

Re: AOR 1975-117

NOTE: The responsive document to AOR 1975-117 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.

February 23, 1976

AOR 1975-117 issued as
OC 1975-121

OC 1975-121

Ronald Robinson, Chairman
Young America's Campaign Committee
919 18th Street, Suite 800
Washington, D. C. 20006

Dear Mr. Robinson:

This responds further to your letter of November 25, 1975, requesting an advisory opinion, on whether the Young America's Campaign Committee (YACC), may approve a project entitled "Citizens Against Kennedy." The project is designed to raise funds through mailings, and advertisements placed in newspapers throughout the country, for the purpose of adversely influencing any presidential ambitions Senator Kennedy may entertain. You state that the project has neither sought nor obtained the consent or approval of any person seeking nomination or election to the Office of President or Vice President of the United States, and ask whether the contribution and independent expenditure limitations under the Federal Election Campaign Act of 1971, as amended (the Act), are applicable.

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.

Regarding independent expenditure limitations, the Court held in Buckley, inter alia, that §608(e) of Title 18, United State Code, is unconstitutional. Thus, the YACC, may make unlimited expenditures on behalf of the "Citizens Against Kennedy" project from funds contributed to the Committee. Of course, since YACC is a "political committee"

under the Act, these independent expenditures will have to be reported. See 2 U.S.C. §434.

The Supreme Court opinion did, however, lay down a test for what constitutes an independent expenditure and what would be considered a contribution in kind to a candidate and therefore subject to the limits of 18 U.S.C. §608(b). See Buckley, supra, fn. 53 at pp. 40-41 of the Slip Opinion. Under that test, inter alia, cooperation with or consent of any candidate (not just the candidate or persons mentioned in the project) would make the cost of the project a contribution in kind to the candidate whose cooperation or consent was obtained and therefore subject to the limits of 18 U.S.C. §608(b).

With regard to contribution limitations, I am of the opinion that only the \$25,000 aggregate calendar year limit on individuals under 18 U.S.C. §608(b)(3) is applicable since the money received is intended to influence the course of a Federal Election. Thus, an individual could contribute as much as \$25,000 to the YACC for the described project, provided he or she made no other contributions with respect to the 1976 elections.

The foregoing constitutes 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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