

AO 1975-3

National Republican Congressional Committee

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request submitted by the National Republican Congressional Committee (hereinafter NRCC) and published as AOR 1975-3 in the June 24, 1975, Federal Register (40 FR 26660). Interested parties were given an opportunity to submit written comments pertaining to the request.

This request states that NRCC provides certain services and property to Republican Members of the House of Representatives (hereinafter Member). These services are:

1. The NRCC's preparing and printing newsletters, questionnaires and other printed matter to be mailed by Members under the Congressional frank.
2. The NRCC's reprinting of excerpts from the Congressional Record to be mailed by Members under the Congressional frank.
3. The NRCC's paying the cost of tabulating responses to questionnaires sent by a Member to his constituents under the Congressional frank including the cost of using a computer for such tabulation.
4. The NRCC's reimbursing a Member for the cost of newsletter paper purchased by the Member from the House of Representatives Stationery Room to be used by the member in preparing materials to be mailed by the Member under the Congressional frank.

The NRCC requests the Commission to rule on the question of whether the described activities are non campaign in nature and, therefore, do not count against the NRCC's contribution limitation to a candidate [18 U.S.C. §608(b) (2)] and do not apply to the Member's election expenditure limitations [18 U.S.C. §608(c)(1)(E)].

It is not necessary for the Commission at this time to reach the question of whether the activities described in paragraphs 1, 2 and 4 are non campaign in nature. 39 U.S.C. §3210 (f) is applicable to material sent under the Congressional frank. This section provides:

Notwithstanding any other provision of Federal, State, or local law, or any regulation there under, the equivalent amount of postage determined under section 3216 of this title on franked mail mailed under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by,

the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office. (Emphasis added.)

As long as the materials prepared by the NRCC are suitable to be mailed under the frank and, in fact, are mailed under the frank, the cost of preparing or printing the materials will not be charged against the contribution or expenditure limitations in 18 U.S.C. §608. For purposes of this opinion, the Commission assumes that such mailings are suitable to be mailed under the frank.

In paragraph 3, the NRCC requests the Commission to rule on its practice of paying the cost of tabulating responses to questionnaires sent by a Member to his constituents under the Congressional frank including the cost of using a computer for such tabulation. The exemption in 39 U.S.C. §3210(f) only extends to the cost of preparing or printing the franked matter. Therefore, in determining whether the cost of tabulating responses is a contribution or expenditure subject to the appropriate limitations in 18 U.S.C. §608, the question is whether such activity is a contribution or expenditure within the general definition of 18 U.S.C. §591(e) and (f). The Commission has proposed regulations providing that the cited definitions apply to these activities and that they are therefore subject to limitation under 18 U.S.C. §608.

This advisory opinion is to be construed as limited to the facts of the request and should not be relied on as having any precedential significance except as it relates to those facts at the time of its issuance.

Date: August 11, 1975

(signed) _____
Neil Staebler, Vice Chairman
For the Federal Election Commission