

**Re: AOR 1975-103**

**NOTE: The responsive document to AOR 1975-103 is an Opinion of Counsel, not an opinion issued by the Commission, and does not constitute an Advisory Opinion. It is included in this database for archival purposes and may not be relied upon by any person.**

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AOR 1975-103 issued as  
OC 1975-123

OC 1975-123

R. Doug Lewis, Executive Director  
Republican Party of Texas  
1011 Congress Avenue, Suite 520  
Austin, Texas 87801

Dear Mr. Lewis:

This responds to your letter requesting an advisory opinion from the Commission on several issues involving the application of the Federal Election Campaign Act of 1971, to the Republican Party of Texas. Your request was formerly processed as AOR 1975-103.

The Supreme Court recently held in Buckley v. Valeo, 44 U.S.L.W. 4127 (S.C. January 30, 1976), that the Commission as constituted could not be given statutory authority to issue advisory opinions. Although this part of the Court's judgment was stayed for 30 days, the Commission has determined that it will not issue further advisory opinions under 2 U.S.C. §437f during the stay period. Thus, this letter should be regarded as an opinion of counsel, rather than an advisory opinion.

Your several questions will be stated and answered in sequence.

1. The first question concerns a clarification of Advisory Opinion 1975-2 concerning the application of the limitation in 18 U.S.C. §608(f) to the Republican Party structure in Texas. Section 608(f)(3), which provides separate expenditure limitations for national and State committees, reads in part:

- (3) The national 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 -- \* \* \* [formula for determining expenditure limitation]. (Emphasis supplied.)

You ask whether the Commission would regard local committees in Texas as subordinate branches of the State party organization. Specifically, would the local parties be considered together with the State committee as one entity for the purpose of making contributions to Federal candidates and for purposes of the expenditure limitation in 18 U.S.C. §608(f).

Under 18 U.S.C. §608(f)(3) a separate expenditure limitation during the general election is established for "a State committee of a political party, including any subordinate committee of a State committee." It is my opinion that a "subordinate committee of a State committee" includes all branches and subsidiaries of a political party. More specifically, a subordinate committee is a party "organization which, by virtue of the bylaws of the state committee, is responsible for the day-to-day operation of a political party at the level of city, county, neighborhood, ward, district, precinct or any other subdivision of a state, or any organization under the control or direction of the state committee." See §100.18 of the Proposed Disclosure Regulations as adopted by the Commission on November 25, 1975. Any desired allocation of this amount would, in my opinion, be a matter for agreement among the State and local committees. (See AO 1975-2, 40 FR 36962, August 16, 1975).

With regard to contributions, it is my opinion that the local party committee will be considered a separate committee and, hence, subject to separate contribution limitations as long as the local party committee exercises independent judgment in making decisions on contributions. If the State committee or other political committee or person exercises any direction or control over the contribution activity of a local party committee, the contribution will count as a contribution by the committee or person exercising control. The different levels of the Texas Republican party organization can make

the maximum contribution if the decision or judgment to make such contribution is independently exercised within the separate levels of the organization.

There are two contribution limitations for political committees. Under 18 U.S.C. §608(b)(1), a person (including a political committee) is limited to a contribution of \$1,000 per election (see 18 U.S.C. §591(a)) to a candidate for nomination or election to Federal office. Therefore, a political committee under 18 U.S.C. §608(b)(1) may contribute \$1,000 with respect to a candidate's primary and \$1,000 with respect to the candidate's general election.

Contributions of a local party committee are limited to \$5,000 per candidate per election if the party committee meets the following criteria:

1. Has been registered as a political committee under 2 U.S.C. §433 for a period of 6 months;
2. Receives contributions from more than 50 donors;
3. Has contributed to 5 or more Federal candidates.

2. Your second question concerns debts created in early 1973 and 1974. The Republican Party of Texas borrowed more than \$115,000 to continue its normal party activities and its State headquarters' operations. The money was not used directly to assist any Federal campaign. You raise the question of whether the policies of Advisory Opinion 1975-6 would require the debts to be reported and whether party committees were required to extinguish pre-1975 debts prior to December 31, 1975.

If the proceeds of these loans were not used in any manner in connection with Federal elections, it is my opinion that the party will not have to report them. The December 31, 1975, deadline, which has been rescinded by the Commission, pertained to pre-1975 debts of Federal candidates and their committees.

3. The Republican Party of Texas currently files three separate reports with the Federal Election Commission: (1) the Texas Republican Congressional Committee, (2) the Texas Republican Campaign Committee (which is for support of State candidates

only, and (3) the State Republican Executive Committee. You inquire as to whether if the Party uses the Texas Republican Congressional Committee as its separate account for Federal elections, it may discontinue reporting the activities of the two committees.

In my opinion the Party may designate the Texas Republican Congressional Committee as the State Party's separate Federal campaign committee. This committee will be required to register as a political committee and file reports on its activities. If the separate Federal committee is established, the Texas Republican Party will not need to report the financial transactions of the committees dealing exclusively with State political party activities. The Party must establish a segregated Federal account in either a State or national bank, and such account may not receive contributions other than contributions designated for the Federal campaign committee, or where the solicitation expressly states that such contribution will be used for Federal elections. The segregated Federal account may not receive transfers from an account or committee established by a State committee, subordinate committee of a State committee, or another political committee except from another Federal campaign account or committee. The Federal campaign committee or account may make transfers for any lawful purpose but may not receive any funds contributed in violation of Federal law, including 18 U.S.C. §§608, 610, 611, 613, 614, and 615. (See Proposed Disclosure Regulation, §102.6(b)(2) as adopted by the Commission on November 24, 1975.)

4. You also inquired as to whether the Party is required to allocate staff costs and other overhead costs in conjunction with its separate Federal campaign account. Under the Allocation Regulations adopted by the Commission on December 23, 1975, party committees which have established a Federal campaign committee pursuant to §102.6 are required to allocate administrative expenses for reporting purposes. This allocation should be on a reasonable basis between Federal and non-Federal activities in proportion to the amount of funds expended on Federal and non-Federal elections, or on another reasonable basis (§107.3(e)), and would be required to be reported by the party in the same manner as any other expenditure.

5. The next question concerns the allocation of contributions. Specifically, you ask whether the Party can take the net proceeds from fundraising events and distribute them to various accounts or must they take specific contributions from individuals and deposit their monies into specific accounts. For example, if a direct mail letter, designated as a general solicitation calling for contributions to the Party to help fulfill all its obligations to local, State, and Federal candidates, produces \$10,000, can the Party simply allocate say 20 percent to the Federal campaign account, 50 percent to the State campaign account, and 30 percent to the operating account (and concurrently attributing the same percentage of costs to each account)? Or must the Party take a specific number of returns from the direct mail solicitation and deposit them as individual contributions in each account and then figure how much each contribution cost to raise and list that as the expenditure for each account.

It is my opinion that a Federal campaign account may not receive contributions other than contributions designated for such committee or account, or contributions where the solicitation expressly states that such contribution will be used for Federal elections. Consequently, in order to use the proceeds from a "general" fundraising effort in a Federal election, the Party must notify the contributor that all or a stated portion of the contribution will be used for Federal elections. The Committee must also make a reasonable allocation of the fundraising costs and attribute a portion thereof to the cost of raising the Federal money.

In the example you cite, the Party would indicate in its direct mailing that a certain percentage of any contribution will be used for a Federal election. An individual contributor would apply that percentage toward his or her overall contribution limitation of \$25,000. 18 U.S.C. §608(b)(3).

6. Your final question is whether a State party is required to file reports with the Clerk of the House and the Secretary of the Senate as well as with the Federal Election Commission, or whether filing with the Commission will satisfy all reporting requirements. Under the proposed Document Filing Regulation, reports and statements required to be filed by political committees are filed with the Clerk of the House of

Representatives if the committee supports only candidates for nomination or election to the House of Representatives. If a political committee supports only candidates for nomination or election to the office of United States Senator, reports and statements shall be filed with the Secretary of the Senate. All other political committees must file reports in original with the Federal Election Commission. (See Proposed Document Filing Regulations, §106.4 as adopted by the Commission on July 15, 1975.)

The foregoing represents an opinion of counsel which the Commission has noted without objection.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.  
General Counsel

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