



# NEWS RELEASE

**N.J. Election Law Enforcement Commission**

Contact: SCOTT A. WEINER  
(609) 292-8700

For Release: IMMEDIATELY  
APRIL 5, 1983

The Election Law Enforcement Commission has scheduled a public hearing on May 11, 1983 to receive comments to recently proposed regulations concerning pre-candidacy financial activity, commonly referred to as "testing the waters".

The proposed regulations address record keeping and public disclosure of financial activity occurring solely for the purpose of deciding whether an individual should become a candidate for public elective office. The Commission's proposal provides that contributions received and expenditures made for testing the waters would be subject to disclosure if the individual on whose behalf the activity was conducted in fact becomes a candidate.

The proposed regulations would apply to all candidates for elective office in New Jersey. For gubernatorial candidates, the regulations would also make the contribution and expenditure limits applicable upon the individual becoming a candidate. If excess contributions were received during the testing the waters period, a candidate would have 10 days to report any amount over the limit, currently set at \$800.

The regulations proposed by the Election Law Enforcement Commission are modeled after procedures adopted by the Federal Election Commission.

Scott A. Weiner, the Commission's Executive Director stated that the regulations were developed following a request for an Advisory Opinion from a committee known as "Friends of Peter Shapiro". Earlier this year, that committee had asked the Commission for guidance as to how the Campaign Reporting Act would apply to funds raised in 1983 that might be used to test the feasibility of or conduct a gubernatorial campaign on behalf of Mr. Shapiro. Weiner explained that the policies incorporated in the regulations were set forth in an Advisory Opinion to Friends of Peter Shapiro. By enacting regulations, the policy will become applicable to all candidates.

Weiner also stated that the Commission members were hopeful that the public hearing will attract broad participation. Copies of the regulations have been sent to former gubernatorial candidates, their treasurers and staff, and each of the Republican and Democratic County Chairmen throughout the state. The regulations will appear in the April 18, 1983 edition of the New Jersey Register. Copies can also be obtained by contacting the Commission's office in Trenton.

The May 11, 1983 public hearing will be held in Trenton in the Assembly Chambers. It will begin at 10:00 a.m. Anyone wishing to testify is requested to contact the Commission by Friday May 6, 1983 so that a mutually convenient time may be scheduled. Written comments may be submitted to the Commission on or before May 18, 1983.

A copy of the proposed regulations is attached.

ELECTION LAW ENFORCEMENT COMMISSION  
National State Bank Bldg., Suite 1114  
28 W. State Street, CN-185  
Trenton, N.J. 08625

Proposed Rules on

Pre-Candidacy Activity  
"Testing The Waters"

Proposed New Rules: N.J.A.C. 19:25-3.1, 11.6 and 12.6

Proposed Amended Rules: N.J.A.C. 19:25-1.7, 9.3, 9.7, 15.3,  
15.4, 15.11, 15.24, 16.3, 16.4, 16.5,  
16.9, 16.12 and 16.25

Proposed Repeal: N.J.A.C. 19:25-3.1, 3.2 and 3.3

Public Hearing: May 11, 1983, 10:00 A.M., Chambers of the  
General Assembly, State House, West State Street,  
Trenton, New Jersey

Authorized By: Election Law Enforcement Commission at its  
Public Meeting of March 9, 1983, Scott A. Weiner,  
Executive Director

Authority: N.J.S.A. 19:44A-6 and 19:44A-38

A public hearing concerning this proposal will be held on  
May 11, 1983 at 10:00 A.M. at:

Chambers of the General Assembly  
State House  
West State Street  
Trenton, New Jersey

Interested persons may submit in writing, data, views or  
arguments relevant to the proposed rules on or before May 18,  
1983. These submissions, and any inquiries about submissions  
and responses, should be addressed to:

Gregory E. Nagy, Esq.  
Staff Counsel  
Election Law Enforcement Commission  
Suite 1114, National State Bank Building  
28 West State Street  
Trenton, New Jersey 08625

The Election Law Enforcement Commission after public hearing and expiration of the public comment period on May 18, 1983 may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adopted rules become effective upon publication in the New Jersey Register of a notice of adoption.

This proposal is known as PRN 1983 - 186

The Agency proposal follows:

## SUMMARY

These proposed new rules concern the recordkeeping, depositing and reporting of funds received and expenditures made by an individual, or by a committee in the individual's behalf, solely for the purpose of determining whether that individual should become a candidate for public elective office in this State. Such activity is commonly referred to as "testing the waters." The proposed rules would clarify that funds received and payments made for such purposes become subject to the provisions of the Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-1 et seq.) if the individual on whose behalf they are received or made in fact becomes a candidate. Specifically, the affected sections of the regulations are as follows:

1. N.J.A.C. 19:25-1.7 contains definitions of the terms "Contribution" and "Expenditure." The proposed regulations add to these definitions so that funds received or payments made for "testing the waters" are excluded so long as the individual on whose behalf they are received or made is not a candidate.

2. N.J.A.C. 19:25-3 is proposed for repeal. This subchapter currently regulates the limitation on total campaign expenditures of candidates for all State public offices. The existing

regulations were promulgated in furtherance of N.J.S.A. 19:44A-7, as it was enacted in Chapter 83 of the Laws of 1973, effective April 24, 1973. However, the text of the statute was amended by Chapter 74 of the Laws of 1980, effective July 23, 1980 so that the expenditure limits apply currently only to candidates for the Office of Governor, who chose to accept partial public financing. Therefore the existing text for Subchapter 3 should be repealed. Regulations concerning the expenditure limits for candidates for the Office of Governor have been previously adopted as N.J.A.C. 19:25-15.11 and 19:25-16.9.

3. The new regulation codified as N.J.A.C. 19:25-3.1 requires recordkeeping and reporting for "testing the waters" funds received and payments made if the individual on whose behalf the activity is undertaken in fact becomes a candidate.

4. A new regulation to be codified as N.J.A.C. 19:25-11.6 is proposed specifying that when an individual becomes a candidate, all funds received or payments made in connection with his or her campaign prior to becoming a candidate shall be considered contributions, and shall be reported in accordance with the applicable reporting requirements in the first report filed by such candidate's campaign committee. Recordkeeping requirements are also set.

5. A new regulation, to be codified as N.J.A.C. 19:25-12.6 will specify that when an individual becomes a candidate, payments made in connection with his or her campaign prior to becoming a candidate shall be considered expenditures, and shall be reported in accordance with the applicable reporting requirements in the first report filed by such candidate's campaign committee. Recordkeeping requirements are also set.

Other proposed changes concern the public financing for the primary and general elections for the Office of Governor. These changes are as follows:

6. "Testing the water" bank accounts must be established by gubernatorial candidates. That account may later be designated as eligible for receipt of matching public funds. The definition in N.J.A.C. 19:25-15.3 and 19:25-16.3 of "contribution eligible for match" has been amended to include "testing the waters" contributions if they comply with public financing restrictions.

7. The date of October 15, 1980 is deleted from several sections of the regulations concerning public financing of gubernatorial primary elections. N.J.A.C. 19:25-16. That date has been replaced by the date an individual becomes a candidate as the deadline for designation of a principal campaign committee, and N.J.A.C. 19:25-16.4, 16.9 and 16.12 have been accordingly amended.

accordingly amended.

8. Funds received for "testing the water" are subject to the \$800.00 contribution limit set forth in N.J.S.A. 19:44A-29 if the individual becomes a candidate for Governor in a primary or general election. Payments made for "testing the water" are to be included in the overall expenditure limit in N.J.S.A. 19:44A-7 if the individual becomes a gubernatorial candidate. See proposed N.J.A.C. 19:25-16.9, 16.12 and 15.12.

#### SOCIAL IMPACT

The proposed rules promote the public interest in achieving disclosure of sources of funds for "testing the waters" activities when the individual on whose behalf such activities are undertaken does in fact become a candidate for public elective office in this state. The Commission finds that "testing the water" activities on behalf of an individual who does not become a candidate does not raise a significant public interest in disclosure. However, where the individual does become a candidate, funds made available to that individual for the purpose of determining the feasibility of his or her candidacy should be identified by source and amount. Where the individual becomes a candidate, the Commission finds that contributions for the purposes of "testing of the waters" are significantly related to the

candidacy as to fall within the public policy concerns articulated in N.J.S.A. 19:44A-2.

The regulations concerning the public financing of the primary election for the Office of Governor established October 15, 1980 as an arbitrary date by which certain actions had to be undertaken by candidates. The necessity of that date was raised because of the timing of the legislation which was not enacted until July 23, 1980. (Law 1980, c.74). At that time, the Commission was faced with the difficult task of regulating primary election activity that had occurred prior to the effective date of the Act. Therefore, the Commission adopted October 15, 1980 as an arbitrary date by which gubernatorial primary candidates had to designate principal campaign accounts and certified compliance with the \$800.00 contribution limit enacted by the new law. In anticipation of the gubernatorial primary election to be conducted in 1985, the Commission no longer finds it necessary to establish an arbitrary date, but rather requires individuals to certify that they are conforming to the \$800.00 contribution limit and other requirements within ten days after becoming candidates.

#### ECONOMIC IMPACT

The proposed rules may result in modest cost to candidates, because they require recordkeeping of activities previously

not required to be reported by the Commission. However, "testing the waters" activities of candidates is a relatively small part of an overall candidacy, and therefore there should be a relatively slight increase in recordkeeping and reporting activity. No new reports are required. Rather, additional information may be required as part of a candidate's first report to the Commission. To the extent that the Commission is required to examine the reported contributions and expenditures of reporting entities, the Commission anticipates no measurable increase in its costs associated with administration of the requirements.

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

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the Act, shall have the following meanings, unless a different meaning clearly appears from the context.

. . . .

"Contribution" includes every loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee or organization), made to any candidate, political committee, political party committee, political club or political information organization, and any pledge or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, funds received and payments

made solely for the purpose of determining whether an individual should become a candidate are not contributions.

. . .

"Expenditure", except as otherwise set forth in N.J.A.C. 19:25-12.1 includes every transfer of money or other thing of value, including any item of real or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee or organization), made by any candidate, political committee, political party committee, political club or political information organization, and any pledge or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been an expenditure upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures.

. . .

[SUBCHAPTER 3. LIMITATION OF EXPENDITURES]

[19:25-3.1 Spending limit

(a) The amount which may be spent, including the total amount expended by the candidate and any other person, committee or organization, in aid of the candidacy of any candidate for a public office at any election shall not exceed \$0.50 for each voter who voted in the last preceding general election in a Presidential year in the district in which the public office is sought.

(b) No money or other thing of value shall be paid or promised, or expense authorized or incurred in behalf of any candidate for nomination or election to any office, whether such payment is made or promised, or expense authorized or incurred by the candidate himself or by an other person, political committee or organization, in furtherance or in aid of his candidacy, under any circumstances whatsoever, in excess of the sums provided; but such sums shall not include the traveling expenses of the candidate or of any person other than the candidate if such traveling expenses are voluntarily paid by such person without any understanding or agreement with the candidate that they shall be, directly or indirectly, repaid to him by the candidate.

19:25-3.2 Computation of spending limit

Published statistics respecting the numbers of voters who voted in the last preceding general election in a Presidential year are on file in the Law and General Reference Section, State Library, Trenton, New Jersey. (For example, the volume relating to the General Election for 1972 is entitled "State of New Jersey, Secretary of State, Results of the General Election Held November 7, 1972".) Current figures are also available at the office of the commission.

19:25-3.3 Review by the Commission

The commission will, at the request of any candidate, compute the spending limits or review the spending limits determined by such candidate and the calculations upon which such determination has been based. Upon request the commission will certify the correct spending limits.]

SUBCHAPTER 3. PRE-CANDIDATE ACTIVITY; "TESTING THE WATERS"

19:25-3.1 Exemption for activities conducted solely for the purpose of determining whether an individual will become a candidate; "Testing the Waters"

Funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions or expenditures. Activities contemplated under this exemption include, but are not limited to expenses

incurred for: conducting a poll, telephone calls and travel to determine whether an individual should become a candidate. The individual shall keep records of all such funds received and payments made. If the individual subsequently becomes a candidate, the funds received and payments made are contributions and expenditures subject to the limitations, prohibitions and requirements of the Act. Such contributions and expenditures must be reported with the first report filed by the candidate or the campaign committee of the candidate, regardless of the date the funds were received or the payments made. This exemption does not apply to funds received or payments made for general public political advertising; nor does this exemption apply to funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

19:25-9.3 Period covered

(a) During the period between the appointment of the campaign treasurer and the election, with respect to any contributions accepted or expenditures made by him or her, the campaign treasurer shall file his or her report:

1. On the 25th day preceding the election; and
2. On the seventh day preceding the election; and
3. On the 15th day following such election.

(b) The report shall cover the period ending with the day preceding the date of the report and beginning with the date when the most recent such report was filed, except that the first report shall cover the period beginning on the date of the appointment of the campaign treasurer, or the first receipt or expenditure by or on behalf of the candidate, or the date of filing of the petition, or the date of public declaration of candidacy whichever first occurred[.], and shall include all receipts and expenditures relating to pre-candidacy activity described in N.J.A.C. 19:25-3.1.

19:25-9.7 Time of filing; period covered

(a) The affidavit shall be filed on or before the 25th day preceding the election to which such affidavit relates.

(b) The affidavit shall cover the time period beginning on the date of the appointment of the campaign treasurer, or the first receipt or expenditure by or on behalf of the candidate, or the date of filing the petition, or the date of public declaration of candidacy, whichever first occurs, and shall include all receipts and expenditures relating to pre-candidacy activity described in N.J.A.C. 19:25-3.1 and ending on the date when all of the business regarding the election to which it relates has been wound up.

19:25-11.6 Contributions for pre-candidacy activity

When an 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 shall be considered contributions or expenditures under the Act and shall be reported in accordance with the applicable reporting requirements in the first report filed by such candidate's campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received and all expenditures made in connection with the individual's testing the waters activity prior to becoming a candidate. Contributions received by an individual prior to becoming a candidate for nomination for or election to the Office of Governor, which contributions are not in compliance with the Act, shall be returned to the contributor within 10 days after the individual becomes a candidate. The individual shall keep records of all refunds made.

19:25-12.6 Expenditures for pre-candidacy activity

When an 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 shall be considered contributions or expenditures under the Act and shall be reported in accordance with the applicable reporting

requirements in the first report filed by such candidate's campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received and all expenditures made in connection with the individual's testing the waters activity prior to becoming a candidate.

19:25-15.3 Definitions for this subchapter

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

. . . .

"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to N.J.S.A. 19:44A-44, no amount of the candidate's own funds in the aggregate in excess of \$800.00, no in-kind contribution and no other moneys received by the candidate, his campaign treasurer, or deputy campaign treasurer, except those contributions described in N.J.S.A. 19:44A-29(a), shall be deemed contributions eligible for match. Funds received by an individual who is testing the waters may be matched when the individual becomes a candidate,

if such contributions meet all the requirements of the regula-  
tions.

. . .

"Matching fund account" means the campaign bank account opened pursuant to N.J.S.A. 19:44A-32 by a campaign treasurer of a candidate, or deputy campaign treasurer, with the permission of the commission, in which only contributions eligible for match may be [contributed] deposited.

. . .

#### 19:25-15.4 Appointment of treasurers and depositories

(a) Each candidate in a general 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 before any contribution is received by such candidate or in his or her behalf, or before any money is expended by him or her or in his or her behalf in furtherance or aid of his or her candidacy, and such candidate must comply with the requirements of subchapter 5 (Appointment of treasurers and depositories) of this chapter (N.J.A.C. 19:25-5.1 et seq). The candidate shall promptly file with the commission the name and mailing address of the appointed campaign treasurer and the bank name, mailing address and number of the designated

depository bank account.

(b) 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.

(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) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-15.17(b), provided that the account and all of the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-15.17(b).

19:25-15.11 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the Act (N.J.S.A. 19:44A-1 et seq.) or these regulations, is subject to the following limitations:

1. No candidate receiving public funds may make expenditures from his or her own funds, including any contributions

from his or her own funds, in aid of his or her candidacy in excess of \$25,000. Any loan guaranteed with such candidate's own funds must be included in calculating the aggregate contribution of the candidate in aid of his or her candidacy until such time as the loan is no longer outstanding.

2. No candidate, or his or her campaign treasurer or deputy campaign treasurer, shall borrow an amount that at any one time exceeds \$50,000 in the aggregate, and such loan must be repaid in full not later than 20 days prior to the general election for which the loan was made from moneys accepted or allocated pursuant to N.J.S.A. 19:44A-29. Certification of such repayment shall be made by the borrower to the Commission in accordance with N.J.A.C. 19:25-15.29.

3. The amount which any qualified candidate may spend in aid of his or her candidacy shall not exceed \$0.70 for each voter who voted in the last preceding general election in a presidential year in New Jersey, [except that such] which amount shall include all expenditures for testing the waters activity prior to candidacy. Such amount shall not include expenditures listed in N.J.A.C. 19:25-15.26.

4. Contributions by any candidate in excess of \$800.00 from his or her own funds in aid of his or her candidacy shall not be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified

candidate eligible for public matching funds.

19:25-15.24 Use of public funds

(a) Public funds received on behalf of a qualified candidate from the fund for general election campaign expenses shall be deposited by the Commission in the candidate's public fund account and the candidate's use of such funds shall be strictly limited to the following purposes:

1. Purchase of time on radio and television stations;
2. Purchase of rental space on outdoor signs or billboards;
3. Purchase of advertising space in newspapers and regularly published magazines and periodicals;
4. Payment of the cost of producing the material aired or displayed on radio, television, outdoor signs or billboards, and in newspapers, regularly published magazines and periodicals;
5. Payment of the cost of printing and mailing campaign literature and brochures distributed under the name of the candidate;

6. Payment of the cost of legal and accounting expenses incurred in complying with the public financing regulations of the commission and with the public financing provisions of the Act;

7. Payment of the cost of telephone deposits, and installation charges and monthly billings in excess of deposits. Within six months after the general election, a candidate shall return to the commission the amount of any public funds used to pay such telephone deposits which are later returned.

(b) Expenditures made prior to the receipt of public funds, including expenditures made for pre-candidacy "testing the waters" activity, which fit within (a) 1 through 7 above, shall be expenses properly payable out of public funds.

~~[(b)]~~ (c) Contributions, other than public funds, received by or in behalf of any candidate (including contributions eligible for match) shall not be subject to the limitations of (a) above, but may be expended for any lawful purpose in furtherance or aid of the candidacy of the candidate.

19:25-16.3 Definitions for this subchapter

The following words and terms, when used in this subchapter, shall have the following meanings unless the context

clearly indicates otherwise.

. . . .

"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to section 15 of P.L. 1980, c. 74 (N.J.S.A. 19:44A-44), no amount of the candidate's own funds in the aggregate in excess of \$800.00, no in-kind contribution and no other moneys received by the candidate, his campaign treasurer, or deputy campaign treasurer, except those contributions described in subsection (a) of section 5 of P.L. 1980, c. 74 (N.J.S.A. 19:44A-29(a)), shall be deemed contributions eligible for match. Funds received by an individual who is testing the waters may be matched when the individual becomes a candidate, if such contributions meet all the requirements of the regulation.

. . . .

"Matching fund account" means the campaign bank account opened pursuant to N.J.S.A. 19:44A-32 by a campaign treasurer of a candidate, or deputy campaign treasurer, with the permission of the commission, in which only contributions eligible for match may be [contributed] deposited.

. . .

19:25-16.4 Designation of principal campaign committee

(a) [On or before October 15, 1980] Upon becoming a candidate each candidate, whether publicly declared or not, [on whose behalf campaign activity has been undertaken prior to that date] 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 or her depository bank account. As to certification of compliance with contribution limitations, see N.J.A.C. 19:25-16.12. [A candidate may designate as his principal campaign committee a committee which has engaged in campaign activity on his behalf prior to October 15, 1980.

(b) No political committee (other than such principal campaign committee) may contribute to the candidate or expend on behalf of the candidacy more than \$800.00.

(c) A candidate who begins his campaign activity subsequent to October 15, 1980, shall designate his principal campaign committee, treasurer and depository to the commission at the time he notifies the commission of his intention to seek to qualify for public funding.]

19:25-16.5 Appointment of treasurers and depositories

(a) Each candidate in a primary election, whether or not intending to participate in public funding, must appoint a campaign treasurer and designate a depository bank account before any contributions is received by him or her or in his or her behalf or any money is expended by him or her or in his or her behalf in furtherance or aid of his or her candidacy, and must comply with the requirements of N.J.A.C. 19:25-5 (Appointment of Treasurers and Depositories).

(b) 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.

(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) 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).

19:25-16.9 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the Act (N.J.S.A. 19:44A-1 et seq.) or these regulations, is subject to the following limitations:

1. No candidate receiving public funds may make expenditures from his or her own funds, including any contributions from his or her own funds, in aid of his or her candidacy in excess of \$25,000.00. Any loan guaranteed with such candidate's own funds must be included in calculating the aggregate contribution of the candidate in aid of his or her candidacy until such time as the loan is no longer outstanding.
2. No candidate, or his or her campaign treasurer or deputy campaign treasurer, shall borrow an amount that at any one time exceeds \$50,000.00 in the aggregate, and such loan must be repaid in full not later than 20 days prior to the primary election for which the loan was made from moneys accepted or allocated pursuant to section 5 of P.L. 1980, c. 74 (N.J.S.A. 19:44A-29). Certification of such repayment shall be made by the borrower to the commission in accordance with N.J.A.C. 19:25-16.30 (Borrowing of funds, repayment).

3. The amount which any qualified candidate may spend in aid of his or her candidacy shall not exceed \$0.35 for each voter who voted in the last preceding general election in a presidential year in New Jersey, which amount shall include all expenditures for testing the waters activity prior to candidacy. Such [except that such] amount shall not include expenditures listed in N.J.A.C. 19:25-16.27.

4. Contributions by any candidate in excess of \$800.00 from his or her own funds and in aid of his or her candidacy shall not be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified candidate eligible for public matching funds.

19:25-16.12 Contributions and loans prior to [October 15, 1980] candidacy.

(a) Each candidate, whether or not intending to participate in public funding, shall certify to the Commission in writing [by October 15 in the year immediately preceding the year of a primary election] within 10 days after the date of commencement of his or her candidacy that:

[1. No contribution in excess of \$800.00 in the

aggregate from a person or political committee has theretofore been received (whether or not prior to the effective date of P.L. 1980, c.74 (N.J.S.A. 19:44A-3, et seq.) on behalf of his candidacy; or

2. That contributions in excess of \$800.00 in the aggregate have been received, and the amount of each contribution in excess of \$800.00 in the aggregate has been returned to the contributor. The certification shall include:

i. A list of names and addresses of all contributors who contributed more than \$800.00 and the dates and amounts of all such contributions; and

ii. Written evidence, such as photocopy of check, showing that such excess amounts have been returned to the contributor.]

1. The candidate did not have a "testing the waters" account; or

2. The candidate did have a "testing the waters" account. In that event, the candidate shall notify the Commission whether the "testing the waters" account is to be designated as the matching fund account and whether contributions from the "testing the waters" account are to be deposited into the matching fund account.

3. No contribution in excess of \$800.00 in the aggregate from a person or political committee has theretofore been received for pre-candidacy testing the waters activity; or contributions in excess of \$800.00 in the aggregate have been received for that purpose, and the amount of each contribution in excess of \$800.00 in the aggregate has been returned to the contributor. The certification shall include:

i A list of all contributors who contributed more than \$800.00 and the dates and amounts of all such contributions; and

ii Written evidence such as photocopy of check, showing that such excess amounts have been returned to the contributor.

(b) [A] In addition to any other penalty provided by law, a candidate failing to make the certification in (a)2 above with respect to excess contributions will not be eligible to receive matching funds.

(c) Each candidate who receives contributions [on behalf of his candidacy on or before October 15, 1980] for pre-candidacy "testing the waters" activity and intends to qualify such contributions for matching public funds must [so notify the Commission and deposit such contributions on or before November 14, 1980, in a matching fund account established

pursuant to N.J.A.C. 19:25-16.18(b), and notify the Commission of such deposit on or before November 14, 1980.] designate the "testing the waters" account as the matching fund account, or deposit such contributions in the matching fund account, within 10 days after the date of commencement of the candidacy. Each such candidate must also comply with the other provisions of N.J.A.C. 19:25-16.18 (Matching of funds). Except as otherwise provided in (d) below, contributions [prior to October 15, 1980] for pre-candidacy "testing the waters" activity not so deposited will not be eligible for match.

(d) Contributions spent [prior to October 15, 1980] for pre-candidacy "testing the waters" activity will be eligible to be matched with public funds if the candidate submits the information required by N.J.A.C. 19:25-16.18 (Matching of funds), and, at the same time, in lieu of evidence of deposit of such contributions in a matching fund account pursuant to N.J.A.C. 19:25-16.18(b) submits evidence of deposit in a [depository bank account] "testing the waters" account established pursuant to [N.J.S.A. 19:44A-12 and evidence in the form of invoices, paid bills, cancelled checks and similar written form, of the disbursements of such contributions for the candidacy.] N.J.A.C. 19:25-16.5(b). Contributions expended [on or after October 15, 1980] which have not been deposited in the matching fund account established pursuant to N.J.A.C. 19:25-16.18 (Matching of funds) will not be eligible to be matched with public funds.

(e) Any candidate who [prior to October 15, 1980] contributed or expended [on behalf of his candidacy] for pre-candidacy "testing the waters" activity an amount in excess of \$25,000 from his or her own funds [contrary to the provisions of section 5 of P.L. 1980, c.74, (N.J.S.A. 19:44A-29),] shall reimburse his campaign account [on or prior to October 15, 1980] within 10 days after the date of commencement of the candidacy, such amount in excess of \$25,000 so contributed and expended, and shall certify to the Commission [on or prior to October 15, 1980,] that such reimbursement has been made.

(f) Any candidate who [prior to October 15, 1980] borrowed an amount in the aggregate in excess of \$50,000.00, [contrary to the provisions of section 15 of P.L. 1980, c.74 (N.J.S.A. 19:44A-44),] shall repay [on or prior to October 15, 1980] within 10 days after the date of commencement of the candidacy such amount in excess of \$50,000.00 so borrowed, and shall certify to the Commission [on or prior to October 15, 1980] that such excess amount has been repaid.

[(g) The provisions of this section shall apply as well to a political committee described in section 18 of P.L. 1980, c.74, except that in lieu of returning to the contributor the amount in excess of \$800.00, the political committee may retain such excess in a depository bank account separate and segregated from both the depository

bank account and the matching fund account. Such excess amounts shall not be used directly or indirectly in aid of or in opposition to a candidate for Governor in a primary or general election. Any expenditure of such moneys by the political committee after October 15, 1980, by means of contributing or transferring such moneys or any part thereof to any candidate for any State, county or municipal office or to a political committee, State, county or municipal political party committee or political club shall be deemed to be an expenditure of funds used directly or indirectly in aid of or in opposition to a candidate for Governor. In determining whether an expenditure of such funds is for such a political purpose, the Commission may take into account among other criteria the purpose of the expenditure, whether the recipient is a candidate or political committee and the political relationship of the recipient to the candidate associated with the committee. On or before November 14, 1980 the political committee shall transfer such funds previously raised it wishes to qualify for public matching funds to a matching fund account and file with the Commission the information required in section 18 of P.L. 1980, c.74.]

19:25-16.25 Use of public funds

(a) Public funds received on behalf of a qualified candidate from the fund for primary election campaign expenses

shall be deposited by the Commission in the candidate's public fund account and the candidate's use of such funds shall be strictly limited to the following purposes:

1. Purchase of time on radio and television stations;
2. Purchase of rental space on outdoor signs or billboards;
3. Purchase of advertising space in newspapers and regularly published magazines and periodicals;
4. Payment of the cost of producing the material aired or displayed on radio, television, outdoor signs or billboards, and in newspapers, regularly published magazines and periodicals;
5. Payment of the cost of printing and mailing campaign literature and brochures distributed under the name of the candidate;
6. Payment of the cost of legal and accounting expenses incurred in complying with the public financing regulations of the commission and with the public financing provisions of the Act;

7. Payment of the cost of telephone deposits, and installation charges and monthly billings in excess of deposits. Within six months after the primary election, a candidate shall return to the commission the amount of any public funds used to pay such telephone deposits which are later returned.

(b) Expenditures made prior to the receipt of public funds, including expenditures made for pre-candidacy "testing the waters" activity, which fit within (a) 1 through 7 above, shall be expenses properly payable out of public funds.

[[b)] (c) Contributions, other than public funds, received by or in behalf of any candidate (including contributions eligible for match) shall not be subject to the limitations of (a) above, but may be expended for any lawful purpose in furtherance or aid of the candidacy of the candidate.

ELECTION LAW ENFORCEMENT COMMISSION

By: /s/ Scott A. Weiner  
SCOTT A. WEINER  
Executive Director

March 21, 1983  
Date