

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
 Opinion requested by)
 Carl A. Kelly)
 County Clerk)
 El Dorado County)
 _____)
 H.L. Masini)
 County Clerk)
 Fresno County)
 _____)

No. 75-134
 No. 75-171-A
 October 23, 1975

BY THE COMMISSION: We have been asked the following questions by Carl A. Kelly, County Clerk, El Dorado County, and H.L. Masini, County Clerk, Fresno County:

(1) If a person files a nomination petition for elective district office under the Uniform District Election Law (Elections Code Sections 23500, et seq.) and such office is filled by appointment and no election is conducted, is the person required to file any campaign statements under the Political Reform Act?

(2) If a candidate is required to deposit funds with the clerk's office for the payment of costs to be incurred in the printing of the candidate's qualification statement, is the deposit, although later refunded, a reportable expenditure under Government Code Section 84200?

CONCLUSION

(1) A person seeking elective office under the Uniform District Election Law who is subsequently appointed to office need not file campaign statements pursuant to Government Code Sections 84200, et seq. unless funds are received or expended by him or in his behalf with a view to bringing about his nomination or election to any elective office.

(2) The deposit of money with the clerk's office is an advance payment for services to be rendered and must be reported pursuant to Government Code Sections 84200, et seq. unless the refund is received by the candidate prior to the closing date for the filing of his first campaign statement.

ANALYSIS

(1) Elections Code Section 23512 establishes the procedure for filing nomination petitions for an elective district office. If 60 days prior to an election only one person has been nominated for a district office, the supervising authority must appoint the nominee to office.^{1/}

Government Code Sections 84200, et seq.^{2/} require candidates to file periodic campaign statements. The term "candidate" is defined in Section 82007:

Candidate means an individual who is listed on the ballot ... or who receives a contribution or makes an expenditure or gives his consent for any other person to receive a contribution or make an expenditure with a view to bringing about his nomination or election to any elective office

Thus, there are two provisions of Section 82007 which may cause a prospective appointee to be a candidate. First, if a person is "listed on the ballot" he is a candidate. In most instances, anyone who has qualified to have his name listed on the ballot will in fact have his name so listed. Therefore, the general rule is that when a person qualifies his name for the ballot he is "listed on the ballot" for the purposes of Section 82007. However, even if a person qualifies his name for the ballot, he will not be a candidate within the meaning of Section 82007 if, by operation of law, his name nevertheless does not actually appear on the ballot. Accordingly, the prospective appointees in the instant case are not "candidates" merely because of the fact that they qualified their names for the ballot.

^{1/}
The appointment, however, may not actually occur until several weeks after the date of the general election.

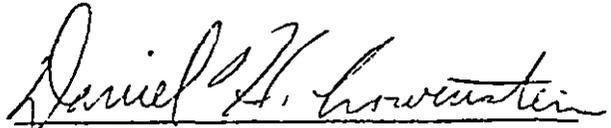
^{2/}
All statutory references are to the Government Code unless otherwise noted.

A second means of becoming a candidate within the meaning of Section 82007 is if a person receives any contributions or expends any funds, or authorizes anyone else to do so, with a view to bringing about his nomination or election to any elective office. Payments for filing fees, pamphlets, newsletters, campaign supplies, etc., are "expenditures". Section 82025. Therefore, payments like these, when made with a view toward bringing about a person's nomination or election, will cause that person to be a candidate. If a prospective appointee is a candidate, he must file campaign statements or a verified statement that not more than \$200 has been received or expended on behalf of his candidacy. Section 84212.

(2) A candidate for election to a district office may submit information for inclusion in a candidate qualification booklet, Elections Code Section 2340.5, which is mailed, along with a sample ballot, to each voter. Elections Code Section 10012.5. The clerk's office bills each candidate for his pro rata share of the cost of producing the candidate qualification booklet. Elections Code Section 10012.5. To simplify this billing procedure, the clerk's office requires each candidate to post a deposit to cover his share of the cost. If, however, the candidate faces no opposition 60 days prior to the election, he will be appointed to office by the supervising authority and, in such a case, his qualification statement deposit will be refunded.

The deposit posted by the candidate is an advance payment to the clerk's office for costs to be incurred in the printing of the candidate's qualification statement. Since the deposit is a payment, it is an expenditure within the meaning of Section 82025. Moreover, an expenditure occurs when the payment is made and must be reported pursuant to Sections 84200, et seq. Therefore, the deposit is a reportable expenditure, even though a subsequent billing may require additional payment or provide a partial refund. However, if a refund is received by the candidate prior to the closing date for the filing of his first campaign statement, the refunded portion of the deposit need not be reported pursuant to Sections 84200, et seq.

Approved by the Commission on October 23, 1975.
Concurring: Brosnahan, Miller and Lowenstein. Commissioners
Carpenter and Waters were absent.


Daniel H. Lowenstein
Chairman