.11, 16.14, 16.18, 16.20, 16.27 and
16.33.

Authorized By: Frederick M. Herrmann, Ph.D., Executive Director, Election Law Enforcement Commission.

ing members, which continuing political committees in turn are making contributions eligible for match to the same gubernatorial candidate. Therefore, a member of such an organization may contribute up to the maximum contribution of \$800.00 to a gubernatorial candidate notwithstanding the fact that the organization to which that member belongs has also contributed a full maximum \$800.00 contribution to the same candidate.

8. The proposed amendment to N.J.A.C. 19:25-16.14 (Limitation on contributions eligible for match) establishes the purchase price of a ticket to a fund raising event or lottery ticket as the amount of the contribution eligible for match, and establishes an additional requirement that tickets for such events or lotteries and their promotional material must state that the price represents a contribution to the candidate conducting the event or lottery. The existing rule requires the Commission to determine the fair market value of any entertainment event or lottery conducted by a gubernatorial candidate. Only the difference between the purchase price and the fair market value, under the existing rule, can be treated as eligible for matching public funds. The Commission believes that tickets for entertainment events and lotteries present substantial valuation problems beyond the ability of the Commission to establish in the short time frame of a matching fund application for a gubernatorial candidacy. Further, the Commission is persuaded that the current rule is overly complex and difficult for candidates or the Commission to apply. The proposed amendment would be predicated on the reasonable assumption that any contributor purchasing a ticket to a fund raising event or a lottery sponsored by a candidate or committee is doing so as an expression of political support, and not for the value of attending the event or participating in the lottery.

9. A proposed new N.J.A.C. 19:25-16.14(e) (Matching of funds) requires that statements submitted by candidates concerning applications for public funds cannot be handwritten.

10. Proposed new N.J.A.C. 19:25-16.20(b) and (c) (Special account for public funds) require campaign treasurers of candidates receiving public funds to file with the Commission reports identifying disbursements made out of any public fund account established for the candidate's campaign. This reporting obligation begins on the fourth Monday following January 1 in a gubernatorial election year, or as soon as the account is established thereafter, and subsequent reports must be filed on every other Monday thereafter until the public fund account is closed. The reports must identify each disbursement made from the public fund account and must give a complete statement of the purpose of the expenditure, indicating which permitted use of public funds is applicable; see N.J.A.C. 19:25-16.25 setting forth the specific purposes for which public funds may be used. Failure to file complete or timely reports, or failure to expend public funds in compliance with statutory and regulatory requirements shall result in immediate cessation of further public fund deposits by the Commission.

11. The proposed amendment to N.J.A.C. 19:25-16.27 (Expenses not subject to expenditure limits) provides that expenses incurred for an election night celebration or event pursuant to proposed N.J.A.C. 19:25-16.33(c) shall not be subject to the overall expenditure limit on candidates receiving public funds. The Commission believes that expenses for election night events are a traditional part of the campaign process and are not intended to be part of the overall campaign expenditure limit provided in N.J.S.A. 19:44A-7, particularly because they generally are conducted after the close of the polls.

12. Proposed new N.J.A.C. 19:25-16.33(b) (Repayment of public of other funds) provides that a publicly funded candidate cannot incur new debt or make expenditures after the date of the election other than to satisfy preexisting campaign obligations or to pay the reasonable and necessary costs of closing the campaign. This proposed rule is intended to protect the interest of the State in the return to the State of any unexpended balance remaining in the account of a publicly financed candidate; see N.J.S.A. 19:44A-35(c). A publicly financed candidate is therefore prohibited from using any remaining balance for expenses not strictly related to campaign activity, or closing of the campaign account.

13. Proposed new N.J.A.C. 19:25-16.33(c) provides that an election night celebration conducted on the date of the primary election is a permissible campaign expenditure.

Social Impact

The proposed amendments will affect gubernatorial candidates and their campaign treasurers in primary elections. However, the Commission does not believe that these proposals affect the public at large. The proposals are intended to enhance the Commission's ability to administer the statutory requirements of the public funding program, particularly

the requirements that public funds awarded to gubernatorial candidates must be spent for purposes specifically enumerated in the statute. Also, the Commission believes that gubernatorial campaign reporting will be enhanced by requiring prospective candidates to identify their bank accounts, and further requiring quarterly reporting of money received and expended by such prospective candidates, or by committees on their behalf. In the absence of such a proposal, the Commission is concerned that substantial funds could be raised without any public disclosure.

Economic Impact

The Commission believes that the proposed amendments will have only a nominal economic impact on prospective and actual candidates for governor in a primary election. New minimal filing responsibilities are imposed upon prospective candidates, and enhanced filing responsibilities are imposed upon actual candidates who are receiving public funds. The Commission believes that the public benefits from these additional requirements far outweigh any nominal economic cost to prospective or actual candidates. Further, the Commission believes its proposed amendment requiring publicly funded candidates to avoid new debt after the date of the election and limiting expenditures to preexisting outstanding campaign obligations or reasonable and necessary closing costs will increase the amount of funds ultimately remaining as unexpended and returned to the State at the close of the campaign.

Regulatory Flexibility Statement

The proposed amendments affect the campaign financing of gubernatorial candidates in a primary election, and as such do not impose reporting, recordkeeping or other compliance requirements on small businesses other than those imposed on any entity making a contribution to a gubernatorial candidate. Such requirements must be applied uniformly to all contributing entities to enable the Commission to administer the statutory requirements of the public funding program.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

[19:25-16.4 Designation of principal campaign committee]

[Upon becoming a candidate, each candidate, whether publicly declared or not, shall designate to the commission the name and address of his or her principal campaign committee for the primary election, the name and address of his or her campaign treasurer and the name, address and number of his depository bank account. As to certification of compliance with contribution limitations, see N.J.A.C. 19:25-16.12.]

19:25-16.4 Appointment of treasurers and depositories

(a) Each candidate in a primary election, whether or not publicly declared and whether or not intending to participate in public funding, shall:

1. Designate the name and address of his or her principal campaign committee for the primary election;
2. Appoint a campaign treasurer;
3. Designate a depository bank account; and
4. Notify the commission pursuant to N.J.A.C. 19:25-5.2 (Appointment by candidates) of such appointment and designation no later than the 10th day after receipt of any contribution or after incurring or making any expenditure, whichever comes first.

19:25-16.5 [Appointment of treasurers and depositories] **Pre-candidacy activity**

[(a) Each candidate in a primary election, whether or not publicly declared and whether or not intending to participate in public funding, must appoint a campaign treasurer and designate a depository bank account and must notify the commission pursuant to N.J.A.C. 19:25-5.2 (Appointment by candidates) of such appointment and designation no later than the tenth day after receipt of any contribution or incurring or making any expenditure, whichever comes first.]

[(b)] (a) All funds received by an individual, or a committee in his or her behalf, solely for the purpose of determining whether that individual should become a candidate (for example "testing the waters") shall be deposited in a separate depository established solely for that purpose.] and the individual or committee controlling that depository shall file quarterly reports with the commission in the manner and on the dates set forth in N.J.A.C. 19:25-10.

(b) An individual, or a committee on that individual's behalf, shall file with the commission a notice containing the name, address and account number of the depository established pursuant to (a) above not later than 10 days after the receipt of funds for the purpose of determining whether that individual should become a candidate.

(c) In the event the individual on whose behalf funds are received and payments made solely for the purpose of determining whether the individual should become a candidate does in fact become a candidate, the separate depository established under [(b)] (a) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-16.18(b), provided that the account and all of the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-16.18(b).

19:25-16.6 Contribution limits: applicability

(a)-(b) (No change.)

(c) Contributions by children under the age of 18 shall be attributed to the [parent who is responsible for the contribution and not to the child unless:

1. The child is 14 years of age or older and a signed statement from the child and the child's parent or guardian is submitted to the commission that the decision to contribute was solely that of the child and the funds used to make the contribution were legally and beneficially controlled by the child and are not the proceeds of a gift made for the purpose of contribution; or

2. The child is 11 years old or older and, in addition to the signed statement set forth in paragraph 1 above, evidence is submitted satisfactory to the commission that the child acted independently and with full knowledge of the contribution.] parents or guardian of the child.

19:25-16.10 Who may or may not contribute: generally

(a)-(b) (No change.)

(c) A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to or on behalf of a candidate which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds \$800.00 in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the [degree of] control or common ownership with related or affiliated corporations, associations or labor organizations[,] and the source and control of funds used for such contribution. [and the degree to which the decisions whether to contribute, to what candidate and in what amount are independent decisions.]

1. In the case of corporations, affiliation status between corporate contributors shall be determined by the following:

- i. Whether a majority of the directors are the same; or
- ii. Whether one corporation owns a majority of the stock of any other contributing corporation.

2. In the case of labor organizations, affiliation status between labor organization contributors shall be determined by the following:

- i. Whether one labor organization has legal authority to seize or otherwise encumber dues or assets of any other contributing labor organization; or
- ii. Whether the leadership of one labor organization is identical to the leadership of any other contributing labor organization.

19:25-16.11 Contributions eligible for match: generally

(a) To be eligible for matching with public funds for a gubernatorial primary election, a contribution must have been received by a candidate at a time when that candidate was seeking or had sought nomination for election for the office of Governor, except that a contribution received and deposited pursuant to N.J.A.C. 19:25-16.5 (Pre-candidacy activity) for the purpose of determining whether an individual should become a candidate for nomination for election for the office of Governor shall be eligible. Any funds received prior to the inception of such a candidacy, or prior to the inception of fund raising activity to determine whether an individual should become a candidate for nomination for election for the office of Governor and not deposited pursuant to N.J.A.C. 19:25-16.5 shall not be eligible for match.

[(a)](b) Only contributions in cash or by check, money order or negotiable instruments shall be contributions eligible for match. Loans shall not be eligible for match. In-kind contributions shall not be eligible for match, but will count toward the individual contribution limit of \$800.00 and the overall expenditure limit contained in section 2 of P.L. 1980, c.74 (N.J.S.A. 19:44A-7) except for expenses not subject to expenditure limits pursuant to N.J.A.C. 19:25-16.27. The total of all contributions eligible for match from any person or political committee shall not exceed \$800.00 in the aggregate.

[(b)](c) A maximum of \$800.00 in the aggregate of a candidate's own funds may be deposited in the matching fund account.

[(c)](d) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

(e) To be eligible for match, a contribution received from a corporation or labor organization must be accompanied by a certification made by an officer of that contributing entity that no other corporation in the case of a corporate contribution, or no other labor organization, in the case of a labor organization contribution, has made a contribution to the recipient candidate that violates the restrictions on related or affiliated contributions contained in N.J.A.C. 19:25-16.10(c).

(f) A contribution received from a contributing member of a political committee which has made a prior contribution to the candidate shall be eligible for matching funds, provided that the political committee is a bona fide political entity with at least 15 contributing members and was not created to circumvent the contribution limit contained in the act.

19:25-16.14 Limitation on contributions eligible for match

(a) Any contribution in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) [or in the form of a purchase price paid for a chance to participate in a raffle, lottery or similar drawing for valuable prizes, or in the form of the purchase price paid for the admission to any activity that primarily confers private benefits to the contributor in the form of entertainment (such as a concert, motion picture or theatrical performance)] shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the \$800.00 contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the \$800.00 limitation.

(c) The purchase price paid to a candidate for a fund raising event or lottery shall deemed the amount of the contribution made to such candidate. The tickets for such an event or lottery and the promotional materials shall state that the purchase price represents a political contribution to the candidate.

19:25-16.18 Matching of funds

(a)-(d) (No change.)

(e) Any statement or list submitted pursuant to this section shall not be handwritten.

19:25-16.20 Special account for public funds

(a) The commission shall maintain for each qualified candidate a separate segregated public fund account for deposit of public funds. All public funds received by the commission from the General Treasury of the State shall be promptly deposited by the commission into such separate segregated public fund account. No funds other than such public funds shall be deposited in such separate segregated public fund account, and all expenditures from such account shall be separately identified in reports filed with the commission.

(b) The campaign treasurer of a candidate on whose behalf a public fund account has been established shall file with the commission on the fourth Monday following January 1 and every other Monday thereafter and for as long as said public fund account is open, a report identifying each disbursement made out of the public fund account. The identification of each disbursement from the public fund account shall include the check number, date of payment, full name of payee, full payee mailing address and a complete statement of purpose of the expenditure indicating which of the permitted purposes set forth in N.J.A.C. 19:25-16.25 (Use of public funds) is applicable. Failure to file any such report, failure to provide the identification information required in such report, or failure to expend public funds in compliance with N.J.A.C. 19:25-16.25, shall result in immediate cessation of public fund deposits by the commission.

(c) Any report filed pursuant to this section disclosing an expenditure for the purpose of media consultant services or other services shall be accompanied by a certification from the payee itemizing media advertising purchases or other services provided, and shall certify such funds are or will be expended in compliance with N.J.A.C. 19:25-16.25.

19:25-16.27 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-16.9(a)3. (Limitations on participating candidates):

1.-3. (No change.)

4. Election night celebration or event expenses incurred pursuant to N.J.A.C. 19:25-16.33(b).

19:25-16.33 Repayment of public or other funds

(a) All monies received by a qualified candidate from the public fund for the primary election campaign expenses remaining after the liquidation of all unlawful obligations with the respect to that election shall be repaid to the commission (for return to the Treasurer to the State of New Jersey) not later than six months after the date of such primary election. All moneys, other than moneys received from the public fund, remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the commission (for return of the Treasurer of the State of New Jersey) no later than six months after the date of such primary election provided, however, that nothing herein contained shall require any candidate to pay into the public fund a total amount of moneys in excess of the total amount of moneys received by such qualified candidate from the public fund.

(b) No candidate who has received public funds shall incur any debt or make any expenditure after the date of the election for any purpose other than the following:

1. To satisfy outstanding obligations incurred on or before the date of the election made for appropriate campaign purposes; or
2. To pay the reasonable and necessary costs of closing the campaign.

(c) An election night celebration or event conducted by a candidate who has received public funds will be deemed a reasonable and necessary cost of closing the campaign provided that it is conducted on the date of the primary election.