

ADVISORY OPINION 1975-9

Application of Contribution and Expenditure Limits To Unopposed Primary Candidates

The Federal Election Commission renders this advisory opinion under 2 U.S.C. 437f in response to requests submitted by a candidate and a political committee. The requests were made public by the Commission and published in the Federal Register on July 9, 1975 (40 FR 28944). Interested parties were given an opportunity to submit comments relating to the requests.

The requesting parties seek an advisory opinion as to whether a primary election in which there is only one candidate for nomination is an "election" for purposes of the contribution and spending limitations of 18 U.S.C. 608. In 18 U.S.C. 591(a) the term "election", as used in 18 U.S.C. 608, is defined as, inter alia, "a general, special, primary, or runoff election." The Commission's opinion is that this definition includes a primary election in which a candidate runs unopposed and without regard to whether his or her name appears on the ballot. The provisions of 18 U.S.C. 608 clearly state that the contribution and expenditure limitations "apply separately with respect to each election." No distinction is made between opposed and unopposed primary and general election candidates.

This conclusion is in accordance with the legislative history of the Federal Election Campaign Act Amendments of 1974, (the Act). The Senate bill (S. 3044) as reported from committee contained specific provisions which limited expenditures by unopposed candidates in both a primary and general election to 10 percent of the limits applicable to opposed candidates. The 10 percent limit on unopposed primary candidates was deleted by floor amendment during Senate debate while the 10 percent limit on candidates unopposed in the general election was dropped in conference with the House. Thus, the legislative history also indicates that it was not Congress' intent to make a distinction between opposed and unopposed candidates for purposes of either contribution or expenditure limits. Accordingly, an unopposed candidate in a primary election is entitled to receive contributions and make expenditures with respect to that election within the limitations set by 18 U.S.C. SS 608.

The Commission further concludes that those expenditures made solely to defray expenses incurred with respect to the primary election would not be chargeable to the unopposed candidate's expenditure limits in the general election. Until further notice the commission will assume that all expenditures made and required to be reported with respect to a forthcoming primary election are allocable to that primary election rather than to a subsequent general election.