

ADVISORY OPINION 1975-120

Treatment of Contributions Made To A House Candidate By An Affiliate Of A State Party

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request submitted by the Clifford Allen for Congress Committee and published in the Federal Register on December 22, 1975 (40 FR 59311). Interested parties were given an opportunity to submit written comments pertaining to the request. No comments were received.

The Clifford Allen for Congress Committee is a political committee formed to support the election of Clifford Allen to Congress from Tennessee (5th Congressional District). The Committee states that subsequent to the Tennessee primary, held on October 9, 1975, it received a \$2,500 check from the Tennessee Democratic Party Telethon Committee -- a group which had registered with the House of Representatives in July 1975, and which, in the view of the Allen Committee, was a division of the Tennessee Democratic Party. There was no indication as to which portion of the \$2,500 check was to be used for the just concluded primary election and which portion for the upcoming election.

The Allen Committee seeks assistance from the Commission as to what portions of the Telethon Committee's check it may utilize for the primary and special elections without violating the Federal Election Campaign Act of 1971, as amended.

In the view of the Commission, the \$2,500 check is clearly a contribution within the meaning of 18 U.S.C. §591(e). Since the Telethon Committee was not in existence for six months when it made the contribution, it therefore, did not come within the scope of the specialized definition in 18 U.S.C. §608(b)(2), and could donate no more than \$1,000 to a single election campaign. [See 18 U.S.C. §§591(a) and 608(b)(1), also, AO 1975-32, published in 40 FR 55599, November 28, 1975.] As a general matter, the Allen Committee could receive \$2,000 and this amount would have to be divided evenly between the two campaigns. The Commission notes, however, that the check was received subsequent to the primary election.¹ The Commission is of the opinion that contributions earmarked for the primary election which are received by the candidate after the primary will be treated as contributions for the special election unless at the time the contribution is received the amount of debts from the primary campaign exceeds the balance on hand in the primary election account. (See AO 1975-53 published in 40 FR 58392, Dec. 16, 1975 and proposed allocation regulation adopted by the Commission on January 19, 1976). Although the Telethon Committee did not specifically " earmark" a portion of the contribution for the primary, the Allen Committee may, under the limited

¹ The term "primary election" is used herein to refer to the primary that was held to determine which candidates would run in the subsequent special election held to fill a vacancy.

facts of this case, consider \$1,000 of this check to be a contribution to the primary election if the following two considerations are met. First, the Telethon Committee has not made any other contribution to Allen's primary election. Second, the Allen Committee has at the time of receipt, outstanding debts from the primary election of \$1,000 or more. In addition, the Allen Committee could receive \$1,000 to be applied toward the special election campaign. Any amount in excess of this violates Federal election laws and would, therefore, have to be returned to the Telethon Committee.

In reaching this conclusion the Commission is mindful that pursuant to 18 U.S.C. §608(f)(3)(B) and its prior ruling AO 1975-2 (40 FR 36092, August 18, 1975), a state party and its lawfully designated subcommittees may expend up to \$10,000 on the general election campaign of a Congressional candidate.² However, a direct donation of money to a candidate -- as in the present instance -- is not the same as an expenditure "in connection with the general election campaign" of a candidate. In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used.

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

Date January 26, 1976

(signed) _____
Neil Staebler
Vice Chairman for the
Federal Election Commission

² The Commission regards a special election to fill a vacancy in Federal office as included in the term general election as used in 18 U.S.C. §608(f).