



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1982-3

of

COMMISSIONER THOMAS E. HARRIS

I fear that the Commission will drown while protecting an individual's right to "test the waters" in order to determine the feasibility of his candidacy. The Commission's regulations were intended to be a narrow exemption from the definition of contribution and expenditure. See 11 CFR 100.7(b)(1), 100.8(b)(1). They allow an individual to take a pole, make phone calls or travel in order "to determine whether an individual should become a candidate." The House Report accompanying H.R. 5010 recognized the validity of the Commission's regulations when it noted, "this regulation recognizes the practical problems which may arise in determining whether an individual will run for Federal office." (H. Rpt. 96-422, 96th Cong. 1st. sess., P.5).

The Commission was cognizant that the line between "testing the waters" and campaign activity was a thin one, but now it is non-existent. This advisory opinion sanctions activities which go beyond those which the Commission envisioned when promulgating its regulations and permits activity which borders on campaigning. For example, it will allow the compiling and maintaining of information concerning persons indicating an interest in the possible candidacy of Senator Cranston. This is simply allowing the Cranston committee a head start on its campaign organization, and it has nothing to do with his personal determination as to whether his candidacy is feasible. Similarly, the Cranston committee's organizing of Advisory Groups on critical and substantive issues would benefit the potential campaign more than the decision whether to campaign. And if the Commission continues to follow its usual course, the one narrow "testing the waters" exemption will become broader and broader.