February 19, 1929

To Honorable Wallace H. White, U. S. Senate
Re: Corrupt Practices Act

Glad to give you my personal reaction in reply to your letter of February 13th.

I do not find in the files that my predecessors have given any interpretation of the provisions of the corrupt practice act in which you are interested, viz: At what moment a receptive or prospective candidate becomes a candidate within the meaning of the corrupt practice act so that thereafter he must keep an account of his expenditures.

I find that the question has been talked over between the secretary of state and the attorney general and I know that I myself gave considerable thought to it when I was a candidate in a contested primary some years ago.

I don't believe that it is possible to give an absolute answer although there are several clues that can be followed:

Looking up the word "candidate" in Words and Phrases, I find that the test laid down in Adams v. Lansdon, 18 Idaho 483, is whether or not the person is expending his money toward accomplishing his ambition.

In State v. Brady, 102 Minn. 104, 12 Ann. Cases 105, under the Minnesota law, he becomes a candidate when he files his affidavit to that effect. In a not very recent Pennsylvania case, Leonard v. Commonwealth, 112 P. 607, 4 Atl. 220, 224, one who seeks or aspires or offers himself for office is a candidate.

Our law does in Section 126 prohibit friends of candidates from spending money themselves "within six months prior to any such election".

It would seem to follow from this last provision that one's friends may spend money quite freely prior to six months. By a natural but, as a matter of law, hardly justifiable extension, many candidates have felt that they could also spend money freely themselves at any time prior to this same six months without accounting for it. Very likely the test is partly a matter of conscience and personal feeling. At one extreme I should not suppose a person was a candidate within the meaning of the act when he is merely making the first approaches toward becoming politically eligible for a position whose vacancy is not definitely certain to occur at a certain time. Probably in the same way, he would hardly be a candidate within the meaning of the act if he were setting his plans for filling a vacancy which is to occur after the incumbency of someone not as yet himself actually selected.

Going back to ancient history for an example, I should not suppose that in the old days in our political organization Mr. Cobb was a

"candidate" for Governor at the time of the convention in 1900 which nominated Hill with the general understanding that Cobb would succeed him four years later. A question of degree, as so often the case with a question of fact or mixed question of fact and law.

The publicity of one's announcement, the definiteness of the ambition and of the plans formed are doubtless important considerations but not controlling. The public announcement of Mr. Cobb's friends in the case above mentioned I should not think would make him a "candidate". On the other hand, I should suppose that many persons whose candidacies have not been formally announced in the press with a signed statement are just as much candidates as those whi have taken that particular step.

The actual spending of money for the particular kind of purpose which is specified as the kind of purpose for which a reckoning must be kept is a significant fact in showing that one is a candidate.

The circulation of primary papers, of course, makes one definitely a candidate but I should not say that this was a necessary element of candidature. Some obvious candidates withhold circulating papers until shortly before the filing date.

I am very anxious indeed to be of any help that I can in working out the problem and don't know as this has been of much assistance.

Clement F. Robinson
Attorney General

CFR*LMR