



## State of New Jersey

### ELECTION LAW ENFORCEMENT COMMISSION

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August 8, 1984

Charles Henry James, Esq  
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#### Advisory Opinion No. 16-1984

Dear Mr. James:

Your letter to the Election Law Enforcement Commission requesting an Advisory Opinion has been considered by the Commission and I have been directed to issue this response. You have asked the Commission to set forth the requirements of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) when applied to a group of persons receiving contributions and making expenditures in anticipation of a recall election in a municipality within the State.

You have stated that you represent a group of citizens in the City of Wildwood that is preparing to circulate petitions for the recall of an elected municipal officer pursuant to the provisions of the Optional Municipal Charter Act (Faulkner Act), N.J.S.A. 40:69A-1 et seq. This group of citizens ultimately anticipates filing recall petitions with the municipal clerk which, if sufficient in numbers and in the absence of the resignation of the elected official, would require the municipal clerk to order a recall election. N.J.S.A. 40:69A-174. You have advised the Commission by telephone that this group anticipates receiving contributions and making expenditures in order to defray expenses associated with the cost of preparing and circulating recall petitions. You have asked the Commission to set forth the filing requirements required by the Act on this group of persons under these circumstances.

Initially, the Commission notes that the Faulkner Act specifically mandates that the provisions of Title 19 of the Revised Statutes (Elections) which include the Act, are applicable ". . . to the election for the recall of officers and the election of their successors." N.J.S.A. 40:69-175. The Reporting Act mandates that its provisions are applicable "(I)N any election for any public office of the State or any public subdivision thereof . . ." N.J.S.A. 19:44A-4(d). The issue raised by this inquiry is whether reporting requirements of the Act arise where a group undertakes activities in anticipation of a recall election but prior to the ordering of such a recall election.

The Commission believes that until the recall election is ordered and the date fixed by the municipal clerk pursuant to N.J.S.A. 40:69-171, funds received and payments made by the citizen group are not subject to the provisions of the Act. However, if a recall election is ultimately ordered, the citizen group must disclose in reports filed under the Act all contributions received and expenditures made in furtherance of the recall question even if those contributions were received and expenditures made prior to the date of the ordering of the recall election.

In Advisory Opinion No. 41-1981, the Commission considered whether funds raised and expended for the employment of an attorney to defend the legal sufficiency of recall petitions filed by a citizen committee were subject to the reporting provisions of the Act. The court stayed any order for a recall election until conclusion of the litigation. The Commission viewed the litigation expense as related to the ultimate purpose of the committee, that is the defeat of the officeholder sought to be recalled in an election. Because the recall election was ultimately ordered, the Commission concluded that if the citizen committee made expenditures in the aggregate exceeding \$1,000 it would be required to report the funds raised and spent for the litigation as contributions and expenditures in furtherance of the defeat of a candidate, and the citizen committee would be required to file reports as a political committee pursuant to N.J.S.A. 19:44A-8. (A copy of Advisory Opinion No. 41-1981 is enclosed for your convenience.)

The reporting of funds received and expenditures made prior to the ordering of a recall election is comparable to the reporting that is imposed upon an individual for funds received or payments made in anticipation of becoming a candidate. Commission regulations provide that funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not reportable contributions or expenditures. N.J.A.C. 19:25-3.1. However, if that individual becomes a candidate, all funds received or payments made in connection with his or her "testing the waters" activity prior to becoming a candidate become reportable contributions or expenditures under the Act. N.J.A.C. 19:25-11.6. The Commission views the circulation of the recall petitions as comparable to "testing the waters" activities of individuals receiving funds and making payments to explore the viability of a candidacy.

In your letter, you specifically refer to the requirement that a candidate, or political committee, file with the Commission a Designation of Campaign Treasurer within ten days following the receipt of a contribution or the making of an expenditure. N.J.S.A. 19:44A-9; 19:44A-10. As has been indicated in this Advisory Opinion, this requirement would arise when the municipal clerk ordered the recall election. On the limited fact record that you have submitted, the Commission is unable to determine whether the funds raised and expended by this citizen group should be attributed to the group as a "political committee," or could be attributed to the efforts of an individual who

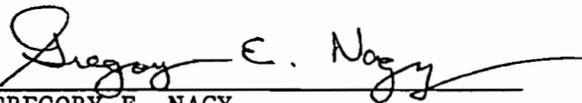
Becomes a candidate opposing the officeholder subject to the recall. If the group circulating the recall petitions is in fact a "political committee" pursuant to N.J.S.A. 19:44A-3(i), it must file a designation (Form D-2) for the recall election pursuant to N.J.S.A. 19:44A-10. Also, the committee must file campaign reports (Forms R-1) pursuant to N.J.S.A. 19:44A-8(a) if its aggregate expenditures exceed \$1,000. However, if this group is conducting the recall activities on behalf of an individual who becomes a candidate to succeed the officeholder and the contributions and expenditures are made into a bank account that is intended to be the candidate's campaign depository, the designation must be filed on behalf of that candidate pursuant to N.J.S.A. 19:44A-9 (Form D-1). Detailed campaign reports (Forms R-1) would be required on behalf of the candidate if expenditures exceeded \$2,000, or a certified statement (Form A-1) would be required if expenditures did not exceed \$2,000. N.J.S.A. 19:44A-16.

The Commission is aware that the timetable for the ordering of an election may make it impossible for compliance with the requirement that the first campaign report be filed 29 days prior to that election. N.J.S.A. 19:44A-8(a); 19:44A-16(b). After the filing of the recall petitions, the municipal clerk has ten days to review their sufficiency. If proven sufficient, the circulators have ten days to file amendments and the clerk has an additional five days to review the amendments. N.J.S.A. 40:69A-170. After the municipal clerk has determined that the number of signatures on the recall petition is sufficient, a period of two days is contemplated for notice to the official involved, and another period of five days is contemplated for the purpose of possible resignations by that official. N.J.S.A. 40:69A-171. If there is no effective resignation, the municipal clerk orders and fixes the date for the recall election not less than 60 nor more than 90 days from the date of the filing of the petition. N.J.S.A. 40:69A-171. Because of this statutory timetable, the clerk could fix a date that was less than 29 days in advance of the recall election. In such a circumstance, the 29-day preelection report would be waived, and the first report that would be required would be the 11-day preelection report.

Although no recall election has been ordered as of this date, the Commission notes that the citizen group should establish immediately a bank account for funds received and expended in furtherance of its recall efforts. See N.J.A.C. 19:25-15.4(b) requiring that all funds received for "testing the waters" activities be deposited in a separate depository. Establishment of such an account for the recall efforts will facilitate observance of reporting requirements if a recall election is ultimately ordered.

Very truly yours,

ELECTION LAW ENFORCEMENT COMMISSION

BY:   
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