



WASHINGTON STATE REPUBLICAN PARTY

October 12, 2004

2004 OCT 13 A 11: 28

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Lawrence M. Norton, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Advisory Opinion Request

AOR 2004-39

2004 OCT 18 A 9:38

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Mr. Norton:

Pursuant to 2 USC 437f, I request an Advisory Opinion on behalf of the Washington State Republican Party (State Party). Specifically, I request an Advisory Opinion regarding the application of the source prohibitions, amount limitations and reporting requirements under the Federal Election Campaign Act of 1971, as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA") (collectively "FECA"), and Federal Election Commission ("Commission") regulations to a fund that will be used to pay for recount expenses that may arise in connection with one or more federal elections.

The State Party intends to establish a fund to finance recount activities in connection with one or more federal elections to be held on November 2, 2004. The recount fund will be established and administered by the State Party's leadership and staff. No federal officeholders or candidates will exercise decision-making authority over the raising or spending monies raised by the fund. However, the State Party intends to host federal candidates, officeholders and their agents as featured guests at state party events that raise permissible monies for the recount fund.

No monies raised by the fund will be used to finance federal election activities, coordinated or independent expenditures, exempt party activities, or any communications referring to any federal candidate prior to or on election day. Rather, all monies raised by the fund will be used to pay for expenses resulting from a recount, election contest, or other similar post-election activities (e.g., counting of provisional ballots) in connection with a federal election.

In order to avoid any confusion regarding the raising and spending of funds in connection with the recount or election contest of the results of a Federal election, the State Party seeks the Commission's opinion regarding how it may pay for recount expenses.

Discussion

Commission regulations specifically exempt funds raised and expended from the definitions of contributions and expenditure. Specifically, 11 C.F.R. § 100.91 provides that “[a] gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a federal election, or an election contest concerning a federal election, is not a contribution except that the prohibitions of 11 C.F.R. § 110.20 and part 114 apply.” *Id.* § 100.91. The definition of “expenditure” contains a similar exemption for recount expenses. *Id.* § 100.151.

In past election cycles, federal candidates were permitted to establish either a separate bank account within the campaign or a separate entity to raise and spend funds for recount purposes. *See, e.g.*, FEC Adv. Op. 1978-92. These candidate recount funds were permitted to raise monies in unlimited amounts from individuals and federal political committees. *See id.* (“Since the described gifts are not contributions they would not be subject to the contribution limits of 2 U.S.C. § 441a.”). To date, the Commission has not provided any guidance concerning BCRA’s impact on whether congressional or senatorial candidate may rely on the Commission’s prior Advisory Opinions.

Under BCRA and its implementing regulations, state parties are required to use federally permissible funds or a combination of federal and Levin funds for activities supporting federal candidates. These activities include coordinated and independent expenditures, “exempt” activities, direct or in-kind contributions, and Federal election activities as defined by Commission regulations. *See, e.g., id.* §§ 109.21 & 100.24. Commission regulations, however, do not impose similar requirements for recount and election contest expenses. In fact, a plain reading of the regulations indicates that the recount exemptions from the definitions of “contribution” and “expenditure” permit a state party to establish a recount fund and raise monies in unlimited amounts from permissible sources.

In addition, Commission regulations permit federal officeholders and candidates to attend, speak and be the featured guest at state party fundraising events where federal, Levin and nonfederal funds are raised. *See id.* § 300.64. The Commission has also recently opined that federal candidates and officeholders are permitted to attend events where nonfederal funds are raised so long as certain disclaimer and other requirements are satisfied. *See* FEC Adv. Op. 2003-36.

Questions Presented

In light of the foregoing, the State Party requests an opinion from the Commission answering the following questions about its intended activities:

1. Is the State Party permitted to raise funds from individuals and federal political committees in unlimited amounts for a fund that will be used to finance recount, election contest, and similar post-election activities in connection with a federal election?

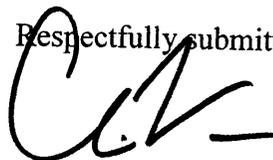
2. Are the State Party's current officers and staff permitted to organize and operate the recount committee if it contains monies raised in unlimited amounts from individuals and federal political committees? Is the state party required to establish a separate account for these purposes?
3. Are the recount fund's receipts and disbursements required to be reported to the Commission? If yes, how should they be reported to the Commission? As other receipts and disbursements?
4. May federal candidates, officeholders, and the agents of both appear as featured guests or speak at an event held for the purpose of raising monies for the State Party's recount fund? Are there any restrictions on such appearances? May federal candidates and officeholders sign letters or make telephone calls soliciting donations for a recount fund? Are there any restrictions on such letters or telephone calls?
5. If the Commission opines that the State Party is permitted to establish the recount fund, are any contrary state laws superceded and preempted under 2 U.S.C. § 453 and 11 C.F.R. § 108.7?

Conclusion

Accordingly, the State Party respectfully requests that the Commission confirm that it is permitted to establish a fund for the purpose of raising funds in unlimited amounts from individuals and federal political committees to finance recount and election contest expenses.

Thank you for your prompt attention to this request. Please do not hesitate to contact me with any questions.

Respectfully submitted,



Chris Vance, Chairman
Washington State Republican Party



Robert Knop/FEC/US
10/14/2004 05:33 PM

To "Peter Abbarno" <peterabbarno@wsrp.org>
cc Mai Dinh/FEC/US@FEC, Rosie Smith/FEC/US@FEC
bcc Duane Pugh/FEC/US@FEC; Margaret Perl/FEC/US@FEC
Subject RE: Your request for an AO 

Peter,

Thank you for your quick response. Our questions are as follows:

1. On pages 1 (paragraph 3) and 2 (question 1) of Mr. Vance's October 12, 2004, letter, he states that all monies raised for WA GOP's recount fund will be used to pay for expenses resulting from a "recount, election contest, or *other similar post-election activities*." (emphasis mine). Please clarify further what is meant by "other similar post-election activities." Would such activities be limited to the counting of provisional ballots (the example provided by Mr. Vance on page 1)? If not, please identify all other post-election activities in which WA GOP intends to engage using monies raised for the recount fund.
2. On page 2 (question 5), Mr. Vance asks whether, assuming the Commission determines that WA GOP is permitted to establish a recount fund, any contrary State laws would be superseded and preempted under 2 USC 453 and 11 CFR 108.7. Please specify which contrary State laws Mr. Vance is inquiring about.

Upon receipt of your responses, our office will give further consideration to Mr. Vance's inquiry. If you have any questions about the advisory opinion process or this e-mail, please let me know.

Thank you,
Bob

"Peter Abbarno" <peterabbarno@wsrp.org>



"Peter Abbarno "
<peterabbarno@wsrp.org>
10/14/2004 04:58 PM

To <rknop@fec.gov>
cc
Subject RE: Your request for an AO

Robert:

I would be more than happy to answer any questions you have. Could you E-mail me the questions and I will provide a quick response.

Thank,

Peter

Peter J. Abbarno, Executive Director
Washington State Republican Party



"Peter Abbarno"
<peterabbarno@wsrp.org>
10/15/2004 11:39 AM

To <rkноп@fec.gov>
cc
bcc
Subject

History: This message has been forwarded.

October 15, 2004

Robert M. Knopp, Esquire

Attorney

Office of the General Counsel/Policy Division

Federal Election Commission

999 E Street, NW

Washington, DC 20463

Re: Advisory Opinion Request

Dear Mr. Knopp:

This responds to your October 14, 2004 email to me requesting additional information regarding the Washington State Republican Party's ("State Party") October 12, 2004 advisory opinion request about a fund that will be established to pay for recount expenses that may arise in connection with one or more federal elections. Your questions, and the respective answers, are listed below.

1. On pages 1 (paragraph 3) and 2 (question 1) of Mr. Vance's October 12, 2004 letter, he states that all monies raised for WA GOP's recount fund will be used to pay expenses resulting from a "recount, election contest, or other similar post-election activities." (emphasis in original). Please clarify what is meant by "other similar post-election activities." Would such activities be limited to the counting of provisional ballots (the example provided by Mr. Vance on page 1)? If not, please identify all other post-election activities in which WA GOP intends to engage using monies raised for the recount fund.

Response: As stated in the initial request, all monies raised by the fund will be used to pay expenses resulting from a recount, election contest, or other similar post-election activities. The "similar post-election activities" will include the counting of provisional and absentee ballots and ballots cast in polling places, and litigation and administrative proceeding expenses concerning the casting and counting of ballots in connection with one or more federal elections.

As stated in the original request, no monies raised by the fund will be used to finance federal election activities, coordinated or independent expenditures, exempt party activities, or any communication referring to a federal candidate prior to or on election day.

2. On page 2 (question 5), Mr. Vance asks whether, assuming the Commission determines that WA GOP is permitted to establish a recount fund, any contrary state laws would be superceded and preempted under 2 U.S.C. § 453 and 11 C.F.R. § 108.7. Please specify which contrary state laws Mr. Vance is inquiring about.

Response: Washington state law does not limit the amount that individuals may contribute to WA GOP. See RCW 42.17.640. It also does not limit the amount that PACs may contribute to the WA GOP for exempt activities such as ballot counting expenses. See *id.* PACs may contribute no more than \$3,400 per calendar year to WA GOP for non-exempt activities. See *id.* WA GOP wants to ensure that if the Federal Election Commission opines that it may accept unlimited donations from individuals and other federal political committees for recount purpose, that this interpretation of Commission regulations will occupy the field and supercede and preempt the state law limiting contributions from PACs for non-exempt activities.

In addition, WA GOP wishes to confirm that, if it is required to report the fund's receipts and

disbursements to the Commission, such federal reporting requirements will also supercede and preempt any reporting requirements with the Washington Public Disclosure Commission under RCW 42.17.030 through 42.17.135.

Please do not hesitate to contact me if you have any additional questions.

Respectfully submitted,

Peter J. Abbarno

Executive Director

Peter J. Abbarno, Executive Director
Washington State Republican Party
16400 Southcenter Parkway, Suite 200
Seattle, WA 98188
206-575-2900 (Phone)
206-575-1730 (Fax)

-----Original Message-----

From: rknop@fec.gov [mailto:rknop@fec.gov]
Sent: Thursday, October 14, 2004 2:34 PM
To: Peter Abbarno
Cc: mdinh@fec.gov; rsmith@fec.gov
Subject: RE: Your request for an AO

Peter,

Thank you for your quick response. Our questions are as follows:

1. On pages 1 (paragraph 3) and 2 (question 1) of Mr. Vance's October 12, 2004, letter, he states that all monies raised for WA GOP's recount fund will be used to pay for expenses resulting from a "recount, election contest, or *other similar post-election activities*." (emphasis mine). Please