

NEW JERSEY ELECTION LAW
ENFORCEMENT COMMISSION
Temporary Office
c/o Frank P. Reiche, Esq.
1 Palmer Square
Princeton, New Jersey 07540

A.O. 02-1973

September 22, 1973

Peter A. Buchsbaum, Esq.
Staff Counsel
American Civil Liberties Union
of New Jersey
45 Academy Street
Newark, New Jersey 07102

Re: The New Jersey Campaign Control and
Expenditures Reporting Act, P. L.
1973, c. 83 ("the Act")
Your Letter Dated July 3, 1973

Dear Mr. Buchsbaum:

Your letter to the New Jersey Election Law Enforcement Commission ("the Commission"), including your request for advisory opinion, has been forwarded to me for reply. By previous correspondence, the Commission requested an extension of time within which to reply to September 6, 1973.

1. The ACLU of New Jersey is, on the facts set forth in your letter, a "political information organization" within the meaning of the Act, and is required to file with the Commission, not later than March 1 of each year, a report of contributions and expenditures in accordance with the provisions of Section 8 of the Act. In the opinion of the Commission the activities set forth in your letter, compel the conclusion that the ACLU of New Jersey is a political information organization. The statement attached to P. L. 1973, c. 83, referred to in your letter does not, on its face, purport to limit the intent of the legislature to implementation of the interim report of September, 1970, and cannot be regarded as substantial support for your position in view of the language of Sub-section g of Section 4 of the Act.
2. A political information organization is subject to the reporting requirements of Section 16 of the Act relating to elections, if such political information organization instituted a fund for the purposes of the election, or otherwise acted in some substantial manner to aid or promote the nomination, election or defeat of

any candidate or candidates for public office or aided or promoted the passage or defeat of a public question in an election. If, for example, the circumstances were such that the affected candidate would be required to report the expenditure as an expense authorized or incurred in furtherance or in aid of his candidacy, then compliance with the reporting requirements of Section 16 would be required, as for a political committee. The collection and publication of political information as to all candidates who respond to a questionnaire or other request for information, would not be regarded as action promoting in a substantial manner the candidacy of any of such candidates, unless the surrounding circumstances, including the tone of the publication, the presence of editorial comment, or other persuasive circumstances, show that the publication is in fact an expenditure authorized or incurred in furtherance or in aid of the candidacy of the candidate and is not simply publication of political information as to all candidates. The ACLU of New Jersey is not, on the basis of the facts set forth in your letter, subject to the pre-election and post-election reporting requirements of paragraph 16, incorporated by reference into paragraph 1 of Section 8 of the Act.

3. United States vs. the National Committee for Impeachment, 469 F. 2d 1135 (2d Cir. 1972) dealt with the applicability of the definition of "political committee" in the federal statute to the National Committee for Impeachment. The federal statute defined "political committee" in terms of accepting contributions and making expenditures, rather than in terms of the activities carried on by the organization, which is the basis for definition under the Act. The Court determined, as a matter of interpretation of the statutory language, that solely on the strength of the one advertisement and contributions made in response to it described in the opinion, the federal statute was inapplicable to the National Committee for Impeachment and expressly did not reach or pass upon the constitutional grounds raised by plaintiffs. We do not believe that cited case requires or even supports a conclusion that the term "political information organization" should be read to exclude the ACLU of New Jersey.
4. The expenditures referred to in your letter to provide information on any candidate or public question or to seek to influence the content, introduction, passage or defeat of any legislation, together with all other expen-

September 22, 1973

ditures made to provide information on any candidate or public question or to seek to influence the content, introduction, passage or defeat of any legislation are subject to detailed reporting. With respect to other expenditures, a statement of the total amount of such other expenditures, sufficient to show the relationship of such other expenditures to the expenditures involving lobbying and other issue and candidate information work, will comply with the recording requirements as to such other expenditures under the Act.

Yours very truly,

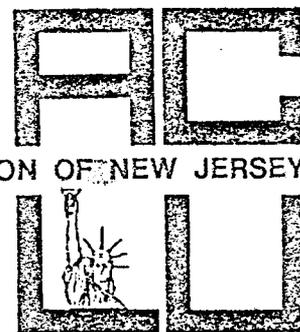
New Jersey Election Law
Enforcement Commission

By Edward J. Farrell
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45 ACADEMY STREET, NEWARK, N.J. 07102
201-642-2084



July 3, 1973

Frank P. Reiche, Esq.
Chairman
Election Law Enforcement Commission
Smith, Stratton, Wise & Heher
1 Palmer Square
Princeton, New Jersey 08540

Dear Mr. Reiche:

The American Civil Liberties Union of New Jersey, Inc. herewith requests an advisory opinion from the Election Law Enforcement Commission pursuant to section 6(f) of the New Jersey Campaign Contributions and Expenditures Reporting Act, P.L. 1973, c. 83. The ACLU wishes an opinion (1) as to whether its activities as hereinafter described, subject it to the reporting requirements of P.L. 1973, c. 83, and (2) if so, what reports it must file and when it must file them.

FACTS

The ACLU of New Jersey is a non-profit membership corporation which is affiliated with the American Civil Liberties Union. The New Jersey affiliate has some 8,000 members and 12 county chapters. Our activities primarily consist of litigation and general public education concerning civil liberties. A rather minor part of our efforts is devoted to lobbying and other issue and candidate information work. The rather tangential nature of these activities is reflected in the proportion of the budget which we spend on such work.

Our budget for calendar year 1973 totals \$84,700. Of this total, \$4,500 goes for the services of our registered lobbyist, Dinah Stevens. While her total salary is \$9,000 she spends only one-half her time doing legislative work. I believe a generous estimate of the overhead (travel, printing, etc.) associated with her work would not exceed \$2,000. Since no one else in

our organization is significantly involved in legislative or political information efforts, our total budget for such work is less than \$7,000 and probably closer to \$6,500. Even the higher figure for such work leaves it as only 14% of the budget total.

We have only one legislative project besides Ms. Stevens' lobbying work. In October, at a cost of some \$200 we publish a set of answers that legislative candidates give to questionnaires we send them. Last year we did this for congressional and senatorial candidates. In 1971 we did this questionnaire for legislative races and we plan to send it out again this coming October. At that time we may also include the recorded vote on a small number of bills of interest to our members. As can be seen from its small expenditure, this involves no significant portion of our budget.

Aside from this budget estimate, we can say that only about 10% of our man-hours are devoted to legislative and related educational work. The ACLU carries a staff of 5 and only half the time of one person is taken up with such work. Thus, measuring our activities by time as well as by dollars demonstrates that the ACLU is only incidentally and in small part involved in activities within the purview of P.L. 1973, c. 83.

LEGAL COMMENT

The ACLU of New Jersey believes that it need not comply with disclosure requirements since it is not significantly involved in lobbying or the provision of political information. This belief is founded on (1) legislative intent behind the definition of "political information organization" found in section 4(g) of the campaign reporting act; (2) the keying of the reporting requirements in section 16 to elections; and (3) the response of the Second Circuit Court of Appeals to an attack on similar provisions of the Federal Election Campaign Act, which attack was grounded on infringement of First Amendment free speech and freedom of association guarantees. United States v. National Committee for Impeachment, 469 F. 2d 1135 (2Cir. 1972).

1. Section 4(g) defines "political information organization" as an organization which is (a) organized for the purpose of lobbying on legislation and/or providing information about political candidates, or (b) a group which does engage in lobbying or the provision of information about candidates. The ACLU is covered, if at all, by the second phrase. Yet this second phrase must be considered in light of the first, more stringent one. The second phrase must be regarded as being aimed at organizations which, have a substantial political and lobbying effort, although not organized for the purpose of such efforts. This interpretation logically flows from legislative intent as well as statutory language.

The statement attached to P.L. 1973, c. 83 asserts that the statute

"implements the Interim Report (September, 1970) of the Election Law Revision Commission and incorporates modifications of that report adopted by the Commission in its resolution of January 20, 1971, as well as other modifications intended to enhance the effectiveness of the proposed legislation."

The following language from the Commission report referred to in the statement sets forth the chief purpose of the disclosure requirements:

"The complete financial picture of a candidate must be placed before the voter. This knowledge is essential to a proper exercise of his right of franchise."

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"The Commission believes that full disclosure requirements are a better means of preventing excesses and abuses. If there were full public disclosure and publication of all campaign contributions and expenditures during a campaign, the voters themselves could better judge whether a candidate

"has spent too much. This policy would do more to protect the political system from unbridled spending than legal limits on the size of contributions and expenditures."

These portions of the Report which chapter 83 implements clearly manifest a concern directed at political fund raising in election campaigns. The Commission's words evince absolutely no interest whatsoever in public interest organizations which incidentally engage in lobbying or political information dissemination. Thus the ACLU has no connection with the evil that the legislature sought to prevent when it enacted P.L. 1973, c. 83. It therefore should not be subject to the regulations imposed by that statute.

2. The fact that the Legislature was concerned primarily with election fund raising is further demonstrated by the schedule of reports required from political information organizations. Section 16 of the statute keys the schedule for reporting to the time at which elections are held. Thus the reporting requirements are geared to elections and organizations which are involved in elections. Not being such an organization, the ACLU should not be required to file any reports.

3. In U.S. v. National Committee for Impeachment, 469 F. 2d 1135 (2 Cir. 1972) the Second Circuit Court of Appeals dealt with the applicability of the federal campaign laws to an organization similar in many respects to the ACLU of New Jersey. The Court there refused to extend the coverage of the Federal Election Campaign Act to a public interest organization because it felt that such a construction of the act might well be unconstitutional. The Court held that requiring every organization engaging in any comment on public issues or candidates to disclose its sources of funds would endanger the privacy of political association which is so necessary for the vigorous expression of ideas. The Court therefore held that only organizations whose primary purpose was political could be subjected to the disclosure provisions of the Federal Election Campaign Act.

We submit that the Commission should adopt this approach. Even in the absence of the legislative intent noted in (1) and (2) above, the Commission

Mr. Frank P. Reiche

-5-

July 3, 1973

and courts would have an obligation to construe P.L. 1973, c. 83 in a manner which ensures its constitutional validity. This obligation should lead the Commission to apply a primary purpose test in deciding whether organizations should be subject to the strictures of the Act and to exempt organizations whose primary purpose is not political. Otherwise, every public interest organization which ventures an opinion on a public issue or a bill before the Legislature will find itself subject to severe reporting and disclosure requirements. This result can only deter the vigorous interchange of ideas which is so necessary to a functioning democracy.

CONCLUSION

The ACLU of New Jersey would greatly appreciate the Commission's response to the above. We waive our right to a response within 10 days and request an answer by August 1, 1973.

Sincerely,



Peter A. Buchsbaum
Staff Counsel

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