

FEDERAL ELECTION COMMISSION

(Notice 1975-24, AO 1975-2 and AO 1975-3)

AO 1975-2: Michigan Democratic Party

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request submitted by the Michigan Democratic Party (hereinafter MDP) and published as AOR 1975-2 in the June 24, 1975, Federal Register (40 FR 26660). Interested parties were given an opportunity to submit written comments pertaining to the request.

The advisory opinion request by the MDP raises several issues. Each issue is discussed separately in the following advisory opinion.

1. The first question concerns the practice by the Michigan Democratic Party of maintaining two separate bank accounts--one for Federal election use and one for state election use. The party has established two separate accounts to assist it in meeting the different reporting requirements of the Federal law and of the Michigan state laws. The Federal election account is not the "official" account of the Michigan Democratic Party. The party's question is, then, whether the money from the Federal election account can be used for the 18 U.S.C. §608(f) state committee expenditures.

Section 608(f) does not specify that the expenditures made under this section must be from the "official" account of the state party. Therefore, the general section on campaign depositories, 2 U.S.C. §437(b), controls. Subsection 437(b)(2) provides:

The treasurer of each political committee (other than a political committee authorized by a candidate to receive contributions or to make expenditures on his behalf) shall designate one or more national or State banks as campaign depositories of such committee, and shall maintain a checking account for the committee at each such depository. All contributions received by such committee shall be deposited in such accounts. No expenditure may be made by such committee except by check drawn on such accounts, other than petty cash expenditures as provided in subsection (b).

The MDP has complied with the first requirement of this subsection by establishing a separate account for Federal elections. In addition, the MDP must designate the bank in which it maintains its separate account for Federal elections (or any other National or State banks) as the campaign depository of the committee. All contributions received or expenditures made pertaining to Federal elections must be deposited in or drawn from this account of the party. Each local party committee which intends to solicit contributions, receive contributions, or make expenditures in connection with any Federal election must establish a separate account for Federal election purposes as described above.

All contributions received by the MDP which the contributor designates to be used for Federal election purposes and all contributions received which the MDP intends to use for Federal election purposes must be deposited in this account. Since the individual or political committee whose contribution is deposited in this account is making a contribution within the definition of 18 U.S.C. §591(e) the contribution limitations established in 18 U.S.C. §608(b) are applicable. In addition, the sections in Title 18 which prohibit contributions by certain types of contributors are applicable. 18 U.S.C. §§610, 611, 613, 614 and 615.

2. The second question raised by the Michigan Democratic Party concerns the application of the expenditures limitations in 18 U.S.C. §608(f) to the state and local committees in Michigan and the proper place of filing reports by the local committees. Subsection 608(f)(3) provides:

The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds
(explanation of formula for determining limitation) (emphasis added)

The term subordinate, as used in this section, includes all "branches" or "subsidiaries" which are officially a part of the State Party organization. By statute, each major party in Michigan is required to establish a county committee in each county, a district committee in each Congressional district, and a State central committee. (Hereinafter the County and Congressional committees are referred to as local committees.) Although the local committees of each party select the members of the state central committee of that party, each committee on each level retains independent statutory existence and exercises a substantial degree of autonomy with respect to all other committees in its finances and operations. When applied to the political party structure in Michigan, the term subordinate as used in §608 includes all statutorily required local committees and any other committee which, by virtue of the bylaws of the Michigan Democratic Party, is part of the Democratic Party structure in the state. Therefore, all such committees are included within the state party expenditure limitation established in §608(f)(3).

The Michigan Democratic Party may administer the §608(f)(3) expenditure by one of the following methods, which the Commission does not intend to be an exhaustive statement of the alternative methods. In the first instance, the state central committee will be responsible for insuring that the expenditures of the entire party organization are within the limitations established in §608(f)(3). Any 608(f)(3) expenditure made by a local committee would have to be reported to the state central committee. The state central committee would be responsible for filing reports with the Commission pertaining to all §608(f)(3) expenditures made by any branch of the party structure.

In the alternative, the state central committee may allocate the §608(f)(3) expenditure among the local party committees in the following manner. The state committee and the local committees first agree upon an allocation formula whereby a

portion of the total §608(f)(3) expenditure limitation for each Federal candidate is allocated to local committees. The state committee, then, files a statement with the Commission setting forth the agreed upon allocation. This "allocation statement" shall contain, in addition to the allocation for each committee, the following information with regard to each committee which has not filed a statement of organization with the Commission: the name and address of the committee; the name, address, and position of the custodian of books and accounts; the name, address and position of other principal officers; and a listing of all banks, safety deposit boxes, or other repositories used. If the local committee has already filed a statement of organization, the "allocation statement" must contain the name and address of the local committee and the amount allocated to that committee, and state that a statement of organization has already been filed by that committee. Any changes in the information pertaining to the local committees which was submitted in the "allocation statement" must be reported by the local committee to the Commission within 10 days following the change.

Once the "allocation statement" has been filed with the Commission, the actual allocation to a local committee may be changed by an amended report submitted to the Commission by the state central committee. This report must be signed by authorized agents of both the state central committee and that particular local committee and state that both parties have agreed that the original allocation should be changed and set forth the amended allocation.

Each local committee (other than a political committee) which is listed in the "allocation statement" will be required to file appropriate reports of expenditures with the Commission if the total §608(f)(3) expenditure allocation is in excess of \$100.¹ In addition, each local committee will be responsible for insuring that all §608(f)(3) expenditures by that local committee are within the allocated amount. If the local committee exceeds its allocation as set forth in the "allocation statement" and, as a result, the total party expenditures in the state exceed the overall expenditure limitation in §608(f)(3), the local committee, rather than the state party officials, will be charged with the responsibility for exceeding the expenditure limitation.

Although §608(f)(3) specifically includes the local committees within the state party expenditure limitation, the local committees may be considered separate organizations for the purposes of applying the contribution limitations in §608(b). If the local committees are in fact truly independent of the state central committee, then each local committee may contribute to Federal candidates. If the local committee qualifies under §608(b)(2), its contribution limitation for each candidate is \$5,000. Otherwise, the limitation for each candidate is \$1,000 per candidate, 18 U.S.C. §608(b)(1). Each local committee is responsible for filing with the Commission any appropriate reports made necessary by reason of its contributions to Federal candidates.

¹ The Commission will be issuing regulations pursuant to 2 U.S.C. §434(e) which will detail this reporting requirement.

3. The next question raised is whether the state committee is required to file the required reports and statements with the appropriate principal campaign committee or with the Commission. The state committee must file reports of any contributions received which are "earmarked" for a particular candidate with that candidate's principal campaign committee. The committee must also file a report pertaining to expenditures which are authorized by the candidate to be made on his or her behalf with the appropriate principal campaign committee.² Reports pertaining to all contributions and expenditures will be filed with the Commission.³ If the state committee has not registered, the statement of organization should be filed with the Commission.

4. Question 4 concerns the newsletter the Michigan Democratic Party publishes and sends to its members. The question is whether the newsletter comes within the expenditure exemption in 18 U.S.C. §591(f)(4)(C), which provides:

(C) any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election of any person to Federal office;

Although a state political party does endorse federal candidates, many of the activities of the party are generally not to influence directly Federal elections, but to build a strong party organization. A newsletter of a political party will come within this expenditure exemption if the newsletter is distributed only to dues paying members of the party. Moreover, the state political party or other entity sending the newsletter must not be "organized primarily for the purpose of influencing the nomination for election, or election, of any person to federal office." 18 U.S.C. §591(f)(4)(C). This concept of being "organized primarily" for such purposes will be particularized by Commission regulations to be issued in the near future.

It is relevant to note that the party may solicit contributions to the Democratic Party in this newsletter (although not for any federal candidate). Such a solicitation will not make the newsletter an expenditure. Section 591(f)(4)(1) exempts from the definition of expenditure any costs incurred by a political committee with respect to the solicitation of contributions to such political committee, unless the solicitation is done by general public advertising.

5. The last question concerns the reporting requirements for the local committees of the Michigan Democratic Party which do not receive contributions for federal elections in excess of \$1,000 or which are not allocated more than \$100 of MDP's §608(f)(3)

² This does not include 18 U.S.C. §608(f)(3) expenditures.

³ An Interim Guideline pertaining to the filing of the July 10 reports was published in the Federal Register on June 26, 1975. Regulations pertaining to reports due on October 10 and thereafter will be published in the Federal Register prior to the date when the reports are due.

expenditures.⁴ The question is whether 2 U.S.C. §437a, pertaining to reports by certain persons, requires such committees to file reports with the Commission. In particular, the MDP asks whether the phrase "commits any act directed to the public for the purpose of influencing outcome of an election" as used in §437a, includes such routine activities by political committees as putting up a poster for a federal candidate.

The local committee of a state political party organization which is not required to file reports as a political committee or as a "person" under 2 U.S.C. §434(e) and which is not required to file reports of §608(f)(3) expenditures, will not be required to file reports under §437a. Certain "routine activities" of political committees described in the request could frequently come within the exemptions to the definition of contribution in 2 U.S.C. §431(e) and 18 U.S.C. §591(e). For example, a person who puts up posters for a federal candidate is usually volunteering his or her services without compensation. If that is the case, such activity is exempt from the definition of contribution by 2 U.S.C. §431(e)(5)(A) and 18 U.S.C. §591(e)(5)(A).⁵

This advisory opinion is issued on an interim basis only pending the promulgation by the Commission of rules and regulations of general applicability. Any interpretation or ruling contained herein is to be construed as limited to the facts of the specific advisory opinion request and should not be relied on as having precedential significance except as it relates to those facts at the time of its issuance.

⁴ See discussion relating to question 2.

⁵ 2 U.S.C. §437a requires that any person (other than an individual) "who expends any funds or commits any act directed to the public for purpose of influencing the outcome of an election" to report the funds received by that person as if they were contributions under 2 U.S.C. §431(e) and payments of such funds as if they were expenditures under 2 U.S.C. §431(f). Therefore, even if the local committee were required to report under §437a, the local committee would not be required to report the activity described in the request if the person putting up the posters was volunteering his services without compensation. The individual volunteering his services would not be making a contribution to the local committee since such volunteer activity is exempted from the definition of contribution. The local committee would not, in these circumstances, be making an expenditure since it is not compensating the individual for his time.