

## ADVISORY OPINION 1975-108

EFFECT OF EXPENDITURE AND CONTRIBUTION  
PROVISIONS OF THE FECA

This advisory opinion is issued pursuant to 2 U.S.C. §437f in response to a request submitted by the United States Labor Party (hereinafter called "Labor Party"). The request was published in the December 1, 1975 Federal Register (40 FR 55827). Interested parties were given an opportunity to submit written comments pertaining to the request. No comments were received.

The Labor Party states that it is a political organization which runs candidates for various State and Federal offices, including the Presidency of the United States. The candidates support the Party's policy program and general goals regardless of the office sought. The Party asks four questions concerning the effect of the expenditure and contribution provisions of the Federal Election Campaign Act of 1971, as amended, and pertinent sections of Title 18, United States Code ("the Act") on certain types of public appearances by its candidates.

The first and third questions ask whether the Act is applicable to the costs incurred by or on behalf of Labor Party candidates for Federal office who make appearances on behalf of causes which the request states are "not directly concerned with their electoral campaigns." The appearances are sponsored by groups which are not affiliated with the Labor Party.

In regard to the first and third questions, costs incurred by Federal candidates of the Labor Party in making non-party appearances may be expenditures within the meaning of the Act. It is the Commission's view that appearances before a substantial number of people who comprise a part of the electorate with respect to which the individual is a Federal candidate are presumably made for the purpose of enhancing the candidacy. Thus, the costs incurred by or on behalf of the candidate in making such appearances are reportable by the candidate as expenditures and are subject to the limitations and prohibitions in 18 U.S.C. §608, 610, 611, 613, et seq. There is no need to compute the quantity or quality of the influence on future voting; it is the presumed purpose to influence the nomination or election that controls and leads to the conclusion that expenditures have been made. [See AO 1975-13 (40 FR 36746, August 21, 1975) and AO 1975-20 (40 FR 45292, October 1, 1975).]

The Labor Party's second question concerns the treatment of donations to organizations which are not affiliated with the Labor Party. Specifically, if a Labor Party candidate appears at an event sponsored by an organization which is not affiliated with the Party and if donations are made by members of the audience to the sponsoring organization, are the donations to be considered as contributions by the Labor Party or the candidate to the organization which sponsored the event. Additionally, would the organization receiving the contribution be transformed into a political committee (assuming the amount to be in excess of \$1,000)?

As a general matter, the Commission would not view a donation by a third party to an organization before which a Labor Party candidate appears as a contribution from the Party or the candidate to the sponsoring organization. This conclusion is premised on the assumption that neither the Labor Party or its candidate exercises any control or has any prior arrangement with the sponsoring organization as to the use of the donations received by the sponsoring organization.

Finally, the Labor Party asks whether it may pay for the costs of party appearances by its presidential candidate without having such costs counted as expenditures within the meaning of 2 U.S.C. §431(f) and 18 U.S.C. §591(f).

The same issue has already been addressed by the Commission in response to an opinion request by the Republican National Committee. (See AO 1975-72 appearing in 40 FR 56588, December 3, 1975). The Commission noted pertinently:

"It is the opinion of the Commission that a political party may designate any person to represent them at a legitimate party promotional event. If such person is a candidate under the Federal Election Campaign Act, as amended, the Commission will presume after January 1 of a presidential election year, . . . that the candidate's appearances benefit his candidacy directly and must be treated as subject to the provisions of the FECA, as amended. The Commission is also of the opinion that candidate appearances at a legitimate party promotional event, prior to January 1 of a presidential election year are party building in nature and are not inherently intended to influence the candidate's nomination for election to Federal office. Therefore, these appearances are not subject to the limitations of the FECA, as amended, as long as they are in compliance with the guidelines set forth herein.

\* \* \*

". . . The post January 1 appearances will be presumed to be candidate-related and will be governed by the relevant portions of the FECA, as amended. Those before January 1 will be presumed not to be candidate-related. The Commission's conclusions may be rebutted upon a showing, *inter alia*, that the solicitations for the party event, or the setting of the event, or the remarks made by candidates who were invited to attend were 'for the purpose of influencing the nomination for election, or election, of [that candidate(s)] to Federal office.' (See 2 U.S.C. §§431(c) and (f); 18 U.S.C. §591(e) and (f).) Moreover, the Commission presumes that in the period prior to January 1, 1975, the [Party] will accord equitable treatment of all of its . . . candidates."

The principles established in AO 1975-72 will apply to party-building appearances by Labor Party candidates. Although there is a distinction between the Republican National Committee and the Labor Party, in that the former is a major party (as defined in 26

U.S.C. §9002(6)) while the latter is neither a major nor a minor party (as defined in 26 U.S.C. §9002(7)) the Commission does not believe the distinction is germane if the presidential candidate appearances involve legitimate party promotional events. The Act implicitly recognizes the importance of encouraging stronger and more competitive major, minor and new parties (see Report of Senate Rules and Administration Comm. to accompany S. 3044, No. 93-689, pp. 7-8.\* Obviously, if the Labor Party is obliged to count the costs incurred on behalf of appearances by its presidential candidate at a legitimate party promotional event, this would only serve to weaken the party; it would also involve an invidious discrimination against the Labor Party.

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

---

\* Within the context of the report, the terms minor and new parties appear to cover all political parties other than the two major parties.