

ADVISORY OPINION 1975-7

Contributions and Expenditures Relating to the Constituent Services of Members of Congress

This advisory opinion is rendered under 2 U.S.C. 437f in response to requests for advisory opinions submitted by Mr. Thomas J. Kern for Congressman Dave Evans, Congressman John P. Murtha, and Senator Jake Garn, which were published together as AOR 1975-7 in the July 2, 1975, Federal Register (40 FR 28044). Interested parties were given an opportunity to submit written comments relating to the requests.

The requests generally ask the Commission, under the Federal Election Campaign Act of 1971, as amended, and Title 18 of the United States Code (the Act), what types of contributions to and expenditures by an office account are permissible, and how these accounts shall be reported and administered. Specifically, the following requests were made:

(a) Thomas J. Kern, administrative assistant for Congressman Dave Evans, states that the Congressman has established two fundraising entities to support the Representative's political activities. One entity is the principal campaign committee of the Congressman and the other is an office account (called here a "constituent service fund") set up to collect funds to assist Congressman Evans in providing services for his constituents. Donations to the office account will be used for printing newsletters; holding neighborhood office hours; conducting meetings and seminars with representatives of governmental and private agencies, and with elected and appointed officials of the cities, counties and towns of the District; holding periodic open house activities at the District and Washington offices, providing constituents with flags, publications and certain other items that must be purchased; and for other expenses incurred in connection with the Congressman's services for his constituents. The account will not be used to present or promote the views of any political party or philosophy or to influence the re-election of Congressman Evans. Mr. Kern asks whether the office account is a political committee under the Act. He also asks how the sponsor of a fundraising event for the benefit of an office account should be identified, and what disclosure requirements are applicable to the use of the proceeds from such an event;

(b) Congressman John P. Murtha states that he has established a franking account (called here a "public service committee") which is used solely to defray the cost of newsletters, reports, and questionnaires sent to constituents. Congressman Murtha asks whether a corporation may make a donation to such an account without violating the statutory provisions governing political contributions; and

(c) Senator Jake Garn asks whether an incumbent Senator or Representative may engage in attitudinal research with his constituency for purposes of measuring the voters' sentiments on policy issues, job approval perceptions, and the like, without having these expenditures allocated against any applicable spending limitation. The proposed polls will ask questions for statistical purposes, open end questions, and

forced response questions, but will not ask questions relating to political trial heats. Senator Garn asks further whether the fact that a Member of Congress is a candidate will make any difference in the use of issue-oriented opinion research.

As stated in AO 1975-14 on "Contributions by Banks, Corporations, and Labor Unions to Defray Constituent Service Expenses" (40 FR 34084, August 13, 1975), "[i]t is clear that the Federal Election Commission has the duty to formulate general policy with respect to the Act (2 U.S.C. 437d(a)(9)), has the power to regulate amounts contributed to a holder of Federal office in order to defray expenses arising in connection with that office (2 U.S.C. 439a), has the power to formulate general policy regarding contributions and expenditures (18 U.S.C. 608), and has the power to formulate general policy regarding contributions or expenditures by national banks, corporations or labor organizations (18 U.S.C. 610)." Congress has the discretion and power to appropriate sufficient money for staff salaries, newsletters, stationery, travel, constituent services, and the other legislative expenses of a Member of Congress to assure the performance of the Member's legislative duties. Accordingly, except for money raised pursuant to 39 U.S.C. 3210(f), additional money which is raised by a Member or his supporters shall be treated as a contribution made for purposes of influencing a Federal election and shall be controlled by all appropriate limitations. Similarly, except for money expended pursuant to 39 U.S.C. 3210(f), additional money which is expended from an office account shall be treated as an expenditure intended for purposes of influencing a Federal election and shall be controlled by all appropriate limitations. As provided in 3210(f) of Title 39, United States Code, money which is contributed and expended for the preparation or printing of material to be mailed under the frank shall be treated as a contribution or expenditures for disclosure purposes of the Act, although not for purposes of the contribution and expenditure limitations provided in 18 U.S.C. 608.

The Commission intends to apply its policy on office accounts as follows:

(a) It is the opinion of the Commission that an office account established to provide services for the constituents of a Congressman shall report as if such account is a political committee and contributions to, expenditures by, and the general operation of an office account should be reported and otherwise treated as provided in Notice 1975-18 of the Federal Election Commission "Office Accounts and Franking Accounts; Excess Campaign Contributions" (40 FR 32951, August 5, 1975). See also AO 1975-14, *supra*. As provided in Notice 1975-18 and AO 1975-14, all private contributions received by or on behalf of a Federal officeholder for use by his office account may be deposited in such account or an account of the officeholder's principal campaign committee, pursuant to 2 U.S.C. 437b. Also as provided in Notice 1975-18, money received for the preparation or printing of material to be sent under the frank (e.g., a newsletter), other than funds appropriated for legislative activities, shall be deposited in a separate segregated franking account which shall report as provided in that notice.

Monies expended from such accounts, other than the franking account, will be counted toward the officeholder's campaign expenditure limits under 18 U.S.C. 608(c). A Congressman holding a fundraiser should identify that the fundraising is being

conducted by either the Congressman's principal campaign committee, his office account or his franking account.

The Commission also is requested to provide guidance as to whether a person holding a fundraiser for the benefit of an office account should state that a donation to the office account is not tax deductible or subject to a tax credit. The Commission is unable to provide such guidance as it lacks authority to rule with regard to such tax consequences. Reference should be made to Sections 41 and 128, Title 26, United States Code.

(b) It is the opinion of the Commission that corporate contributions to a franking account, used solely to defray the cost of newsletters, reports, and questionnaires sent to constituents, are prohibited under 18 U.S.C. 610. While exempt from the limitations in 18 U.S.C. 608 (see 39 U.S.C. 3210(f)), contributions and expenditures for the preparation or printing of material to be mailed under the frank shall otherwise be treated as contributions and expenditures for purposes of the Act, (including the pertinent provisions of Title 18). Since the proposed contribution would be derived from general corporate funds, and not from separate voluntary funds to support the franking accounts of Congressmen, the contribution by the corporation would be prohibited under 18 U.S.C. 610.

(c) A Member of Congress may, of course, make expenditures for attitudinal research within his constituency for purposes of measuring the voter's sentiments on policy issues, job approval perceptions, and the like. However, unless the expenditures for the attitudinal research are paid from funds appropriated for legislative purposes by Congress or from a Congressional franking account and are used to print or prepare matter mailed under the frank, they will be treated as an expenditure from the Member's office account and will be subject to the limitations provided in 18 U.S.C. 608 as well as the other provisions of the Act. See Notice 1975-18, supra. The fact that a Member of Congress is an announced candidate thus would not make any difference in how expenditures for attitudinal research will be treated.

The provisions of this opinion represent the opinion of the Commission as to the effect of 2 U.S.C. 437(a)(9), 2 U.S.C. 439a, 18 U.S.C. 608, 18 U.S.C. 610, and 39 U.S.C. 3210(f) on contributions and expenditures from the office or franking account of a Federal officeholder.

The provisions of this opinion are reflected in the proposed regulations which the Commission has submitted to Congress, see Notice 1975-18, supra. Pursuant to the Administrative Procedure Act the Commission will hold public hearings on the proposed regulation on September 16 and 17, 1975, at the U.S. Court of Claims in Washington, D.C.