



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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October 18, 1988

Senator Richard J. Codey
District 27
331 Main Street
West Orange, NJ 07052

Advisory Opinion No. 10-1988

Dear Senator Codey:

The Election Law Enforcement Commission has directed me to respond to your letter received September 23, 1988 requesting an advisory opinion. You have asked whether unexpended campaign funds remaining from your 1987 Senate primary and general election campaigns may be used for the purpose of determining whether you should become a candidate for Governor in the 1989 primary election, i.e. pre-candidacy activities. You have also asked whether funds expended on such pre-candidacy activities prior to the effective date of promulgation of amendments to the gubernatorial primary election regulations are exempt from reporting requirements established in those amendments; see 20 N.J.R. 2395(a), effective September 19, 1988.

In the 1987 general election, you were a successful candidate for State Senate in the 27th Legislative District. You certified the correctness of and filed campaign reports pursuant to N.J.S.A. 19:44A-16 under the name, "Friends of Richard J. Codey." On February 10, 1988, a final campaign report was filed indicating an unexpended campaign surplus of \$43,977.

Question No. 1

In regard to your inquiry concerning the use of surplus funds for pre-candidacy activity, the regulation governing the disposition of surplus campaign funds specifically permits a candidate to retain them "... for a future election campaign of such candidate..."; see N.J.A.C. 19:25-7.4(b)(6). The intent of the regulatory language in permitting retention of surplus funds for future campaign use encompasses the purpose you contemplate, that is to expend such funds for pre-candidacy activity.

While the Commission regulations permit surplus funds to be employed for purposes of pre-candidacy activity, a person conducting such activities for the office of Governor must be cognizant of the applicability of the \$800 contribution limit on such funds. Except in the case of a candidate using the candidate's "own funds," no person or political committee may contribute more than \$800; see N.J.S.A. 19:44A-29(a). The

term "own funds" is specifically defined to exclude "...funds given or otherwise transferred to the candidate by any person other than the spouse of the candidate for use in aid of his candidacy"; see N.J.S.A. 19:44A-29(g). The Commission understands this statutory prohibition to include surplus funds from a prior non-gubernatorial candidacy, and furthermore has expressly provided that "(S)urplus campaign funds shall not be converted to any personal use by the candidate or any other persons"; see N.J.A.C. 19:25-7.4(a). Since the 1987 election surplus funds are not available for use as "own funds," they are subject to the \$800 contribution limit contained in N.J.S.A. 19:44A-29(a). Therefore, within ten days after the date of commencement of your candidacy, you will be required to file with the Commission a certification to the effect that no contribution in excess of \$800 has been received for pre-candidacy activities, or alternatively that if any contribution in excess of \$800 in the aggregate was received from "Friends of Richard J. Codey," the excess amount has been returned to that entity; see N.J.A.C. 19:25-16.12(a).

Question No. 2

In regard to your inquiry concerning the reporting requirements on pre-candidacy activities, please note initially that the amendments to the Commission regulations promulgated on September 19, 1988 do not affect the provisions of Commission Regulation N.J.A.C. 19:25-3.1 (Exemption for activities conducted solely for the purpose of determining whether an individual will become a candidate; "Testing the Waters"). Pursuant to that regulation, funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not deemed to be reportable as contributions or expenditures until that individual becomes a candidate. Upon achieving candidate status, all pre-candidacy activity becomes subject to the reporting requirements and other limitations and prohibitions of the Act. Because of the possibility that an individual conducting pre-candidacy activities may ultimately become a candidate, the individual is required to keep records of all pre-candidacy funds received and payments made; see N.J.A.C. 19:25-3.1(a). Kindly note also, that this exemption does not apply to funds received or payments made for general public political advertising, or 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). Undertaking such activities would have the effect of establishing such an individual as an active candidate whether or not that individual publicly declared his or her candidacy; see Advisory Opinion No. 7-1988, a copy of which is enclosed for your convenience.

The public financing regulation amendments to which your letter refers did impose a new additional filing requirement in regard to individuals conducting pre-candidacy activities for the office of Governor in a primary election. Specifically, such an individual, or a committee on behalf of such an individual, must file with the Commission a notice containing the name, address and account number of the depository established for pre-candidacy activity not later than ten days after the receipt of funds for the purpose of conducting such activity; see N.J.A.C. 19:25-16.5(b). As you have correctly noted, the effective date of this regulation was September 19, 1988.

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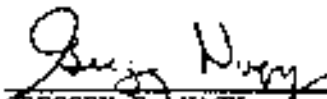
The Commission recognizes that some individuals conducting such pre-candidacy activity may not be aware of the recently-adopted regulation, and further it recognizes that the form it has prepared for such notice (Form T-1) has only recently become available. Therefore, the Commission is taking the liberty of sending copies of this advisory opinion to each individual it has reason to believe may be conducting pre-candidacy activity, and is forwarding a copy of the Form T-1, (enclosed).

In view of the recent adoption of the Form T-1 filing requirement, the Commission has established November 1, 1988 as the deadline for an individual, or committee on behalf of such an individual, who has received pre-candidacy funds to file the Form T-1. After November 1st, the 10-day period in the regulation must be observed.

Thank you for your inquiry and your interest in the administration of this program.

Very truly yours,

Election Law Enforcement Commission

By: 
GREGORY E. NAGY

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Enclosures