

ADVISORY OPINION 1975-105

Pre-primary Nominating Convention as Part of Primary Election Process

The Federal Election commission renders this advisory opinion under 2 U.S.C. §437f in response to a request submitted by Mr. Jack Stahl on behalf of the Republican Party of New Mexico. This request was published in the Federal Register on November 12, 1975 (40 FR 52797). Interested parties were given an opportunity to submit comments relating to the request, but no comments were received.

Mr. Stahl seeks an advisory opinion concerning the New Mexico nominating process. New Mexico law requires that all candidates seeking position on the primary ballot, other than write-in positions, must seek their party's convention designation. Mr. Stahl asks whether such a pre-primary convention is a separate election as defined by 18 U.S.C. §591(a), and whether limitations on expenditures and contributions therefore apply as provided in 18 U.S.C. §608.

The Commission is of the opinion that a political party's caucus or convention held prior to a primary election which does not select a nominee is part of the primary election rather than a separate election.

18 U.S.C. §608 provides separate contribution and expenditure limitations for the period during which nomination is sought and for the period when election is sought. A pre-primary convention for the purpose of gaining access to a primary ballot would be part of the primary process; thus, when a candidate campaigns for selection by such a convention he or she would be engaged in an effort to secure nomination and the limits applicable to that process would be in effect. These candidates would be responsible for determining what portion of their expenditures would be necessary for campaigning before the convention and what portion would be needed to campaign before the primary election itself. Competing candidates could, by agreement, voluntarily limit expenditures for a convention or caucus to a fixed amount so that an adequate amount remained to be expended in connection with the actual primary.

This advisory opinion is issued on an interim basis pending promulgation by the Commission of rules and regulations or policy statements of general applicability.