

Office of Government Ethics
80 x 5 -- 06/15/80

Letter to an Agency Counsel dated June 25, 1980

Your letter of May 19, 1980 asks about the applicability of section 201(c) of the Ethics in Government Act ("the Act") to Presidential candidates who have withdrawn their candidacy prior to May 15, 1980.

You set forth the specific situation of [an individual] who became a candidate for the Office of President in early 1979. You inform us that he filed a financial disclosure report for 1979 in accordance with the Act and that [before May] in 1980 he withdrew from the Presidential race. A copy of his 1979 report has been reviewed by us and is in our files.

Section 201(c) reads, in part, as follows:

Within thirty days of becoming a candidate in a calendar year for nomination or election to the Office of President or Vice President, as determined by the Federal Election Commission, or on or before May 15 of that calendar year, whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President or Vice President shall file a report (emphasis added).

The issue is whether [the individual], having withdrawn prior to the filing date of May 15, 1980, must file a financial disclosure report by that date¹ since he was a candidate during part of 1980 -- a candidate"? Must the candidacy continue up to at least May 15 or is it sufficient if the candidate is active during any period in 1980, no matter how brief the period is?

The wording of the statute does not directly address this problem.

We can obtain some understanding of it by looking to the purpose of this provision. Sutherland, *Statutory Construction*, 2A § 45.09 (4th ed. 1972); *United States v. Evans*, 333 U.S. 483 (1948). Financial reports are intended to furnish information to assist the public in evaluating the candidates for the Presidency. Where a person such as [this individual] is no longer a candidate, the public has no need for the report.

Contemporary and practical interpretation can be used in defining the boundaries of a law where there is some uncertainty about its meaning. Sutherland, *supra* 2A § 49.03, *Fleming v. Mohawk Wrecking and Lumber Co.*, 331 U.S. 111, 67 S.Ct. 1129, 1132 (1947); *Jablon v. Trustees of California State Colleges*, 432 F.2d 997, 999 (9th Cir. 1973), cert. denied, 414 U.S. 1163 (1974). The Senate and House Committees which handle the reports of candidates for Congress under section 101(d) of the Act -- a provision similar to section 201(c) -- do not require filing by candidates who withdraw prior to May 15, a pragmatic interpretation with which we agree.

Additional light is thrown on the problem by the 1979 amendment to section 201(c). Its purpose was to clear up a technicality regarding the necessity for defeated candidates to file reports under the Act where their candidacy continues under the Federal Election Campaign Act for satisfying campaign debts. 2 U.S.C. § 433(d). The need for the amendment was that "continued financial disclosure during such a period of technical candidacy is not within the intent of the Act." Hearing on H.R. 2805 Before the Subcomm. on Human Resources of the House Committee on Post Office and Civil Public Law No. 96-19 removed the requirement for financial disclosure reports by defeated candidates.²

Public Law No. 96-19 strengthens our conclusion that an individual who withdraws his candidacy prior to May 15, 1980 need not file a financial disclosure report. Unlike a candidate who loses in the election, [the individual] did not continue to be a candidate prior to the election. At the Hearing, *supra*, the statement appears that "the purpose of this provision [section 201(c) of the act] was to insure disclosure by a candidate actually seeking office" (p. 19). [The individual] was not "actually seeking office" on May 15, 1980.

In light of the foregoing, we conclude that [the individual] and others similarly situated who do not continue to be candidates at

any time prior to May 15 of the successive reporting year -- in this case 1980 -- are not required to file a financial disclosure report under section 201(c) of the Act. Our opinion does not cover the separate issue of what filing obligations, if any, [the individual] may have under the Federal Election Campaign Act since that is a matter within your jurisdiction.

Sincerely,

J. Jackson Walter
Director

1 The Federal Election Commission has granted [the individual] an extension of the May 15th filing date by reason of the pendency of this opinion request.

2 The following sentence was added by Public Law No.96-19 to section 201(c):

Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during the year.