

M-79-164

Federal preemption

2 U.S.C. 431(b) provides that a person is a candidate under the Federal Election Campaign Act if he seeks nomination or election to a federal elective office. The FEC has provided by regulation that a person is not a candidate if he does not actually seek nomination to an office. Thus, funds raised to "test the water" by a person who ultimately does not seek nomination to an office are not reportable.

The question arose as to whether California was preempted from requiring reporting of federal testing the water money. Nancy Simmons of the FEC in consultation with the general counsel advised me that California clearly could require that state campaign statements be amended to disclose federal testing the water money when the person did not become a federal candidate. If California wishes to require the federal testing the water money to be reported prior to the time that the person knows whether or not he will ultimately be a federal candidate, she suggested that we write for a general counsel's opinion. She indicated that they might hold that California would not be preempted until the person in question actually becomes a federal candidate.